2013 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

UNITED STATES TRADE REPRESENTATIVE

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FOREIGN TRADE BARRIERS

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Office of the United States Trade Representative

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LIST OF FREQUENTLY USED ACRONYMS AND ABBREVIATIONS

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

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

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FOREWORD

The 2013 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 28th in an annual series that surveys significant foreign barriers to U.S. exports. This document is a companion piece to the President's Trade Policy Agenda published in March. The issuance of the NTE Report continues the elaboration of an enforcement strategy, utilizing this report, among other tools, in that strategy.

On February 28, 2012, the President signed an Executive Order establishing the Interagency Trade Enforcement Center (ITEC) within the Office of the United States Trade Representative. Bringing together staff from a variety of agencies with a diverse set of skills and expertise, ITEC is a single organization with a clear cross-government commitment to strong trade enforcement. ITEC already has begun playing a critical role in multiple enforcement actions, including two actions regarding China, and one each against Argentina, India and Indonesia. The information contained in the NTE represents one of the important sources upon which ITEC staff can draw as it conducts research and analysis regarding a number of countries and issues.

In accordance with section 181 of the Trade Act of 1974, as added by section 303 of the Trade and Tariff Act of 1984 and amended by section 1304 of the Omnibus Trade and Competitiveness Act of 1988, section 311 of the Uruguay Round Trade Agreements Act, and section 1202 of the Internet Tax Freedom Act, the Office of the U.S. Trade Representative is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers.

The statute requires an inventory of the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. Such an inventory facilitates negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws, with the goal of expanding global trade and strengthening the rules-based trading system, to the benefit of all economies, and U.S. producers and consumers in particular.

The report provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports. Information is also included on some of the actions taken to eliminate foreign trade barriers. Opening markets for American goods and services, either through negotiating trade agreements or through results-oriented enforcement actions, is this Administration's top trade priority. This report is an important tool for identifying such trade barriers.

SCOPE AND COVERAGE

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

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

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

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

- Government procurement (*e.g.*, "buy national" policies and closed bidding);

- Export subsidies (*e.g.,* export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

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

- Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of foreign data processing, and barriers to the provision of services by foreign professionals);

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

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

- Trade restrictions affecting electronic commerce (*e.g.*, tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

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

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

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

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

USTR continues to more vigorously scrutinize foreign labor practices and to redress substandard practices that impinge on labor obligations in U.S. free trade agreements (FTAs) and deny foreign workers their internationally recognized labor rights. USTR has also introduced new mechanisms to enhance its monitoring of the steps that U.S. FTA partners have taken to implement and comply with their obligations under the environment chapters of those agreements. To further these initiatives, USTR has implemented interagency processes for systematic information gathering and review of labor rights practices and environmental enforcement measures in FTA countries, and USTR staff regularly works with FTA countries to monitor practices and directly engages governments and other actors. The Administration has reported on these activities in the *2013 Trade Policy Agenda and 2012 Annual Report of the President on the Trade Agreements Program*.

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

This report discusses the largest export markets for the United States, including 57 countries, the European Union, Taiwan, Hong Kong, and one regional body. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

NTE sections report the most recent data on U.S. bilateral trade in goods and services and compare the data to the preceding period. This information is reported to provide context for the reader. In nearly all cases, U.S. bilateral trade continued to increase in 2012 compared to the preceding period (with world Gross Domestic Product and world trade up 3.3 percent and 3.2 percent, respectively). The merchandise trade data contained in the NTE are based on total U.S. exports, free alongside (f.a.s.)[ii] value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce (NOTE: These data are ranked in an Appendix according to size of export market). The services data are drawn from the October 2012 Survey of Current Business, compiled by the Bureau of Economic Analysis in the Department of Commerce (BEA). The direct investment data are drawn from the September 2012 Survey of Current Business, also from BEA.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

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

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

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

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

March 2013

Endnotes

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

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

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

The United States led efforts to launch the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). In November 1997, the United States and 33 other nations adopted the Antibribery Convention, which currently is in force for 38 countries, including the United States. The Antibribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. (*For additional information, see* http://www.export.gov/tcc ***and*** http://www.oecd.org*.)*

The United States also played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anticorruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of December 2012, there were 165 parties, including the United States.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption (Inter-American Convention). The Inter-American Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery and corruption. The Inter-American

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

The United States continues to push its anticorruption agenda forward. The United States seeks binding commitments in FTAs that promote transparency and that specifically address corruption of public officials. The United States also is seeking to secure a meaningful agreement on trade facilitation in the World Trade Organization (WTO) and has been pressing for concrete commitments on customs operations and on transparency of government procurement regimes in FTA negotiations. In the Trans-Pacific Partnership negotiations, the United States is seeking expanded transparency and anticorruption disciplines. The United States is also playing a leadership role on these issues in APEC and other fora.

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

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was $8.3 billion in 2012, down $3.8 billion from 2011. U.S. goods exports in 2012 were $1.5 billion, down 0.9 percent from the previous year. Corresponding U.S. imports from Angola were $9.8 billion, down 27.8 percent. Angola is currently the 70th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Angola was $5.7 billion in 2011 (latest data available), up from $4.7 billion in 2010.

IMPORT POLICIES

Tariffs and Nontariff Measures

Angola is a member of the WTO and the Southern African Development Community (SADC). However, Angola has delayed implementation of the 2003 SADC Protocol on Trade (which seeks to reduce tariffs), which remains low as a result of years of civil war and economic underdevelopment. The government is concerned that early implementation of the SADC Protocol on Trade would lead to a large increase in imports, particularly from South Africa.

In September 2008, a tariff schedule came into force that removed duties on the import of raw materials, equipment, and intermediate goods for industries and reduced tariffs on 58 categories of basic goods. A new tax was also established on imports of luxury products, which are now subject to a 1 percent surcharge. The 2008 tariff schedule eliminated personal customs fees and transportation taxes. In addition to duties, fees associated with importing include clearing costs (2 percent), value added tax (2 percent to 30 percent depending on the good), revenue stamps (0.5 percent), port charges ($500 per day per 20 foot container or $850 per day per 40 foot container), and port storage fees (free for the first 15 days, then $20 per 20 foot container or $40 per 40 foot container per day).

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

Customs Barriers

Administration of Angola's customs service has improved in the last few years but remains a barrier to market access. The Angolan customs code follows the guidelines of the World Customs Organization, the WTO, and the SADC. The construction of two dry ports for container storage in the Luanda capital area and the diversion of some marine traffic to the Port of Lobito improved customs clearance. The pre-clearance of containers before transport to Angola through exclusive pre-shipment inspection provider, Bureau Veritas, further improves the efficiency of the process. In November 2012, the Vice-Minister of Transportation reported a two-week average for the clearance of containers at the Port of Luanda.

The importation of certain goods into Angola requires an import license issued by the Ministry of Commerce. Most forwarding agents can complete this process quickly. The import license is renewable annually and covers all shipments of the authorized good or category of goods imported by the licensed importer. The importation of certain goods may require specific authorization from various government ministries. This often leads to bureaucratic bottlenecks that can result in delays and extra costs. Goods that require ministerial authorization include the following: pharmaceutical substances and saccharine and derived products (Ministry of Health); radios, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); weapons, ammunition, fireworks, and explosives (Ministry of Interior); plants, roots, bulbs, microbial cultures, buds, fruits, seeds, and crates and other packages containing these products (Ministry of Agriculture); fiscal or postal stamps (Ministry of Post and Telecommunications); poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and samples or other goods imported to be given away (Customs).

Required customs paperwork includes the "*Documento Único*" (single document) for the calculation of customs duties, proof of ownership of the good(s), bill of lading, commercial invoice, packing list, and specific shipment documents verifying the right to import or export the product. Any shipment of goods equal to or exceeding $1,000 requires use of a clearing agent. The number of clearing agents increased from 55 in 2006 to 155 in 2011, but competition among clearing agents has not reduced fees, which typically range from 1 percent to 2 percent of the value of the declaration.

Pre-shipment inspection is recommended for most goods including cars, live animals and living plants, cereals, seeds, food produce, pharmaceuticals, chemicals, alcoholic beverages, and dairy products. The Bureau Inspection Valuation Assessment Control (BIVAC), a private company associated with Bureau Veritas, is agent for pre-shipment inspections. Exporters that do not use BIVAC/Bureau Veritas for pre-shipment inspection are subject to additional inspection upon arrival, another time-consuming and bureaucratic process.

GOVERNMENT PROCUREMENT

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

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

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

INVESTMENT BARRIERS

Angola is formally open to foreign investment, but its legal infrastructure makes it difficult to provide sufficient protection to foreign investors. Smaller firms in non-extractive industries tend to have a more difficult time conducting business in Angola as compared to larger, multinational corporations engaged in extractive industries. A private investment law, passed in May 2011, altered benefits and incentives available for investors. The minimum investment required to qualify for incentives was increased from $100,000 under the previous law to $1 million under the new law. Investors must enter into an investment contract with the Angolan state, represented by the National Agency for Private Investment (ANIP), which establishes the conditions for the investment as well as the applicable incentives. ANIP offices are located in Luanda and Washington, D.C. The incentives and benefits, which can include preferential treatment when repatriating funds out of Angola, tax deductions and exemptions, will be negotiated with ANIP and other ministries of the Angolan government on a case-by-case basis. In determining whether to grant incentives, consideration will be given to the economic and social impact of the investment, taking into account the government's economic development strategy. Larger incentives with longer validity periods are offered to companies that invest in lesser developed areas outside of the greater Luanda capital region.

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

The Angolan justice system is slow, arduous, and not always impartial. The World Bank's "Doing Business in 2013" survey estimates that commercial contract enforcement, measured by the amount of time elapsed between the filing of a complaint and the receipt of restitution, generally takes 1,011 days in Angola. While an existing law includes the concept of domestic and international arbitration, the practice of arbitration law is still not widely implemented.

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

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

Obtaining the proper permits and business licenses to operate in Angola is time-consuming and adds to the cost of investment. The World Bank "Doing Business in 2013" report noted that it takes an average of 171 days in Angola compared to a regional average of 100 days to start a business.

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

In November 2011, the government passed a law requiring oil companies to conduct a much greater share of their financial transactions through the Angolan banking system. The law will be implemented in phases. Under the first phase set to begin in January 2013, oil companies will be required to pay their taxes owed to the Angolan government through a local bank. Under the final phase, oil companies operating in Angola must use local banks to make all payments, including payments to suppliers and contractors located outside of Angola. U.S. companies are concerned that Angolan banks may lack the capacity to process all of these transactions.

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

OTHER BARRIERS

Corruption

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

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

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

In November 2009, President Dos Santos called for a zero tolerance policy against corruption. In March 2010, the National Assembly approved a law on Public Probity which requires most government officials to declare their assets to the Attorney General (though the information is not made available to the general public).

Infrastructure

Angola's damaged and neglected infrastructure substantially increases the cost of doing business for investors. Poor roads, destroyed bridges, and mined secondary routes raise transportation costs. While the government continues its efforts to rebuild Angola's communications, energy, transportation, and road infrastructure, many times its efforts fall short because of poor planning, shoddy work, and lack of capacity among Angolan professional and technical workers. For example, while road infrastructure has improved, the roadways connecting Angola's major cities still contain many hazards such as potholes and poor signage. Cell phone and Internet coverage is unreliable, as communication networks continue to be oversubscribed in the provinces and sometimes even in the capital city of Luanda. Frequent disruptions of service also plague the water and power utilities forcing the purchase of back-up electrical generators and cisterns.

ARAB LEAGUE

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

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

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

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

Boycott activity can be classified according to three categories. The primary boycott prohibits the importation of goods and services from Israel into the territory of Arab League members. This prohibition may conflict with the obligation of Arab League members that are also members of the WTO to treat products of Israel on a most favored nation basis. the secondary boycott prohibits individuals, companies (both private and public sector), and organizations in Arab League members from engaging in business with U.S. firms and those from other countries that contribute to Israel's military or economic development. Such foreign firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League; the CBO often provides this list to other Arab League member governments, who decide whether or to what extent they follow it in implementing any national boycotts. The tertiary boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

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

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

JORDAN: Jordan formally ended its enforcement of any aspect of the boycott when it signed the Jordanian-Israeli peace treaty in 1994. Jordan signed a trade agreement with Israel in 1995, and later an expanded trade agreement in 2004 (essentially Israel's first free trade agreement with an Arab country). Jordanian-Israeli bilateral trade grew from $10 million in 1996 to approximately $374 million in 2008, though trade fell (likely a result of the international financial crisis) to an estimated $130 million in 2010 (latest information available). While some elements of Jordanian society continue to oppose improving political and commercial ties with Israel, government policy does not condone such positions.

LIBYA: Libya does not maintain diplomatic relations with Israel and has a law in place mandating the boycott. Under the Qaddafi regime, Libyan government entities routinely inserted boycott language in contracts with foreign companies and government tenders. After the United States lifted trade sanctions against Libya in April 2004, several U.S. firms shunned business opportunities because of Libya's strict enforcement of its boycott law. The 2011 revolution, which led to the downfall of the Qaddafi regime, and the uncertain political environment which has prevailed since, have made it extremely difficult to predict the future course of Libyan government policy with respect to the boycott. The post-revolution Libyan government has not articulated its stance vis-à-vis the boycott. The Administration will continue to monitor closely Libya's treatment of boycott issues.

IRAQ: The legal status of Iraq's boycott laws is ambiguous. A 2009 Council of Ministers decision held that Saddam-era boycott laws should not be applied. However, some individual Iraqi government officials and ministries have ignored that decision and continue to request that companies provide boycott-related information or comply with boycott restrictions. According to data from the U.S. Department of Commerce, the number of prohibited requests from Iraq has continued to increase, from 7 in 2009 to 69 in 2012 (slightly down from 72 in 2011); Iraq was the second largest source of prohibited requests in 2012.

The Iraqi Ministry of Health continues to request compliance with the Arab League boycott and has not removed boycott-related requirements from tender documents. In addition, Iraq's Ministry of Planning requires U.S. companies to answer a boycott questionnaire about a firm's relationship with Israel as part of the patent registration process. The Ministry of Oil also employs boycott-related language. U.S. officials have urged officials in these ministries to follow the 2009 Council of Ministers decision and have solicited the assistance of the Ministry of Trade in advocating for compliance with that decision.

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

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

PALESTINIAN AUTHORITY: The Palestinian Authority (PA) agreed not to enforce the boycott in a 1995 letter to the U.S. Government.

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

MOROCCO: Moroccan law contains no specific references to the Arab League boycott. The government informally recognizes the primary aspect of the boycott due to Morocco's membership in the Arab League, but does not enforce any aspect of it. Trade with Israel reportedly does take place, but cannot be quantified from official statistics. U.S. firms have not reported boycott-related obstacles to doing business in Morocco. Moroccan officials do not appear to attend CBO meetings in Damascus.

TUNISIA: Upon the establishment of limited diplomatic relations with Israel, Tunisia terminated its observance of the Arab League boycott. In the wake of the 2011 revolution, the interim Tunisian government's policy with respect to the boycott remains unclear.

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

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

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

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

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

The situation in individual GCC countries is as follows:

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

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

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

Qatar does not maintain a boycott law and does not enforce the boycott. However, it normally sends an embassy employee to observe the CBO meetings in Damascus. Although Qatar renounced implementation of the boycott of U.S. firms that do business in Israel (the secondary and tertiary boycott) in 1994, U.S. firms and their subsidiaries occasionally report receiving boycott requests from public Qatari companies. An Israeli trade office opened in Qatar in May 1996, but Qatar ordered that office closed in January 2009 in protest against the Israeli military action in Gaza. Despite this closure, Qatar continues to allow trade with Israel and allows Israelis to visit the country. Official data from the Qatari government indicated that there was approximately $3 million in trade between Qatar and Israel in 2009. Actual trade, including Israeli exports of agricultural and other goods shipped via third countries, is likely double the official figures. Qatar permits the entry of Israeli business travelers who obtain a visa in advance. The chief executive of Qatar's successful 2022 World Cup bid indicated that Israeli citizens would be welcome to attend the World Cup.

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

The United Arab Emirates (UAE) complies with the 1994 GCC decision and does not implement the secondary and tertiary aspects of the boycott. The UAE has not renounced the primary aspect of the boycott, but the degree to which it is enforced is unclear. According to data from the U.S. Department of Commerce, U.S. firms continue to face a relatively high number of boycott requests in the UAE (this could be attributed to the high volume of U.S.-UAE goods and services trade), which the government explains is mostly due to the use of outdated documentation, especially among private sector entities. The United States has had some success in working with the UAE to resolve specific boycott cases. Commerce Department OAC and Emirati Ministry of Economy officials met in early 2012 to continue their periodic meetings aimed at encouraging the removal of boycott-related terms and conditions from commercial documents. The Emirati government has taken a number of steps to eliminate prohibited boycott requests, including the issuance of a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy.

Non-Arab League Countries

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

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was $6.0 billion in 2012, an increase of $569 million from 2011. U.S. goods exports in 2012 were $10.3 billion, up 4.2 percent from the previous year. Corresponding U.S. imports from Argentina were $4.4 billion, down 3.3 percent. Argentina is currently the 29th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Argentina were $5.8 billion in 2011 (latest data available), and U.S. imports were $1.7 billion. Sales of services in Argentina by majority U.S.-owned affiliates were $7.3 billion in 2010 (latest data available), while sales of services in the United States by majority Argentina-owned firms were $13 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was $13.3 billion in 2011 (latest data available), up from $11.2 billion in 2010. U.S. FDI in Argentina is mostly in manufacturing and nonbank holding sectors.

IMPORT POLICIES

Tariffs

Argentina is a member of the MERCOSUR common market, formed in 1991 and composed of Argentina, Brazil, Paraguay, Uruguay, and Venezuela. Venezuela was admitted as a full member in July 2012. MERCOSUR maintains a Common External Tariff (CET) schedule with a limited number of country-specific exceptions, with most favored nation (MFN) applied rates ranging from 0 percent to 35 percent *ad valorem*. Argentina's import tariffs follow the MERCOSUR CET, with some exceptions. Argentina's MFN applied rate averaged 11.4 percent in 2012. Argentina's average bound tariff rate in the WTO is significantly higher at 31.8 percent. According to current MERCOSUR procedure, any good introduced into any member country must pay the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country.

At the MERCOSUR Common Market Council (CMC) ministerial meeting in December 2011, MERCOSUR members agreed to increase import duty rates temporarily to a maximum rate of 35 percent on 100 tariff items per member country. Although authorized to implement the decision as early as January 2012, Argentina waited until January 2013 to publish decree 25/2013 implementing these tariff increases. These tariff increases are valid for one year but may be extended through December 2014. The list of products affected can be found at http://infoleg.gov.ar/infolegInternet/anexos/205000-209999/207701/norma.htm. In June 2012, the MERCOSUR CMC further allowed up to 100 additional country-specific exceptions to the CET to be implemented for as long as one year, through December 31, 2014. As of February 2013, Argentina has not yet implemented this provision.

MERCOSUR member countries are also currently allowed to set import tariffs independently for some types of goods, including computer and telecommunications equipment, sugar, and some capital goods. In July 2012, Argentina partially eliminated its exemptions to the CET on capital goods through Decree 1026/2012 and currently imposes the 14 percent CET rate on imports of capital goods that are produced domestically; imports of certain other capital goods that are not produced domestically are subject to a reduced *ad valorem* tariff of 2 percent. A list of the goods affected and their respective tariff rates can be found in http://infoleg.gov.ar/infolegInternet/anexos/195000-199999/199256/norma.htm. Argentina also has bilateral arrangements with Brazil and Uruguay on automobiles and automotive parts intended to liberalize trade and increase integration in this sector among the three countries.

Several U.S. industries have raised concerns about prohibitively high tariffs and other taxes in Argentina on certain products, including distilled spirits, restaurant equipment, and motorcycles. In early 2012, the Argentine government announced a tax increase on "high-end" imported cars and motorcycles with the stated purpose of protecting the domestic industry. Argentine consumers are now required to pay an additional 10 percent tax on such vehicles imported from outside MERCOSUR.

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

During its 39th meeting in August 2010, MERCOSUR's CMC advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and decision 5610 (December 2010) to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012. That deadline was not met, however. In November 2012, Argentina became the first MERCOSUR member to ratify the CCC. The CCC still must be ratified by the other MERCOSUR member countries.

Nontariff Barriers

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

Since 2011, the government of Argentina increased its reliance on a growth strategy that is based heavily on import substitution. To carry out this strategy, Argentina increased its use of non-automatic import licenses (see more detailed discussion below) and imposed other nontariff barriers.

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

Argentina prohibits the import of many used capital goods. Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that may be imported, which are also subject to import taxes of up to 28 percent and a 0.5 percent statistical tax. Argentina has carved out exceptions for some industries (*e.g.*, graphics, printing, machine tools, textiles, and mining), enabling importation of used capital goods at a zero percent import tax. The Argentina-Brazil Bilateral Automobile Pact also bans the import of used self-propelled agricultural machinery unless it is rebuilt. Argentina prohibits the importation and sale of used or retreaded tires (but in some cases allows remolded tires); used or refurbished medical equipment, including imaging equipment; and used automotive parts. Argentina generally restricts or prohibits the importation of any remanufactured good, such as remanufactured automotive parts, earthmoving equipment, medical equipment, and information and communications technology products. In December 2010, Argentina reintroduced an import prohibition on used clothing, which is due to expire in 2015.

In August 2012, the Argentine tax authority (*Administración Federal de Ingresos Públicos* or "AFIP") issued Resolution 3373, which increased the tax burden for importers. The value-added tax (VAT) advance rate rose from 10 percent to 20 percent on imports of consumer goods, and from 5 percent to 10 percent on imports of capital goods. The income tax advance rate on imports of all goods increased from 3 percent to 6 percent, except when the goods are intended for consumption or for use by the importer, in which case an 11 percent income tax rate applies.

In May 2012, the Argentine National Mining Agency (*Agencia Nacional de Minería*) issued resolutions 12/2012 and 13/2012 requiring mining companies registered in Argentina to use Argentine-flagged vessels to transport minerals and their derivatives for export from Argentina and to purchase domestic capital goods, spare parts, inputs and services, in accordance with the government's import substitution policies.

Import Licenses:

In 2012, Argentina continued the use of non-automatic licenses to restrict imports generally and to protect sectors that the Argentine government deems sensitive. Throughout 2012, approximately 600 tariff lines were subject to non-automatic licenses, including textile products, yarn, and fabrics; iron, steel, and metal products; automotive parts; chemical products; general and special purpose machinery; and consumer goods. In January 2013, the non-automatic import license requirements on these products were repealed.

U.S. firms have reported long delays in obtaining import licenses, including delays that significantly exceed the time periods contemplated by the WTO Agreement on Import Licensing Procedures. U.S industry notes that the wait time for the issuance of non-automatic licenses generally is between 60 days to 180 days but can be longer. In many instances, import licenses are denied altogether without explanation or justification. The lack of transparency in Argentina's implementation and administration of its import licensing regime creates uncertainty for U.S. exporters as well as U.S. investors in Argentina. Obtaining a license is reportedly burdensome and requires multiple duplicative reviews by several different government offices. Once issued, the certificates are generally valid for 60 days.

U.S. firms have also reported that applications for import licenses are often not approved unless they are accompanied by a plan to export goods from Argentina of equivalent value to those that are being imported or a plan to invest in local production facilities. These requirements are not codified in law or regulation. Rather, they are communicated to companies informally by the Argentine government.

In early January 2012, Argentina announced a new measure, effective on February 1, 2012, requiring companies to file an online affidavit, known as the Advanced Sworn Statement on Imports (or by its Spanish acronym "DJAI") and wait for government review and approval before importing goods. All goods imported for consumption are subject to the DJAI requirement. This requirement creates additional delays and is reportedly used to restrict imports, including by imposing export or investment plans of the type required to obtain product specific non-automatic import licenses. Following the implementation of the DJAI measure, in September 2012, Argentina eliminated the automatic import licensing requirements it previously administered on 2,100 tariff lines, mainly involving consumer products.

In response to U.S. Government inquiries about its import licensing regime, Argentina has asserted that all of these measures are nondiscriminatory and consistent with WTO rules. On August 21, 2012, the United States requested consultations with Argentina under the dispute settlement provisions of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes concerning these import restrictive measures and practices. The United States, along with Mexico and Japan, held consultations with Argentina in September 2012. After the consultations failed to resolve the issue, the United States requested the establishment of a dispute settlement panel in December 2012. The European Union and Japan joined the United States in its panel request.

Customs Valuation:

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

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

In April 2012, Argentina issued General Resolution 3301, which established reference values for other household articles and toiletry articles of plastics (HS code 3924.90) from several countries, including the United States.

Customs External Notes 87/2008 of October 2008 and 15/2009 of February 2009 establish administrative mechanisms that restrict the entry of products deemed sensitive, such as textiles, apparel, footwear, toys, electronic products, and leather goods. While the restrictions are not country specific, they are to be applied more stringently to goods from countries considered "high risk" for under-invoicing, and to products considered at risk for under-invoicing as well as trademark fraud. The full text of Note 87/2008 can be found at: http://www.infolegInternet/anexos/145000-149999/145766/normal.htm.

Ports of Entry:

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

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

Customs Procedures

Certificates of origin have become a key element in Argentine import procedures because of antidumping measures, criterion values, and certain geographical restrictions. In August 2009, AFIP revised through External Note 4 certificate of origin requirements for a list of products with non-preferential origin treatment. The products effected include certain organic chemicals, tires, bicycle parts, flat-rolled iron and steel, certain iron and steel tubes, air conditioning equipment, wood fiberboard, most fabrics (*e.g.*, wool, cotton, other vegetable), carpets, most textiles (*e.g.*, knitted, crocheted), apparel, footwear, metal screws and bolts, furniture, toys and games, brooms, and brushes. To receive the most favored nation tariff rate, the certificate of origin must be certified by an Argentine consulate. The certificate is valid for 180 days, which has proven problematic for some companies that import goods subject to non-automatic licenses where major delays in obtaining an import license results in their issuance after the 180 day validity period for the certificate of origin has expired.

Simplified customs clearance procedures on express delivery shipments are only available for shipments valued at $1000 or less. Couriers also are now considered importers and exporters of goods, rather than transporters, and also must declare the tax identification codes of the sender and addressee, both of which render the process more time-consuming and costly. These regulations increase the cost not only for the courier, but also for users of courier services. The U.S. Government has raised these policies with the Ministry of Federal Planning, Public Investment and Services, the Directorate of Customs, and the National Administration of Civil Aviation.

EXPORT POLICIES

Argentina imposes export taxes on all but a few exports, including significant export taxes on key hydrocarbon and agricultural commodities. In many cases, the export tax for raw materials is set higher than the sale price of the processed product to encourage development of domestic value-added production. Crude hydrocarbon export taxes are indexed to world commodity benchmarks. Total export tax revenue in 2012 was equal to 15.5 percent of the value of all Argentine exports (stable from 15.6 percent in 2011), including goods not subject to export taxes.

Despite proposals from within and outside the Argentine Congress to reduce or eliminate export taxes, the taxes continue to be actively supported and managed by the government of Argentina, as they are a major source of fiscal revenue and create competitive advantages for downstream processors of the products subject to the tax. The following major agricultural commodities are currently subject to export taxes: soybeans at 35 percent, soybean oil and soybean meal at 32 percent, sunflower seed at 32 percent, sunflower seed meal and sunflower seed oil at 30 percent, wheat at 23 percent, and corn at 20 percent. In August 2012, Argentina increased its export tax on biodiesel to 32 percent from 20 percent and eliminated a 2.5 percent rebate. Biodiesel exports are now affected by a sliding scale tax that is reviewed every 15 days. As of the end of 2012, the effective export tax was 19.11 percent. In August 2012, pursuant to Decree 1513/2012, Argentina extended the 2009 ban on ferrous scrap exports for 360 days. Ferrous scrap is an important input to steel production.

The CCC, approved during the 39th MERCOSUR CMC meeting in August 2010, restricts future export taxes and anticipates a transition to a common export tax policy. As noted above, in November 2012, Argentina became the first MERCOSUR member to ratify the CCC. The other MERCOSUR member countries have yet to ratify it.

Export Registrations

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

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

GOVERNMENT PROCUREMENT

Law 25551 of 2011 established a national preference for local industry for most government procurement if the domestic supplier's tender, depending on the size of the company, is no more than 5 percent to 7 percent higher than the foreign tender. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the provincial level. These preferences serve as barriers to participation by foreign firms.

In March 2011, the Argentine Senate approved an amendment to Law 25551 extending the entities subject to the "Buy Argentine" regime to include: (a) offices within the Argentine public sector (centralized and decentralized public administration); (b) social security institutions; (c) state-owned companies; (d) private legal entities engaged in public works and licensees and concessionaires of public utilities and other services (fixed and mobile communications, freight transportation, mining, oil and gas, etc.); (e) provincial public entities; and (f) private entities with tax benefits. In addition, the amendment would also increase the price preference for local suppliers to 10 percent. The draft law is still pending in the Argentine Lower House Committees.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Argentina continued to be listed on the Priority Watch List in the 2012 Special 301 report. Argentina has made some progress with respect to intellectual property rights (IPR) enforcement, including two noteworthy actions that Argentina's judicial authorities, both civil and criminal, took in 2012 against the unauthorized distribution of pirated content over the Internet. However, significant concerns remain. IPR legal enforcement needs to be strengthened in order to combat the widespread availability of pirated and counterfeit goods. Although some industries report good cooperation with law enforcement authorities, Argentina's judicial system remains inefficient with respect to IPR enforcement, and there is a reluctance to impose deterrent-level sentences. Piracy over the Internet is a growing concern, and overall levels of copyright piracy, in both the online and hard goods environments, remain high.

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

SERVICES BARRIERS

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

Audiovisual Services

U.S. industry remains concerned with the added costs associated with exporting movies to Argentina due to measures governing the showing, printing, and dubbing of films. Industry also has concerns regarding the practice of charging *ad valorem* customs duties on U.S. exports based on the estimated value of the potential royalty generated from the film in Argentina rather than on the value of the physical materials being imported.

Since August 30, 2011, under Resolution 2114/2011, the National Institute of Cinema and Audiovisual Arts has been authorized to tax foreign films screened in local movie theaters. Distributors of foreign films in Argentina must pay screening fees that are calculated based on the number and geographical locations of theaters at which films will be screened within Argentina. Films that are screened in 15 or fewer movie theaters are exempted.

Financial Services

Foreign bank branches in Argentina may lend only on the basis of local paid-in capital rather than on the basis of the parent bank's capital. This limitation on lending undermines the choice of juridical form exercised by the bank, *i.e.*, the branch is treated as a subsidiary.

Insurance Services

The Argentine insurance regulator (SSN) issued an order (Resolution 35.615/2011) in February 2011 prohibiting cross-border reinsurance. Since September 1, 2011, local insurers have been able to contract reinsurance only from locally based reinsurers. Foreign companies without local operations are not allowed to enter into reinsurance contracts except when the SSN determines there is no local reinsurance capacity. On October 27, 2011, the Argentine insurance regulator issued Resolution 36.162 requiring that "all investments and cash equivalents held by locally registered insurance companies be located in Argentina."

These regulations do not formally require the exchange of dollars into pesos; companies can convert their holdings to dollar-denominated assets based in Argentina and still be in compliance. Nevertheless, foreign insurance firms have reported pressure by the Argentine government to sell their dollars for pesos. Many of these companies have liabilities denominated in U.S. dollars, making this foreign exchange requirement difficult to meet. U.S. insurance firms also have reported that complying with the Argentine government's informal requirements would force them to take losses due to what they believe is an official exchange rate that over-values the peso.

INVESTMENT BARRIERS

Pension System

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

Foreign Exchange and Capital Controls

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

Time limits on fulfilling the obligation to convert to pesos range from approximately 60 days to 360 days for goods (depending on the goods involved) and 15 days for services. For certain capital goods and situations where Argentine exports receive longer-term financing not exceeding six years, Argentine exporters receive more generous time limits. A portion of foreign currency earned through exports may be used for foreign transactions.

In April 2012, Argentina issued Resolution 142/12, which reduces the time limits for companies to convert their export earnings to pesos on the local foreign exchange market to within 15 calendar days. This requirement virtually halted exports in some industries, such as mining, that were unable to comply with the new rule. In response, the Argentine government partially eased the requirement and set differential timeframes ranging from 15 to 360 days depending on the exported product. Tariff lines and their corresponding timeframes can be found at: http://www.infoleg.gov.ar/infolegInternet/anexos/195000-199999/196638/texact.htm).

Argentina has expanded its capital control regime since 2003, with the stated goal of avoiding the potentially disruptive impact on the nominal exchange rate from large short-term capital flows. In May 2005, the government issued Presidential Decree 616 revising registration requirements for inflows and outflows of capital and extending the minimum investment time period from 180 days to 365 days. The Decree also expanded the registration requirement to include "all types of debt operations of residents that could imply a future foreign currency payment to nonresidents" and requires that all foreign debt of private Argentine residents, with the exception of trade finance and initial public debt offerings that bring foreign exchange into the market, must include provisions that the debt not need to be repaid in fewer than 365 days.

Since 2004, both foreign and domestic institutional investors have been restricted to total currency transactions of $2 million per month, although transactions by institutions acting as intermediaries for others do not count against this limit. In June 2010, the Argentine Central Bank introduced a regulation that permitted Argentine residents to conduct more than $2 million per month in foreign exchange transactions for specific enumerated purposes (*e.g.*, to purchase bonds issued by the federal government, to deposit in the local banking system, and to finance investment projects). The Central Bank also requires Argentine residents who purchase more than $250,000 within a year to show that the purchase is compatible with personal income tax filings.

The Ministry of Economy implemented Decree 616 through resolutions in 2005 and 2006 that imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial public offerings of stock and bond issues); inflows for most fiduciary funds; inflows of nonresident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These inflows are subject to three restrictions: (1) they may not be transferred out of the country for 365 days after their entry; (2) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (3) a 30 percent unremunerated reserve requirement must be met, meaning that 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days in an account that must be denominated in dollars and pay no interest.

As of September 2006, a deposit is not required for capital inflows intended to finance energy infrastructure works. Furthermore, as of January 2008, a deposit is not required for inflows for the purchase of real estate property by foreigners as long as the foreign exchange liquidation occurs on the day of settlement (and transfer of the title). As of February 2009, a deposit is not required for inflows to be used for tax payments and social security contributions within the 10 days following settlement of the foreign currency exchange. Violations are subject to criminal prosecution. In October 2007, the Argentine Central Bank introduced new control measures, banning all foreign entities from participating in Central Bank initial public offerings. However, foreign firms may still trade Central Bank debt instruments on the secondary market. In November 2011, insurance firms converting non-Argentine assets to Argentine assets were also exempted from this requirement.

Argentina increased controls on retail foreign exchange in October 2011. Buyers are required to be approved by AFIP, which evaluates each request based on the individual’s or company’s revenue stream. Local business representatives have reported receiving amounts much lower than they requested. This has hampered the ability of Argentine importers to buy U.S. exports. In July 2012, Argentina also banned retail foreign exchange purchases for purposes of savings, and only allows such purchases, though with significant restrictions, for purposes of payment for tourism services abroad. This limited access to foreign exchange has contributed to the existence of a parallel exchange rate.

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

Non-Payment of Investment Treaty Awards

Eight U.S. firms have pending cases against the government of Argentina in investor-state arbitration under the United States-Argentina bilateral investment treaty (BIT).

Some of these claims allege that measures imposed by Argentina during the financial crisis that began in 2001 breached certain BIT obligations. Investor-state arbitral tribunals have ruled against Argentina in a number of these cases, awarding hundreds of millions of dollars to U.S. investors. To date, Argentina has resisted paying any awards made to U.S. investors. Argentina has argued that, under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), it is not required to pay damages until a prevailing claimant has completed the potentially lengthy additional process of taking all necessary steps to enforce a final ICSID award through the Argentine courts. In 2008, the U.S. Government filed a submission in an arbitration rebutting Argentina's argument and reaffirming that Argentina is obligated to pay final ICSID awards immediately. Arbitral tribunals have consistently rejected Argentina's argument.

As a result of Argentina's failure to pay two final ICSID awards, the two U.S. companies to which these awards are owed filed petitions with the Office of the United States Trade Representative seeking the suspension of benefits to Argentina under the Generalized System of Preferences (GSP). In March 2012 the President announced the suspension of Argentina's GSP benefits, which became effective in May 2012.

ELECTRONIC COMMERCE

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

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was $21.7 billion in 2012, up $4.4 billion from 2011. U.S. goods exports in 2012 were $31.2 billion, up 13.3 percent from 2011. Corresponding U.S. imports from Australia were $9.5 billion, down 6.9 percent. Australia is currently the 11th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Australia were $16.1 billion in 2011 (latest data available), and U.S. imports were $6.3 billion. Sales of services in Australia by majority U.S.-owned affiliates were $45.2 billion in 2010 (latest data available), while sales of services in the United States by majority Australia-owned firms were $12.4 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was $136.2 billion in 2011 (latest data available), up from $123.5 billion in 2010. U.S. FDI in Australia is led by the finance and insurance, non-bank holding companies and mining sectors.

Trade Agreements

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

Australia is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region.

The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Australia, the TPP negotiating partners currently include Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

GOVERNMENT PROCUREMENT

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Australia generally provides strong intellectual property rights protection and enforcement through legislation that, among other things, criminalizes copyright piracy and trademark counterfeiting. Under the AUSFTA, Australia must notify the holder of a pharmaceutical patent of any requests by a third party for marketing approval of a product claimed by that patent. U.S. and Australian pharmaceutical companies have raised concerns that unnecessary delays in this notification process restrict their options for action against third party products that would infringe their patents if the Australian Therapeutic Goods Administration granted them marketing approval.

Australia was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations and signed ACTA in October 2011. It has not yet ratified the agreement. ACTA establishes an international framework that will assist Parties in their efforts to effectively combat the infringement of intellectual property rights, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

SERVICES BARRIERS

Audiovisual Services

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

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

The Australian commercial radio industry Code of Practice sets quotas for the broadcast of Australian music on commercial radio. The code requires that up to 25 percent of all music broadcast between 6:00 a.m. and midnight must be performed by Australians. In July 2010, the Australian Communications and Media Authority (ACMA) announced registration of a new code that provides a temporary exemption for digital-only commercial radio stations (stations not also simulcast in analog) from the Australian music quotas. The ACMA will review the exemption in 2013. Since January 2008, all licensees of regional commercial radio broadcasting licenses have been required to broadcast minimum levels of local content.

Telecommunications

The Australian Parliament passed legislation for the National Broadband Network (NBN) in April 2011. The government-owned NBN Company (NBNCo) that is implementing the network is intended to be a neutral provider of wholesale high-speed broadband services nationwide. The NBN structure could improve non-discriminatory access to network services, including for U.S. companies, since NBN will not compete in retail markets, and thus will have no incentive (as incumbent Telstra formerly did) to discriminate in favor of an affiliated retailer. In October 2011, shareholders of Telstra endorsed an agreement to progressively migrate the company's voice and broadband traffic from its copper and cable networks to the NBN. In November 2012, the Australian Competition and Consumer Commission sought comment on Telstra's plans to migrate customers from its networks to the NBN to ensure that Telstra does not obtain an unfair advantage from information it receives from NBNCo.

INVESTMENT BARRIERS

Inward foreign investment in Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia's Foreign Investment Policy. The Foreign Investment Review Board (FIRB), a division of Australia's Treasury, screens potential foreign investments in Australia above a threshold value of A$248 million (approximately $257 million). Based on advice from the FIRB, the Treasurer may deny or place conditions on the approval of particular investments above that threshold on national interest grounds.

Under the AUSFTA, all U.S. "greenfield" investments are exempt from FIRB screening. AUSFTA also raised the threshold for screening of most U.S. investments in Australia, which now stands at A$1,078 million indexed annually ($1,117 million, indexed annually). All foreign persons, including U.S. investors, must notify the Australian government and get prior approval to make investments of 5 percent or more in the media sector, regardless of the value of the investment.

ELECTRONIC COMMERCE

A number of U.S. companies have voiced concerns that various Australian government departments are sending negative messages about cloud computing services to potential Australian customers in both the public and private sectors. The government implies that hosting data overseas, including in the United States, by definition entails greater risk and unduly exposes consumers to their data being scrutinized by foreign governments. This messaging is on the decline, but has yet to disappear. For example, in its "Cloud Computing Strategic Direction Paper" the Australian Government Information Management Office cites the U.S. Patriot Act as the sole example of foreign legislation that presents a legal and regulatory risk associated with cloud computing. In July 2012, the Personally Controlled Electronic Health Records Act, which prohibits the overseas storage of any Australian electronic health records, went into effect. The U.S. Government and business community continue to advocate for a risk-based approach to ensuring the security of sensitive data as opposed to a geographical one.

OTHER BARRIERS

Blood Plasma Products and Fractionation

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

BAHRAIN

TRADE SUMMARY

The U.S. goods trade surplus with Bahrain was $508 million in 2012, down $186 million from 2011. U.S. exports in 2012 were $1.2 billion, down 0.3 percent from the previous year. Corresponding U.S. imports from Bahrain were $701 million, up 35.2 percent. Bahrain is currently the 75th largest export market for U.S. goods.

The United States-Bahrain Free Trade Agreement

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

GOVERNMENT PROCUREMENT

In 2002, Bahrain implemented a new government procurement law to ensure transparency and reduce bureaucracy in government tenders and purchases. The law specifies procurements on which international suppliers are allowed to bid. The Tender Board is chaired by the Minister of Housing who oversees all tenders and purchases with a value of BD10,000 ($26,525) or more. The Tender Board plays an important role in ensuring a transparent bidding process, which Bahrain recognizes is vital to attracting foreign investment. The FTA requires procuring entities in Bahrain to conduct procurements covered by the FTA in a fair, transparent, and nondiscriminatory manner.

The Tender Board awarded tenders worth $1.38 billion in 2011, an increase of 10 percent over 2010. Bahrain has begun tendering several major public infrastructure projects including new roads, bridges, public housing, utility upgrades, port upgrades, the expansion of Bahrain International Airport, and a five billion dollar, five-year plan to upgrade the country's oil and gas industry to greatly increase production. In 2011, other Member States of the Gulf Cooperation Council (GCC) announced that they would establish a $10 billion fund over a 10-year period to promote development. The fund is geared toward infrastructure projects, with donor countries overseeing its use.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States-Bahrain FTA provides for strong intellectual property rights (IPR) protection. As part of its FTA obligations, Bahrain passed several key laws to improve protection and enforcement for copyrights, trademarks, and patents. In 2012, Bahrain joined the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedures, and made progress on drafting the laws necessary to accede to the International Union for the Protection of New Varieties of Plants.

Bahrain's record on IPR protection and enforcement is mixed. Over the past several years, Bahrain has launched several campaigns to combat piracy of cable and satellite television by blocking illegal signals and prohibiting the sale of decoding devices. Bahrain also launched several public awareness campaigns, equating IPR piracy with theft. However, the government's efforts to inspect and seize counterfeit goods from stores have been unsuccessful, and counterfeit consumer goods continue to be sold openly.

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

BOLIVIA

TRADE SUMMARY

The U.S. goods trade deficit with Bolivia was $916 million in 2012, up $681 million from 2011. U.S. goods exports in 2012 were $732 million, up 9.7 percent from the previous year. Corresponding U.S. imports from Bolivia were $1.6 billion, up 82.7 percent. Bolivia is currently the 84th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bolivia was $406 million in 2011 (latest data available).

IMPORT POLICIES

Bolivia's constitution, adopted in February 2009, establishes broad guidelines to give priority to local production. However, to date, the only legislation enacted to support this requirement is Law 144 (the "Productive Revolution Law") approved on June 26, 2011. The law supports communal groups and unions of small producers in an effort to bolster domestic food production. The "Productive Revolution Law" allows the production, importation, and commercialization of genetically modified products, though it calls for mandatory labeling. The Bolivian government has yet to issue regulations to implement the law. However, on October 15, 2012 the Bolivian government passed the "Mother Earth Law" (Ley de Madre Tierra) that calls for the phased elimination of all genetically modified products from the Bolivian marketplace. Bolivian government officials have since stated that implementing regulations may interpret the law so as to allow the use of some genetically modified products.

Tariffs

Supreme Decree 29349 of November 2007 established tariff rate categories of 0 percent, 5 percent, 10 percent, 15 percent and 20 percent to be applied to imports of goods into Bolivia. Supreme Decree 1272 of June 2012 amended that decree to permit the imposition of tariffs of 30 percent and 40 percent to goods imported into Bolivia that compete against sensitive local products, including textiles and leather products. Bolivia's simple average applied tariff is 11.2 percent.

In February 2008, Bolivia established by decree a zero percent import tariff for live bovine animals; fresh bovine meat; fresh, frozen and refrigerated chicken meat; wheat and wheat flour; corn; rice; and vegetable oil. The decree also prohibits the export of these products, with the exception of vegetable oils and oilseeds. The decree has been modified several times to establish export quotas and certificates in order to ensure adequate domestic supply and control domestic prices for specific commodities.

Import Restrictions/Licenses

The export of certain edible products, including sugar, vegetable oils, soy, and sunflower flour, requires export licenses. At times, exports of staples such as wheat are completely banned due to a Bolivian government policy of ensuring an adequate supply to local markets. To complement the "Productive Revolution Law," on August 2, 2011, the Bolivian government suspended until 2016 import duties on products typically used for purposes of agricultural production (Supreme Decree 943). These products include seeds, salt for cattle feeding, animal vaccines, animal drugs, and machinery that might be used for agricultural purposes.

Nontariff Measures

The Bolivian government generally does not apply specific restrictions, such as permits or import licenses, to trade in industrial and commercial goods. However, since December 2008, Supreme Decree 28963 has gradually reduced the age of vehicles that may be imported. Since January 2011, the maximum age of cars permitted for import is three years old. Additionally, Bolivia has prohibited the importation of diesel vehicles with engine displacement smaller than 4,000 cubic centimeters, all vehicles that use liquefied petroleum gas, and cars with right side steering. The import prohibition on cars with right side steering has led to increased demand for U.S. vehicles.

Since October 2008, the importation of guns and ammunition for civilian use (Supreme Decree 29747) has been prohibited. In accordance with Andean Community Decision 337, Bolivia banned all used clothing imports in April 2007.

GOVERNMENT PROCUREMENT

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

Bolivian companies also are given priority in government procurement valued between $142,000 and $5.7 million. Importers of foreign products can participate in these procurements only where locally manufactured products and local service providers are unavailable or where the Bolivian government does not select a domestic supplier. In such cases, or if a procurement exceeds $5.7 million, the government can call for an international tender. There is a requirement that foreign companies submitting a tender for government consultancy contracts do so in association with a Bolivian company, but the Bolivian government has been known to make exceptions in strategic sectors, as defined by the government.

As a general matter, the tendering process is nontransparent. Government requirements and the details of the tender are not always defined, and procurement notices are not always made public. For example, none of the government-owned strategic sector companies (including YPFB, ENDE, Mutun, Evaporitic Resources, and the Hydrocarbon Industrialization Company) are required to publish their tenders through the official procurement website (SICOES or *Sistema de Información de Contrataciones Estatales*). Concerns have been raised that these companies are not required to follow the procedures established in the national procurement law.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Bolivia was listed on the Watch List in the 2012 Special 301 report. The report noted that high levels of piracy and counterfeiting persist, and there is a continued need to improve criminal and civil intellectual property rights (IPR) enforcement. The report also stated that Bolivia should provide for more efficient prosecution of IPR violations, for better coordination among Bolivian enforcement authorities, and for additional resources to be allocated to enforcement officials.

INVESTMENT BARRIERS

Government policy changes stemming, in part, from the adoption of a new constitution in February 2009 have raised concerns among foreign investors. Although the new constitution has yet to be fully implemented, one of its most troubling provisions calls for a limit on foreign companies' access to international arbitration in cases of conflicts with the government. It also states that all bilateral investment treaties (BIT) must be renegotiated to adjust to this and other new constitutional provisions. Citing these provisions, in June 2012, the Bolivian government became the first U.S. BIT partner to terminate its BIT with the United States. Existing investors in Bolivia at the time of termination continue to be protected by the BIT's provisions for 10 years after the termination of the treaty. In October 2007, Bolivia became the first country to withdraw from the World Bank's International Centre for Settlement of Investment Disputes (ICSID).

The government of Bolivia has reversed the privatization efforts of previous governments and has placed increasing emphasis on public ownership of strategic enterprises. In an effort to control key sectors of the economy, the Bolivian government has obtained (through legally required contract renegotiations) at least 51 percent government ownership in a number of companies in the oil, gas, and telecommunications sectors. As part of re-nationalization negotiations, the Bolivian government in 2009 also re-acquired 47 percent to 50 percent of the shares in four electric companies that were privatized 12 years earlier; in 2010, the government took control of 100 percent of the shares and assumed management control of all four of these companies. In 2012, the Bolivian government took further control of the energy sector by nationalizing two additional companies, including a large national electricity transportation company, as well as the principal electricity distribution company in the Department of La Paz. The government has announced that additional companies in strategic sectors, including railways, could be nationalized.

The government is also using means other than nationalization to reestablish public sector control over the economy. In the past few years, the Bolivian government created 20 public companies to operate in "strategic" sectors such as food production, industrialization of natural resources, air travel, and internal and external market sales. Private sector entities have expressed concern that these public companies engage in subsidized, unfair competition and are leading to a state-driven economic system.

The new Bolivian constitution includes requirements for state involvement in natural resource companies. It states that all natural resources will be administered by the government of Bolivia. The government will grant ownership rights and control the exploitation, exploration, and industrialization of natural resources through public companies, communities, and private companies that will enter joint ventures with the public sector.

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

Outside the hydrocarbons sector, the government is considering a change to the mining code that may require all companies to enter into joint ventures with the state mining company, *Corporacion Minera de Bolivia* (COMIBOL). In 2012, in part due to the absence of a new mining law, instability has increased in the sector and several mines have been taken over by protesters, resulting in the Bolivian government nationalizing two privately held mines, and leaving several others in uncertain circumstances.

Bolivian labor law limits foreign firms' ability to globally staff their companies by restricting foreign employees to 15 percent of the work force.

BRAZIL

TRADE SUMMARY

The U.S. goods trade surplus with Brazil was $11.6 billion in 2012, an increase of $413 million from 2011. U.S. goods exports in 2012 were $43.7 billion, up 1.8 percent from the previous year. Corresponding U.S. imports from Brazil were $32.1 billion, up 1.1 percent. Brazil is currently the 7th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Brazil were $21.7 billion in 2011 (latest data available), and U.S. imports were $6.9 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $29.9 billion in 2010 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $1.3 billion.

The stock of U.S. foreign direct investment (FDI) in Brazil was $71.1 billion in 2011 (latest data available), up from $64.2 billion in 2011. U.S. FDI in Brazil is led by the manufacturing and finance/ insurance sectors.

IMPORT POLICIES

Tariffs

Brazil is a member of the MERCOSUR customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, Uruguay, and Venezuela. Venezuela was admitted as a full member in July 2012. MERCOSUR maintains a Common External Tariff (CET) schedule with a limited number of country-specific exceptions, with most favored nation (MFN) applied rates ranging from zero percent to 35 percent *ad valorem*. Brazil's import tariffs follow the MERCOSUR CET, with few exceptions. Brazil's MFN applied tariff rate averaged 11.6 percent in 2012. Brazil's average bound tariff rate in the WTO is significantly higher at 31.4 percent. Brazil's maximum bound tariff rate for industrial products is 35 percent, while its maximum bound tariff rate for agricultural products is 55 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in the Brazilian market, because the government often changes tariffs to protect domestic industries from import competition or to manage prices and supply.

Brazil imposes relatively high tariffs on U.S. imports across a wide spread of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel. Brazil is permitted by MERCOSUR to maintain 100 exceptions to the CET until December 31, 2015. Using these exceptions, Brazil maintains higher tariffs than its MERCOSUR partners on certain goods, including cell phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, sardines, and mushrooms. At the MERCOSUR Common Market Council (CMC) ministerial meeting in December 2011, MERCOSUR members agreed to allow member countries to increase import duty rates temporarily to a maximum rate of 35 percent on 100 items per member country. In October 2012, Brazil issued its list of 100 products subject to this tariff increase, which will remain in effect through the end of 2013 and may be extended until the end of 2014. Exports of U.S. products in the categories affected by these tariff increases totaled approximately $1 billion in 2011. In June 2012, the MERCOSUR CMC authorized each member country to increase tariffs on an additional 100 products. Brazil's increases are expected to be announced and take effect in the first half of 2013.

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

As part of its Uruguay Round commitments, Brazil agreed to establish a 750,000 metric ton tariff-rate quota (TRQ) for wheat. Brazil has never opened the TRQ, and therefore no wheat has been shipped under the TRQ. In an April 1996 notification to the WTO, Brazil indicated its intent to withdraw the wheat TRQ and initiated the Article XXVIII process under the GATT 1994. Brazil considers the Article XXVIII process to be ongoing. In the meantime, Brazil continues to not allow imports of wheat under the TRQ. The United States will continue to engage Brazil on this issue.

Nontariff Barriers

Brazil applies to imports federal and state taxes and charges that can effectively double the actual cost of imported products in Brazil. The complexities of the domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges for U.S. companies operating in and exporting to Brazil. For example, in December 2011, Brazil raised the Industrial Products Tax (IPI) by 30 percentage points on vehicles that do not meet a 65 percent local content requirement (defined as content from MERCOSUR countries and Mexico) and certain other investment and production requirements. Effective January 1, 2013, Brazil instituted a revised but similar version of this "temporary" regime that will remain in effect for at least four years. Although the new plan eliminates the 65 percent local content requirement, locally produced vehicles continue to be taxed at preferential rates assuming manufacturers comply with a series of requirements. As part of the new program, the baseline IPI on all vehicles will be revised upward by 30 percentage points, which is equivalent to the level applied to imported vehicles under the prior regime. However, it allows those meeting certain levels of local content, fuel efficiency and emissions standards, and required levels of local engineering, research and development, or labeling standards to receive tax breaks that may offset the full amount of the IPI. Imported automobiles continue to face a potential 30 percentage point price disadvantage *vis-à-vis* equivalent vehicles manufactured in Brazil even before import duties are levied.

Brazil also prohibits a number of imports, including some blood products and all used consumer goods, such as automobiles, clothing, and tires, as well as used medical equipment and information and communications technology (ICT) products. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). In general, Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically. A 25 percent merchant marine tax on ocean freight plus port handling charges at Brazilian ports puts U.S. products at a competitive disadvantage vis-à-vis MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals via mail and express shipment, which go through a simplified customs clearance procedure called RTS (simplified tax regime). Goods with a value of over $3,000 cannot be imported using this regime.

Import Licenses/Customs Valuation

All importers must register with the Secretariat of Foreign Trade (SECEX) to access the Brazilian Secretary of Foreign Trade's computerized documentation system ("SISCOMEX"). SISCOMEX registration requirements are onerous, including a minimum capital requirement. Fees are assessed for each import statement submitted through SISCOMEX.

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

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

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

U.S. companies continue to complain of burdensome documentation requirements for the import of certain types of goods, even on a temporary basis. For example, the Ministry of Health's regulatory agency, ANVISA, must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. Currently, the registration process at ANVISA takes from three to six months for new versions of existing products, and can take more than six months for new products. Registration of certain pharmaceutical products can take more than a year, since ANVISA requires that a full battery of clinical testing be performed in Brazil, regardless of whether or not the drug has already obtained approval from the U.S. Food and Drug Administration.

U.S. companies have also reported that customs officials often apply a higher dutiable value based on a retail price rather than recognizing the company's stated transaction value.

SUBSIDIES

The *Plano Brasil Maior* ("Greater Brazil Plan") industrial policy offers a variety of tax, tariff, and financing incentives to encourage production for export and to spur domestic manufacturing, regardless of whether the company is Brazilian or foreign-owned. The *Reintegra* program, launched in December 2011 as part of *Plano Brasil Maior*, exempts from certain taxes exports of goods covering 8,630 tariff codes. It also introduced a tax credit for exporters of industrialized goods equal to 3 percent of the value of their exports. To qualify, the imported content of the exported goods must not exceed 40 percent, except in the case of high-technology goods such as pharmaceuticals, electronics, and aircraft and parts, which are permitted to have imported content of up to 65 percent. In 2012, the *Reintegra* program resulted in approximately R$1.5 billion (approximately $750 million) in refunds to exporters; in 2013, the Ministry of Finance estimates *Reintegra* refunds will total approximately R$2.2 billion (approximately $1.1 billion). *Plano Brasil Maior* also calls for the creation of funds designed to aid small and medium sized exporters and to cover non-payment by customers in countries where the risk of non-payment is high.

Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several programs, such as the R$44 billion (approximately $22 billion) Investment Maintenance Program (PIS). At between 3 percent and 5.5 percent, the interest rates charged on financing under this program are substantially lower than the prevailing market interest rates for commercial financing. One BNDES program, FINAME, provides preferential financing for the purchase, sales operations and exports of Brazilian machinery and equipment, as well as imports of the same types of goods produced abroad. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture.

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

Brazil also provides a broad range of assistance to its agricultural sector in the form of low interest financing, price support programs, tax exemptions and tax credits. An example of such assistance is the Premium for Product Flow Program (*Prêmio para Escoamento de Produto*, or PEP), which offers a payment through an auctioning system to purchasers of certain agricultural commodities including corn, wheat, and rice, from a rural producer or cooperative, based on the difference between the minimum price set by the government and the prevailing market price. Each PEP auction notice specifies the commodity to be tendered and the approved destinations for that product, including export destinations. Another example is financing provided by BNDES. Of the R$156 billion (approximately $78 billion) BNDES allocations to the various sectors of the Brazilian economy in 2012, R$18 billion (approximately $9 billion) was set aside for the agriculture and livestock sectors, up 74 percent from 2011. In 2012, BNDES announced the Prorenova credit line of R$4 billion (approximately $2 billion), available for the calendar year to finance the renewal and/or expansion of approximately 2.5 million acres (1 million hectares) of sugarcane fields. BNDES has already announced the extension of Prorenova for 2013.

GOVERNMENT PROCUREMENT

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

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

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

Pursuant to Decree number 2745/98, the state-controlled oil company Petrobras may issue tenders through invitation letters, electronic auctions, or national or international bids. From time to time, however, suppliers have found that Brazil's Federal Attorney General will question procurement conducted pursuant to these simplified procedures, resulting in delays in tenders from Petrobras.

Petrobras' local content requirements are currently established and regulated by Brazil's National Petroleum Agency (ANP), which is gradually introducing higher local content requirements with each bidding round. In addition, local content requirements vary by block (the geographic area that is awarded by the Brazilian government to oil companies for oil exploration), and within that block, the local content requirements differ for equipment, workforce, and services. In the past, local content requirements were as low as 5 percent; however, Brazilian officials have indicated that local content requirements for Petrobras and other oil companies could reach 80 percent to 95 percent by 2020 in certain product categories. Technology-intensive equipment and services will likely be subject to higher local content requirements than low-technology equipment and services. The Oil and Gas Regulatory Framework introduced in December 2010 requires Petrobras to be the majority operator of new projects, and as a result, Petrobras is responsible for ensuring that its workforce and its entire supply chain adhere to these increasingly high local content requirements. ANP fined Petrobras and other oil exploration and production companies over the last few years for noncompliance with local content requirements; in September 2011, Petrobras was fined R$29 million (approximately $16.85 million) for noncompliance. In August 2012, ANP announced that it was reviewing 17 local content waiver requests from five unnamed operators, requiring that a company prove in its waiver request that it is unable to acquire the appropriate goods and services locally or that local prices are not in line with international standards.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil was listed on the Watch List in the 2012 Special 301 report. Brazil has taken steps to address a backlog of pending patent applications, including by hiring more patent examiners, but long delays still exist. Brazil has also continued to make progress in enhancing the effectiveness of intellectual property enforcement, including conducting some notable raids. However, concerns remain with respect to piracy, particularly Internet piracy. Concerns also persist with respect to Brazil's inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. The United States is also concerned that Brazil's proposed administrative procedures conflict with opinions by the Attorney General that had clarified that Brazil's health authority, the National Sanitary Regulatory Agency (ANVISA), does not have the authority to review patentability requirements when analyzing pharmaceutical patent applications.

SERVICES BARRIERS

Audiovisual Services and Broadcasting

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

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

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

In September 2011, Brazil enacted law 12.485 covering the subscription television market, including satellite and cable television. The law permits telecommunications companies to offer television packages with their services, and also removes the previous 49 percent limit on foreign ownership of cable television companies. However, new content quotas also went into effect in September 2011, which require every channel to air at least three and a half hours per week of Brazilian programming during prime time. Additionally, one third of all channels included in any television package must be Brazilian. The content quotas are being phased in over a three-year period, with full implementation in September 2013. As before, foreign cable and satellite television programmers are subject to an 11 percent remittance tax, which does not need to be paid if the programmer invests 3 percent of its remittances in co-production of Brazilian audiovisual services. In addition, the law delegates significant programming and advertising regulatory authority to ANCINE, the national film industry development agency. In order to gauge public opinion regarding the telecommunications sector before proposing revisions to existing regulations, the Brazilian Telecommunications Agency (ANATEL) organized three public consultations in late 2011 and submitted the results to the Brazilian Congress. As a result of feedback from the Brazilian Congress, the Brazilian Supreme Court held further consultations in February 2013. It is anticipated that revisions to the regulations would be enacted in 2013. While the results of these consultations are being considered, the law as enacted in September 2011 prevails.

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

Express Delivery Services

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

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

Financial Services

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

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

Telecommunications

In June 2012, ANATEL held its spectrum auction for mobile broadband services. Applicants were required to accept, as a condition for bidding on the spectrum, a commitment to meet specific milestones over time to ensure specific local content for the infrastructure, including software, installed to supply the licensed service and to ensure a 70 percent local content ratio in the infrastructure by the tenth year.

INVESTMENT BARRIERS

Foreign Ownership of Agricultural Land

On December 9, 2011, the National Land Reform and Settlement Institute (INCRA) published a set of new rules covering the purchase of Brazilian agricultural land by foreigners. These rules follow an August 2010 opinion issued by the Attorney General limiting foreign ownership of agricultural land. Under the new rules, the area bought or leased by foreigners cannot account for more than 25 percent of the overall area in its respective municipal district. Additionally, no more than 10 percent of the land in any given municipal district may be owned or leased by foreign nationals from the same country. The rules also make it necessary to obtain congressional approval before large plots of land can be purchased by foreigners, foreign companies, or Brazilian companies with a majority of shareholders from foreign countries. These restrictions and the accompanying uncertainty of how they will be applied in practice may discourage U.S. investment in Brazilian agricultural land. There are several proposed bills pending in the Brazilian Congress which would clarify the process for foreigners who want to purchase land.

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade surplus with Brunei was $71 million in 2012, a decrease of $90 million from 2011. U.S. goods exports in 2012 were $157 million, down 14.7 percent from the previous year. Corresponding U.S. imports from Brunei were $86 million, up 268 percent. Brunei is currently the 139th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Brunei was $55 million in 2011 (latest data available), down from $57 million in 2010.

Trade Agreements

Brunei is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and its 10 Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world, act as an important tool to expand U.S. exports which are critical to the creation and retention of jobs in the United States, and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment issues. It will also address a range of emerging issues not covered by past agreements, including trade and investment in innovative products and commitments to help companies operate more effectively in regional markets. In addition to the United States and Brunei, the TPP negotiating partners currently include Australia, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

Brunei has expressed support for the U.S.-ASEAN Expanded Economic Engagement (E3) Initiative, a new framework for economic cooperation designed to expand trade and investment ties between the United States and ASEAN, promoting new business opportunities and supporting job creation in the United States and ASEAN countries, as well as laying the groundwork for ASEAN countries to prepare to join high-standard trade agreements, such as the Trans-Pacific Partnership (TPP) agreement.

IMPORT POLICIES

Tariffs

Brunei has bound 95 percent of its tariff lines in the WTO. The average bound rate is 25.3 percent and applied rates averaged 2.5 percent in 2011. With the exception of a few products, including coffee, tea, tobacco, and alcohol, tariffs on agricultural products are zero. Roughly 130 products, including alcoholic beverages, tobacco, coffee, tea, petroleum oils, and lubricants, are subject to specific rates of duty and greater overall protection. Brunei also applies high duties of up to 20 percent on automotive parts, machinery, and electrical equipment.

Brunei offers preferential tariff rates to many Asia-Pacific countries under various trade agreements. As a member of the Association of South East Asian Nations (ASEAN), Brunei is reducing intraregional tariffs as agreed under the ASEAN Free Trade Agreement. Brunei also accords preferential access to its market to Australia, New Zealand, China, India, South Korea, and Japan (as part of free trade agreements concluded by ASEAN); to Chile, Singapore, and New Zealand (as part of the Trans-Pacific Strategic Economic Partnership); and to Japan (under a bilateral Economic Partnership Agreement). At the November 2012 East Asia Summit, Brunei joined other ASEAN leaders and their six regional free trade partners--Australia, China, India, South Korea, Japan and New Zealand--in kicking off negotiations for the Regional Comprehensive Economic Partnership.

GOVERNMENT PROCUREMENT

All government procurement is conducted by Ministries, Departments, and the State Tender Board of the Ministry of Finance. Most invitations for tenders or quotations below B$250,000 (approximately $204,461.07) are published in a bi-weekly government newspaper, but often are selectively tendered only to locally registered companies. The relevant ministry may approve purchases up to a B$250,000 threshold, but tender awards above B$250,000 must be approved by the Sultan in his capacity as Minister of Finance based on the recommendation of the State Tender Board. A project performance bond is required at the tender approval stage to guarantee the delivery of a project in accordance with the project specifications. The bond is returned to the companies involved after the project is successfully completed.

In July 2010, Brunei established the Centre of Science and Technology Research and Development in its Ministry of Defense to administer military procurements in a more transparent manner and in accordance with its Defense White Paper. Under the new procedures, companies are issued an invitation to tender for each program and bids are evaluated according to established criteria such as performance, cost, and production time. Although this is an improvement over past practice, the defense award process still lacks transparency, and some tender decisions are not publically disclosed.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brunei was placed on the Special 301 Watch List in 2012. Brunei has made progress on enforcement, implementing the Patents Order of 2011 in January in 2012. Among other things, the Patents Order established an independent patent system for the receipt, processing, and granting of patents by a new Registry of Patents and facilitates the international filing of patents. The United States has continued to urge Brunei to raise public awareness regarding the importance of intellectual property rights (IPR) protection, including through public education and enforcement of the Patents Order. The United States also continues to have concerns regarding pending copyright amendments and the lack of *ex officio* authority for IPR enforcement authorities.

OTHER BARRIERS

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

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was $2.5 billion in 2012, down $61 million from 2011. U.S. goods exports in 2012 were $226 million, up 21.9 percent from the previous year. Corresponding U.S. imports from Cambodia were $2.7 billion, down 0.8 percent. Cambodia is currently the 129th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cambodia was $10 million in 2011 (latest data available), up from $4 million in 2010.

IMPORT POLICIES

Tariffs

Cambodia is one of the few least-developed World Trade Organization (WTO) members that took binding commitments on all products in its tariff schedule when it joined the WTO in 2004. The overall simple average bound tariff rate is 19.1 percent, while the average applied rate is now 10.9 percent, which is 0.96 percentage points higher than the rate in 2011. This higher rate can be attributed to Cambodia's conversion from the ASEAN Harmonized Tariff Nomenclature (AHTN) 2007 to the AHTN 2012. Cambodia's highest applied tariff rate of 35 percent is imposed across a number of product categories, including a wide variety of prepared food products, bottled and canned beverages, cigars and cigarette substitutes, minerals including table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, video games, and gambling equipment.

Customs

When Cambodia joined the WTO, it was given until January 1, 2009 to implement the WTO Customs Valuation Agreement (CVA). Cambodia drew up a revised plan for the modernization and streamlining of customs procedures from 2009 to 2013 in order to meet WTO requirements. The official implementation of the CVA began on January 1, 2011. The United States continues to work with the government to address remaining concerns about Cambodia's implementation of these commitments.

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

Taxation

Cambodia levies trade-related taxes in the form of customs duties, petroleum taxes on gasoline ($0.02 per liter) and diesel oil ($0.04 per liter), an export tax, and two indirect taxes – a value-added tax (VAT) and an excise tax – levied on the value of imports. The VAT is applied at a uniform 10 percent rate. To date, the VAT has been selectively imposed only on large companies, but the Cambodian government is working to expand the base to which the tax is applied. The VAT is not collected on exports and services consumed outside of Cambodia (technically, a 0 percent VAT applies). Subject to certain criteria, the zero rate also applies to businesses that support exporters and subcontractors that supply goods and services to exporters, such as garment and footwear manufacturers.

GOVERNMENT PROCUREMENT

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

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

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Stakeholders continue to raise concerns about intellectual property rights (IPR) protection and enforcement in Cambodia, including widespread copyright piracy and trademark counterfeiting. Pirated CDs, DVDs, software, garments, and other copyrighted materials, as well as an array of counterfeit goods, including pharmaceuticals, reportedly are widely available in Cambodia’s markets. Legislation remains pending to implement commitments with respect to the protection of trade secrets, protection of encrypted satellite signals or semiconductor layout designs. The draft law on geographical indications is being reviewed by the Council of Ministers and is expected to be passed in 2013.

INVESTMENT BARRIERS

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

ELECTRONIC COMMERCE

The Cambodian government has not imposed any specific restrictions on products or services traded via electronic commerce, and no existing legislation governs this sector. Electronic commerce legislation has been drafted, but not yet adopted, to facilitate domestic and international electronic commerce by eliminating legal barriers and promoting public confidence in the authenticity, integrity, and reliability of data messages and electronic communications.

OTHER BARRIERS

Corruption

Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to attracting foreign direct investment. In 2010, Cambodia adopted anticorruption legislation and established a national Anti-Corruption Unit to undertake investigations, law enforcement measures, and conduct public outreach. Since the law was enacted 2011, some government officials have been prosecuted and convicted of corruption.

Judicial and Legal Framework

Cambodia's legal framework is incomplete and unevenly enforced. While the legislature has passed numerous trade and investment laws, including a law on commercial arbitration, many business-related draft laws are still pending. U.S. industry has reported that the judicial system is often arbitrary and subject to corruption.

To address these concerns, in 2009 the Cambodian government established a commercial arbitration body called the National Arbitration Center (NAC), an alternative dispute resolution mechanism intended to more quickly resolve commercial disputes than can be done through the court system. Disagreements between the Ministry of Commerce and the arbitrators, however, have delayed the start of NAC operations. Independent arbitrators have been recruited, and the election of a board of directors is due by the end of 2012, which would enable the NAC to be operational in early 2013.

Smuggling

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

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $32.5 billion in 2012, down $2.0 billion from 2011. U.S. goods exports in 2012 were $291.8 billion, up 3.9 percent from the previous year. Corresponding U.S. imports from Canada were $324.2 billion, up 2.8 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were $56.1 billion in 2011 (latest data available), and U.S. imports were $28.0 billion. Sales of services in Canada by majority U.S.-owned affiliates were $117.3 billion in 2010 (latest data available), while sales of services in the United States by majority Canada-owned firms were $68.9 billion

The stock of U.S. foreign direct investment (FDI) in Canada was $319.0 billion in 2011 (latest data available), up from $289.5 billion in 2010. U.S. FDI in Canada is led by the nonbank holding companies, manufacturing, and finance/ insurance sectors.

The North American Free Trade Agreement

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

In 2012, Canada and Mexico became participants in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States, Canada and Mexico, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

Canada eliminated tariffs on all industrial and most agricultural products imported from the United States on January 1, 1998, under the terms of the NAFTA. Canada has been phasing out the remaining MFN tariffs on imported machinery and equipment and intends to complete this process by 2015.

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). Canada's supply management regime severely limits the ability of U.S. producers to increase exports to Canada above the TRQ levels and inflates the prices Canadians pay for dairy and poultry products. One of the barriers facing U.S. exports of dairy products is a 245 percent *ad valorem* tariff on breaded cheese sticks. The United States is pressing for expanded in-quota quantities for these products.

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

Canada announced in 2008 its intention to implement the Special Safeguard (SSG) under the WTO Agreement on Agriculture for supply-managed goods. The SSG is a provision that would allow additional duties to be imposed on over-quota trade when import volumes rise above a certain level, or if prices fall below a certain level. Canada continues to work on the details of this mechanism and monitor over-quota trade, but has not established a timeframe for announcing the SSG price and volume triggers.

The Canadian Wheat Board

The United States has had longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. Canada passed the *Marketing Freedom for Grain Farmers Act* in 2011 to transition the Canadian Wheat Board from a crown corporation to a commercial entity over a five-year period. The legislation allowed Western Canadian farmers to sell wheat on the open market beginning August 1, 2012.

Since the changes brought about by the Marketing Freedom for Grain Farmers Act are important to stakeholders involved in U.S.-Canada trade of grains and oilseeds, several not for profit associations from both the United States and Canada created a task force in order to provide information to facilitate the marketing of grain and seed between the United States and Canada.

Restrictions on U.S. Grain Exports

Canada has varietal registration requirements for wheat and barley. Canada eliminated a portion of the varietal controls in 2008 by no longer requiring that each registered variety of grain be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD). This KVD requirement limited U.S. export access to Canada's grain market because U.S. varieties are not visually distinct and cannot be registered for use in Canada. While this policy change is an improvement, it will take years before U.S. wheat varieties are able to complete the necessary field trials to determine whether they will be registered for use in Canada. In the meantime, due to "grown in Canada" requirements, U.S. wheat, regardless of quality, will continue to be sold in Canada as "feed" wheat at sharp price discounts compared to Canadian varieties. U.S. members of the task force described above would like to have a working group established to look at issues concerning varietal declarations and foreign origin. Legislation to amend the Canada Grains Act is currently under consideration in the Canadian Parliament.

Restrictions on U.S. Seeds Exports

Canada's *Seeds Act* prohibits the sale, advertising for sale in Canada, or importation into Canada of seed varieties that are not registered in the prescribed manner. In order to apply for seed varietal registration, which is a long and cumbersome process, the applicant must reside permanently in Canada. This poses a trade barrier for the many U.S. seeds that are not one of the registered Canadian varieties. Wheat and barley seeds, among others, are covered under the *Seeds Act*.

Personal Duty Exemption

On June 1, 2012, Canada increased the cross-border shopping limit for tax-free imports of goods purchased in the United States. Canadians who spend more than 24 hours outside of Canada can now bring back C$200 worth of goods duty-free (the previous limit was C$50). Canada raised the duty-free limit for trips over 48 hours to C$800, an increase from a C$400 limit for stays of up to one week and a C$750 limit for stays longer than seven days. The United States provides similar treatment for its returning travelers, but with a much more generous limit of $200 of duty-free goods after visits of less than 24 hours. However, the United States will continue to press Canada on the lack of parity in the personal duty exemptions for day shoppers. Canada currently provides no duty-exemption for returning residents who have been out of Canada less than 24 hours.

Wine and Spirits

Most Canadian provinces restrict the sale of wine and spirits through province-run liquor control boards. Market access barriers in those provinces greatly hamper exports of U.S. wine and spirits to Canada. These barriers include cost-of-service mark-ups, listings, reference prices, labeling, discounting, distribution and warehousing policies. As noted above, Canada increased its personal duty exemption limit in June 2012. However, Canadian tourists still face high provincial taxes on personal imports of U.S. wines and spirits upon their return to Canada from the United States, which inhibit their purchases of U.S. alcoholic beverages.

SOFTWOOD LUMBER

On January 23, 2012, the United States and Canada signed an agreement to extend the Softwood Lumber Agreement (SLA) for an additional two years, until October 13, 2015. The SLA entered into force on October 12, 2006 and was set to expire after October 12, 2013. The 2006 SLA settled extensive litigation and resulted in the revocation of U.S. antidumping and countervailing duty orders on softwood lumber from Canada. The SLA is designed to create a downward adjustment in Canadian softwood lumber exports to the United States through the imposition of Canadian export measures when U.S. demand is low. The SLA also provides for binding arbitration to resolve disputes regarding interpretation and implementation of the agreement. Under the SLA, arbitration is conducted under the rules of the LCIA (formerly the London Court of International Arbitration). The bilateral Softwood Lumber Committee, established pursuant to the SLA, meets to discuss a range of implementation issues and Canadian provincial assistance programs for softwood lumber industries. The Softwood Lumber Committee last met in October 2012, in Quebec City.

On July, 18, 2012, a tribunal issued its finding in an SLA dispute regarding the apparent underpricing of timber in the interior of British Columbia. At issue was whether British Columbia was justified in selling increasing amounts of publicly-owned timber in its interior – most of which was used to make softwood lumber products – at salvage rates. While the tribunal acknowledged the dramatic increase in the amount of timber sold at salvage prices, and reviewed a number of actions by British Columbia that the United States had explained helped account for that increase, the tribunal did not find a conclusive link between the increase and actions taken by British Columbia. British Columbia has issued an update with regard to its timber pricing systems and the United States will be monitoring the resulting pricing closely.

Canada continued to collect duties in 2012 resulting from a 2011 arbitration award under the SLA. A tribunal convened under the LCIA found that certain provincial assistance programs in Quebec and Ontario provide benefits to the Canadian softwood lumber industry in breach of the SLA, and Canada has imposed additional export charges to collect $59.4 million as compensation for this breach. Canada began collecting the additional charges on March 1, 2011.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

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

The review also recommended that the Canadian government continue funding the Strategic Aerospace and Defense Initiative (SADI). The SADI provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defense, space, and security industries, and has authorized over $827 million to fund 26 advanced research and development (R&D) projects since its establishment in 2007.

The Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company in 2008 not to exceed C$350 million (federal) and C$117 million (provincial) to support research and development related to the launch of the new class of Bombardier CSeries commercial aircraft. According to the Public Accounts of Canada, the federal government has disbursed C$203 million dollars to Bombardier from April 2008 through March 2012. The United States continues to express its concerns to the government of Canada that any launch aid associated with the C-Series must be consistent with Canada's international trade obligations.

The United States also has expressed concern over the possible use of Export Development Canada (EDC) export credit financing to support commercial sales of Bombardier CSeries aircraft in the U.S. market. The United States continues to urge the government of Canada to refrain from distorting market competition in accordance with the purpose and principals of the OECD Aircraft Sector Understanding (ASU).

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

Risk Management Programs for Canadian Pork Producers

Canada provides an array of business risk management programs for its pork producers. The AgriStability program provides financial assistance to producers when income falls below 70 percent of a producer's limited historical reference margin[1], at a compensation rate of 70 percent. This reflects adjustments to the program that will be effective as of April 2013. The AgriInvest program aims to cover small income declines by providing matching government funds based on producer contributions. It is essentially a producer-government savings account. Both AgriStability and AgriInvest are cost-shared 60/40 by the federal and provincial governments, respectively.

Provincial governments also provide significant subsidies in the form of price stabilization programs and preferential loans and loan guarantees. Quebec's Farm Income Stabilization and Insurance Program (ASRA) provides direct payments to hog farmers. The ASRA program is designed to guarantee a positive net annual income. One-third of the premium comes from producer participants and two-thirds comes from the Quebec government.

Ontario established a price protection program similar to ASRA, called the Ontario Risk Management Program (ORMP), in June 2011. The support level directly relates to the cost of production (a greater cost of production translates into a greater support level). The program offers producer support of 40 percent from the Ontario government. The federal government does not participate, because of trade related concerns.

The United States will continue to raise these issues with Canada, including in the U.S.–Canada Consultative Committee on Agriculture.

Ontario Feed-In Tariff Program

In December 2012, a WTO panel found that Canada breached its obligations under the *General Agreement on Tariffs and Trade 1994*, due to particular local-content requirements in Ontario's *Green Energy and Green Economy Act of 2009* ("Green Economy Act") that treat imported equipment and components less favorably than domestic products (*see Canada – Certain Measures Affecting the Renewable Energy Generation Sector* (WT/DS412) *and Canada – Measures Relating to the Feed-In Tariff Program* (WT/DS426)). On February 5, 2013, Canada appealed the panel reports in both disputes to the WTO Appellate Body. Japan and the European Union each brought the dispute in 2011 against certain provisions of Ontario's feed-in tariff program that require the use of renewable energy generation equipment made in Ontario, to the exclusion of competing products, including clean energy equipment manufactured in the United States. The United States participated in the dispute as a third party.
A Texas-based renewable energy firm initiated an investor-state claim under NAFTA chapter 11 against Canada in July 2011, claiming the Green Economy Act violates Canada's obligations under the NAFTA to provide investors with fair and equitable treatment.

Port Hawkesbury Paper Mill

The United States is investigating the nature and extent of assistance provided by the Province of Nova Scotia to the Port Hawkesbury paper mill following a bankruptcy settlement that resulted in the sale of the mill to a Canadian firm. Provincial assistance provided through the settlement has made possible the continuation of significant productive capacity that otherwise would not exist.

[1]Under the Agristability and Agrinvest programs, "margin" refers to a producer's allowable revenue less allowable expenses. The historical reference margin is calculated as the average program margin in three of the past five years, with the highest and lowest years dropped.

GOVERNMENT PROCUREMENT

Canada is a signatory to three international agreements relating to government procurement (the WTO Agreement on Government Procurement (GPA), the NAFTA, and the 2010 United States-Canada Agreement on Government Procurement). The agreements provide U.S. businesses with access to procurement conducted by most Canadian federal departments and a large number of provincial entities. However, U.S. suppliers have access under trade agreements to procurement of only seven of Canada's Crown Corporations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Canada has been included since 2009 on the Special 301 Priority Watch List. The 2012 report cited concerns related to Canada's copyright laws, border enforcement, and failure to implement the World Intellectual Property Organization (WIPO) Internet Treaties, which Canada signed in 1997. Canada's enforcement against trade in counterfeit goods remains insufficient. On June 29, 2012, Canada adopted the *Copyright Modernization Act.* The Act will come into force following additional legislative procedures and regulatory action. The United States urges Canada to enact further legislation to give customs officers *ex officio* authority to take action against counterfeit and pirated goods.

Canada, the United States and other key trading partners, signed the Anti-Counterfeiting Trade Agreement (ACTA) in October 2011. Canada has yet to ratify the agreement, but introduced domestic legislation to meet its ACTA commitments. ACTA establishes an international framework that will assist parties in efforts to effectively combat the infringement of intellectual property rights, in particular, the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

U.S. stakeholders also have expressed strong concerns about Canada's current administrative process for appeals of the regulatory approval of pharmaceutical products, and limitations in Canada's trademark regime. In addition, recent decisions by Canadian courts regarding pharmaceutical patents have raised concern in the U.S. pharmaceutical industry. In November 2012, one U.S. pharmaceutical company formally served a notice of intent to submit a claim to arbitration under NAFTA Chapter 11, stemming from a Canadian court's decision invalidating the company's patent. Also in November 2012, the Supreme Court of Canada held that another U.S. pharmaceutical company's patent covering a major pharmaceutical product was void.

SERVICES BARRIERS

Telecommunications

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

Canada amended the *Telecommunications Act* in June 2012 to rescind foreign ownership restrictions to carriers with less than 10 percent share of the total Canadian telecommunications market. Foreign-owned carriers are permitted to continue operating if their market share grows beyond 10 percent provided the increase does not result from the acquisition of, or merger with, another Canadian carrier. Canada announced in March 2012 that it would cap the amount of spectrum that large incumbent companies could purchase at the next spectrum auction in an effort to facilitate greater competition in the sector. Canada has announced it will hold the next 700 MHz spectrum auction on November 13, 2013, to be followed by the 2500 MHz spectrum auction within a year.

In 2009, a cell phone service provider with significant U.S. financial backing was permitted to acquire wireless spectrum rights in Canada. This represented a rare new entry into a telecom sector dominated by several large Canadian-owned firms. The provider has since faced numerous legal challenges from its competitors, who claim that the company violates the Canadian ownership requirements in the *Telecommunications Act*, because a foreign conglomerate controls a majority of its debt. Canada's Federal Court of Appeal ruled in the provider's favor in June 2011, securing the company's right to operate in Canada. An appeal against this decision was filed to the Supreme Court of Canada; however, the Supreme Court announced it would not hear the case in April 2012.

Canadian Content in Broadcasting

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

Specialty services and pay television services that are not part of a large English language private broadcasting group are subject to individual Canadian programming quotas (time or expenditure or both), which vary depending upon their respective license conditions.
For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian programming services. Non-Canadian channels must be pre-approved ("listed") by the CRTC. Canadian licensees may appeal the listing of a non-Canadian service that is thought to compete with a Canadian pay or specialty service. The CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

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

INVESTMENT BARRIERS

General Establishment Restrictions

Under the *Investment Canada Act* (ICA), the *Broadcasting Act*, the *Telecommunications Act*, and standing Canadian regulatory policy, Canada screens new or expanded foreign investment in the energy and mining, banking, fishing, publishing, telecommunications, transportation, film, music, broadcasting, cable television, and real estate sectors.

The ICA has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business of substantial size. Canada reviews the acquisition by non-Canadians of existing Canadian businesses and the establishment of new Canadian businesses in designated types of business activity relating to Canada's culture, heritage, or national identity where the federal government has authorized such review is in the public interest.

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

The threshold for review of investments/acquisitions by companies from World Trade Organization (WTO) Member States was $330 million. Canada amended the ICA in 2009 to raise the threshold for review to $1 billion over a four-year period. The new thresholds will come into force once regulations are drafted and published; however future bids by foreign SOEs will remain subject to the current $330 million threshold. Industry Canada is the reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage. Foreign acquisition proposals under government review must demonstrate a "net benefit" to Canada to be approved. The ICA sets time limits for the reviews. Once an application for review is received, the Minister has 45 days to determine whether or not to allow the investment. A 30-day extension is permitted if the investor is notified prior to the end of the initial 45-day period. Reviews of investments in cultural industries usually require the full 75 days to complete.

The ICA was amended in June 2012 to allow the Industry Minister to disclose publicly that an investment proposal does not satisfy the net benefit test and publicly explain the reasons for denying the investment so long as the explanation will not do harm to the Canadian business or investor. Another amendment allows the Industry Minister to accept security payment from investors when found by a court to be in breach of their ICA undertakings. Canada also introduced guidelines that provide foreign investors with the option of a formal mediation process to resolve disputes when the Industry Minister believes a non-Canadian investor has failed to comply with a written undertaking.

Under the ICA, the Industry Minister can make investment approval contingent on meeting certain conditions such as minimum levels of employment and research and development. Since the global economic slowdown in 2009, some foreign investors in Canada have had difficulties meeting these conditions. Canada blocked a $38.6 billion hostile takeover by an Australian company in 2010 of Potash Corp. of Saskatchewan as not being of "net benefit" to Canada under the ICA. This was only the second time an investment has been blocked since 1985. The United States has long expressed concerns that Canada's net benefit test is overly broad, lacks transparency, and has the potential to extend into every sector of the Canadian economy and to implicate issues unrelated to national security, such as competitiveness and protectionism.

OTHER BARRIERS

Cross-Border Data Flows

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

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

Container Size Regulations

Canada announced in its 2012 budget that it would repeal standardized container size regulations for food products. The Canadian government has stated that these regulations do not provide a food safety benefit and that the elimination of such regulations would remove an unnecessary barrier for the importation of new products from international markets. The timeline for implementing the new regulations continues to be extended, however, and the regulations have not been repealed to date. The Canadian Food Inspection Agency announced in November 2012 its plans to launch formal consultations in 2013 as part of the regulatory amendment process. Existing regulations for food container sizes will remain in force until the review process is complete.

CHILE

TRADE SUMMARY

The U.S. goods trade surplus with Chile was $9.5 billion in 2012, an increase of $2.6 billion from 2011. U.S. goods exports in 2012 were $18.9 billion, up 18.1 percent from the previous year. Corresponding U.S. imports from Chile were $9.4 billion, up 3.4 percent. Chile is currently the 19th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Chile were $3.0 billion in 2011 (latest data available), and U.S. imports were $1.2 billion. Sales of services in Chile by majority U.S.-owned affiliates were $8.4 billion in 2010 (latest data available), while sales of services in the United States by majority Chile-owned firms were $398 million.

The stock of U.S. foreign direct investment (FDI) in Chile was $34.2 billion in 2011 (latest data available), up from $30.5 billion in 2010. U.S. FDI in Chile is reported mostly in the finance/insurance, and manufacturing sectors.

Trade Agreements

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. The FTA is a comprehensive agreement that eliminates tariffs and opens markets, reduces barriers for trade in services, provides protection for intellectual property, ensures regulatory transparency, guarantees nondiscrimination in the trade of digital products, commits the Parties to maintain competition laws that prohibit anticompetitive business conduct, and requires effective labor and environmental enforcement.

Chile is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Chile, the TPP negotiating partners currently include Australia, Brunei, Canada, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Under the FTA, Chile immediately eliminated tariffs on 87 percent of bilateral trade. All trade in consumer and industrial goods is duty free beginning in 2013, while remaining tariffs on most agricultural goods will be eliminated by 2015.

Chile has one of the most open trade regimes in the world, with a uniform applied tariff rate of 6 percent for nearly all goods. However, there are several exceptions to the uniform tariff. For example, during the transition period under the FTA, higher effective tariffs will remain for wheat, wheat flour, and sugar due to the application of an import price band system.

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

Import Controls

There are virtually no restrictions on the types or amounts of goods that can be imported into Chile, nor any requirements to use the official foreign exchange market. However, Chilean customs authorities must approve and issue a report for all imports valued at more than $3,000. After customs authorities issue the report, the goods must generally be imported within 30 days. Commercial banks may authorize imports of less than $3,000. Importers and exporters must also report their import and export transactions to the Central Bank. Commercial banks may sell foreign currency to any importer to cover the price of the imported goods and related expenses as well as to pay interest and other financing expenses that are authorized in the import report. Chile prohibits the importation of used vehicles, used motorcycles, and used retreaded tires (with the exception of wheel-mounted tires). Some used items originating from a country that does not have an FTA with Chile are subject to an additional importation charge of 3 percent over the cost, insurance and freight (CIF) value. Depending on the product, this additional charge can be eliminated or reduced if the used item is imported from a third country that has an FTA with Chile.

Nontariff Barriers

Chile maintains a complex price band system for wheat, wheat flour, and sugar that, under the FTA, will be phased out by 2015 for imports from the United States. Mixtures containing more than 65 percent sugar (*e.g.*, high fructose corn syrup) content are subject to the sugar price band system. The price band system was created in 1985 and is intended to guarantee a minimum and maximum import price for the covered commodities. When certain CIF prices (as calculated by Chilean authorities) fall below the set minimum price, a special tax is added to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices.

Since 2008, the minimum price has been adjusted downward by 2 percent per year on U.S. imports. In 2014, Chile's President will evaluate whether to continue the price band system for other trading partners or eliminate it entirely by 2015 as required under the FTA.

Companies are required to contract the services of a customs agent when importing or exporting goods valued at over $1,000 free on board (FOB). The customs agent is the link between the exporter or importer and the National Customs Service. The agent is responsible for facilitating foreign trade operations and acting as the official representative of the exporter or importer in the country. Customs agents' fees are not standardized. Companies established in any of the Chilean duty-free zones are exempt from the obligation to use a customs agent when importing or exporting goods.

EXPORT POLICIES

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

In accordance with its FTA commitments, Chile is eliminating, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United States. Full drawback rights were allowed through 2012. Beginning in 2013, however, the amount of drawback allowed is reduced until it reaches zero in 2015.

Under Chile's separate VAT reimbursement policy, exporters have the right to recoup the VAT they have paid when purchasing goods and using services intended for export activities. Any company that invests in a project in which production will be for export is eligible for VAT reimbursement.

Exporters of services can only benefit from the VAT reimbursement policy when the services are rendered to people or companies with no Chilean residency. Also, the service must qualify as an export through a resolution issued by the Chilean customs authority.

GOVERNMENT PROCUREMENT

The FTA requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. The FTA contains nondiscrimination provisions that require Chilean entities covered by the FTA to allow U.S. suppliers to participate in their procurement on the same basis as Chilean suppliers in procurements covered by the FTA. The FTA covers the procurement of most Chilean central government entities, 15 regional governments, 11 ports and airports, and 346 municipalities.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Chile was listed on the Priority Watch List in the 2012 Special 301 Report. The report notes that in 2011 Chile took steps towards addressing some, but not all, outstanding intellectual property rights (IPR) issues under the FTA. The report highlights Chile's ratification of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellites (Brussels Convention) and the Trademark Law Treaty. In 2011, the Chilean Senate approved the International Convention for the Protection of New Varieties of Plants. However, the Chilean Congress has not yet approved legislation to implement the Convention.

The United States has urged Chile to create a system to expeditiously address patent issues in connection with applications to market pharmaceutical products and to provide adequate protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products. The United States has also urged Chile to implement protections against the circumvention of technological protection measures, and to amend its Internet service provider liability regime to permit effective action against any act of infringement of copyright and related rights, to implement protections for encrypted program-carrying satellite signals, and to ensure that effective administrative and judicial procedures and deterrent remedies are made available to rights holders.

In 2013, the United States will continue to work with Chile on IPR-related matters.

SERVICES BARRIERS

Telecommunications Services

Chile maintains high mobile termination rates, the wholesale per-minute rate paid by an originating mobile provider to the terminating mobile provider when a call is placed from subscribers from one network to subscribers of another. Although the government-established rates are expected to be revised in 2013, concerns remain about the impact of these high rates on small mobile providers.

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $315.1 billion in 2012, up $19.6 billion from 2011. U.S. goods exports in 2012 were $110.6 billion, up 6.4 percent from the previous year. Corresponding U.S. imports from China were $425.6 billion, up 6.6 percent. China is currently the 3rd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to China were $26.7 billion in 2011 (latest data available), and U.S. imports were $11.3 billion. Sales of services in China by majority U.S.-owned affiliates were $28.5 billion in 2010 (latest data available), while sales of services in the United States by majority China-owned firms were $966 million.

The stock of U.S. foreign direct investment (FDI) in China was $54.2 billion in 2011 (latest data available), down from $58.5 billion in 2010. U.S. FDI in China is primarily in the manufacturing sector.

IMPORT BARRIERS

Prior to its WTO accession in December 2001, China restricted imports through high tariffs and taxes, quotas, and other nontariff measures, as well as restrictions on trading rights, *i.e.*, the right to engage in importing and/or exporting goods. Beginning in 2002, its first year in the WTO, China significantly reduced tariff rates on many products, decreased the number of goods subject to import quotas, expanded the number of Chinese enterprises with trading rights and the products they could import, and increased the transparency of its licensing procedures. Subsequently, China has continued to make progress by implementing tariff reductions on schedule, phasing out import quotas, and expanding trading rights for foreign enterprises and individuals. Nevertheless, some serious problems remain, such as China's refusal to grant trading rights for certain industries that are listed in the following section.

Trading Rights

In its Protocol of Accession to the WTO, China committed to substantial liberalization in the area of trading rights. Although China did not fully adhere to the agreed phase-in schedule, it put in place a registration system implementing the required liberalization of trading rights for wholly Chinese-owned enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises, and foreign individuals, including sole proprietorships. This liberalization is reflected in China's revised Foreign Trade Law, issued in April 2004. It provides for trading rights to be automatically available through a registration process, effective July 1, 2004. In June 2004, the Ministry of Commerce (MOFCOM) issued implementing rules establishing the procedures for registering as a foreign trade operator. U.S. companies have reported few problems with the trading rights registration process.

Consistent with the terms of China's Protocol of Accession to the WTO, the importation of some goods, such as petroleum and sugar, is still reserved for state trading enterprises. In addition, for goods still subject to tariff-rate quotas (TRQs), such as grains, cotton, vegetable oils and fertilizers, China reserves a portion of the in-quota imports for state trading enterprises, while it makes the remaining portion (ranging from 10 percent to 90 percent, depending on the commodity) available for importation through non-state traders. In some cases, the percentage available to non-state traders increases annually for a fixed number of years. (*For further information, please refer to the section below on Tariff-Rate Quotas.*)

China continued to restrict the importation and distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music, in contravention of its trading rights and distribution services commitments, leading the United States to mount a successful WTO challenge to these policies. In order to comply with the WTO ruling, China agreed to remove these restrictions by March 2011. China subsequently issued several revised measures and repealed other measures relating to the restrictions on books, newspapers, journals, DVDs, and music. China did not issue any measures addressing theatrical films, but requested bilateral discussions. In February 2012, the two sides signed a Memorandum of Understanding (MOU) regarding the film-related aspects of the WTO ruling. The MOU provides for increased market access for imported films and better terms of compensation for foreign film producers. The MOU will be reviewed after five years in order to discuss issues of concern, including additional compensation for the U.S. side. (*For further information, please refer to the section below on Audiovisual and Related Services.*)

Import Substitution Policies

When it acceded to the WTO, China agreed to eliminate all subsidies prohibited under Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including all forms of subsidies contingent on the use of domestic over imported goods. In its Protocol of Accession to the WTO, China also committed that it would not condition import or investment approvals on whether there are competing domestic suppliers nor impose other performance requirements. In anticipation of this commitment, China enacted legal changes in 2000 and 2001 to eliminate local content requirements for foreign investments. Under the prevailing rules, however, investors are still "encouraged" to follow some of the formerly mandated practices. Instances in which the Chinese government has reportedly pursued import substitution or similar policies are described below.

Ministry of Industry and Information Technology Equipment Catalogue:

Following intensive dialogue, including under the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the U.S.-China Strategic and Economic Dialogue (S&ED), regarding concerns about import substitution provisions, on November 14, 2011, China's Ministry of Industry and Information Technology (MIIT) published a revised draft *Guiding Catalogue of Indigenous Innovation in Major Technologies and Equipment* for public comment. On a positive note, the revision removed specific eligibility criteria contained in the 2009 *Catalogue Guiding Indigenous Innovation in Major Technology Equipment* relating to import substitution and to the generation of foreign exchange earnings through exports. In addition, the revised catalogue no longer provides that products will be eligible for government procurement preferences, nor does it any longer identify subsidies and other benefits for which listed products are eligible. However, the catalogue's revised product selection criteria are subjective and vague, and the government benefits to be accorded are not specifically enumerated. As a result, it is still possible that listed products could receive benefits that conflict with China's WTO obligations. The United States will continue to monitor China's practices in connection with use of the catalogue.

Automotive Policy:

U.S. automakers and parts manufacturers face significant challenges in China's automotive market, as China has implemented a series of policies with a discriminatory effect on foreign enterprises. In May 2004, China issued a new automobile industrial policy: the Policy on Development of the Automotive Industry, and subsequently issued implementing regulations that unfairly discriminated against imported automotive parts and discouraged automobile manufacturers in China from using imported automotive parts in the assembly of vehicles. In 2006, the United States, the EU, and Canada initiated dispute settlement proceedings against China at the WTO. The WTO ultimately ruled in favor of the United States. In September 2009, China repealed the challenged measures.

Additional problems emerged after China's economic policymakers began devoting substantial resources – and creating new policies – to assist Chinese automobile enterprises in developing cutting-edge New Energy Vehicle (NEV) technologies and building domestic brands that could succeed in global markets. China introduced regulations, issued by the National Development and Reform Commission (NDRC) in 2007 and by MIIT in 2009, requiring manufacturers of NEVs in China to "demonstrate mastery" over, and hold intellectual property rights in, core NEV technologies. Because China only allows foreign automobile manufacturers to operate in China through joint ventures with Chinese enterprises, and because none of these joint ventures can be majority foreign-owned, this raised serious concerns that these policies could compel the transfer of foreign automotive manufacturers' core NEV technologies to their Chinese domestic joint venture partners. There were also widespread reports that China would require all NEVs manufactured in China to be sold under Chinese, rather than foreign, brands.

China has also pursued policies similarly designed to promote the development of a Chinese NEV component industry at the expense of foreign enterprises. For example, in March 2011, the NDRC issued a draft *Catalogue Guiding Foreign Investment in Industry ("Foreign Investment Catalogue")* that proposed a new limitation on foreign ownership in NEV parts manufacturing facilities in China to no more than 50 percent. Previously, foreign automotive parts manufacturers could establish in China as wholly foreign-owned enterprises. Foreign enterprises also raised questions about whether new consumer subsidies and other incentive programs being introduced by the Chinese government would be made available to both domestic and imported NEVs, raising national treatment concerns.

In 2011, the United States repeatedly raised its concerns about China's NEV policies during the preparations for the November 2011 U.S.-China JCCT meeting. As a result of these efforts, at the JCCT meeting, China confirmed that it would not require foreign automobile manufacturers to transfer technology to Chinese enterprises or to establish Chinese brands in order to invest in China's market for NEVs. China also confirmed that foreign-invested enterprises would have equal access to subsidies and other preferential policies for NEVs and that these policies would conform to WTO rules. With regard to the new investment restrictions contained in the draft *Foreign Investment Catalogue*, China removed the 50 percent limit on foreign capital for almost all of the key components of NEVs in the final version, released in January 2012, but retained the restriction on NEV batteries. The retention of the limit is a significant limitation on foreign ownership in the NEV sector, as batteries are one of the critical components of most NEVs, and the United States continues to urge China to eliminate this restriction as well. The United States will continue to monitor China's evolving NEV policies and will continue to engage China on concerns in this important sector.

(For discussion of concerns regarding government procurement policies in the automotive sector, please refer to the section below on Indigenous Innovation, Technology Transfer and Strategic Emerging Industry Barriers.)

Steel:

China's 2005 *Steel and Iron Industry Development Policy* (Steel Policy) includes a host of objectives and guidelines that raise serious concerns. For example, the Steel Policy requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel. These provisions appear to remain in effect. Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China, this requirement could be regarded as a *de facto* technology transfer requirement. The Steel Policy also appears to discriminate against foreign equipment and technology imports, encouraging the use of local content by calling for a variety of government financial supports for steel and iron projects using newly developed domestic equipment. Even more troubling, the policy calls for the use of domestically produced steel manufacturing equipment and domestic technologies whenever domestic suppliers exist –

raising serious concerns given China's commitment under its Protocol of Accession to the WTO not to condition importation on whether competing domestic suppliers exist.

China's steel production has grown rapidly and at a rate faster than the growth in its domestic steel consumption, causing China to become the global leader in steel exports starting in 2006. In bilateral and multilateral meetings, the United States has argued that China has acted to impose different levels of taxes on different exports of steel products and steelmaking inputs in a manner that appears to encourage the export of certain value-added steel products. In Fall 2008, in response to the financial downturn, China rapidly reduced or removed export duties on many, but not all, steel products to encourage exports during a period of steeply declining global demand. In a series of moves over several months, China eliminated export duties on additional semi-finished and finished steel products while it also reinstated or increased value-added tax (VAT) export rebates. As a result, Chinese steel production reached a record 567 million metric tons in 2009, a 14 percent increase over 2008. Later, in June 2010, the Ministry of Finance (MOF) and the State Administration of Taxation removed the 9 percent VAT export rebate on certain steel products, primarily intermediate hot-rolled products. Because the VAT export rebates on finished pipes, tubes and other tubular products remained in place, the differential VAT treatment between exports of hot-rolled products and tubular products actually increased, further incentivizing the production and export of tubular products.

In June 2010, the State Council published the *Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector*. This measure reiterated existing steel policies, specifically identifying a number of well-known objectives for the sector, such as controlling steel industry growth, strengthening efforts to eliminate outdated capacity, promoting energy savings and emissions reduction, technical innovation, accelerating mergers, disciplining access to iron ore imports and promoting domestic iron ore mining, and encouraging domestic steel producers to explore mining and steel investments abroad.

In October 2011, MIIT published its *Twelfth Five-Year Development Plan for the Iron and Steel Industry*, covering the period of 2011 to 2015. The plan itself notes that China's steel production grew from 350 million MT in 2005 to 630 million MT in 2010. The plan places the Chinese government in the role of closely managing the development of the steel industry, and furthermore, specifies where to build, close, or relocate steelmaking capacity, how much to spend on research and development, and the types of products that should not be produced. The plan also emphasizes "self-sufficiency" in steel production and sets specific market share targets for domestic steel producers, implying that imports of certain steel products are too high and should be replaced by domestic production. This high degree of government direction and decision-making, including over areas such as the allocation of resources into and out of China's steel industry, raises concerns in light of China's WTO commitments. Meanwhile, the plan provides no indication that China plans to liberalize restrictions on foreign investment in the Chinese domestic sector, yet it sets out objectives for overseas investment by Chinese iron and steel producers. The plan also states that incentives will be provided to support investment in foreign iron ore mines and steel plants to create groups with "powerful international competitive strength."

China's steelmaking capacity was 424 million metric tons in 2005, and more than doubled by 2012, according to OECD estimates. China's steelmaking capacity has continued to grow and is expected to top 900 million metric tons by 2014. In September 2012, MIIT released the 2012 *Regulations and Conditions of Production and Operation of the Iron and Steel Industry*. The new regulations are formulated in line with *Several Opinions of the General Office of the State Council on Further Strengthening Energy Conservation and Emission Reduction and Speeding Up Restructuring in the Iron and Steel Industry* and the *Twelfth Five-Year Development Plan for the Iron and Steel Industry*. The new regulations seek to reduce excess inefficient capacity, increase value-added production, reduce energy consumption and pollution, and increase steel mills' social responsibility. However, in 2012, China approved the installation of significant new large-scale steel plants, and it is unclear whether the September 2012 measures will succeed in achieving their capacity rationalization, social and environmental objectives.

Semiconductors:

China's Twelfth Five-Year Plan calls for increased research and development in the Chinese semiconductor sector, replacing the emphasis in former five-year plans on production capacity. In spite of government investment in the semiconductor sector, this sector remains fairly weak in terms of innovation. The United States continues to monitor whether or not the new financial support China is making available to its domestic integrated circuit producers is consistent with the WTO Subsidies Agreement's disciplines. Chinese exports of counterfeit semiconductor products have also eroded the sales of legitimate semiconductor products and created security threats to recipients of these products.

Fertilizer:

China exempts all phosphate fertilizers except diammonium phosphate (DAP) from the VAT. DAP, a product that the United States exports to China, competes with other phosphate fertilizers produced in China, particularly monoammonium phosphate. Both the U.S. Government and U.S. producers have complained that China has employed its VAT policies to benefit domestic fertilizer production.

Telecommunications Equipment:

There have been continuing reports of MIIT adopting policies to discourage the use of imported components or equipment. For example, MIIT has reportedly still not rescinded an internal circular issued in 1998 instructing telecommunications companies to buy components and equipment from domestic sources.

The Twelfth Five-Year Plan, which began in 2011, anticipates investing up to RMB 600 billion in the telecommunications sector by 2015. This plan calls for explosive growth in broadband capacity. The United States and the private sector have criticized China in the past for heavily promoting, supporting, and favoring one technical standard over others in the telecommunications sphere. During the 2010 JCCT meeting, China committed to be "technologically neutral" for current and future services and technologies related to 3G networks and future networks based on new technologies, allowing operators to choose freely among those technologies. The Chinese government also committed not to provide any preferential treatment based on the standard or technology used by an operator.

Agricultural Support

At the end of 2011, China submitted notifications on its domestic support policies (for 2005 to 2008) to the WTO. China reported that the value of its agricultural subsidies, as measured by the Aggregate Measurement of Support (AMS), is below the WTO-compliant *de minimis* level of 8.5 percent of the value of agriculture production. However, there have been reports of additional subsidies to agriculture as part of China's recent agricultural reform policy.

While certain categories of agricultural support are permitted under the WTO, China has significantly increased its support to agriculture. China has a number of agricultural support programs including a direct payment program, minimum support prices for basic commodities, and significant input subsidies. China's classification of certain programs and the methodology China used to calculate certain measures of its support, particularly with its price support policies and direct payments, present potential concerns.

The United States will continue to monitor and evaluate the potential trade-distorting effects of China's new policies.

Tariffs and Other Import Charges

China maintains high duties on some products that compete with sensitive domestic industries. For example, the tariff on automobiles is 25 percent. Likewise, most video, digital video, and audio recorders and players still face duties of approximately 30 percent. Some agricultural items continue to face high tariffs and taxes; for instance, certain tree nut imports face duties of up to 25 percent. After several years of negotiation between the United States and China, China reduced in-shell almond tariffs from 24 percent to 10 percent effective January 1, 2013.

Tariff Classification

Chinese customs officers appear to have wide discretion in classifying goods, and U.S. companies have expressed concern that classifications sometimes appear to be arbitrary. The lack of uniformity makes it difficult to anticipate border charges.

Customs Valuation

China has not uniformly implemented the various customs valuation measures issued following its accession to the WTO. U.S. exporters continue to report that they encounter valuation problems at many ports. According to U.S. exporters, even though the Customs Administration's measures provide that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials still improperly use "reference pricing," often resulting in a higher dutiable value. Moreover, reference pricing appears to be on the rise in recent years. Products often subjected to reference pricing include information technology products and wood products.

In addition, some of China's customs officials reportedly do not apply the rules set forth in the Customs Administration's measures as they relate to software royalties and license fees. Following their pre-WTO accession practice, these officials are still automatically adding royalties and license fees to the dutiable value (for example, when an imported personal computer includes pre-installed software), even though the rules expressly direct them to add those fees only if they are import-related and are a condition of sale for the goods being valued.

U.S. exporters have also continued to complain that some Chinese customs officials are assessing duties on digital products based on the imputed value of the content, such as the data recorded on a CD-ROM. China's own regulations require this assessment to be made on the basis of the value of the underlying carrier medium, meaning the CD-ROM itself.

China has indicated that it is working to establish more uniformity in its adherence to WTO customs valuation rules. The United States has assisted this effort by conducting technical assistance programs for Chinese government officials. In addition, the United States has raised its concerns about particular valuation problems during meetings of the WTO's Committee on Customs.

More generally, U.S. exporters still complain of inefficient and inconsistent customs clearance procedures in China. These procedures vary from port to port, lengthy delays are not uncommon, and the fees charged appear to be excessive, giving rise to concerns that they are not related to the cost of services rendered, as required by China's WTO obligations.

Border Trade

China's border trade policy also continues to generate most favored nation (MFN) and other concerns. China provides preferential import duty and VAT treatment to certain products, often from Russia, apparently even when those products are not confined to frontier traffic as envisioned by WTO rules. In June 2003, China began to address these concerns when it eliminated preferential treatment for boric acid and 19 other products. However, several other products continue to benefit from preferential treatment.

Antidumping, Countervailing Duty and Safeguard Measures

Since acceding to the WTO, China has become a significant user of antidumping measures. As of December 2012, China had a total of 107 antidumping measures in place (some of which predate China's membership in the WTO) affecting imports from 17 countries and regions, and 12 antidumping investigations in progress. China's significant use of antidumping measures underscores the importance of China adhering to the transparency and procedural fairness requirements and substantive standards embodied in WTO rules.

MOFCOM's predecessor agencies, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the State Economic and Trade Commission (SETC), issued most of the rules and regulations that MOFCOM uses to conduct its antidumping investigations. While these measures generally represent good faith efforts to implement the relevant WTO commitments and to improve China's pre-WTO accession measures, they also contain vague language, have gaps in areas of practice, and allow inordinate discretion in their application. In July 2009, MOFCOM solicited public comment on draft revisions of its rules for new shipper reviews, antidumping duty refunds, and price undertakings. Once finalized, China is obligated to notify these revised rules to the WTO to allow an opportunity to review the rules for compliance with the WTO Antidumping Agreement and to seek any needed clarifications.

In 2012, the United States and other WTO members continued to express serious concerns about key lapses in transparency and procedural fairness in China's antidumping investigations. The principal areas of concern include MOFCOM's inadequate disclosure of key documents placed on the record by domestic Chinese producers; insufficiently detailed disclosures of the essential facts underlying MOFCOM decisions, such as the results of on-site verification, dumping margin calculations and evidence supporting injury and dumping conclusions; and failure to adequately address critical arguments or evidence put forward by interested parties.

The United States and other WTO members have also expressed serious concerns about China's evolving practice of launching antidumping and countervailing duty investigations that appear designed to discourage the United States or 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 protocol. This type of retaliatory conduct is not typical of WTO members, and it may have its roots in China's Foreign Trade Law and antidumping and countervailing duty implementing regulations, which authorize "corresponding countermeasures" when China believes that a trading partner has discriminatorily imposed antidumping or countervailing duties against imports from China. Further, when China has pursued investigations under these circumstances, it appears that its regulatory authorities imposed duties regardless of the strength of the underlying legal and factual support.

As China's antidumping regime has matured, many of its antidumping orders have been in effect for five years, warranting sunset reviews, which MOFCOM calls "expiry reviews." As of December 2012, MOFCOM was conducting eight expiry reviews. While none of these reviews involves products from the United States, every expiry review involving U.S. products to date has resulted in the measure at issue being extended. Because of the problems that respondents have encountered in China's antidumping investigations, it is critical that China publish rules and procedures specifically governing the conduct of expiry reviews, as required by the WTO Antidumping Agreement. The United States has pressed China to issue regulations governing sunset reviews for more than two years and will continue to do so.

To date, it appears that only one interested party, a Russian exporter, has filed for judicial review of a Chinese antidumping proceeding. However, China has not released any information to the public about the case. As China continues to launch antidumping investigations and apply antidumping measures against imports, the opportunity for interested parties to seek judicial review will become more critical.

China initiated its first three countervailing duty investigations in 2009. Each of these investigations involved imports of products from the United States: grain-oriented electrical steel (GOES), chicken broiler products, and automobiles. These countervailing investigations demonstrated that, as in the antidumping area, China needs to improve its transparency and procedural fairness when conducting these investigations. The United States is concerned, for example, about how China applies the principle of "facts available" under WTO countervailing duty rules. In addition, as in the antidumping area, the United States has expressed serious concerns about China's pursuit of countervailing duty remedies that appear intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO countervailing duty rules and the trade remedy provisions of China's accession protocol.

The United States is currently pursuing three WTO disputes against China in the areas of antidumping and countervailing duties. The disputes involve China's antidumping and countervailing duty measures on imports of GOES, chicken broiler products, and automobiles from the United States.

The United States initiated the GOES dispute in September 2010, arguing that China's regulatory authorities imposed the duties at issue without the necessary legal and factual support, and without observing certain transparency and procedural fairness requirements, in violation of various WTO rules. A WTO panel was established in March 2011, and eight other WTO members joined as third parties. Hearings took place in September and December 2011. The panel issued its report in June 2012, finding in favor of the United States on all significant claims. China appealed the panel's report in July 2012. The WTO's Appellate Body rejected China's appeal in October 2012. The United States has requested binding arbitration to set a reasonable period of time for China to comply with the GOES reports.

The United States initiated the chicken broiler products WTO dispute in September 2011. Once again, in the course of its antidumping and countervailing duty investigations, China's regulatory authorities appeared to have imposed the duties at issue without the necessary legal and factual support and without observing certain transparency and procedural fairness requirements, in violation of various WTO rules. Consultations were held in October 2011, and the United States requested the establishment of a panel in December 2011. A WTO panel was established in January 2012, and seven other WTO members joined as third parties. Hearings took place in September and December 2012, and the panel is scheduled to issue its report in 2013.

The United States initiated the automobiles WTO dispute in July 2012, raising claims similar to those put forward in the GOES and chicken broiler products disputes. A WTO panel was established in October 2012, and eight other WTO members have joined the dispute as third parties.

In July 2012, China initiated its fourth countervailing duty investigation against the United States. This investigation, along with a companion antidumping investigation, involves imports of solar-grade polysilicon – a major input into the production of solar panels. The investigations are currently ongoing.

Nontariff Barriers

Many U.S. industries continue to indicate that they face significant nontariff barriers to trade, which are discussed in more detail in various sections below. These barriers include, for example, regulations that set high thresholds for entry into services sectors such as banking, insurance and telecommunications; selective and unwarranted inspection requirements for agricultural imports; and the use of questionable sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) measures. (*China's SPS and TBT measures are addressed in separate reports issued by USTR.*)

Beef

China continues to maintain market access barriers to U.S. beef and beef product exports that are inconsistent with international standards of the World Animal Health Organization (OIE). Reopening China's beef market consistent with science and international standards, as well as in a commercially viable manner, is an important priority. This issue is discussed in detail in USTR's annual Report on Sanitary and Phytosanitary Measures.

Remanufacturing

China currently prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains a general import prohibition that prevents remanufacturing process inputs (cores) from being imported into China's customs territory other than to its special economic zones. This undermines the development of many sectors, such as mining, agriculture, healthcare, transport and communications. Businesses and consumers are unable to purchase high-quality, lower-cost remanufactured products produced outside of China. Certain capital equipment companies have found ways to participate in China's market through pilot programs and Memoranda of Understanding, but their activities remain severely restricted and prohibitions on the importation of remanufactured goods and cores remain a problem. To help address this issue, in 2011 and 2012, the Department of Commerce, USTR and China's Ministry of Industry and Information Technology co-chaired the U.S.-China Remanufacturing Dialogue. Relevant industry and government stakeholders from both countries participated. Through this dialogue and in other bilateral fora, such as the JCCT, the U.S. Government has pushed China to lift the ban on the importation of used goods with respect to remanufactured products and cores, and to expand upon the scope of remanufacturing activity that is allowed to be conducted in China**.**

Tariff-Rate Quotas

As part of its WTO accession commitments, China established large and increasing tariff-rate quotas (TRQs) for imports of wheat, corn, rice, cotton, wool, sugar, rapeseed oil, palm oil, soybean oil, and fertilizer, with most in-quota duties ranging from 1 percent to 15 percent. Under these TRQ systems, China places quantitative restrictions on the amount of these commodities that can enter at a low "in-quota" tariff rate, and any imports over that quantity are charged a prohibitively high duty. Each year, a portion of each TRQ is to be reserved for importation through non-state trading entities. China's Protocol of Accession to the WTO sets forth specific rules for administration of the TRQs, including increased transparency and reallocation of unused quotas to end users that have an interest in importing. China phased out the vegetable oil TRQs in 2006, but currently maintains TRQs for wheat, cotton, corn, rice, wool and sugar, as well as three chemical fertilizers, including DAP.

The administration of China's TRQ system has suffered from systemic problems since China's WTO accession, including insufficient transparency and administrative guidance affecting how the allocated quota is used. Although the United States has repeatedly engaged China bilaterally, as well as multilaterally at the WTO, concerns about inadequate transparency remain. U.S. fertilizer exports to China have declined throughout the post-WTO accession period, due in part to Chinese government policies, such as export duties and discriminatory internal taxes that promote the use of domestic fertilizer.

INTERNAL POLICIES

Non-discrimination

Multi-Level Protection Scheme:

Beginning in 2010 and continuing through 2012, the United States raised its concerns with China about framework regulations for information security in critical infrastructure known as the Multi-Level Protection Scheme (MLPS), first issued in June 2007 by the Ministry of Public Security (MPS) and MIIT. The MLPS regulations put in place guidelines to categorize information systems according to the extent of damage a breach in the system could pose to social order, public interest and national security.

Among other things, the MLPS regulations bar foreign products from information systems graded level 3 and above, because all products deployed must be developed by Chinese information security companies and must be based on Chinese intellectual property in their key components. Additional troubling product testing provisions for level 3 and above require companies to disclose product source code, encryption keys and other confidential business information. (*This topic is discussed in more detail in the USTR TBT Report.*)

To date, hundreds of requests for proposals (RFPs) incorporating MLPS requirements have come from government agencies, the financial sector, telecommunications companies, the power grid, educational institutions and hospitals in China. These RFPs cover a wide range of information security software and hardware, and many of them exclude the purchase of foreign products by incorporating level-3 requirements. If implementing rules for the MLPS regulations are issued and applied widely to commercial sector networks and information technology infrastructure, they could have a significant impact on sales by U.S. information security technology providers in China.

At the December 2012 JCCT meeting, China indicated that it would begin the process of revising the MLPS regulations. It also agreed that, during that process, it would enter into discussions with the United States regarding U.S. concerns.

Taxation

Value-Added Taxes (VAT):

China gains a significant amount of annual tax revenue from VAT. This revenue is shared between the central government (75 percent) and the local government (25 percent). In 2009, the central government implemented VAT reforms, changing the VAT from production-based to consumption-based. All enterprises and individuals engaged in the sale of goods, provision of processing, repairs and replacement services, and import of goods within China are required to pay the VAT, although there are a few exemptions.

China's State Council, in October 2011, announced a VAT reform program aimed at resolving double-taxation issues and providing support to the development of China's services sector by replacing the business tax with the VAT in certain industries, including transportation and some modern services. A business tax-to-VAT pilot program was first launched in Shanghai, and, in the fall of 2012, the State

Council expanded the pilot program. As of February 2013, a total of 12 provinces and municipalities are participating. The government plans to further expand the business tax-to-VAT program to other provinces in 2013 and may also increase the number of sectors.

Uneven application of the VAT continues in China. Importers from a wide range of sectors report that, because taxes on imported goods are reliably collected at the border, they are subject to the application of a VAT that their domestic competitors often fail to pay. In addition, China's selective exemption of certain fertilizer products from the VAT has operated to the disadvantage of imports from the United States.

China retains an active and constantly changing VAT rebate program for exports. The effect of many of China's VAT rebate adjustments, which are often used in conjunction with export duties, is to make larger quantities of primary and intermediate products in a particular sector available domestically at lower prices than the rest of the world, giving China's downstream producers of finished products using these inputs a competitive advantage over foreign downstream producers. China discourages the export of the relevant primary and intermediate products by reducing or eliminating VAT rebates and is believed to also impose export duties on select products, resulting in increased domestic supply and lower domestic prices. China's downstream producers, in turn, benefit from these lower input prices as well as larger VAT rebates on export of their finished products. In some situations, China has also used its border taxes to encourage the export of certain finished products over other finished products within a sector, especially the steel and aluminum sectors.

Business Tax on Foreign Services:

Effective January 1, 2009, China issued amendments to its business tax regulations that reinterpreted the scope of taxable services. Previously, taxes were imposed only on taxable services actually provided within China. Under the amendments, if services are provided to an enterprise, a non-business organization or an individual in China, the service provider is liable for business tax regardless of where the services are performed.

Consumption/Luxury Taxes:

A number of higher-end products currently face consumption or luxury taxes, including large displacement automobiles and SUVs, recreational vehicles, yachts, and wine. Reports suggest that additional consumption taxes are being considered, including for general aviation aircraft.

EXPORT REGULATION

Export Quotas, Duties and Licenses

Since its accession to the WTO, China has continued to impose restraints on exports of raw materials – including quotas, duties and related fees, licensing requirements and other restraints – as the Chinese government has continued to guide the development of downstream industries. These export restraints are widespread. For example, China maintains export quotas and sometimes export duties on antimony, bauxite, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten, yellow phosphorus and zinc, all of which are of key interest to U.S. producers of downstream products. These types of export restraints can significantly distort trade, and are normally barred by WTO rules. In case of China, the trade-distortive impact is exacerbated, because China is the world's leading producer of many of the raw material inputs at issue.

China's export restraints affect U.S. and other foreign producers of a wide range of downstream products, such as steel, chemicals, hybrid and electric cars, energy efficient light bulbs, wind turbines, hard-disc drives, magnets, lasers, ceramics, semiconductor chips, refrigerants, medical imagery, aircraft, refined petroleum products, fiber optic cables and catalytic converters, among many others. The export restraints can create serious disadvantages for these foreign producers by artificially increasing China's export prices for the raw material inputs, which also drives up world prices. At the same time, the export restraints can artificially lower China's domestic prices for the raw materials due to significant increases in domestic supply, enabling China's domestic producers of downstream products to produce lower-priced products, thereby creating significant advantages for China's domestic downstream producers. The export restraints can also create incentives for foreign downstream producers to move their operations, jobs and technologies to China.

Despite extensive U.S. engagement in this area starting shortly after China's WTO accession, China appears to have maintained its policies for these input materials. In fact, it appears that, over time, China has increased the artificial advantages afforded to its downstream producers by making the export quotas more restrictive and by imposing or increasing export duties on many of the raw material inputs at issue.

In June 2009, the United States and the EU initiated a WTO case challenging export quotas, export duties, and other restraints maintained by China on the export of several key raw material inputs for which China is a leading producer, including bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc. A WTO panel was established to hear the case in December 2009, and 13 other WTO members joined the case as third parties. The panel issued its decision in July 2011, finding in favor of the United States and its co-complainants on all of the significant claims. China appealed the decision in August 2011. In a decision issued in January 2012, the WTO's Appellate Body upheld the panel's core findings that China's export quotas and export duties violate its WTO obligations. China subsequently agreed to come into compliance with the WTO's rulings by December 2012. China removed the export quotas and export duties at issue in December 2012, although it continued to impose an export licensing requirement on several of the products at issue in the case, which could act as an export restriction depending on how it is administered.

China's export restraints on rare earths, a collection of 17 different chemical elements used in a variety of green technology products, among other products, began to generate significant concern among China's trading partners in July 2010. At that time, even though China controls about 97 percent of the global rare earths market, China sharply reduced its export quotas on rare earth ores, concentrates, oxides, metals, chlorides, chlorinates, fluorides, carbonates and other compounds, causing world prices for some of the rare earths to rise dramatically higher than China's domestic prices, hindering efforts in other countries to develop expertise in the increasingly important downstream manufacturing of green technology products. In 2011, China expanded the scope of the products covered by the rare earths quota to include more downstream products, making the quota even more restrictive than it had been in 2010. In addition, according to several reports, China's customs authorities began rejecting rare earth exports that were not priced above certain minimum export prices. It appears that this practice disrupted the export quota process and contributed to rapidly increasing prices outside China.

In March 2012, the United States initiated a WTO case challenging China's export quotas, export duties, and other export restraints on rare earths, as well as tungsten and molybdenum. These raw materials are key inputs in a multitude of U.S.-made products and manufacturing sectors, including hybrid car batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals, among many others. Because China is a top global producer of these raw material inputs, its export restraints can artificially increase prices for the inputs outside of China while lowering prices in China. This price dynamic creates significant cost advantages for China's producers when competing against U.S. producers, both in China's market and in other markets around the world. It also contributes to creating substantial pressure on U.S. and other non-Chinese downstream producers to move their operations, jobs and technologies to China. The European Union and Japan joined in the case as co-complainants, and joint consultations took place in April 2012. A WTO panel was established to hear the case at the complaining parties' request in July 2012, and 18 other WTO members joined the case as third parties. Proceedings before the panel began in February 2013.

Export Subsidies

A general lack of transparency makes it difficult to identify and quantify possible export subsidies provided by the Chinese government. China's subsidy programs are often the result of internal administrative measures and are not publicized. U.S. industries have alleged that subsidization is a key reason that Chinese exports are undercutting prices in the United States and gaining market share. Of particular concern are China's practices in the steel, petrochemical, high technology, forestry and paper products, agricultural products, textiles, hardwood, plywood, machinery, aerospace, clean energy, and copper and other nonferrous metals industries.

China acceded to the WTO in December 2001, but did not submit the first of its annually required subsidies notifications to the WTO's Subsidies Committee until April 2006, nearly five years late. The notification was incomplete and failed to notify any subsidies provided by provincial and local governments or by state-owned banks as required. In addition, while China notified several subsidies that appeared to be prohibited under WTO rules, it did so without making any commitment to withdraw them. Following the submission of China's 2006 notification, the United States repeatedly raised concerns about the incomplete notification. During Subsidies Committee meetings in 2009 and 2010, China pledged to finalize a second subsidies notification. When China failed to submit the notification, the United States filed a counter notification under Article 25.10 of the Subsidies Agreement in October 2011. The United States identified 200 unreported subsidy programs in its counter notification, including many provided by provincial and local authorities and many which the United States has found countervailable in the course of its countervailing duty investigations. Following the United States' filing of the counter-notification, China submitted a new subsidies notification. However, the new notification was incomplete; it only covered the period of 2005 to 2008 and contained numerous overlapping programs. In October 2012, the United States submitted a written request for information from China under Article 25.8 of the Subsidies Agreement regarding numerous other central and sub-central government subsidies that China has not yet notified. Article 25.9 of the Subsidies Agreement requires that a response to an Article 25.8 request be provided "as quickly as possible and in a comprehensive manner." To date, China has not answered the questions in the United States' Article 25.8 request. The United States will continue to press China to answer these questions, to submit complete and current subsidies notifications on a regular basis, and to withdraw any subsidies that are prohibited by WTO rules.

The United States has pursued four WTO dispute settlement cases against China involving claims of prohibited subsidies. The first three cases led to favorable outcomes, as China modified or repealed the various challenged measures. The United States initiated its fourth case in September 2012 when it challenged numerous subsidies provided by the central government and various sub-central governments in China to automobile and automobile-parts enterprises located in regions in China known as "export bases." The challenged subsidies appear to be inconsistent with China's obligation under Article 3 of the Subsidies Agreement not to provide subsidies contingent upon export performance. In addition, it appeared that China failed to abide by various WTO transparency obligations requiring it to publish the measures at issue in an official journal, notify them to the WTO Committee on Subsidies and Countervailing Measures and make translations of them available in one or more WTO languages. Consultations with China took place at the WTO in November 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

China's persistent inadequacies in the protection and enforcement of intellectual property rights (IPR) continue to present barriers to U.S. exports and investment. China was listed again on the Priority Watch List in the 2012 Special 301 report. Key concerns include unacceptable levels of retail and wholesale counterfeiting; persistently high levels of book and journal piracy; end-user piracy of business software; lack of effective trade secret protection and enforcement; and copyright piracy over the Internet. The report describes these enforcement-related concerns and summarizes the legal difficulties rights holders face when attempting to assert their IPR rights in China. The lack of deterrent penalties and other policies, such as barriers to the market for legitimate products, contribute to the poor record on reducing IPR crime in China. The report also recognizes industry concerns about the possibility that laws or policies in a variety of fields might be used to unfairly favor domestic intellectual property (IP) over foreign IP, including procurement preferences for products with domestically developed IP and the treatment of IPR in setting standards.

Chinese markets were also prominent in USTR's Out-of-Cycle Review of Notorious Markets in 2011, as well as 2012, which identified physical and online markets that have significant levels of piracy and counterfeiting. Following the publication of the first online list, the Chinese website Baidu reached a precedent-setting licensing agreement with U.S. and international rights holders in the recording industry to curtail illegal music downloads. Another Chinese website, Taobao, has also launched new procedures to facilitate the removal of infringing material from its website.

With respect to copyright piracy and trademark counterfeiting, weaknesses in China's enforcement system – criminal, civil, and administrative – contribute to China's poor IPR enforcement record. There are also a number of other obstacles to effective enforcement. High value and volume thresholds must be met in order to initiate criminal prosecution of IPR infringement. U.S. trademark and copyright industries also report that administrative fines are too low, and imposed too infrequently, to be a deterrent. Consequently, infringers view administrative seizures and fines merely as a cost of doing business. Civil damages for infringement are likewise inadequate.

Foreign companies have also had trouble protecting and enforcing their trade secrets against misappropriation in China. The challenges these companies face in trying to protect their trade secrets in China are complex, ranging from the enforcement of trade-secret related agreements to difficulties in gathering evidence in trade secret cases, as well as the lack of a clear legal framework in China for handling trade secret problems. U.S. companies have found it difficult to obtain relief against those who have benefitted from trade secrets misappropriation, despite compelling evidence demonstrating the misappropriation.

U.S. companies also have concerns related to China's patent regime. The United States continues to encourage China to provide an effective system to expeditiously address patent issues in connection with applications to market pharmaceutical products. In addition, the United States continues to have concerns about the extent to which China provides effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

An exacerbating factor contributing to China's poor IPR protection has been China's maintenance of restrictions on the right to import and distribute legitimate copyright-intensive products, such as theatrical films, DVDs, music, books, newspapers and journals. These restrictions impose burdens on legitimate, IPR-protected goods and delay their introduction into the market, creating advantages for infringing products and helping to ensure infringing products continue to dominate the Chinese domestic market.

As previously reported, after the United States brought a successful WTO case, China issued several measures, and repealed other measures, relating to its importation and distribution restrictions on imported books, newspapers, journals, DVDs and music. However, China did not issue any measures addressing theatrical films. In February 2012, after China had sought an alternative solution to its compliance with the films-related aspects of the WTO ruling, the United States and China reached an agreement providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial additional revenue for foreign film producers.

The United States and China continued to engage in bilateral efforts to address a variety of IPR issues. Just prior to the November 2011 JCCT meeting, China committed to establish a State Council-level leadership structure, headed by a Vice Premier, to lead and coordinate IPR enforcement across China in order to enhance China's ability to crack down on IPR infringement, thereby making permanent the leadership structure under the special campaign. China also made significant commitments on software legalization at the 2011 JCCT meeting. China specifically committed to complete its software legalization efforts at the provincial government level by the middle of 2012 and at the local and municipal levels by the end of 2013. According to the General Administration for Press and Publications (GAPP) and the National Copyright Administration of China (NCAC), all government offices at the provincial level in China completed software legalization by June 30, 2012, but this assertion has not been independently verified, given the lack of published information by China's government related to software audits and inspection efforts.

In addition, China stated, at the 2011 JCCT meeting, that it would increase resources for audits and inspections of government agencies and would improve the efficiency and accuracy of the audits and inspections. To help achieve these goals, Chinese government agencies promised to further improve the management of their software assets, including by the use of technical means. China also pledged to publish the results of the audits to ensure that there is an accurate accounting of all types of software used by government agencies. Finally, China committed to further promote the use of licensed software by state owned enterprises, conduct additional enterprise software management projects, and publish progress reports on the projects.

In November 2011, at the 22nd JCCT meeting, MOFCOM, USTR, and USPTO signed the U.S.-China IPR Cooperation Framework Agreement 2012-2013. The United States and China are working together through the framework to more effectively promote the protection and enforcement of IPR. Finalization of the details of a 2013 work plan for the framework agreement is under discussion.

At the May 2012 U.S.-China Strategic & Economic Dialogue (S&ED), China reaffirmed its commitment made during Vice President Xi Jinping's February 2012 visit to the U.S. that technology transfer would not be a pre-condition for market access, and agreed to continue intensive, ongoing interagency discussions. China also committed to improve IPR-related laws and regulations, further strengthen measures for the pursuit of criminal liability for IPR infringement, and continue enforcement efforts in IPR border protection to reduce cross-border trade in IPR-infringing goods. Both sides also committed to fostering a market environment that leads to the increased sales of legitimate IP products and services. China also affirmed the importance of trade secret protection, and pledged to include this affirmation in its 2012 work plan for the State Council IPR leading group, which it did.

Major concerns related to potential IPR-related trade barriers since the 2012 NTE and Special 301 reports include the potential consequence of empowering provincial-level IP Offices to administratively enforce patent rights, investigate and sanction infringements, and determine and award compensatory damages as envisioned in the 4th amendments to China's Patent Law, since this could lead to inconsistent enforcement approaches. The United States has also expressed concerns regarding the potentially severe consequences for U.S. businesses conducting research and development in China of draft regulations issued by the State IP Office related to award and remuneration requirements for "service inventions" or IP developed in the course of an inventor's or creator's employment activities. The United States is following these developments with great attention, obtaining input from interested U.S. parties, submitting written comments when appropriate, and engaging with the relevant authorities to ensure that IP-related policy developments eliminate existing IPR related trade barriers for U.S. rights holders, without creating new problems.

SERVICES BARRIERS

China imposes restrictions in a number of services sectors that prevent or discourage foreign suppliers from gaining or further expanding market access. For example, in certain sectors, China either does not grant new licenses or maintains a licensing review process that is opaque or slow-moving. China also imposes foreign equity limitations or other discriminatory measures on foreign suppliers in certain industries. Excessive and sometimes discriminatory capital requirements continue to prove unduly burdensome for foreign enterprises in many sectors, including telecommunications and construction services.

Insurance Services

China continues to maintain market access barriers in the insurance sector. Foreign insurance companies saw very modest growth following China's WTO accession. China's formal and informal practices have combined to keep foreign market share very low. Foreign invested insurance companies' market share in the life insurance sector was less than four percent while only 1 percent for the non-life insurance sector (property and casualty). Foreign life insurance companies can only be established as joint ventures, with foreign equity capped at 50 percent. And China's market for political risk insurance is closed to foreign participation. In May 2012, China amended its regulations to open its mandatory third-party liability motor vehicle insurance market to foreign participation. The United States will seek to ensure that U.S. companies obtain maximum benefit from such liberalization.

U.S. companies established in China continue to have difficulty opening new internal branches to expand their operations. The China Insurance Regulatory Commission (CIRC) is not always consistent in meeting its own deadlines for reviewing and approving internal branch applications. U.S. companies also report difficulties in applying for and receiving multiple, concurrent approvals for new internal branches. In addition, the United States has urged China to ensure that China Post, which has been granted a license to supply insurance through its existing network of postal facilities, is not given competitive advantages in terms of regulatory requirements and distribution network for insurance products of other companies.

Private Pensions – Enterprise Annuities

China has not granted any new enterprise annuities services licenses (similar to the U.S. 401(k) system) in more than five years. Even under previous licensing windows, China licensed very few foreign operators, and only for limited elements of enterprise annuities services. If China were to re-open its licensing procedure, any license to manage enterprise annuities would need to be obtained from the Ministry of Human Resources and Social Security, which must include the China Banking Regulatory Commission (CBRC), the China Securities Regulatory Commission and CIRC in its decision-making process. This complex approval process could create barriers to market access. The United States will continue to urge China to re-open its licensing process and ensure that any such licensing procedures are transparent and do not discriminate against qualified suppliers.

Banking and Securities Services

Regulations mandate that only foreign-funded banks that have had a representative office in China for two years and that have total assets exceeding approximately $10 billion can apply to incorporate in China. After incorporating, these banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for three years and have had two consecutive years of profits. In addition, foreign banks in China are subject to rules mandating a 20 percent ownership limit on any single foreign investment in a Chinese bank, with total foreign ownership capped at 25 percent. While foreign banks' assets in China grew 24 percent in 2011, their share of total banking assets in China is still below 2 percent. Locally incorporated foreign banks operating in China face numerous administrative barriers to competing on equal terms with Chinese banks.

With respect to the securities sector, at the May 2012 S&ED, China committed to allow foreign investors to hold up to 49 percent equity stake in domestic securities joint ventures, up from a 33 percent limit. In addition, China agreed to shorten the period for securities joint ventures before they can apply to expand into brokerage, fund management, and trading activities from five years to two years. China also agreed to allow foreign investors to establish joint venture brokerages to trade commodity and financial futures and hold up to 49 percent of the equity in those joint ventures.

Electronic Payment Services

In the Services Schedule accompanying its Protocol of Accession to the WTO, China committed to remove market access limitations and provide national treatment for foreign suppliers providing payment and money transmission services, including credit, charge, and debit cards, with this commitment becoming effective with regard to the domestic currency (RMB) business of retail clients. China also committed to allow the provision and transfer of financial information, financial data processing, and advisory, intermediation, and other financial services auxiliary to payments and money transmission services. These electronic payment and related commitments were to be implemented by no later than December 11, 2006.

After the December 11, 2006 deadline passed without China taking any action, the United States pursued extensive bilateral engagement, which did not resolve U.S. concerns. The United States requested WTO consultations in September 2010 over China's various restrictions on foreign suppliers of electronic payment services. Consultations were held in October 2010, but failed to resolve the dispute. At the United States' request, a WTO panel was established to hear the case in March 2011, and six other WTO members joined the case as third parties. Hearings before the panel took place in October and December 2011, and the panel issued its decision in July 2012. The panel found the challenged restrictions to be inconsistent with China's commitments under the GATS. China decided not to appeal the panel's decision and subsequently agreed to come into compliance with the WTO's rulings by July 2013.

In 2010, the PBOC issued a set of rules requiring licenses for online payment transmission services, and began a process of accepting and processing applications for Payment Settlement Organization licenses. The rules stipulate that foreign-invested service suppliers will be governed by a separate set of rules to be issued by PBOC, and set a deadline of September 1, 2011 for existing suppliers to comply with the licensing requirement. As no rules for foreign-invested suppliers have been issued to date, service suppliers with foreign investment facing a possible shutdown of their businesses had to divest their foreign-owned stakes to obtain licenses by the September 1 deadline. In 2011, PBOC, which has yet to clarify how it will treat foreign-affiliated suppliers, issued 40 licenses in two tranches. To date, no foreign-affiliated suppliers have been licensed.

Foreign banks are interested in issuing credit and debit cards in China. In 2008, the first application to issue local currency credit and debit cards was approved for an offshore entity, although regulators have been slow in approving foreign banks' direct participation in this business. In August 2012, Citigroup became the first U.S.-based bank to issue its own credit card in China.

Retailing Services

The United States remained concerned that China treats domestic companies more favorably than foreign companies regarding zoning and urban development requirements, and imposes additional informal minimum capital requirements on foreign suppliers. In addition, China maintains the right to impose foreign equity approval restrictions on foreign chain stores operating more than 30 stores in China that seek to sell certain commodities.

Sales Away From a Fixed Location

In 2010, MOFCOM delegated authority for approving direct sales products to provincial authorities, a move that allowed localization of products and faster approvals. This is a welcome step, but a number of concerns remain, as China maintains unduly burdensome "service center" establishment requirements, caps and other restrictions on sales force compensation, and discriminatory qualification requirements affecting foreign direct sellers.

Express Delivery Services

The United States continues to monitor China's implementation of its 2009 Postal Law and related regulations, including a new permitting system introduced under the State Postal Bureau's (SPB's) September 2009 *Measures for the Management of Express Delivery Business Permits*. The United States remains concerned that China's regime does not treat foreign and domestic companies equally, despite China's WTO commitment to open the domestic express delivery services sector to foreign competition by 2005. To date, the SPB has severely delayed review and approval of its newly mandated domestic (point-to-point within China) express package delivery business permits for U.S. express delivery companies, significantly handicapping their ability to compete. The United States also is concerned that China may not provide adequate protection to the existing operations of U.S. companies as such new permits are issued. In contrast, the SPB has continued to quickly approve permit requests from Chinese domestic express delivery companies, allowing them broad access to the Chinese marketplace. The Postal Law also excludes foreign suppliers from the important document segment of China's domestic express delivery market. In addition, the United States is concerned that any additional Postal Law implementing regulations, including those related to the universal service fund requirement, may unfairly affect foreign companies.

In July 2010, the General Administration of Customs of China (GACC) eliminated the RMB 400 (approximately $64) *de minimis* exemption for advertising materials and samples imported to China. As a result, importers of these goods that had previously been exempted now are required to obtain a customs registration code. However, the process of obtaining such a code is cumbersome and limiting. Further, GACC practices relating to the classification of packages for tax purposes and GACC processes for the collection of duties run counter to international best practices, creating confusion for companies. These requirements add administrative and cost burdens to express delivery service providers and slow the shipping process.

On the related issue of air freight forwarding, wholly foreign-owned express delivery companies cannot qualify for an Air Transport Agency license, and therefore do not have the ability to directly load cargo on Chinese domestic or international flights, but instead must work through a Chinese agent.

Construction, Engineering, Architectural, and Contracting Services

The *Rules on Administration of Foreign-Invested Construction Enterprises* (known as Decree 113) and *Rules on the Administration of Foreign-Invested Construction Engineering and Design Enterprises* (known as Decree 114) impose more restrictive conditions on foreign firms than existed prior to China's WTO accession. These decrees require foreign-invested enterprises to incorporate in China, impose high minimum registered capital requirements, and burdensome personnel staff requirements. Decree 113 also limits the scope of projects (in terms of size and scale) open to participation by foreign-invested enterprises. Two Ministry of Construction circulars impose additional discriminatory restrictions. Circular 200 prohibits foreign companies from providing project management services unless they also have construction or design enterprise approvals. Under Circular 202, foreign construction engineering design companies do not have the right to apply for a comprehensive “Grade A” design license, as domestic companies do.

Logistics Services

The Ministry of Transport (MOT) has been slow to approve applications by foreign logistics firms, and is unwilling to issue nationwide trucking licenses, limiting the ability of foreign firms to build economies of scale. In addition, local regulations in almost all major Chinese cities restrict daytime access by trucks. China’s enforcement efforts are often targeted at foreign transport/logistics firms, while local firms are permitted to operate without being in full compliance.

China’s State Council supports the logistics industry as part of the Chinese government’s industry revitalization plans for 10 key industries. Foreign logistics firms with investments in China have raised concerns about inadequate transparency for implementing measures, equitable treatment, and efforts to strengthen industry standardization. Although modern logistics is listed in the encouraged investment category in the latest *Foreign Investment Catalogue*, China limits foreign participation in certain aspects of its domestic express delivery sector and includes certain freight rail transportation in the restricted category, both of which are inconsistent with further development of its logistics sector.

Aviation Services

The United States and China negotiated an amended bilateral air services agreement, which was signed in July 2007. Although China agreed to work with the United States towards the mutual goal of eliminating frequencies limitations on passenger and cargo flights, the Civil Aviation Authority of China (CAAC) has not engaged with the United States to schedule new rounds of negotiations since August 2011. Additionally, China’s unfavorable interpretation of cargo hub provisions in the agreement has resulted in U.S. cargo carriers experiencing difficulties in getting their operating schedules approved by the CAAC.

Telecommunications

Foreign participation in China’s telecommunications market, including both basic and value-added telecommunications services, remains very limited. China maintains foreign equity restrictions and a multitude of other barriers in the telecommunications sector, including investment approval procedures that are nontransparent and lengthy. Although China has the world’s largest fixed landline, mobile, and broadband markets measured by subscribership, the lack of opportunities for foreign service suppliers is striking. China’s regulator for the sector, MIIT, while nominally separate from current telecommunications operators, maintains extensive influence and control over their operations and the overall structure of the market. China’s foreign equity restrictions (a maximum of 49 percent foreign equity for basic telecommunications and 50 percent for value-added telecommunications) severely diminish commercial opportunities in the sector.

Not only was there no new market entry in the basic telecommunications sector over the past decade, but China also forced the consolidation of the sector in 2008, reducing the number of national operators from six to three—China Mobile, China Telecom, and China Unicom. China's policy is to permit only foreign joint ventures with existing, state-owned licensees. This policy has further reduced market access opportunities for U.S. suppliers and limited the potential for additional competition in the Chinese telecommunications market. Although not explicitly stated in rule or policy, China appears to apply an economic needs test to new entrants in this sector to avoid "unhealthy competition." China also shows reluctance to authorize new services or technologies which might compete with the revenue of incumbent operators, such as cable modem service, Voice over Internet Protocol (VoIP), or WiFi over a mobile handset. In September 2008, in response to a long-standing U.S. request, China slightly reduced basic telecommunications capitalization requirements to RMB 1 billion (approximately $160 million). This level is still excessively high and makes it commercially unattractive for most foreign operators to invest in the sector, particularly for leased line, resale, and corporate data services, which require no new building of facilities. Although China recently announced plans to open its market to resale of mobile services to private sector companies (that is, not just the three state-owned providers listed above), China's draft regulations suggest that foreign companies would not be allowed to participate in such liberalization, another source of great concern.

At the December 2010 JCCT meeting, China agreed to technology neutrality for 3G networks and future networks based on new technologies, such as 4G, allowing operators to choose freely among those technologies without the Chinese government providing any preferential treatment based on the standard or technology used by an operator. The United States will continue to monitor this situation closely.

Regarding value-added telecommunications, although there are over 20,000 licensed domestic telecommunications value-added suppliers in China, as of December 2009, MIIT has issued only 19 value-added licenses to foreign companies, including five U.S.-affiliated companies. One difficulty foreign companies face in obtaining a license is the lack of clarity regarding which services a foreign-affiliated firm is permitted to offer. In addition, MIIT seems to classify certain value-added corporate data services (IP-VPN) as value-added when offered domestically, but as basic (and thus capped at lower foreign equity levels and subject to higher capitalization requirements) when offered internationally. MIIT has provided no justification for this practice. China agreed at the 2011 JCCT meeting to publish in draft and allow public comment on the revision to its value-added telecommunications services catalogue.

Regarding satellite services, such as video transport services for Chinese broadcasters or cable companies, foreign satellite operators remain severely hampered by Chinese policies that prohibit foreign satellite operators from obtaining licenses to operate these services in China. China's rules only allow foreign operators to use a licensed Chinese satellite operator to provide these services. The policies make it difficult for foreign operators to develop their own customer base in China, as Chinese satellite operators essentially have a right of first refusal with regard to potential customers.

China made a draft of its Telecommunications Law available for review and comment on an unofficial basis in the fall of 2009. This draft contains troubling elements, including provisions that would codify China's foreign equity limitations for the sector, complicating ongoing efforts in the WTO and other fora to encourage China to liberalize this sector, and other issues of concern to industry. China has been working on the draft law for over 10 years. MIIT still lacks a specific authorizing statute for its powers.

In addition, the opening of broadband spectrum access for wireless Internet access has been highly limited in China. Bureaucratic disagreements between MIIT and the State Administration of Radio, Television, and Film seem to be a key factor in broadband's paralysis. MIIT's 2012 announcement that a portion of 5 GHz bandwidth will be allocated for commercial use is a positive step, but overall broadband access remains highly restricted.

Online Services

China operates the world's most restrictive and comprehensive Internet filtering regime, which affects a broad range of commercial activity conducted via the Internet. Chinese authorities closely monitor and routinely filter Internet traffic entering China, focusing primarily on the content they deem objectionable on political, social, or religious grounds, but often arbitrarily blocking access to other content that is not clearly offensive or objectionable. Since the 2008 Olympics, a concerted effort to reassert control appears to have been instituted, through what the Open Net Initiative termed "Control 2.0" and an effort to "set the agenda for coverage, rather than suppress it." At the time of the 2012 18th National People's Congress, China experienced one of the most restrictive periods of Internet access in recent history. Specific foreign websites were completely blocked, while overall access was extremely limited, and Virtual Private Networks (VPNs), on which many foreign firms rely to conduct their online functions, were largely blocked.

Changes to Internet filtering can occur without warning or public explanation. While the filtering ostensibly is to address public interest concerns enumerated in law, Chinese government authorities rarely issue lists of banned search terms or banned sites, with little justification or means of appeal, putting Internet-enabled services in a precarious position, caught between complying with the law and implementing apparently arbitrary restrictions.

China's Internet regulation regime is exceedingly complex and nontransparent. Internet content restrictions for Internet Content Providers, electronic commerce sites and application service providers located in China are governed by a number of measures, not all of which are public. Since 2000, these measures have increased, with as many as 12 government entities wielding authority over Internet access and content. Some of these measures restrict who may report news and place limits on what exactly may constitute news. In addition to interfering with news reporting in the traditional sense, these measures may also provide a basis for Chinese authorities to interfere with the normal business reporting operations of non-news organizations, such as multinational corporations, if they use the Internet to keep clients, members, their headquarters, and other interested parties informed about events in China.

This complex regulatory regime governing online services has resulted in several high-profile cases which have affected foreign firms' delivery of online services, such as search engine and web domain registration. Uncertainty also continues regarding a number of other online service areas, such as mapping and other online content distribution methods.

In 2011, in an effort to streamline the bureaucratic regulatory process governing the Internet, China established the State Internet Information Office (SIIO). Its officers are drawn from the agencies mentioned above that have authority over Internet content and access. Given U.S. concerns that China's arbitrary blocking of commercial websites undercut U.S. WTO services trade rights, USTR posed a series of questions to China regarding China's plans to regulate the Internet, including with reference to SIIO's publication of a White Paper on that issue. The United States met with China in April 2012 to seek more detail regarding an initial response that China had provided in 2011. The United States continues its outreach to China to discuss these issues in more detail and to ensure more transparency and predictability in such regulations.

Audiovisual and Related Services

Importation and distribution of books, newspapers, journals, sound recordings, videos, films, and television programs remain highly restricted. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign providers. China's large black market for foreign DVDs and other home entertainment video products continues to grow because market access restrictions create a demand for pirated goods in the absence of legitimately licensed home or theatrical entertainment.

At both the central and regional levels, interconnected agencies under the State Administration for Radio, Film and Television (SARFT) dictate the terms under which films can be produced and distributed. SARFT permits only one film importer and two film distributors (which are both components of the same monopoly managed by SARFT) to operate in China. For theatrical releases, the monopoly dictates the number of films that will be imported, when the films will be released in China's market, and the compensation paid to foreign film producers. In addition, the Chinese government sets strict guidelines with respect to the public screening of foreign films. Under Article 44 of the *Regulations for the Administration of Films,* issued by the State Council in 2001, the total annual screening time for foreign films must not exceed one-third of the total screening time of all films (domestic and foreign).

Television quotas are also highly restrictive. The *Administrative Measures on the Import and Broadcast of Extraterritorial Television Programs*, effective October 23, 2004, restrict foreign television drama and film programming to no more than 25 percent of total airtime, and other foreign programming to no more than 15 percent of total air time. Foreign programming, including animated programs, is banned between 7:00 P.M. and 10:00 P.M. on terrestrial stations. SARFT's *Interim Regulation on Digital Cable TV Pay Channels* (November 14, 2003) restricts foreign programming to a maximum of 30 percent of total airtime on pay television channels.

Major concerns for imported films include censorship reviews by Chinese authorities, which can delay the arrival of imported foreign films on Chinese movie screens. In addition, the Chinese government has historically decreed "black-out periods" during which no new revenue-sharing foreign films may be released, in order to prevent competition with Chinese films being released during the same period. Banning the release of new foreign titles or removing popular foreign films during peak seasons not only hurts theatrical revenues but also contributes to increased piracy, as pirates meet immediate consumer demand for foreign titles by offering illegal downloads through the Internet, on pirate optical discs and pirate video-on-demand channels.

China also continues to require that film prints be made in local laboratories for most theatrical distribution, and for all home video distribution. Local printing and duplication requirements reduce rights holders' ability to control the quality of a film copy and may result in increased costs.

For sound recordings, China limits market access opportunities for imported sound recordings in a manner similar to the limitations imposed on films for theatrical release or home viewing. The Ministry of Culture's *Opinion on the Development and Regulation of Network Music* bans foreign ownership of firms supplying digital music services, requiring that entities engaging in the online distribution of sound recordings in China be wholly Chinese-owned entities. This regulation was amplified in rules established jointly by MIIT and SARFT, explicitly restricting audio and video distribution services (including over electronic networks such as the Internet) to state-owned entities.

As discussed above in the section on Trading Rights, the United States initiated a WTO dispute settlement case against China in April 2007 challenging the importation and distribution restrictions applicable to certain copyright-intensive products, including books, newspapers, journals, theatrical films, videos and sound recordings, and associated services. The WTO panel that heard the case issued its decision in August 2009, ruling in favor of the United States on all significant issues. China appealed the panel's decision in September 2009. The WTO's Appellate Body rejected China's appeal on all counts in December 2009. China agreed to comply with these rulings by March 2011. China subsequently issued several revised measures, and repealed other measures, relating to its distribution of restrictions on imported books, newspapers, journals, DVDs, and music. However, China did not issue any measures addressing theatrical films. In February 2012, after China had sought an alternative solution to its compliance with the films-related aspects of the WTO ruling, the two sides entered into an MOU that provides for increased market access for imported films and better terms of compensation for foreign film producers. The MOU will be reviewed after five years.

Investment in China's audiovisual sector is highly restricted. For television production, joint ventures or cooperative firms must have a minimum capital requirement of RMB 2 million (approximately $275,000), foreign capital is capped at 49 percent, and two-thirds of the programs of a joint venture or cooperative firm must have Chinese themes.

In August 2005, the State Council issued a directive stating that private capital cannot be used to establish or operate a news agency, newspaper, publishing house, radio station, or television station. The directive also stated that radio and television signal broadcasting and relay stations, satellite networks and backbone networks are closed to private capital.

Travel and Tourism Services

Group Travel

In December 2007, the United States and China signed an MOU to facilitate Chinese group leisure travel to the United States and the marketing in China of U.S. destinations or businesses. The first group of Chinese leisure travelers visited the United States under the MOU in June 2008. In November 2009, the United States and China agreed to implement the second phase of the MOU to include an additional 12 jurisdictions, bringing the total to 21. As part of the December 2010 JCCT meeting, the United States and China agreed to implement the third phase of the MOU, opening the market to three additional provinces in China. During the 2011 JCCT meeting, China and the United States agreed to expand the MOU, opening the market for the sale of packaged travel to three additional provinces, and bringing the total number of province-level administrative districts covered by the MOU to 27 out of a total of 31. The United States will continue to press China to broaden the scope of access to include the remaining provinces.

In order to obtain a 10-year license, foreign travel and tourism firms in China must register with the China National Travel Administration (CNTA) and deliver a required feasibility study to CNTA/Ministry of Commerce, as well as an annual report on future investment and possible sectoral expansion. China continues to apply an annual sales requirement on foreign travel agencies, although there are no such requirements for domestic agencies.

Computer Reservation Systems/Global Distribution Systems

China requires all Chinese travel agents and airlines to connect into China's nationally owned and operated computer reservation system/global distribution system when booking airline tickets for domestic flights and outbound international flights as well as hotel, car, or other travel service bookings. Foreign global distribution systems have been excluded from providing their services to Chinese travel agents and Chinese airlines in China, the world's second-largest domestic air travel market and a rapidly growing international market. In October 2012, the CAAC published long-awaited regulations for the global distribution services market. However, these provisional rules have limited application and the new do not seem to liberalize access to China's domestic air market in any commercially meaningful way. China also has not yet explained how it intends to implement the new measures.

Education and Training Services

The Ministry of Education (MOE) restricts participation by foreign educators and trainers. China permits only nonprofit educational activities that do not compete with the MOE-supervised nine years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. China also bans foreign companies and organizations from offering educational services via satellite networks. Foreign universities may set up nonprofit operations, but must have a Chinese university host and partner to ensure that programs bar subversive content and that imported informational material is adapted to suit local conditions.

Legal Services

Foreign law firms face numerous restrictions on the scope and structure of their activities in China, as well as other barriers affecting market access. Current Chinese laws and regulations prohibit foreign firms from practicing Chinese law, and Chinese lawyers must temporarily forfeit their license to practice law while working for a foreign law firm. As a result, foreign firms are unable to hire Chinese-qualified lawyers to practice Chinese law as employees of their firms, or otherwise provide advice on Chinese law to clients. China also maintains restrictions on cooperation with Chinese law firms (including investment and profit-sharing restrictions) that further limit market opportunities. Foreign law firms are concerned that they are not being allowed, in some cases, to attend, along with their clients, certain regulatory proceedings administered by Chinese government agencies, including MOFCOM mergers and acquisitions reviews. Typically foreign law firms would provide consultancy and legal advisory services to clients as part of such reviews.

China also maintains regulatory requirements for foreign representative legal offices that are not applied to Chinese law firms, as set forth in the December 2001 Regulations on the Administration of Foreign Firm Representative Offices and July 2002 implementing rules. The measures appear to create an economic needs test for foreign law firms seeking to establish representative offices in China. In addition, a foreign law firm may not establish an additional representative office until its most recently established office has been in practice for three consecutive years. China also requires that representatives of foreign law firms must have practiced for no less than two years outside of China as a member of a bar or law society of a WTO Member. Foreign lawyers seeking to provide legal services in China must undergo a lengthy approval process that can take more than one year, during which they must leave the country periodically to renew their visas.

Substantial differences in official tax policies applied to the representative offices of foreign law firms in comparison with taxes applied to Chinese law firms, coupled with inconsistent tax enforcement policies, represent an additional significant hurdle to supplying legal services in China.

INVESTMENT BARRIERS

The volume of foreign direct investment (FDI) in China rose by 8.1 percent in 2011 to $124 billion, but was only $91.7 billion as of the end of October 2012, a year-on-year decline of 3.45 percent. China is the world's second-largest destination for FDI, after the United States. However, investors in China continue to voice concerns about the lack of transparency, inconsistent enforcement of laws and regulations, weak IPR protection, corruption, and an unreliable legal system that fails to enforce contracts and judgments.

Although China's leadership has repeatedly affirmed its commitment to further open China to foreign investment, including during the May 2012 S&ED, in practice, China has not followed through on this promise, except in limited instances. China also pursues other actions that discriminate against or otherwise disadvantage foreign investors. For example, China's investment restrictions are often accompanied by other problematic industrial policies, such as the increased use of subsidies and the development of China-specific standards. Many of these developments appear to represent protectionist tools created by industrial planners to shield inefficient or monopolistic enterprises, particularly those in which the Chinese government has an ownership interest, from competition.

The United States has continued to raise its concerns about China's investment restrictions on multiple occasions in bilateral fora, such as the JCCT, the S&ED, and the Investment Forum, as well as in WTO meetings. The United States and China are also engaged in bilateral investment treaty (BIT) negotiations launched in 2008. At the 2012 S&ED, the United States and China agreed to intensify BIT negotiations. To date, the two sides have held eight negotiating rounds, including meetings in October and December 2012.

Investment Requirements

Upon accession to the WTO, China assumed the obligations of the Agreement on Trade Related Investment Measures (TRIMS Agreement), which prohibits trade-related investment measures that violate GATT Article III obligations to treat imports no less favorably than domestic products and GATT Article XI obligations not to impose quantitative restrictions on imports. In its Protocol of Accession to the WTO, China also specifically agreed to eliminate export performance, local content, and foreign exchange balancing requirements from its laws, regulations, and other measures, and not to enforce the terms of any contracts imposing these requirements. In addition, China agreed that it would no longer condition importation or investment approvals on these requirements or on other requirements such as technology transfer and offsets.

Although China has revised many of its laws and regulations to conform to its WTO investment commitments, some of these measures continue to raise WTO concerns, including those that require parties to conduct certain amounts of research and development in China, or to register their intellectual property in China or license it to Chinese entities, frequently state-owned enterprises, as well as those that "encourage" technology transfers to China, without formally requiring them. The United States remains concerned that these measures and activities of Chinese agencies, when reviewing investment applications, are resulting in U.S. companies either directly, or indirectly through negotiations with Chinese state-owned enterprises, being required to transfer technology on terms that are not consonant with commercial business dealings, particularly given the high degree of discretion Chinese agencies wield when reviewing investment applications. Similarly, some laws and regulations "encourage" exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials, even in the absence of applicable language in a law, regulation or agency rule, still consider factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank, which is often essential to the success of an investment project.

Investment Guidelines

Foreign Investment Catalogue:

China's foreign investment objectives are defined in part through its *Foreign Investment Catalogue*, which is revised every few years. China's latest revised *Foreign Investment Catalogue* went into effect on January 30, 2012. The *Foreign Investment Catalogue* employs vague language and lacks transparency. For example, sections of the *Foreign Investment Catalogue* appear to be inconsistent with foreign investment regulations and policies issued by ministries and/or local governments. In addition, the *Foreign Investment Catalogue* includes several key sectors, such as telecommunications, certain insurance services, legal services, and logistics, in its "restricted" category. The United States has provided formal comments to China on the Catalogue, noting that it fails to make substantial progress in opening China's markets to greater foreign investment and, in some cases, imposes new limitations in sectors that had previously been more open. Regulators are reportedly in the process of revising the *Foreign Investment Catalogue* for the undeveloped central and western regions in order to guide more investment to those regions. In any case, China has the ability to liberalize its investment regime even without a formal amendment of the Catalogue.

For discussion of concerns regarding the Foreign Investment Catalogue in the automotive sector, see the sections titled: Import Barriers, Import Substitution Policies, and Automotive Policy.

Administrative Measures to Restrict Investment

In August 2012, the NDRC published *Draft Administrative Measures for the Examination and Approval of Foreign Investment Projects* for public comment. The United States is very concerned that the foreign investment approval process contemplated in the draft (and to a large extent, already in place) creates significant uncertainty for foreign investors and lacks transparency, and could be used to block market access, even in sectors China deems to be "permitted" or "encouraged" for foreign investment. China also would maintain vague approval conditions relating to assessing "the public interest," and to overall national economic and social development planning, that only apply to foreign investors.

In December 2006, the State-owned Assets Supervision and Administration Commission (SASAC) issued the *Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises*. Statements accompanying the release of this measure identified an expansive list of sectors deemed critical to the national economy. This measure explained that "pillar" and "backbone" industries, such as automotive, chemical, construction, electronic information, equipment manufacturing, iron and steel, nonferrous metals, science and technology, and survey and design, must remain under relatively strong state control. Reportedly, SASAC officials also identified a separate set of seven strategic sectors in which state capital must play a leading role, including aviation, coal, defense, electric power and grid, oil and petrochemicals, shipping, and telecommunications. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment in state-owned enterprises operating in these sectors.

In October 2008, the National People's Congress issued the *Enterprise State-Owned Assets Law*. Among other provisions, Article 57 of the law states that, where state-owned assets are transferred to a foreign investor, the transfer must not harm the national security or public interests of China. It remains unclear how SASAC implements these policies in practice or, in the context of the *Enterprise State-Owned Assets Law*, how it interprets the "national security" and "public interests" of China. In August 2010, the State Council issued the *Opinions on Promoting Enterprise Merger and Restructuring*, which promotes consolidation of enterprises in six industries, most of which are dominated by state-owned enterprises, including the automobile, steel, cement, aluminum, rare earths, and machinery manufacturing industries.

China also continued to employ various sector-specific measures designed to impose new requirements on foreign investors. For example, in January 2010, China imposed a new restriction on foreign investment in the offshore wind power market. At that time, China's National Energy Administration (NEA) and the State Oceanic Administration (SOA) jointly issued the *Interim Measures for Offshore Wind Power Development and Construction*, stipulating that offshore wind farm investment projects in China must be undertaken by either a Chinese enterprise or a Chinese majority-controlled enterprise with foreign ownership of no greater than 49 percent. Measures affecting foreign investment in the automotive and steel sectors are discussed above in the section on Import Substitution Policies.

In June 2009, revisions to the *Provisions on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors*, originally issued in 2006, were promulgated by MOFCOM and five other government agencies. Under the 2006 measure, foreign mergers and acquisitions of domestic enterprises that would result in "actual control" of a domestic enterprise in a "key industry" with "potential impact on national economic security" or that would give control of a famous Chinese trademark or traditional Chinese brand to a foreign investor required approval at the central government level by MOFCOM. The 2006 measure also placed MOFCOM in the role of determining if the domestic acquisition target has been appropriately valued. The 2009 revisions neither removed nor provided greater clarity with respect to terms such as "national economic security" and "critical industries," and also retained the provision permitting denial of a foreign investor's acquisition if a famous trademark or a traditional Chinese brand is being acquired. Changes in these areas would have provided useful clarity for foreign investors, and the continued lack of precision raises concerns that administrative ambiguity will continue to provide a basis for uneven administration and for differential treatment of Chinese and foreign investors.

In February 2011, China released the *State Council Notice Regarding the Establishment of a Security Review Mechanism for Foreign Investors Acquiring Domestic Enterprises*. The notice established an interagency Joint Conference, led by NDRC and MOFCOM, with the authority to block foreign mergers and acquisitions of domestic firms that it believes may have an impact on national security. The Joint Conference is instructed to consider the impact of a proposed transaction on national defense, economic stability, social stability, and the research and development capabilities of key national security technologies. MOFCOM issued implementing rules for the system in August 2011. The United States has voiced its strong concerns about the broad scope and opaque structure of the review mechanism. The concerns center on China's application of the broad scope of review the system allows, the determination of "actual control" under the system, the criteria for determining risks to national security, the relationship between these review process and other existing reviews of foreign investment, and the ability of non-government entities to call for reviews of transactions in which they are not directly involved. China committed at the May 2012 S&ED to focus its security reviews solely on national security concerns and to adhere to specific timelines and review standards.

Other Investment Issues

Private Equity and Venture Capital:

Foreign private equity and venture capital investments are subject to a variety of regulatory limitations in China. Restrictions on foreign exchange conversion, for instance, are still a major hurdle for private equity funds investing in China. China's Qualified Foreign Limited Partnerships (QFLP) pilot program, launched initially in Shanghai, followed by Beijing and Tianjin, has made establishing an RMB fund somewhat easier for qualified foreign firms by eliminating the requirement for State Administration of Foreign Exchange (SAFE) approval of every foreign exchange transaction. Under the QFLP program, qualified foreign private equity firms can launch RMB-denominated funds using overseas capital up to a quota permitted by the license granted to that firm. However, QFLPs must still work with MOFCOM for approval of investment plans, acquisitions, and capital contribution transactions. In addition, the quota limits will likely restrict participation by some of the largest foreign private equity firms, and China's continued concerns about "hot money" inflows may limit the pace of continued reform and opening in this sector. In general, China still lacks a uniform set of national rules for foreign private equity investment. In addition, it is still unclear how SAFE will allocate quotas to foreign private equity firms.

Holding Companies:

Foreign-invested holding companies in China are at least 25 percent, and usually 100 percent, owned by foreign investors to manage their investments and provide services to their subsidiaries in China. Holding companies are barred from engaging in manufacturing or other types of production, but may engage in trading, distribution, and research and development. Because holding companies are subject to an approximately $30 million minimum registered capital investment requirement, and must already have at least one subsidiary in China, only large multinationals with ambitious expansion plans in China tend to be interested in establishing them. Some restrictions on services provided by holding companies and on holding companies' financial operations remain in place, in addition to constraints on the ability to balance foreign exchange internally. Profit and loss consolidation within holding companies also remains prohibited. In addition, rules promulgated in August 2011 require that all dividends, interest, liquidation proceeds, and other income received by holding companies be treated as an increase to registered capital before it can be reinvested in projects in China. This requirement appears inconsistent with government policy to encourage the establishment of holding companies, as it is likely to force foreign-invested holding companies to make capital-inefficient reinvestments of income, delaying or reducing their ability to declare and repatriate dividends to their shareholders.

Securities Investments:

China continues to open its domestic securities markets to foreign investors. Through the Qualified Foreign Institutional Investor (QFII) program, foreign institutional investors may apply for QFII licenses, which permit limited access to Chinese financial markets, subject to a quota. Chinese authorities enacted reforms to expand the investment scope and lower the minimum qualification requirements of QFIIs, including granting QFIIs access for the first time to China's interbank bond market. In 2012, China granted $15.8 billion in QFII quota and approved 72 new QFII licenses. As of February 2013, China has granted a total of $40 billion to over 177 foreign entities since the program was launched in 2002.

Access to Capital Markets;

Foreign-invested firms in China are limited in their ability to raise capital domestically. China's controls on capital flows and differences between its accounting standards and those of other countries remain the main obstacles in developing the so-called "panda bond market," where foreign entities issue RMB-denominated debt in China. Meanwhile, the market for RMB-denominated debt issued in Hong Kong ("dim sum" bonds) was opened to foreign companies in 2010, and after tremendous initial growth, it has seen a slowdown in issuance. In late 2012, China appears to have yet again put on hold plans to create an "international board" of the Shanghai Stock Exchange where foreign companies could list. Allowing foreign firms greater access and freedom to trade in these assets would add substantial expertise, liquidity and competition to the Chinese market.

Some loosening of capital controls was announced in late 2012. Starting in mid-December 2012, foreign investors will not need regulatory approval to open bank accounts, remit profits, and transfer money between different domestic accounts, according to recent public comments from SAFE. Limits on the number of foreign-currency accounts and the amount of money that can be transferred will also be loosened. In total, SAFE will cancel 35 rules on regulatory approval and simplify 14 others. These moves are expected to encourage long-term capital inflows. Nevertheless, foreign exchange transactions on China's capital account are still tightly regulated. To date, foreign firms remain generally satisfied with their ability to repatriate profits. With respect to capital inflows, several foreign firms continue to note difficulties in obtaining government approval to bring in foreign capital to expand their businesses.

GOVERNMENT PROCUREMENT

According to the Ministry of Finance (MOF), China's government procurement for 2011 was approximately $180 billion, using MOF's narrow definition of government procurement spending. This figure represents approximately 11 percent of total fiscal spending, an increase of more than 30 percent over the 2010 published figure.

Accession to the WTO Agreement on Government Procurement

China is not a signatory to the WTO Agreement on Government Procurement (GPA). In accordance with China's Protocol of Accession to the WTO, it became an observer to the WTO Committee on Government Procurement in 2002. China also committed, in its Protocol of Accession, to initiate negotiations for accession to the GPA "as soon as possible." China initiated GPA accession by submitting its application for accession and initial offer of coverage in December 2007.

The United States and other GPA Parties noted that significant improvements would be needed in China's initial market access offer to bring China's coverage to a level commensurate to other Parties. In accordance with its commitment at the May 2010 S&ED meeting, China submitted its first revised GPA accession offer in July 2010. While the revised offer reflected some improvement over China's initial offer, the United States and other GPA Parties noted a number of changes necessary to bring China's coverage to a level comparable to that of the other GPA Parties. The Parties particularly emphasized the need to include sub-central entities and certain state-owned enterprises that engage in government activities in its subsequent offer.

At the December 2010 JCCT meeting, China committed to accelerate its accession to the GPA and to submit a robust revised offer in 2011. In addition, during Chinese President Hu's state visit in January 2011, China agreed that its revised offer would include sub-central entities. On November 30, 2011, China submitted its second revised offer, which included several sub-central entities. Although the revised offer was an improvement over the previous offer, it still did not provide terms comparable to the extensive procurement that the United States and other Parties cover under the GPA. Specifically, the offer lacked coverage of state-owned enterprises engaged in procurements for government purposes, included insufficient coverage of sub-central entities and services, maintained excessively high thresholds, and proposed overly broad exclusions to coverage.

At the May 2012 S&ED meeting, China committed to submit "a new comprehensive revised offer that responds to the requests of the GPA parties before the [GPA] committee's final meeting in 2012." China subsequently submitted its third revised offer in November 2012. This revised offer still falls well short of the coverage provided by the United States and other GPA parties, as China responded to few requests made by GPA parties. The United States, the EU, and other GPA parties described the revised offer as highly disappointing, both in terms of scope and coverage, and pushed China to submit a revised offer commensurate to other Parties by July 2013. At the December 2012 JCCT meeting, China agreed to engage seriously with the United States on outstanding core issues relating to the scope of projects that qualify as government procurement and situations where state-owned enterprises in China engage in government procurement activities.

Government Procurement Regime

In January 2003, China issued a *Government Procurement Law* (GPL), which generally reflects GPA obligations and incorporates provisions from the *United Nations Model Law on Procurement of Goods*. However, the GPL does not cover all Chinese procurement, as noted below. Further, it directs central and sub-central government entities to give priority to "local" goods and services, with limited exceptions.

In 2010, China circulated two draft measures intended to implement its *Government Procurement Law*. The first draft measure, the *Regulations to Implement the Government Procurement Law*, was issued by MOF in January 2010. The United States submitted comments on the draft measures, in which, among other things, it expressed concern that the draft measure did not provide a GPA-consistent regime. The United States also expressed concern that the draft measure did not provide more specificity about the conduct of government procurement. The second draft measure, the *Administrative Measures for Government Procurement of Domestic Products*, was issued for public comment in May 2010 by MOF, MOFCOM, NDRC and the General Administration of Customs. In accordance with China's October 2009 JCCT commitment, this draft measure set out requirements for products to qualify as "domestic products," ensuring that products produced in China by foreign-invested enterprises receive the same treatment as products produced by any other firm in China, including wholly-Chinese owned enterprises. The United States submitted comments on this draft measure in June 2010, in which it expressed concerns about the lack of details regarding how the draft measure would be implemented. As of January 2013, neither of the draft regulations had been issued in final form.

The GPL generally does not cover tendering and bidding for large-scale public works and government infrastructure projects. Those projects are subject to a different regulatory regime, established by *China's Tendering and Bidding Law* (TBL), which entered into force in January 2000. While official figures for procurement covered under the TBL are not available, analysts estimate that this procurement may exceed $200 billion. In September 2009, the State Council finally circulated NDRC's draft implementing regulations for the TBL for public comment. In October 2009, the United States submitted written comments on these draft regulations in which it emphasized, among other things, the need for greater clarification of the relationship between the TBL and the GPL, and the need to define "domestic products." At the end of December 2011, the State Council issued the final implementing rules for the TBL. The new rules entered into effect on February 1, 2012.

INDIGENOUS INNOVATION, TECHNOLOGY TRANSFER AND STRATEGIC EMERGING INDUSTRY BARRIERS

In November 2009, MOST, NDRC and MOF issued the *Circular on Launching the 2009 National Indigenous Innovation Product Accreditation Work*, requiring companies to file applications for their products to be considered for accreditation as "indigenous innovation products." This measure provided for preferential treatment in government procurement to any products granted this accreditation, which was based on criteria such as the ownership or development of a product's intellectual property in China. Subsequently, the United States and U.S. industry, along with the governments and industries of many of China's other trading partners, expressed serious concerns to China about this measure. In April 2010, MOST, NDRC, and MOF issued a draft measure for public comment, the *Circular on Launching 2010 National Innovation Product Accreditation Work*. The draft measure would have amended certain of the product accreditation criteria set forth in the November 2009 measure, but would have left other problematic criteria intact. At the May 2010 S&ED, China agreed that its innovation policies would be consistent with a number of innovation principles and agreed to begin intensive multi-agency discussions of innovation policies in the U.S.-China Innovation Dialogue.

At the December 2010 JCCT meeting, China took additional important steps to address U.S. concerns about its indigenous innovation policies. China agreed not to maintain any measures that provide government procurement preferences for goods or services based on the location where the intellectual property is owned or was developed. China also agreed to take into account U.S. views on its *Draft Regulations Implementing the Government Procurement Law*, which provide for government procurement preferences for indigenous innovation products. During Chinese President Hu Jintao's January 2011 state visit, China further committed to delink its innovation policies from the provision of government procurement preferences. To implement President Hu's commitment, at the May 2011 S&ED, China agreed to eliminate all of its government procurement product accreditation catalogues and revise the *Draft Regulations Implementing the Government Procurement Law* to eliminate the provision requiring government procurement preferences for indigenous innovation products. On June 23, 2011, MOF issued a circular effectively canceling the implementation of the *Measures on Budget Administration for Government Procurement of Indigenous Innovation Products*, the *MOF Circular on Issuing 'Measures on Assessment for Government Procurement of Indigenous Innovation Products'*, and the *MOF Circular on Issuing 'Measures on Contract Administration for Government Procurement of Indigenous Innovation Products'*. During the 2011 JCCT meeting, China announced that the State Council had issued a measure requiring provincial, municipal, and autonomous regional governments to eliminate any catalogues or other measures linking innovation policies to government procurement preferences.

In 2012, the United States continued to call attention to the trade and investment-restrictive aspects of China's indigenous innovation and technology and intellectual property localization policies. Increasingly, U.S. companies are describing business situations they confront in which the Chinese government or government-affiliated entities are signaling or requiring that technology and intellectual property be shared with Chinese parties in conjunction with the approval of investments, as well as the grant of licenses, permits and other approvals. During the February 2012 visit of Vice President Xi Jinping, the United States urged China not to press U.S. companies to involuntarily transfer intellectual property and technology to Chinese entities. China agreed that technology transfer and technological cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access. At the May 2012 S&ED, China agreed to engage in intensive, on-going discussion on these matters. China also agreed to treat and protect IPR owned or developed in other countries the same as IPR owned or developed in China.

The United States also used the 2012 JCCT process to raise concerns with China about its innovation and technology and intellectual property localization policies. As a general matter, China agreed that it will correct any departmental or local measures that are inconsistent with its above-referenced commitment that businesses alone shall be involved in decisions relating to technology transfer and technology cooperation. The United States also raised concerns about a number of Chinese measures that may require U.S. firms to transfer technology to China. For example, the United States expressed concern about China's draft 2012 catalogue of vehicles eligible for purchase for official use and its applicable vehicle selection rules. They contain a number of problematic eligibility criteria, including a requirement that automobile manufacturers invest at least 3 percent of operating revenue on research and development in China and hold the right to modify, improve or transfer relevant intellectual property. Given that foreign automobile manufacturers must establish joint ventures with Chinese partners, and are not permitted to have controlling shares, in order to operate in China, these provisions could require foreign automobile manufacturers to conduct or transfer research and development activities to China and share the resulting technology with their Chinese partners. These provisions also appear to require foreign automobile manufacturers to transfer the rights to existing core intellectual property to their Chinese partners. The United States views such criteria as very troubling, given China's commitments not to link innovation policies to government procurement preferences, and not to condition government procurement preferences on where intellectual property is owned or developed. During the December 2012 JCCT meeting, China committed to delay issuance of a final catalogue and to engage with the United States on these concerns.

At the 2012 JCCT, the United States also raised concerns about China's *High and New Technology Enterprise Certification Administration Measures*. These measures provide a reduced tax rate for enterprises only if they register their intellectual property in their major products in China or have an exclusive intellectual property license.

Strategic Emerging Industries Policies

In 2010, China unveiled a new high-level government plan to rapidly spur innovation in seven high-tech sectors. The *Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries* established an early, broad framework for "developing and cultivating" innovation in energy conservation, environmental protection, new generation information technology, biology, high-end equipment manufacturing, new energy, new materials, and new energy-powered vehicles. During a May 30, 2012, meeting of the State Council, Premier Wen Jiabao offered additional clarity on the scope and goals for each strategic emerging industry (SEI) sector and emphasized both the importance of "indigenous innovation" and international exchanges between Chinese and foreign enterprises.

The release of China's national SEI policies coincided with China's 12th Five-Year Plan process that requires central government ministries and subcentral government offices to draft strategies and goals in a wide variety of areas. *The National 12th Five-Year Plan for the Development of Strategic Emerging Industries* defines SEI sectors, set priorities, and recommended future policy support. Consistent with Premier Wen's statement, the 12th Five Year Plan also advocates pursuing "indigenous innovation" policies while "deepening international cooperation", in part, by affirming that SEI development policies "are equally applicable to qualified foreign-funded enterprises."

In the second half of 2012, China issued three catalogues on SEI development. In July 2012, MIIT distributed to subcentral Industry and Information Technology departments documents cataloguing the development priorities for key technologies and products considered to be SEIs. The *Notification of the Ministry of Industry and Information Technology on Printing and Issuing Development Priorities of Key Generic Technologies and Key Products in Strategic Emerging Industries* identifies specific sub-sectors, technologies, and specific products in each SEI sector. It also identifies major research and development units and major companies, as well as government policies and funds designed to spur development in each category. Only a small number of companies listed have any foreign investment, as the list heavily favors Chinese-invested firms, particularly state-owned enterprises and national champions.

In September 2012, the NDRC released a draft *Guiding Catalogue of Key Products and Services of the Strategic and Newly Emerging Industries* (NDRC Draft SEI Catalogue). This catalogue lists specific sub-sectors, technologies, and products that should be considered as SEIs, but omits specific details about how the catalogue should be used. In November 2012, MIIT issued the *Solicitation of Public Opinions on the Classification Catalogue of Strategic Emerging Industries* (MIIT SEI Classification Catalogue), which also defined the scope of SEIs for each sub-sector and created a unique numerical identification system. In the preamble to the catalogue, MIIT explains that this document will be used to statistically track the development of China's SEI industries, and suggests that it should be used by other Chinese government departments to "issue targeted supporting fiscal and taxation policies".

The U.S. Government has voiced strong concerns over the direction of some of China's SEI policy development, particularly regarding those measures which indicate discrimination against U.S. firms or their products, would allow excessive government involvement in determining market winners and losers, or could lead to injurious subsidized imports. This engagement has led to Chinese commitments at the 2011 and 2012 JCCT meetings. Specifically, China committed in 2011 to provide a "fair and level playing field for all companies, including U.S. companies" in the development of China's SEIs. In 2012, China went further by committing to provide foreign enterprises with fair and equitable participation in the development of SEIs, and announcing that policies supporting SEI development would be equally applicable to qualified domestic and foreign enterprises. The U.S. Government is closely following the development of China's SEI and 12th Five Year Plans and policies throughout China and will continue to raise concerns over measures that appear to run counter to China's multilateral or bilateral commitments.

ELECTRONIC COMMERCE

China has experienced dramatic growth in Internet usage. According to the China Internet Network Information Center (CNNIC), the number of Internet users in China reached approximately 538 million as of June 2012, representing an Internet penetration rate of 39.9 percent. The majority of these people access the Internet through non-computer means, *i.e.*, cell phones and tablets. The number of households with broadband access is currently 170 million, an increase of 20 million from 2011. Mobile devices have become the most commonly used form of access to the Internet in China, with 388 million people using mobile devices in 2012, an increase of 32.7 million from 2011. The increase in the percentage of Internet users that access the Internet via mobile devices increased from 69.3 percent in 2011 to 72.2 percent in 2012.

China is experiencing a rapid development in online businesses such as search engines, network education, online advertisements, audio-video service, paid electronic mail, short message, online job searches, Internet consulting, electronic trading, and online gaming. In June 2012, CNNIC reported that the number of Chinese online retailers had reached 24,620, an increase of over 20 percent from 2011. The size of China's online retail market is estimated at $82 billion, an increase of 46.6 percent from 2011. Chinese firms dominate the electronic commerce market within China, with tmall.com holding a 47.6 percent market share in business-to-customer retail and taobao.com holding a 94.5 percent market share in customer-to-customer retail.

The Chinese government recognizes the potential of electronic commerce to promote exports and increase competitiveness, and has made some progress toward establishing a viable commercial environment. However, several Chinese ministries have jurisdiction over electronic commerce and impose a range of burdensome restrictions on Internet use (*e.g.*, registration requirements for web pages and arbitrary and nontransparent content controls), stifling the free flow of information and the consumer privacy needed for electronic commerce to flourish. Encryption is also regulated, as discussed more fully above (in the "Online Services" section), and the frequent blocking of websites (including those of a commercial nature) inhibits the predictability and reliability of using electronic networks as a medium of commerce.

A number of technical problems also inhibit the growth of electronic commerce in China. Rates charged by government-approved Internet service providers (ISPs) make Internet access expensive for most Chinese citizens. Slow connection speeds are another problem, although this is changing quickly as broadband connections become more widely available. At the same time, Internet penetration is still relatively low in China, and the urban penetration rate is six times higher than the rural penetration rate, so there is still significant room for growth.

Other impediments to businesses and consumers conducting online transactions in China include the paucity of credit card payment systems (exacerbated by a current monopoly provider of RMB-denominated services), consumer reluctance to trust online merchants, lack of secure online payment systems, and inefficient delivery systems. China has also yet to develop a legal framework conducive to the rapid growth of electronic commerce. Laws recognizing the validity of "electronic contracting" tools and stressing the importance of online privacy and security have been proposed but not yet issued. Despite these obstacles, however, a large and growing percentage of Chinese Internet users reportedly have made online purchases. The number of electronic bank and online payment users grew 14.8 percent and 12.3 percent respectively in the first half of 2012. By the end of June 2012, such users numbered 191 million and 187 million, respectively.

The number of electronic commerce retail sites grew in 2012. Many are taking on the above-mentioned challenges themselves or finding ways around them. For example, the large platforms have invested in fulfillment centers and logistics services to reduce delivery inconsistencies. Cash on delivery is still a preferred method of payment, and mobile credit card swiping machines are being deployed for "swipe on delivery" options. In addition, consumers are becoming more trusting of online payment systems like Alipay, a Paypal clone owned by Alibaba. Recently, there has been an increase in sites that require companies to have a registered retail business in China in order to post their products online. This has helped create online "safe havens" that are trusted among shoppers. Alibaba has also launched an anti-counterfeiting campaign to combat recent negative publicity on their C2C platform, Taobao.

For foreign electronic commerce companies, ISP licensing agreements also form a barrier to entry. According to Chinese regulations, foreign firms must partner with Chinese companies to obtain an ISP license and operate in the Chinese market.

In general, electronic commerce does not have a clear legal framework in China. Cross-border data flows and data sovereignty are areas of particular concern. Given the partnership requirements for obtaining ISP licenses, data that foreign firms collect about customers, including spending trends and personal data such as credit card information, is not clearly controlled by the foreign firm. This increases the risk for foreign firms to operate electronic commerce services in China.

ANTICOMPETITIVE PRACTICES

Competition Policy Laws and Regulations

China has many laws and regulations that concentrate production in certain sectors into monopolies, near-monopolies or authorized oligopolies. These measures are concentrated in capital intensive sectors, like electricity and transportation, or in industries such as fixed-line telephony and postal services, in which this approach may be used to ensure national coverage. Examples of such laws and regulations include the *Law on Electricity* (1996), *Civil Aviation Law* (1995), *Regulations on Telecommunication* (2000), *Postal Law* (1986), *Railroad Law* (1991) and *Commercial Bank Law* (amended in 2003), among others. The enforcement of these laws and regulations is uneven because of the inherent difficulty in coordinating their implementation nationwide, as well as inconsistent local and provincial enforcement which may be exacerbated by local protectionism. More troubling are efforts by government authorities at all levels in China to restrict competition to specific firms, often state-owned enterprises, through various forms of regulation. Official statements frequently suggest that these efforts are tied primarily to employment concerns. However, the ultimate beneficiaries of the resulting measures are often unclear. In addition, local governments frequently enact rules that restrict interprovincial trade. Since the central government has difficulty enforcing its own industrial policy measures at the local level, these local government rules continue to restrict market access for certain imported products, raise production costs, and limit market opportunities for foreign invested enterprises.

The *Anti-monopoly Law* took effect in August 2008 and established an anti-monopoly commission with oversight and coordinating responsibilities. Several Chinese ministries and agencies are members of this body. Three agencies share enforcement responsibilities: MOFCOM reviews mergers; NDRC reviews monopoly activities, abuse of dominance, and abuse of administrative power involving pricing; and SAIC reviews these same types of activities when they are not price-related.

After the *Anti-monopoly Law* was issued, MOFCOM, SAIC, NDRC and other Chinese government ministries and agencies began to formulate implementing regulations, departmental rules and other measures. Generally, these ministries and agencies have been willing to seek public comment on their proposed measures. The United States has urged China to implement the *Anti-monopoly Law* in a manner consistent with global best practices and with a focus on consumer welfare and the protection of the competitive process. The United States has underscored the importance of avoiding consideration of industrial policy or other non-competition objectives. The United States has also urged China to ensure that implementing measures do not create disguised or unreasonable barriers to trade and do not provide less favorable treatment to foreign goods and services or foreign investors and their investments.

It remains unclear how China will implement the *Anti-monopoly Law* with respect to state-owned enterprises and government monopolies in industries deemed nationally important. Although an ambiguous provision of the *Anti-monopoly Law* suggests such enterprises may be subject to a different standard, the three *Anti-monopoly Law* enforcement agencies have publicly stated that the law applies to state-owned enterprises, and have pursued enforcement actions against them. In addition, because trade associations in China frequently appear to have strong government ties, the United States has encouraged the Chinese agencies charged with enforcing the *Anti-monopoly Law* to work with Chinese regulatory agencies with sectoral responsibilities to encourage trade associations to comply with the *Anti-monopoly Law*. Furthermore, the inclusion of provisions on the abuse of administrative power in the *Anti-monopoly Law*, which also appear in NDRC's and SAIC's implementing regulations, could be important instruments for promoting the establishment and maintenance of increasingly competitive markets in China.

Since the *Anti-monopoly Law* went into effect, MOFCOM's oversight of mergers has yielded the most enforcement activity, largely due to the requirement to pre-notify merger transactions. Under the *Anti-monopoly Law*, through late 2012 China has "unconditionally" approved 458 merger cases and "conditionally" approved 15 through late 2012. Twelve of 15 cases approved with conditions have involved offshore transactions between foreign parties, rather than transactions between Chinese enterprises. The other three transactions involved foreign companies merging with Chinese enterprises. MOFCOM blocked one acquisition, in which a foreign company tried to acquire a well-known Chinese enterprise. As a step to improve the transparency of enforcement, MOFCOM issued a notice in November 2012 disclosing information about the 458 merger cases it has unconditionally approved under the *Anti-monopoly Law*. MOFCOM has committed to disclosing information on a quarterly basis going forward.

OTHER BARRIERS

Transparency

Official Journal:

In its WTO accession agreement, China committed to establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS, or the control of foreign exchange. China also agreed to publish the journal regularly and to make copies of all issues of the journal readily available to enterprises and individuals. Following its accession to the WTO, however, China did not establish or designate an official journal. Rather, China relied on multiple channels, including ministry websites, newspapers, and a variety of journals, to provide information on trade-related measures. Following sustained U.S. engagement, the State Council issued a notice in March 2006 directing all central, provincial, and local government entities to begin sending copies of all trade-related measures to MOFCOM for immediate publication in the MOFCOM Gazette. Adherence to the State Council's notice appeared to be far from complete. Following additional U.S. expressions of concern, at the December 2007 SED meeting, China reconfirmed its WTO commitment to publish all final trade-related measures in a designated official journal before implementation. As a result of US efforts, it appears that most government entities now regularly publish their trade-related measures in this journal, although it is still not clear whether all types of trade-related measures are being published.

Public Comment:

In its WTO accession agreement, China committed to provide a reasonable period for public comment on new or modified trade-related laws, regulations and other measures before implementing them, except in certain enumerated instances. However, China has been slow to implement this commitment. Following sustained U.S. engagement, the NPC's Standing Committee instituted notice-and-comment procedures for draft laws in April 2008. Two months later, in June 2008, China agreed to publish in advance for public comment, subject to specified exceptions, all trade- and economic-related administrative regulations and departmental rules proposed for adoption and provide a public comment period of not less than 30 days from the date of publication. China further agreed to publish such measures for comment in a single location: the Chinese Government Legislative Information Website of the State Council Legislative Affairs Office (SCLAO). Since then, although the NPC has been regularly publishing draft laws for public comment and the State Council has also been regularly publishing draft regulations for public comment, China has had more difficulty implementing the agreement to publish trade- and economic-related administrative regulations. Since June 2008, China has increased the number of proposed departmental rules published for public comment on the State Council's website, but a significant number are still issued without first having been published for public comment on the State Council's website. While some ministries publish departmental rules on their own websites, they often allow less than 30 days for public comment, making it difficult for interested parties to submit timely and complete comments.

In October 2010, the State Council issued the *Opinions on Strengthening the Building of a Government Ruling by Law*, which directs ministries and agencies at the central and provincial levels of government to solicit public comment when developing new rules and regulatory documents that directly affect citizens' legal rights and obligations, subject to certain exceptions primarily related to the protection of state secrets. However, this measure does not require government agencies to publish their measures in advance for public comment for at least a 30 day public comment period on the Chinese Government Legislative Information Website.

At the May 2011 S&ED meeting, China committed to issue a measure in 2011 implementing the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the State Council's website for comment. In advance of the May 2012 S&ED meetings, SCLAO issued two measures that appear to require all central government agencies to observe China's S&ED commitments. Since the issuance of those two SCLAO measures, the proportion of administrative regulations and departmental rules published on the Chinese Government Legislative Information Website or individual agency websites for at least a 30-day public comment period has increased. However, a significant portion of administrative regulations and departmental rules are still not published in accordance with China's S&ED commitments. In addition, it appears that Chinese agencies are not frequently soliciting public comment on draft regulatory documents that directly implicate citizens' rights and obligations.

Legal Framework

Laws and Regulations:

Laws and regulations in China often contain provisions that lack sufficient precision. While this approach allows the Chinese authorities to apply laws and regulations flexibly, it also results in inconsistency and confusion in application. Companies often have difficulty determining whether their activities contravene a particular law or regulation.

Regulations are also promulgated by a host of different entities at the central, provincial, and local levels, and it is not unusual for the resulting regulations to be at odds with one another. Even though finalized regulations are now routinely published in China, they often leave room for discretionary application and inconsistencies. Indeed, government bureaucracies have sometimes been accused of selectively applying regulations. China has many strict rules that are often ignored in practice until a person or entity falls out of official favor. Governmental authorities can wield their discretionary power on foreign or disfavored investors or make special demands on them simply by threatening to crack down. In addition, confidential accounts from foreign enterprises indicate that Chinese government officials, acting without fear of legal challenge, at times require foreign enterprises to transfer technology if they want to secure investments approvals, even though Chinese law does not – and cannot under China's WTO commitments – require technology transfer.

This lack of a clear and consistent framework of laws and regulations creates barriers and uncertainty. A clear and consistent legal framework, coupled with adequate prior notice of proposed changes to laws and regulations and an opportunity to comment on those changes and consistent adherence to and enforcement of those laws and regulations, would greatly enhance business conditions, promote non-discrimination between foreign and domestic firms, and reduce opportunities for corruption.

The U.S. Government has provided technical assistance, at the central, provincial, and local levels of government in China, in an effort to promote improvements in China's legislative and regulatory drafting processes. In its Protocol of Accession to the WTO, China committed to establish tribunals for the review of all administrative actions relating to the implementation of trade-related laws, regulations, judicial decisions, and administrative rulings. These tribunals must be impartial and independent of the government authorities entrusted with the administrative enforcement in question, and their review procedures must include the right of appeal. To date, little information is publicly available regarding the frequency or outcomes of reviews before these tribunals.

China also committed, at all levels of government, to apply, implement, and administer all of its laws, regulations and other measures relating to trade in goods and services in a uniform and impartial manner throughout China, including in special economic areas. In connection with this commitment, China established an internal review mechanism, now overseen by MOFCOM's Department of WTO Affairs, to handle cases of non-uniform application of laws. The actual workings of this mechanism remain unclear, however.

Administrative Licensing:

In July 2004, China's Administrative Licensing Law entered into effect. This law is designed to increase transparency in the licensing process by establishing procedures relating to administrative licensing applications, examinations, approvals and public hearings, including applicable timeframes. Since entering into effect, this law has increased transparency in the licensing process, while reducing procedural obstacles and strengthening the legal environment for domestic and foreign enterprises. China has also continued to reform its administrative licensing system. For example, China has established administrative licensing centers to facilitate the issuance of licenses, and many licensing authorities are increasingly using the Internet to allow persons to apply for administrative licenses and track the progress of their applications online. Since 2001, the State Council has released six decisions to eliminate or amend various administrative licensing requirements, including a September 2012 State Council decision, which calls for the standardization of the administrative examination and approval process. In addition, under the auspices of the JCCT, the United States and China have agreed to work together in order to facilitate commercial activity impacted by administrative licensing.

Nevertheless, significant problems remain with administrative licensing in China. U.S. industry reports that, in practice, many Chinese government bodies at the central, provincial and municipal levels do not comply with this law. U.S. industry also reports that vague criteria and possibilities for delay in the licensing process provide licensing officials with tremendous discretion, thereby creating opportunities for corruption, and sometimes lead to foreign enterprises and products being treated less favorably than their domestic counterparts. For example, in the foreign investment context, in addition to restrictions formally imposed via China's foreign investment catalogue, industry contends that China can impose additional constraints on investment through its foreign investment approval processes, where Chinese government officials can use vaguely defined powers on an ad hoc basis to delay or restrict market entry. In addition, according to confidential reports from foreign enterprises, Chinese government officials may use informal means to require a foreign enterprise to conduct research and development in China, transfer technology, satisfy performance requirements relating to exportation or the use of local content, or make valuable, deal-specific commercial concessions if it wants its investment approved.

Commercial Dispute Resolution:

Both foreign and domestic companies often avoid seeking resolution of commercial disputes through the Chinese courts, due to deep skepticism about the independence and professionalism of China's court system and the enforceability of court judgments and awards. There is a widespread perception that judges, particularly outside big cities, are subject to influence by local political or business pressures. Many judges are not trained in the law or lack higher education, although this problem decreases at the higher levels of the judiciary.

At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased emphasis on the consistent and predictable application of laws. For example, Supreme Court rules provide that foreign or Chinese enterprises and individuals may bring cases in the designated courts, raising challenges under the Administrative Litigation Law to decisions made by China's administrative agencies relating to international trade matters. The rules also state that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

Despite initial enthusiasm, there is increasing skepticism of the China International Economic and Trade Arbitration Commission (CIETAC) as a forum for the arbitration of trade disputes. Some foreign firms have obtained satisfactory rulings from CIETAC, but other firms and legal professionals have raised concerns about restrictions on the selection of arbitrators and inadequacies in procedural rules necessary to ensure thorough, orderly and fair management of cases.

Finally, in cases where the judiciary or arbitration panels have issued judgments in favor of foreign-invested enterprises, enforcement of the judgments has often been difficult. Officials responsible for enforcement are often beholden to local interests and unwilling to enforce court judgments against locally powerful companies or individuals.

Labor Issues:

In recent years, China has sought to expand the scope of its national labor laws and regulations. Three important labor laws are: the *Labor Contract Law (LCL)*, which clarifies the rights and obligations of workers and employers to promote better labor relations; the *Labor Dispute Mediation and Arbitration Law*, which improves and streamlines the labor dispute resolution process; and the *Employment Promotion Law*, which aims to stimulate employment opportunities. In 2012, the Standing Committee of the National People's Congress published draft amendments to the *Labor Contract Law* focusing on the Law's labor dispatch-related provisions.

On December 28, 2012, the Standing Committee of the National People's Congress approved amendments to the *LCL*. The amended *LCL* will go into effect on July 1, 2013. The amendments add significant requirements that are designed to discourage the use of temporary/dispatched workers who by law should, but in practice often do not, receive the same treatment as direct-hire employees. Until July 1, 2013, enterprises will be allowed to continue to use temporary/dispatched workers already under contract prior to passage of the amendment. However, all enterprises, including foreign- invested enterprises, must adjust their employment practices by July 1, 2013, or they will be subject to penalties from RMB 5,000 to RMB 10,000 (approximately $800 to $1600) for each temporary/dispatched worker employed in violation of the amended *LCL*. Under Chinese law, representative offices established by foreign enterprises are not considered independent legal entities and are exempt from those particular amendments. As representative offices are not allowed to hire Chinese employees directly, they must continue to hire workers through qualified labor agencies as defined in the amendments. This is likely to become more expensive, as provisions in the amended LCL increase the registered capital and other requirements for companies to register as qualified labor agencies.

China does not adhere to certain internationally recognized labor standards, including the freedom of association and the right to bargain collectively. 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 Communist Party of China. Once a union chapter is established, the enterprise is required to pay fees to the ACFTU, often through the local tax bureau, equaling 2 percent of total payroll, regardless of the number of union members in the enterprise. The workers at these enterprises are required to accept the ACFTU as their representative; they cannot instead select another union or decide not to have any union representation.

In addition, China does not effectively enforce its labor laws and regulations concerning issues such as minimum wages, hours of work, occupational safety and health, bans on child labor, forced prison labor, and participation in social insurance programs. Many foreign invested companies have expressed concern about their domestic competitors' lack of compliance with labor and social welfare laws due to lax enforcement, which allows the domestic firms to avoid the costs associated with compliance.

Skilled workers are in relatively short supply. Restrictions on labor mobility continue to distort labor costs. China is gradually easing restrictions under the country's household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy.

Corruption:

China's entry into the WTO, which mandated a significant reduction in tariffs and non-tariff barriers, was expected to reduce incentives for smuggling-related corruption. While WTO membership has increased China's exposure to international best practices and resulted in some overall improvements in transparency, corruption remains prevalent. Chinese officials admit that corruption is one of the most serious problems the country faces and have stated that corruption poses a threat to the survival of the Communist Party and the state. China's leadership has called for an acceleration of the country's anticorruption drive, with a focus on closer monitoring of provincial-level officials. According to official sources, the Communist Party of China's anticorruption agencies have punished more than 660,000 officials found guilty of disciplinary violations over the past five years.

As required by the United Nations Convention Against Corruption, which China ratified in 2006, the National People's Congress amended China's criminal law to criminalize the payment of bribes to officials of foreign governments and international public organizations on February 25, 2011. The amendment took effect on May 1, 2011. Although criminalizing foreign bribery represents an important milestone in fighting international corruption, China has provided little information about how the law will be interpreted and enforced. Accordingly, the United States will continue to monitor China's anticorruption efforts and encourage China to vigorously enforce its anti-bribery laws. In addition, the United States will continue to encourage China to join the OECD Working Group on Bribery and seek accession to the Anti-Bribery Convention.

While the central government in recent years has pledged to begin awarding contracts solely on the basis of commercial criteria, it is unclear how quickly, and to what extent, the Chinese government will be able to follow through on this commitment. U.S. suppliers complain that the widespread existence of unfair bidding practices in China puts them at a competitive disadvantage. Corruption nevertheless undermines the long-term competitiveness of both foreign and domestic entities in the Chinese market.

Land Issues:

China's constitution specifies that all land is owned in common by all the people. In practice, agricultural collectives, under the control of local Communist Party chairmen, distribute collectively-owned agricultural land to rural residents in the form of 30-year renewable contracts, while provincial and municipal governments distribute state-owned urban land for residential and industrial use under a greater diversity of terms depending on the type of land, its intended use, and the status of the land-use rights "purchaser." Governments and collectives can transfer or lease land-use rights to enterprises in return for the payment of fees, or other forms of compensation, such as profit-sharing. However, the law does not currently define standards for compensation when eminent domain supersedes land-use rights. This situation creates considerable uncertainty when foreign investors are ordered to vacate premises in the public interest. Moreover, the absence of public hearings on planned public projects can give affected parties, including foreign investors, little advance warning. The government is aware of this problem, however, and is revising the *Land Administrative Law* to correct it, but it remains unclear how extensive or effective the revision will be.

A major problem for foreign investors is the array of regulations that govern their ability to acquire land-use rights, which are limited to 50 years for both industrial and commercial purposes in the case of foreign investors. Local implementation of these regulations may vary from central government standards, and prohibited practices may be tolerated in one area while the regulations are enforced in another. Most wholly-owned foreign enterprises seek land-use rights to state-owned urban land as the most reliable protection for their operations. Chinese-foreign joint ventures usually attempt to acquire land-use rights through lease or contribution arrangements with local partners.

China's National People's Congress passed a *Property Rights Law* on March 16, 2007, which grants equal legal status to private, state, and collectively-owned property, while explicitly affirming the dominant role of public property in the economy. In addition, this law covers the "means of production," such as factories, but agricultural land remains a collective possession distributed in the form of 30-year contracts. It is unclear at this time how the law will be implemented, particularly in light of the ongoing revision of the *Land Administration Law*.

Given the scarcity of land resources in China, the price of land-use rights and land allocation are important considerations from both a market access and competition standpoint and from the perspective of their effect on production and trade. It is therefore of some concern to the United States that the Chinese government continues to exercise a strong hand in land-use markets in China, with the objective, in part, to ensure that land use-rights are allocated in accordance with a compulsory national land-use plan aimed at boosting grain production, and state industrial development policies aimed at sustaining urbanization and growth.

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was $8.2 billion in 2012, down $555 million from 2011. U.S. goods exports in 2012 were $16.4 billion, up 14.5 percent from the previous year. Corresponding U.S. imports from Colombia were $24.6 billion, up 6.6 percent. Colombia is currently the 22nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was $6.9 billion in 2011 (latest data available), up from $6.4 billion in 2010. U.S. FDI in Colombia is primarily concentrated in the mining and manufacturing sectors.

The United States-Colombia Trade Promotion Agreement

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

On April 7, 2011, the U.S. and Colombian Governments announced a Colombian Action Plan Related to Labor Rights in which the Colombian government committed to a series of measures over defined time frames to improve the protection of internationally recognized labor rights, the prevention of violence against labor leaders, and the prosecution of the perpetrators of such violence. The Santos Administration is meeting these milestones under the Action Plan. Nevertheless, there are ongoing concerns regarding labor rights in Colombia, and the U.S. Government continues to work closely with the government of Colombia to ensure full implementation of the Action Plan.

IMPORT POLICIES

Tariffs

About 80 percent of U.S. exports of consumer and industrial products to Colombia became duty free immediately upon entry into force of the CTPA, with the remaining of those tariffs to be phased out within 10 years of the Agreement's entry into force. In March 2012, Colombia joined the WTO Information Technology Agreement, under which Members eliminate tariffs on a most favored nation (MFN) basis for a wide range of information technology products.

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

Nontariff Measures

The Colombian government had required that importers purchase local production of certain agricultural products in order to import under TRQs. Under the CTPA, the Colombian government committed to ensuring that U.S. access to the TRQs of the Agreement will not be conditioned on the purchase of domestic products by the importers.

Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods (provided they have warranties similar to new goods) and that some existing prohibitions on trade in used goods would not apply to remanufactured goods. This provides significant new export and investment opportunities for firms involved in remanufactured products, such as machinery, computers, cellular phones, and other devices. In accordance with Andean Community Decision 337, Colombia does not permit the importation of used clothing.

Colombia assesses a consumption tax on distilled spirits with a system of specific rates per degree (half percentage point) of alcohol strength (Law 788 of 2002, Chapter V, amended by Law 1393 of 2010). Arbitrary breakpoints have the effect of applying a lower tax rate to spirits that tend to be produced locally and therefore create a barrier for imported distilled spirits. Under the CTPA, Colombia committed to eliminating the breakpoints for imports of U.S. distilled spirits by 2016.

GOVERNMENT PROCUREMENT

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia was listed on the Watch List in the 2012 Special 301 Report. During 2012, Colombia continued to improve its efforts against intellectual property rights (IPR) violators through enforcement action and improved coordination among IPR enforcement agencies and with rights holders. The Colombian government gave its Copyright Office and its Patent and Trademark Office new authority to handle IPR related cases, expediting the resolution of these cases. This builds on the Colombian government's concerted effort in recent years to combat IPR violations, including through conducting raids to seize counterfeit and pirated products and deter the counterfeiting of pharmaceuticals. Colombia continued to take steps in 2012 to address its patent backlog.

Despite these positive developments, there remains a need for further IPR improvements in Colombia, particularly through additional training and resources for agencies involved in enforcing IPR. Actions are still needed to reduce optical media piracy and combat piracy over the Internet, which is a growing problem in Colombia.

On January 23, 2013 the Colombian Constitutional Court invalidated on procedural grounds the law enacting many IPR related commitments under the CTPA. The Colombian government is reintroducing the bill to the Congress using different procedures.

SERVICES BARRIERS

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

Financial Services

Insurance companies must maintain a commercial presence to sell policies other than those for international travel or reinsurance. Colombia prohibits the sale of maritime insurance by foreign companies. Foreign banks must establish a subsidiary to operate in Colombia.

Under the CTPA, Colombia will phase in further liberalization in financial services, such as allowing branching by banks and allowing the cross-border supply of international maritime shipping and commercial aviation insurance by 2016. Additionally, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade deficit with Costa Rica was $4.8 billion in 2012, up $788 million from 2011. U.S. goods exports in 2012 were $7.2 billion, up 18.7 percent. Corresponding U.S. imports from Costa Rica were $12.0 billion, up 19.0 percent. Costa Rica is currently the 37th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was $1.5 billion in 2011 (latest data available), roughly the same as in 2010. U.S. FDI in Costa Rica is primarily in the manufacturing sector.

Free Trade Agreement

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

The United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011, and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

Tariffs

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

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

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

Nontariff Measures

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

Costa Rica implemented the Information Technology Customs Control (TICA) system in 2007 for imports and in early 2009 for exports (other than exports from free trade zones). The TICA system has significantly improved what had been a complex and bureaucratic import process, but it was reported to have suffered system-wide breakdowns in 2012 as the volume of entries increased. Under the TICA system, the Costa Rican customs authority has changed its focus from the verification of goods to the verification of processes and data. Customs officials now have up to four years to review the accuracy of import declarations, which allows customs to facilitate the free flow of goods while gathering necessary documentation.

Costa Rica has ratified the "Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents" or "Apostille Convention," to which the United States is also a party. With implementation of this agreement on December 14, 2011, official documents originating in the United States are subject to a single act of authentication, which is expected to facilitate paperwork for commerce between the United States and Costa Rica.

GOVERNMENT PROCUREMENT

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

The government of Costa Rica's "Digital Government" development group, currently a division of the Costa Rican Electricity Institute, is well advanced in implementing an automated procurement system dubbed "MerLink." MerLink is streamlining procurement procedures and should significantly reduce the risk of corruption or fraud in the procurement process. Even though the central government ministries have not yet begun using MerLink, a growing number of local government entities (56 in a recent count) are conducting procurement processes online. For example, in July 2012, MerLink representatives announced an agreement to jointly procure car tires on behalf of four large agencies (the electricity institute (ICE), the state insurance provider (INS), the tourism institute (ICT) and the Post Office) and stated that while this is Merlink's first joint procurement agreement, there is potential for similar joint procurements in the future.

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

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

EXPORT SUBSIDIES

Tax holidays are available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica.

Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Costa Rica was permitted to maintain such measures through 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the government of Costa Rica in an effort to ensure compliance with its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica was again listed on the Watch List in the 2012 Special 301 report. Key concerns include Costa Rica's need to place a higher priority on intellectual property rights (IPR) protection, to devote more resources to IPR enforcement efforts and impose deterrent penalties. The current Costa Rican Attorney General's office has indicated an intention to pursue IPR crimes more forcefully than in the past. The United States looks forward to seeing a corresponding improvement in IPR enforcement and will continue to monitor Costa Rica's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Insurance

Costa Rica's state-owned insurance provider, the National Insurance Institute (INS), no longer operates as a monopoly. Ten private companies are operating in the market, including U.S. companies. The new market entrants continue to face challenges in light of INS' market power as a result of its former monopoly position. In addition, the regulatory regime is not fully developed, which has resulted in delays as new market entrants seek authorization to operate in the market. Specific concerns relate to deceptive advertising by the former monopoly, a cumbersome and nontransparent product approval process, and the potential extension of preexisting exclusivity contracts between INS and insurance retailers designated as "agents."

Telecommunications

Since the 2009 entry into force of the CAFTA-DR in Costa Rica, Costa Rica has progressively opened important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services, which are now formally open for competition as a matter of law or regulation. However, while this market opening is a notable achievement, Costa Rica's new wireless service providers continue to face obstacles, including reluctance by some municipal governments to approve cell tower construction necessary to support new providers. Furthermore, a company that had been seeking to provide Internet services via satellite since Costa Rica implemented its obligations under CAFTA-DR was subjected to a lengthy and onerous regulatory review and only very recently was able to obtain the required license authorization from Costa Rica's telecommunications regulator, the *Superintendencia de Telecomunicaciones*, and the telecommunications ministry. Industry claims that competition in Costa Rica's mobile telephony market is hindered by a still under-developed regime to ensure that operators are able to share certain microwave links that are needed to connect base stations to towers throughout the country.

INVESTMENT BARRIERS

The regulatory environment can pose significant barriers to successful investment in Costa Rica. One common problem is inconsistent government action, between institutions within the central government or between the central government and municipal governments. Another concern for U.S. investors is the frequent recourse to legal challenges before Costa Rica's constitutional court to review whether government authorities have acted illegally or to review the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to undermine their investments or hinder the quick resolution of disputes. Consequently, some investors use the phrase "judicial insecurity" to describe their predicament in Costa Rica, despite Costa Rica's relatively robust legal protections.

OTHER BARRIERS

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

In July 2009, Costa Rica notified levels of agricultural domestic support to the WTO that in 2007 were above its $15.9 million Total Aggregate Measurement of Support (TAMS) ceiling on trade-distorting domestic support. Costa Rica's subsequent notifications to the WTO for the years 2008 through 2011 listed domestic support expenditures at ever increasing levels, reaching $104.5 million in 2011. Between 2008 and 2011, Costa Rica's price support for rice accounted for all of its notified TAMS, and rice accounted for a majority of its notified TAMS prior to 2008. During this time period, Costa Rica's domestic production of rice has increased. U.S. rice exports to Costa Rica have dropped by over 50 percent in 2011 as compared to 2006. In November 2010, the government of Costa Rica attempted to reform its rice support policy and reduced the support price. While positive, it was insufficient to bring Costa Rica's support level down to its WTO ceiling, and was subsequently overturned by a Costa Rican court. The government of Costa Rica has appealed the court's decision. Given this situation, the United States is considering all options for addressing this issue.

As the Costa Rican government has increased tax collection efforts in recent years, several U.S. companies have found themselves facing what they consider to be novel interpretations of tax regulations and principles as they apply to international trade. While a number of the current cases have been resolved or appear to be on reasonable paths to resolution, they illustrate the increasing level of bureaucratic challenges facing foreign business in dealing with Costa Rican tax authorities.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with the Dominican Republic was $2.7 billion in 2012, down $395 million from 2011. U.S. goods exports in 2011 were $7.1 billion, down 3.0 percent from the previous year. Corresponding U.S. imports from the Dominican Republic were $4.4 billion, up 4.2 percent. The Dominican Republic is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic was $1.7 billion in 2011 (latest data available), up from $1.3 billion in 2010. U.S. FDI in the Dominican Republic is primarily in the manufacturing sector.

Free Trade Agreement

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

The United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011, and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

Tariffs

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

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

More than half of U.S. agricultural exports currently enter the Dominican Republic duty free under the CAFTA-DR. The Dominican Republic will eliminate its remaining tariffs on nearly all agricultural goods by 2020 (2025 for chicken leg quarters, 2028 for some dairy products, and rice). For certain agricultural products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities, with the duty-free amount expanding during the tariff phase-out period. Under the CAFTA-DR, the TRQs are to be made available for the entire calendar year, beginning on January 1 of each year. The Dominican Republic has a record of failing to allow product subject to TRQs to enter on January 1, as required by the Agreement, because it was not allocating the in-quota volumes in a timely manner, nor distributing the import certificates which allow importers allocated a share of the TRQ volume to import the product.

In 2010 and 2011, the Dominican Republic did not open any of the TRQs on January 1, and many of these TRQs were not available until March of each year. In 2012, the Dominican Republic allocated TRQ volumes and distributed import certificates for most products before the end of January, but import certificates for rice and beans were not distributed until late May or early June.

The new Dominican administration (which assumed office in August of 2012) made the improvement of its TRQ administration a priority and made substantial and positive changes to its administration system. For the 2013 TRQ volumes, the Dominican Republic opened and allocated TRQ volumes for all products by January 10, 2013; a significant improvement. It also has eliminated the use of physical import certificates and has moved to an electronic document system which had previously been a significant barrier to timely market access. The U.S. Government will continue to engage on this issue with the Dominican Republic and will monitor its performance with regard to the timely opening of the TRQs and the timely distribution of all import certificates, to allow product to enter the Dominican Republic under the TRQs on January 1 of each year.

Nontariff Measures

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

The Dominican Ministry of Agriculture continues to use discretionary import permits. The United States continues to raise concerns with this practice with Dominican authorities and is working to eliminate it. The 17 percent tax on the first *matricula* (registration document) for all vehicles, which was set by the government in 2006, remains in effect.

The government of the Dominican Republic recently began enforcing a 2006 law which requires registration with the Ministry of Health for a wide variety of products, including cosmetic, hygiene, cleaning products, as well as medical devices. The requirement to provide documentation from U.S. sources that is acceptable to the Ministry for registration purposes has presented challenges and created lengthy delays, as many of the products do not require that type of regulation by the U.S. Federal Government. However, the United States has made significant progress during 2012 in resolving issues of documentation and in streamlining the registration process, and it will continue to work with Dominican authorities.

In early 2012, exporters of steel reinforcing bars (rebar) from the United States to the Dominican Republic encountered a technical barrier to trade which was subsequently resolved. However, exporters still are required to provide performance bonds and other financial guarantees covering civil liability in an amount equal to the full value of each shipment. The United States continues to work with Dominican authorities to resolve this issue.

Since late 2011, importers of U.S.-made used vehicles up to five years old, which are allowed access into the Dominican Republic under the CAFTA-DR, have reported that the Dominican customs service has routinely challenged the eligibility of these vehicles to be considered as originating in the United States and thus their eligibility for the CAFTA-DR preferential tariff rate. Although a Vehicle Identification Number (VIN) indicates both the country of origin as well as the specific factory of manufacture, the Dominican government has denied CAFTA-DR preferences for U.S. used cars for reasons of "technical difficulties in demonstrating compliance with the rules of origin."

GOVERNMENT PROCUREMENT

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

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

EXPORT SUBSIDIES

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2012, the Dominican Republic remained on the Watch List in the Special 301 report. Key concerns cited in the report included the widespread availability of pirated goods and excessive delays in the issuance of patents.

Despite these concerns, progress has recently been made in a few areas. For example, the Dominican Republic continued its efforts to implement its obligations under the CAFTA-DR with respect to government use of licensed software and addressing television broadcast piracy. The Dominican Republic has also acceded to the Trademark Law Treaty. The Dominican Republic also expanded in 2011 the use of a system to facilitate and expedite the Ministry of Public Health's marketing approval process for foods, medicinal products, cosmetics, and home and personal hygiene products. However, U.S. producers continue to report lengthy administrative delays in the marketing approval process for pharmaceutical products.

During 2013, the United States will continue to monitor the Dominican Republic's implementation of its intellectual property rights (IPR) obligations under the CAFTA-DR, particularly in trademarks, data protection for pharmaceuticals and enhancing judges' capacity to manage IPR issues. The United States will continue to monitor the Dominican Republic's implementation of its bilateral and multilateral obligations to provide an effective system for protecting against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical and agrochemical products.

OTHER BARRIERS

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

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $2.9 billion in 2012, down $639 million from 2011. U.S. goods exports in 2012 were $6.6 billion, up 8.3 percent from the previous year. Corresponding U.S. imports from Ecuador were $9.5 billion, down 1.4 percent. Ecuador is currently the 39th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was $1.2 billion in 2011 (latest data available), the same as 2010. U.S. FDI in Ecuador is led by the mining and manufacturing sectors.

IMPORT POLICIES

The Organic Code for Production, Trade, and Investment (Production Code), which came into effect on December 29, 2010, covers an array of issues, including import and export policies, customs procedures, taxes, and investment and labor rules. Among other things, the Production Code provides incentives intended to spur local and foreign investment and to promote export expansion and diversification.

The Production Code created a Committee on Foreign Trade (COMEX) to replace the former Trade and Investment Council (COMEXI) as Ecuador's interagency body in charge of trade policy formulation and regulation. The Production Code identifies trade policy tools available to the government to address certain objectives, including: guaranteeing "fundamental rights" contained within Ecuador's 2008 Constitution, implementing treaties or international agreements, preserving the environment and biodiversity, responding to unjustifiable and unilateral restrictions applied by other countries to Ecuadorian exports, correcting balance of payments imbalances, preventing illicit trafficking of drugs, avoiding shortages of essential products and controlling the prices of such products, securing supplies of raw materials for domestic producers as part of a government industrial development plan, and protecting nonrenewable natural resources and the national cultural and historic heritage. In addition, the Production Code authorizes the use of trade remedies, including antidumping, countervailing duty, and safeguard measures.

Since January 26, 2011, Ecuador has pursued a strategic policy of import substitution drawing on mechanisms included in the Production Code. The products subject to selective import substitution measures include: fertilizers, agrichemicals, pesticides and fungicides, soaps, detergents and cosmetics, other chemicals, ceramic tiles and floors, textiles, clothing, footwear, leather, radios, television, telephones, electronics, and electrical appliances. Ecuador applies a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above. The country introduced numerous new trade restrictions in 2012 (described below). The Production Code also includes a provision for cutting the corporate tax rate by 1 percentage point per year until it reaches 22 percent in 2013, as well as three types of tax incentives to promote investment in domestic production activities.

Tariffs

Ecuador's import policies are increasingly restrictive and create an uncertain environment for traders in many sectors. Ecuador is a member of the Andean Community (AC) customs union, which also includes Bolivia, Colombia, and Peru. When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador's second Trade Policy Review (TPR) by the WTO was concluded in

November 2011. According to the WTO Secretariat's TPR report, Ecuador's tariff structure has become more complex. Previously, Ecuador had generally applied a simple four-tiered tariff structure with levels of 5 percent for most raw materials and capital goods, 10 percent or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador also imposes a number of fees and charges on imports.

According to the information available to the WTO, Ecuador's applied average most favored nation (MFN) tariff rate was 10.1 percent in 2011. While its average applied MFN tariff rate for industrial products declined from 10.6 percent in 2005 to 8.8 percent in 2011, for agricultural products it increased from 16.7 percent to 18.3 percent. However, as Ecuador did not supply to the WTO the *ad valorem* equivalents for its mixed tariffs and has implemented new trade restrictions since then, the actual average applied MFN tariff rates might be higher than those noted above and, in some cases, might exceed Ecuador's bound tariff rates. The WTO Secretariat identified 19 tariffs at the 10-digit level that exceeded Ecuador's bound tariff rates by 5 to 15 percentage points in 2011.

In June and July of 2012, Ecuador enacted a number of trade-restrictive measures, which included an increase in tariffs on a number of products, as well as import quotas that will expire at the end of 2014. A deteriorating non-oil trade deficit of $2.9 billion during the first four months of 2012 appears to have prompted these measures. Some government officials publicly stated that they hoped these measures would reduce imports by $300 million.

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

Resolution 65, also enacted on June 15, 2012, established value ceilings and unit quotas for imports of automobile complete knock-downs (CKDs). In addition, Resolution 65 established a sliding tariff scale ranging between 4 percent and 40 percent, which decreases as more locally produced content is incorporated in the vehicle. Resolution 65 also created a monitoring mechanism to verify increases in the incorporation of local content. However, Ecuador has not yet published a methodology for measuring local content levels. This resolution will remain in effect through December 2014.

Resolution 66, issued on June 11, 2012, established a $538 million limit for the importation of motor vehicles classified under 16 tariff lines, including passenger cars and cargo trucks. The $538 million quota would limit imports of vehicles under the 16 tariff lines affected, to 68 percent by value of the total imported in 2010. The 38 importers among which the quota has been divided must comply with established unit and dollar value limitations. Tariffs on vehicles, which are as high as 40 percent, also remain in effect. On July 30, 2012, COMEX approved Resolution 77, which slightly eased the unit and value restrictions on vehicle imports imposed by Resolution 66. Resolution 77 allowed importers to use existing import licenses to continue to import vehicles through December 28, 2012, even if it resulted in imports exceeding the importers' quotas. This eased concerns somewhat because some importers were already approaching their annual import quotas when the quotas were announced, which would have required vehicles ordered before Resolution 66 was announced to be re-exported.

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

On July 17, 2012, COMEX issued Resolutions 69 and 70, which tightened import restrictions established in Resolutions 63 and 67. Resolution 69 reduced by 28 percent the total value of permissible imports by CONECEL, Ecuador's largest private mobile phone operator. Meanwhile, the public telecommunications company, CNT, received a 145 percent increase in its import value entitlement, which grew from $4.9 million to $12 million. Unit quotas for CONECEL and CNT remained unchanged, suggesting that Ecuador has structured the restrictions to permit CNT to import more expensive phone models and improve its market share, which is only 1.6 percent.

Resolution 70 introduced a specific tariff of $39.97 for all televisions up to 20 inches, while retaining the existing 5 percent *ad valorem* duty; it also increased to $73.11 the specific tariff for televisions between 20 and 32 inches.

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

Agricultural Products

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

When Ecuador became a WTO member, it agreed to phase out its participation in the APBS. To date, no steps have been taken to phase out use of the APBS. The extent to which the APBS restricts trade varies by product. For some U.S. exports, such as wheat, barley, malt barley, and their byproducts, the price band total duty (*ad valorem* tariff plus variable levy) is often zero. However, price band total duties as high as 85.5 percent and 45 percent have been applied to chicken parts and pork, respectively, restricting those imports.

Safeguards

On October 11, 2010, Ecuador imposed a safeguard measure on imports of automotive windshields based on a determination of serious injury to the national industry due to increased imports. The safeguard measure will be applied for three years and consists of the application of a $12.72 specific tariff on top of the current applied 15 percent *ad valorem* tariff; imports from Peru and Chile are exempted from the measure.

Tariff-Rate Quotas

When Ecuador became a WTO Member it established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, and frozen turkeys. The Ecuadorian government's process for TRQ administration lacks transparency, and for some products, such as frozen chicken parts, a TRQ has not yet been established.

Nontariff Measures

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

Ecuador requires prior authorization from the Ministry of Agriculture, Livestock, Aquaculture, and Fisheries (MAGAP) for imports of 37 agricultural products originating in countries outside the AC (COMEXI Resolution 585 of 2010). Many of these products are also protected under the APBS (*e.g.*, poultry, dairy, rice, palm oil). MAGAP officials argue that the authorization ensures that sanitary standards and tax rules are followed, but entry has been denied in situations where these concerns do not appear to apply.

Another administrative hurdle for importers of agricultural products is the MAGAP's use of "Consultative Committees" for import authorizations. These Committees, composed primarily of local producers, often advise the MAGAP against granting import authorizations for products such as corn, soybean meal, dairy products, and meats. Additionally, import authorizations usually are subject to crop absorption programs, pursuant to which MAGAP requires that all local production be purchased at high prices before authorizing imports.

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

The December 2011 tax package also included an increase, effective immediately, of Ecuador's capital exit tax from 2 percent to 5 percent. Importers claim this indirect tax on imports substantially increases the cost of purchasing abroad. Imports of raw materials, basic inputs, and capital goods are eligible for offsetting tax credits, but the process has been criticized as convoluted.

Since 2007, Ecuador's customs service has used a risk analysis system rather than Ecuador's existing pre-shipment inspection regime for imports with f.o.b. values of more than $4,000. Under this system, low risk importers benefit from fewer physical inspections and expedited release of their cargo. In August 2010, a policy was implemented requiring that for every shipment, importers must provide net weight figures per product lot number, rather than prorating the weight of the container by product as was previously allowed.

GOVERNMENT PROCUREMENT

Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidding on government procurement can be cumbersome and relatively nontransparent. The lack of transparency creates opportunities for manipulation by procuring entities.

Since 2008, Ecuador's public contracting law requires that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the procurements. Based on Article 25 of the public contracting law, INCOP (Public Contracting Institute) established that at least 40 percent of the value of a product must be locally produced to qualify for this preference. Bidders are required to register and submit bids for government procurement through an online system (http://www.compraspublicas.gob.ec).

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ecuador was listed on the Watch List in the 2012 Special 301 report. The report acknowledged statements from Ecuador's intellectual property rights (IPR) officials regarding the need to create a culture of respect for IPR. However, the report also cited key remaining concerns, including: weak IPR enforcement; lack of effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products; and lack of an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. Overall IPR enforcement in Ecuador remains seriously inadequate, resulting in high piracy levels in the software, publishing, recording, and film industries. In addition, Ecuador has yet to put in place specialized IPR courts, which were required under its 1998 IPR law.

On October 23, 2012, Ecuador enacted Resolution 006-2012-CD-IEPI, which substantially raised the fees associated with registration of patents and new plant varieties. Under this resolution patent and plant variety maintenance fees are assessed yearly, on an upward sliding scale. As enacted, the fees associated with a patent for an invention or procedure are more than $140,000 over 20 years, while the fees associated with protection of a plant variety are more than $175,000 over 20 years.

Ecuador has issued two compulsory licenses for patented drugs used in the treatment of HIV/AIDS. The first was issued on April 14, 2010, for a patented drug manufactured by a U.S. company. The second was issued on November 12, 2012, for a patented drug manufactured by a British company.

SERVICES BARRIERS

Credit Reference Services

On October 2, 2012, Ecuador's National Assembly passed a credit bureau bill severely restricting the operations of private credit bureaus. The bill creates a new state-owned entity with exclusive rights to credit-related data. Private credit bureaus, while not prohibited outright from operating, are obliged under the bill to give up their databases to the government and can no longer receive data directly from the financial sector.

INVESTMENT BARRIERS

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

Ecuador's framework for investment protection is still unsettled. Ecuador's withdrawal from the World Bank's International Centre for Settlement of Investment Disputes (ICSID) became effective January 7, 2010. In September 2009, the Ecuadorian government requested approval from the country's National Assembly to terminate 13 bilateral investment treaties (BITs), including its BIT with the United States, arguing that they contained provisions that were unconstitutional. On November 24, 2010, Ecuador's Constitutional Court ruled that provisions within Ecuador's BIT with the United States were unconstitutional due to a conflict with Article 422 of the 2008 Constitution. In its ruling, the Court stated that Article 422 of Ecuador's Constitution prohibited the State from concluding treaties or international instruments in which Ecuador would cede sovereign jurisdiction to international arbitration tribunals in commercial disputes between the State and private investors and concluded that the BIT with the United States constituted such an instrument. The Constitutional Court has delivered similar rulings on the other BITs under review. Based on the Constitutional Court's rulings, Ecuador's National Assembly has so far approved termination of five of the BITs, but did not approve termination of four others. It has not yet acted on Ecuador's BIT with the United States. To date, the Ecuadorian government has only officially terminated its BIT with Finland. The Ecuadorian government has indicated it may be open to negotiating international arbitration clauses within individual contracts, as provided for under the Production Code and the Planning and Public Finance Code.

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

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was $2.5 billion in 2012, a decrease of $1.7 billion from 2011. U.S. goods exports in 2012 were $5.5 billion, down 11.8 percent from the previous year. Corresponding U.S. imports from Egypt were $3.0 billion, up 45.6 percent. Egypt is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Egypt was $14.6 billion in 2011 (latest data available), up from $12.2 billion in 2010.

Overview

Over the past seven years, the government of Egypt has gradually liberalized its trade regime and economic policies, although the reform process has been slow and uneven. Revolution and political uncertainty gripped Egypt over the course of 2011 and in 2012, leaving unclear the future of Egyptian approaches to tackling needed trade reforms. The government released an economic reform plan on November 29, 2012, and has publicly committed to make investment promotion and trade facilitation a top priority. However, continuing political instability has made it difficult for the government to focus on long-term trade and investment policy issues. As a result, few actions have been taken to improve the trade and investment climate. Challenges to opening Egypt's markets remain, including a need to reduce corruption, reform the cumbersome bureaucracy, and implement a fully transparent regulatory regime.

IMPORT POLICIES

Tariffs

The Egyptian government has undertaken liberalizing reforms that have reduced the overall weighted applied tariff average from 14.6 percent to 10.1 percent. Tariffs on the vast majority of goods entering Egypt are below 15 percent. Vehicles, alcohol, tobacco, and selected cereals are the only items on which tariffs are 40 percent or higher. Tariffs on some cereals are well over 1,000 percent. All clothing faces a relatively high tariff of 30 percent.

The tariff on passenger cars with engines of less than 1,600 cubic centimeters (cc) is 40 percent, and the tariff on cars with engines of more than 1,600cc is 135 percent. In addition, cars with engines over 2,000cc are subject to an additional escalating sales tax of up to 45 percent. The Egypt-EU Association Agreement, which entered into force in 2004, will bring all auto tariffs faced by EU carmakers to zero by 2019, with certain vehicle classes duty-free by 2016.

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

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

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

Customs Procedures

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

The Ministry of Finance in August 2008 finalized a draft of a new customs law to streamline procedures and facilitate trade. The proposed legislation has yet to be submitted to parliament for consideration. Its status at this point is unclear. The practice of consularization, which requires exporters to secure a stamp from Egyptian Consulates on all documents for goods to be exported to Egypt – at a cost of $100 to $150 per document – remains in place and adds significant costs in money and time. To address these and other issues, the United States and Egypt have opened negotiations on a trade facilitation protocol.

Import Bans and Barriers

On March 18, 2012, Egypt's Minister of Agriculture and Land Reclamation (MALR) signed Decree 438 lifting the import ban on cotton from all origins that was originally imposed on October 25, 2011, by Decree 1864. However, the March 2012 decree was abrogated by a ruling in the Administrative Courts. As such, MALR allows the importation of cotton only for use in the country's free trade zones for processing and re-export.

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

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

GOVERNMENT PROCUREMENT

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

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Egypt remained on the Watch List in the 2012 Special 301 Report. Piracy and counterfeiting continue to be serious problems, as does the speed and effectiveness of processing trademark applications. Specifically, piracy of broadcast content via satellite television operations, lack of enforcement in major cases involving counterfeit apparel and trademark violations, online piracy, entertainment software piracy, and book piracy remain concerns. The United States remains concerned about the lack of clarity in protections against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products. Additionally, rights holders have difficulty addressing patent infringement concerns expeditiously in connection with applications to market pharmaceutical products.

SERVICES BARRIERS

Egypt restricts foreign equity in construction and transport services to 49 percent. Egypt also limits the employment of non-nationals to 10 percent of an enterprise's general workforce, although the Ministry of Manpower and Migration can waive this limitation. In computer-related industries, Egypt requires that 60 percent of top level management be Egyptian within three years of the start-up date of the venture. According to Egyptian labor law, foreigners cannot be employed as tourist guides.

Banking

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

Since banking reform began in 2004, the government has divested itself from many joint venture banks and privatized the government-owned Bank of Alexandria in 2006. However, efforts to restructure the remaining three state-owned banks have been mixed, and the Central Bank rejected privatization of the three banks in 2009 on the grounds that market conditions were not right. The three remaining state-owned banks control at least 40 percent of the banking sector's total assets. In 2010, in reaction to high meat and poultry prices, the Central Bank relaxed a requirement of 100 percent foreign exchange cover for Letters of Credit issued for the purchase of agricultural and food products, reducing the requirement to 50 percent. As of mid-March 2013, this practice continues.

Telecommunications

The state-owned telephone company, Telecom Egypt, lost its legal monopoly on the local, long-distance and international telecommunication sectors in December 2005, but in large part due to the failure of the National Telecommunications Regulatory Authority (NTRA) to offer additional licenses to compete in these sectors, Telecom Egypt continues to hold a *de facto* monopoly. In October 2007, the NTRA offered Egypt's three wireless carriers, MobiNil, Vodafone and Etisalat, the option to acquire a license to offer international gateway services, but only to their own customers.

Courier and Express Delivery Services

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

INVESTMENT BARRIERS

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

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

Although Egypt is a signatory to international arbitration agreements, Egyptian courts do not always recognize foreign judgments. Resolution of any dispute is very slow, with the time to adjudicate a case to completion averaging three to five years. The judicial system is also subject, in some cases, to political influence.

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

OTHER BARRIERS

Pharmaceutical Price Controls

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

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was $502 million in 2012, a decrease of $384 million from 2011. U.S. goods exports in 2012 were $3.1 billion, down 8.3 percent from the previous year. Corresponding U.S. imports from El Salvador were $2.6 billion, up 4.2 percent. El Salvador is currently the 53rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador was $2.7 billion in 2011 (latest data available), up from $2.6 billion in 2010.

Free Trade Agreement

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

The United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011, and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

Tariffs

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

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

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

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including El Salvador, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods. However, U.S. exporters and Salvadoran importers of U.S. products, particularly agricultural goods, have expressed increasing concern about customs-related problems they are encountering in El Salvador, specifically issues related to origin verification procedures. The United States is continuing to engage with El Salvador on these issues. In addition, while El Salvador continues to make progress on customs issues, the United States continues to work with El Salvador to address concerns related to implementation of its CAFTA-DR obligations with respect to express shipments.

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

GOVERNMENT PROCUREMENT

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

In May 2011, the Legislative Assembly approved a series of reforms to the LACAP (*Ley de Adquisiciones y Contrataciones de la Administración Pública*), which regulates government procurement. These reforms included easing procurement procedures to expedite contracts valued at less than $35,856. However, the U.S. Government is discussing with the government of El Salvador additional measures that have passed since, including a June 2011 law which would allow the Ministry of Health to purchase pharmaceuticals without going through an open tender, and a December 2012 decree that would require local seeds be procured by the Ministry of Agriculture under the Presidential Agricultural Package Giveaway Program.

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

EXPORT SUBSIDIES

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

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, El Salvador undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these efforts, the piracy of optical media, both music and video, in El Salvador remains a concern. In addition, the business software industry continues to report very high piracy rates for El Salvador. Optical media imported from the United States into El Salvador are being used as duplication masters for unauthorized copies of copyrighted works. The United States has expressed concern to the Salvadoran government about inadequate enforcement of cable broadcast rights and the competitive disadvantage it places on legitimate providers of this service. The United States will continue to monitor El Salvador's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

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

INVESTMENT BARRIERS

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

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time consuming. Bureaucratic requirements have at times reportedly been excessive and unnecessarily complex. U.S. firms have expressed concern about the "Medicines Act" passed by the Salvadoran Legislature in

February 2012, and the implementing regulations issued in December 2012, particularly regarding the methodology to determine maximum sales price of pharmaceuticals to be sold in El Salvador and the lack of transparency in the process.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was $1.1 billion in 2012, an increase of $558 million from 2011. U.S. goods exports in 2012 were $1.3 billion, up 86.4 percent from the previous year. Corresponding U.S. imports from Ethiopia were $183 million, up 26.7 percent. Ethiopia is currently the 74th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ethiopia was $8 million in 2011 (latest data available), up from $6 million in 2010.

IMPORT POLICIES

Ethiopia is not a Member of the World Trade Organization (WTO), but is actively acceding to the WTO. Ethiopia held a third working party meeting in March 2012 and submitted to the WTO its proposed tariff rates for imports of goods in February 2012. Ethiopia has made progress in drafting new legislation and implementing capacity building measures relevant to WTO accession with the help of technical assistance from a number of donors, including the U.S. Government.

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

Tariffs

According to the WTO, Ethiopia's average applied tariff rate was 17.3 percent in 2011. Revenue generation appears to be the primary justification for Ethiopia's tariffs; however, high tariffs are applied to protect certain local industries, including textiles and leather. Goods imported from COMESA members are granted a 10 percent tariff preference. *Ad valorem* duties range from 0 percent to 35 percent, with a simple average of 16.8 percent. There is a 10 percent surtax on selected imported goods, with the proceeds designated for distribution of subsidized wheat in urban areas.

Nontariff Barriers

A cereals (wheat, corn, barley and teff) export ban imposed in 2009 due to supply shortages remains in effect. An export ban imposed on cotton in November 2010 was lifted in April 2012. An export ban on raw and semi-processed hides and skins, which was intended to shore up domestic supply and strengthen the export of value added products, took effect at the end of 2011. An importer must apply for an import permit and obtain a letter of credit for the total value of the imports before an order can be placed. Even then, import permits are not always granted.

Foreign Exchange Controls

Ethiopia's central bank administers a strict foreign currency control regime and the local currency (Birr) is not freely convertible. While larger firms, state-owned enterprises, and enterprises owned by the ruling party do not typically face major problems obtaining foreign exchange, less well connected importers, particularly smaller, new-to-market firms, face delays in arranging trade-related payments. The limited supply of foreign exchange from Ethiopia's banks has recently affected U.S. companies' ability to import essential inputs and industrial capital goods on a timely basis.

GOVERNMENT PROCUREMENT

A high proportion of Ethiopian import transactions are conducted through government procurement, reflecting the heavy involvement of the government in the overall economy. Tender announcements are usually made public. Bureaucratic procedures and delays in the decision-making process sometimes impede foreign participation in procurements. U.S. firms have complained about the abrupt cancellation of some procurements, a perception of favoritism toward Chinese suppliers, a frequent requirement that would-be suppliers appear in person to collect solicitation packages, and a general lack of transparency in the procurement system. Business associations complain that state-owned and ruling party-owned enterprises have enjoyed *de facto* advantages over private firms in government procurement. Several U.S. firms have complained of pressure to offer supplier financing or other low-cost financing in conjunction with tenders. Several significant, large contracts have been signed in recent years between government enterprises and Asian companies outside of the government procurement process.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Ethiopian Intellectual Property Office (EIPO) is responsible for the administration of patents, trademarks, and copyrights, and has competence in intellectual property policy. EIPO focuses mainly on protecting and enforcing Ethiopian intellectual property rights (IPR), and has taken virtually no action to confiscate or impede the sale of pirated foreign works in Ethiopia. Ethiopia is a member of the World Intellectual Property Organization, and a signatory to the WIPO treaty; however, it has not ratified most of the major IPR treaties including the Madrid Protocol and Rome Convention. A November 2012 Memorandum of Understanding between Microsoft and the EIPO establishes a program to train journalists, private sector distributors, and government procurement agents on IPR infringement and licensing issues.

Trademark infringement of major international brands appears to be widespread in Ethiopia.

SERVICES BARRIERS

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

INVESTMENT BARRIERS

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

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

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

OTHER BARRIERS

Parastatal and Party-affiliated Companies

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

Judiciary

Companies that operate businesses in Ethiopia assert that its judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. The Commercial Code dates back to 1960. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters, and scheduling of cases often suffers from extended delays. Contract enforcement remains weak. There is no guarantee that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities.

EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with the European Union was $115.7 billion in 2012, up $15.8 billion from 2011. U.S. goods exports in 2012 were $265.1 billion, down 1.2 percent from the previous year. Corresponding U.S. imports from the European Union were $380.8 billion, up 3.4 percent. European Union countries, together, would rank as the second largest export market for the United States in 2012.

U.S. exports of private commercial services (*i.e*., excluding military and government) to the European Union were $188.8 billion in 2011 (latest data available), and U.S. imports were $136.8 billion. Sales of services in the European Union by majority U.S.-owned affiliates were $499.0 billion in 2010 (latest data available), while sales of services in the United States by majority European Union-owned firms were $382.2 billion.

The stock of U.S. foreign direct investment (FDI) in the European Union was $2.1 trillion in 2011 (latest data available), up from $1.9 trillion in 2010. U.S. FDI in the European Union is primarily concentrated in the nonbank holding companies, finance/insurance, and manufacturing sectors.

Overview

The United States and the 27 Member States of the European Union (EU) share the largest economic relationship in the world. The enormous volume of trade and investment is a key pillar of prosperity both in the United States and Europe.

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

An important recent development was the announcement by President Obama on February 12, 2013 that the Administration intends to initiate domestic procedures to launch negotiations with the EU on a comprehensive trade and investment agreement. This followed more than a year of work by the U.S.-EU High Level Working Group on Jobs and Growth, headed by U.S. Trade Representative Ron Kirk and EU Commissioner for Trade Karel De Gucht. The Working Group concluded that a comprehensive U.S.-EU agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules would provide significant mutual benefit to both economies.

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

WTO Information Technology Agreement

In September 2010, the WTO Dispute Settlement Body (DSB) adopted the final report of the panel considering the U.S. claim that the EU violated its tariff commitments under the WTO Information Technology Agreement (ITA) by imposing duties as high as 14 percent on flat panel computer monitors, multifunction printers, and certain cable, satellite, and other set-top boxes. For all three products at issue, the panel concluded that the EU tariffs were inconsistent with its obligations. The United States and the EU agreed to a period of nine months and nine days for the EU to comply with the recommendations and rulings of the DSB, ending on June 30, 2011. While the EU took some steps to bring itself into compliance, the United States remains concerned that, notwithstanding the measures the EU has adopted to date, one or more Member State customs authorities may continue to apply duties to the products at issue. The United States is closely monitoring Member State customs decisions in this regard. With EU compliance, the United States expects that U.S. producers of high technology products will continue to be able to export those products to Europe duty free, as required under the ITA.

Pharmaceutical Products

The U.S. pharmaceutical industry has expressed concerns regarding some EU and Member State policies affecting market access for pharmaceutical products, including nontransparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement, including therapeutic reference pricing and other price controls. The United States is following with interest EU deliberations on steps to increase the availability of pharmaceutical product information to consumers as a means of promoting consumer awareness and access to medicines, and is also following the current discussions on the review of the EU Transparency Directive. The United States continues to engage with the EU and individual Member States on these matters. In recent years, the U.S. pharmaceutical industry has raised concerns about pharmaceutical market access and government pricing and reimbursement systems in Austria, Belgium, the Czech Republic, Finland, France, Germany, Hungary, Lithuania, the Netherlands, Poland, Portugal, Romania, Spain, and the United Kingdom. Additional detail on some of these countries' measures follows.

Member State Measures:

Austria: In 2011, the government of Austria, public health insurers, and the pharmaceutical industry agreed to a "Frame Contract for Reimbursement of Pharmaceuticals." U.S. companies have voiced concern that, despite the new contract, they are forced to accept significant price reductions to compete with generic pharmaceuticals. In addition, U.S. companies have expressed concern that the reimbursement structure for biosimilars (biologic pharmaceuticals that are similar, but not equivalent to original biologic pharmaceuticals that received regulatory approval) is too low to allow them to enter or remain in the Austrian market.

Belgium: U.S. pharmaceutical companies have expressed concern about the lack of adequate transparency in the development and implementation of government cost-containment measures in Belgium. The United States has encouraged the government of Belgium to ensure that policies affecting the pharmaceutical industry are developed and implemented in a transparent manner, and that industry has opportunities to engage with the relevant authorities to address their concerns and to ensure the continuing development of their already significant investment in the Belgian market.

In 2012, the government proposed to implement an International Price Referencing System for on-patent medicines. The Ministry of Social Affairs, Public Health and Social Integration modified the proposal, in coordination with the U.S. Government and industry, to ensure that pharmaceutical companies would not be treated differently with respect to budgetary cuts than any other group within the medical sector. The Belgian government agreed not to increase the sales tax on pharmaceuticals and to speed up the approval process for new medicines.

Czech Republic: U.S. pharmaceutical companies previously expressed concern about the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products, as well as new legislation that went into effect in December 2011 requiring electronic auctions on pharmaceuticals and medical devices and equipment. The government has not fully implemented this legislation, however, and it is expected that only pharmaceuticals based on a few specified molecules will initially be included, should the auctions be carried out in spring 2013. The United States has encouraged the Czech government to ensure that its current pricing and reimbursement system does not unfairly limit the access of innovative pharmaceutical products to the Czech market.

Finland: U.S. innovative pharmaceutical companies report that the Finnish Pharmaceutical Pricing Board has significantly delayed reimbursement for new drugs by the Finnish national health care system. U.S. pharmaceutical companies have reported that it can take two years to four years for a new drug to become eligible for reimbursement, and only after repeated applications. Such delays have a significant impact on consumer purchasing of new drugs in Finland.

The Finnish Pharmaceutical Pricing Board is also pressuring U.S. pharmaceutical companies to lower the prices of their innovative medicines in line with generic drugs of the same therapeutic class. This is concerning, particularly because a generic drug may treat the same disease or symptoms as the innovative drug in the same therapeutic class, but such drugs may be distinct at the molecular level. The Pricing Board has, at times, threatened to stop reimbursement for innovative drugs if the U.S. companies do not drop their prices.

France: France's "Sunshine Act" reform bill, introduced in December 2011, provides stricter disclosure and drug monitoring rules and also created the National Agency for Health Products Safety. This new regulatory authority can conduct post-authorization studies in cases of reported adverse reactions to a drug. It also reviews all advertising of pharmaceuticals. To prevent conflicts of interest, the law further requires manufacturers to make agreements with healthcare authorities public. The pharmaceutical industry largely supports the reform, with the exception of two provisions: a new industry tax to finance provision of continuing medical information for doctors and a two-year ban on visits by industry sales representatives to individual doctors.

Hungary: Pharmaceutical manufacturers have expressed concern about Hungary's volume and pricing restrictions, high sector-specific taxes, and delays in reimbursement approvals. The United States has encouraged the Hungarian government to review its pricing and reimbursement system to ensure that affected stakeholders have adequate opportunities to engage with relevant authorities to address their concerns. In August 2012, the government introduced new tax obligations for pharmaceutical companies marketing innovative products, and several pharmaceutical manufacturers raised concerns.

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

Lithuania: The United States continues to engage with the government of Lithuania regarding pharmaceutical market access issues. The Health Ministry began several reform efforts in 2011, inviting representatives of the pharmaceutical industry to discuss various matters, including the addition of certain drugs to the government's reimbursement list and the procurement of additional innovative drugs. Discussions with pharmaceutical industry representatives are ongoing.

Poland: U.S. pharmaceutical companies continue to report that there is a lack of adequate transparency and meaningful engagement with industry in the development and implementation of cost-containment measures affecting pharmaceutical reimbursement and pricing policies in Poland. The terms of reimbursement agreements have sometimes been modified unilaterally by the government with little advance warning to companies.

According to U.S. pharmaceutical companies, the new law governing reimbursement by the national health system, which entered into force in January 2012, applies therapeutic reference pricing, a methodology which pools both patented, off-patent pharmaceutical, and generic products into just 300 so-called “limit” groups based on therapeutic categories. By assuming that all products used to treat the same condition are interchangeable, this practice erodes the incentives to invest in the development of innovative medicines and may undermine the availability of such medicines.

Companies also report that they have found it difficult to obtain information from the Ministry of Health or to arrange meetings with its officials. The United States has encouraged the government of Poland to ensure that policies affecting the pharmaceutical industry are developed and implemented in a transparent and consistent manner and that U.S. firms are given opportunities to engage with relevant government ministries on issues of concern.

Portugal: The U.S. pharmaceutical industry reports that there continues to be a lack of transparency in the development and implementation of government cost-containment measures. Portuguese Law No. 52/2011, in effect since January 2012, requires that pharmaceutical patent holders submit cases, including evidence, to arbitration within 30 days of notice of intent by a generic drug manufacturer to distribute the generic product. Industry complains that the new mandatory arbitration process is costly and slow, pointing out that not a single case has been resolved by the body as of October 2012. Moreover, the law does not provide for injunctive relief, instead only requires patent violators to reimburse patent holders for any resulting losses.

Romania: Innovative pharmaceutical products face several significant challenges in Romania due to the government’s failure to update the lists of compensated pharmaceuticals that are eligible for reimbursement under the national health system (the reimbursement lists). This severely undermines the ability of U.S. pharmaceutical companies to introduce newer drugs in Romania, because the National Health Insurance House will not reimburse those companies for drugs absent from the reimbursement list. The Ministry of Health has not updated the reimbursement list since 2008. Although 80 drugs based on new molecules have been approved by the Ministry of Health for sale in Romania between 2008 and 2012, the government has not approved their inclusion on the reimbursement list. In contrast, generic drugs have benefited from accelerated, quasi-automatic inclusion on the reimbursement lists. As a result of these practices, research-based pharmaceutical companies are unable to effectively recoup their significant investment in safety and efficacy testing data during the period of that data’s protection in Romania. International pharmaceutical companies have repeatedly requested the Romanian government to update the reimbursement lists. The U.S. Embassy in Bucharest has raised the issue several times in the last two years in letters and meetings with government officials. Despite public and private statements to the Embassy and diplomatic community that the government is considering updates to the reimbursement list, there has been little indication to date that a revised list will be issued in the near future. U.S. pharmaceutical company representatives estimate the value of potential increased sales of innovative drugs, through imports or local production, as between $25 million and $100 million.

Spain: U.S. pharmaceutical companies remain concerned that Spain’s pricing and reimbursement system is unpredictable and lacks transparency. U.S. companies reported that Spanish government reforms enacted during 2010, 2011, and 2012 impacted the value of their patents and created a disincentive to innovation and new investment. The reforms, aimed at reducing the national health system budget, require, in general, that the prescription of medicine must be by active ingredient, rather than by brand, and that pharmacies must dispense the lowest cost drugs available. For drugs that lack generic alternatives, the price will be reduced by 15 percent after a period of 10 years on the market. Following discussions facilitated by the U.S. Embassy in Madrid, U.S. companies reached an agreement with the Spanish government in May 2011. In response to those industry concerns, Spain agreed that the 15 percent price reduction will not apply to products whose patents are in force in all the EU member states.

The Spanish government approved a comprehensive health care reform package on April 20, 2012, which further reduced industry revenues by requiring prescription of generic drugs, even if innovative drugs are the same price, and lowering the reference prices on certain drugs. The reforms also subjected patented drugs with no generic competitors to reference pricing after 10 years of obtaining the first marketing authorization in the EU. The United States worked with the Spanish government refining the scope of the reform package to ensure continued incentives for innovation in Spain.

Uranium

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

MARKET ACCESS FOR AGRICULTURAL AND FOOD PRODUCTS

Bananas

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

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

Husked Rice Agreement

The United States has ongoing concerns regarding the operation of the U.S.-EU husked rice agreement, which has been in effect since 2005. Under the terms of this bilateral agreement, negotiated as a result of the EU's decision to modify the tariff concessions agreed to in the Uruguay Round, the applied tariff for husked rice imports from the United States is determined by the total quantity of husked rice (excluding

Basmati) imported by the EU, and is adjusted every six months. Discussions on this subject with the European Commission (the Commission) have focused on the annual increase in the import reference volume and the longer-term operation of the tariff adjustment mechanism set out in the agreement. The United States has sought a significant increase in the import reference quantity in the husked rice agreement. The longer term U.S. objective is to obtain consistent market access for U.S. brown rice at a tariff well below the WTO-bound tariff of €65 per ton.

Meursing Table Tariff Codes

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

Subsidies for Fruit

The EU Common Market Organization (CMO) for fruit and vegetables came into effect on January 1, 2008. Implementing rules, covering fresh and processed products, are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to producer organizations for dozens of products, including peaches, citrus fruits, and olives. In 2013, after the end of a five-year transitional period, EU support for this sector will be fully decoupled from production decisions. However, hidden subsidies remain an ongoing concern for U.S. producers. The decoupled Single Farm Payments are funded by the European Commission and paid to the Member States, channeled through POs. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

EU Enlargement

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2012, the European Commission continued implementation of its 2011 intellectual property rights (IPR) strategy that includes initiatives on enforcement and copyright, as well as a renewed effort to adopt an EU-wide patent regime. Although patent filing costs have decreased in the EU, patent filing and maintenance fees in the EU and its Member States remain significantly higher than in other countries, including the United States. The IPR strategy also included launching a study into extending geographical indication (GI) protection for products other than agricultural products and food stuffs, which are currently eligible for GI protection in the EU.

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

With respect to copyright protection, the European Commission decided in December 2012 to initiate a two-part copyright program. Under the first part of that program, the Commission will launch a stakeholder dialogue to address key copyright issues in the EU. The Commission will take stock of that dialogue in December 2013. The second part of the program will involve completing market studies, impact assessments, and legal drafting work with a view to a decision in 2014 whether to table legislative reform proposals. The United States welcomes the inclusion of U.S. stakeholders in the Commission-led dialogue and urges that any outcomes of this program fully reflect the value of copyright industries to the EU, transatlantic, and global economies and continue to promote strong copyright protection and enforcement internally and internationally.

On enforcement, actions within the EU on the Anti-Counterfeiting Trade Agreement (ACTA) remain a priority concern for the United States, particularly following the European Parliament's vote to reject the Agreement in July 2012, and the Commission's decision in December 2012 to withdraw its request to the European Court of Justice to review the Agreement's consistency with EU law. These actions stand in contrast to the active participation of the Commission and the Member States in the ACTA negotiations, which concluded in November 2010, and which culminated in the EU and 22 of its Member States signing the ACTA on January 26, 2012.

Member State Measures

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

Austria: U.S. copyright holders report that while legal protections are strong in principle, procedural roadblocks prevent copyright holders from blocking online access to pirated works and prevent effective prosecution.

Bulgaria: U.S. industry reports continued IPR concerns, particularly with respect to piracy over the Internet, a poor track record on prosecutions, delays and conflicts of interest in enforcing patent protection, and difficulties obtaining information from Internet service providers (ISPs) in Bulgaria to combat piracy over the Internet. Several companies have reported difficulty when seeking recourse for patent and trademark infringement at the Bulgarian Patent Office. Bulgaria has an established process for administrative rulings and appeals in cases of patent and trademark infringement, but the decisions are not well justified and often appear arbitrary.

U.S. exporters of distilled spirits are negatively impacted by trademark violations and limited enforcement against locally-produced counterfeit products.

Regarding the use of legitimate business software, Microsoft concluded a software licensing agreement with the government of Bulgaria and the Bulgarian Armed Forces in 2012.

Czech Republic: The Czech Republic continues to make progress in increasing enforcement in the approximately 50 open air markets that line the Czech Republic's borders with Germany and Austria. Piracy over the Internet, however, has increased in the Czech Republic. Industry is also concerned that the IPR penalties that have been imposed are not sufficient to deter violations.

Finland: Finland was included in the Watch List in the 2012 Special 301 Report. The key concern cited in the report was the lack of product patent protection for certain pharmaceutical products and a regulatory framework that denied adequate protection for some process patents filed before 1995, and those that were pending in 1996. Affected products include many of the top-selling U.S. pharmaceutical products currently on the Finnish market.

Greece: Greece was included on the Watch List in the 2012 Special 301 report. The United States acknowledges some improvements in IPR protection and enforcement in Greece, including actions taken against piracy over the Internet. However, inadequate IPR protection continues to pose barriers to U.S. exports and investment. Key issues cited in the 2012 Special 301 report include widespread copyright piracy and weak and inconsistent IPR enforcement.

Italy: Italy remained on the Watch List in the 2012 Special 301 Report, primarily due to ongoing concerns about piracy over the Internet. USTR conducted an Out-of-Cycle Review (OCR) of Italy that was inconclusive due to lingering concerns about piracy over the Internet and the lack of progress that the Italian Communications Regulatory Authority (AGCOM) had made with respect to the adoption of draft regulations to combat piracy over the Internet. Additional concerns cited in the 2012 report included a Data Protection Agency opinion on the monitoring of peer-to-peer networks, the lack of an expeditious legal mechanism for rights holders to address piracy on the Internet, and a lack of deterrent sentences. In early 2012, AGCOM devoted considerable time and attention to preparing regulations to address online piracy, which included provisions for a notice-and-take-down system. However, the previous commission never finalized the regulations, which were pending in front of a newly appointed board at the time of writing of this report.

Latvia: Recent amendments to Latvia's intellectual property criminal statutes have simplified certain aspects of infringement cases and may result in more successful prosecutions of IPR violations. Police and customs officials continue to gain experience and understanding of intellectual property matters. Police and prosecutors actively pursue IPR cases, but are hampered by a lack of resources and severe backlogs in police forensics labs. The Latvian judicial process still poses significant challenges, including lengthy proceedings, high evidentiary burdens, and a failure to publicize judgments. Latvia hosts a number of file-sharing websites, and software piracy rates remain high.

Malta: Although industry reports that Malta's civil regime regulating copyright is generally adequate, the sufficiency of Malta's criminal law with respect to IPR is mixed. While the relevant provisions of the Maltese Criminal Code are generally satisfactory in the context of trademarks and designs, the Criminal Code provisions governing other IPR have been largely overlooked over the past two decades. For example, the criminal sanctions provisions do not provide adequate deterrence.

Poland: Thanks to Poland's more stringent IPR enforcement, physical piracy (*e.g.*, optical discs) is no longer the problem it once was. Online piracy of movies, music, and software, however, continues to be widespread, despite progress in enforcement. Rights holders continue to express concern that penalties for digital IPR infringement are not at levels sufficient to deter violations. In an effort to address these concerns, the government has put in place a national IPR strategy, entitled "Program for the Protection of Copyright and Related Rights 2011-2013," which aims to adopt EU IPR protection strategies.

In January 2012, the Polish government organized a series of stakeholder workshops on copyright law and related issues. The government is now in the process of updating legislation on the delivery of services by electronic means, and is also reviewing the possibility of updating Poland's 1994 copyright law. The government meets with rights holder groups and ISPs to increase cooperation in combating Internet piracy, and the government's interagency IPR working group met in January 2013.

Portugal: Portugal regularly conducts inspections for illegal goods at street fairs, markets, and festivals. However, it does not have adequate mechanisms to deter piracy over the Internet. Court cases involving IPR often take years to resolve, and rarely result in convictions. Furthermore, courts rarely order an injunction against the activity in question while a case is pending.

Romania: Romania remained on the Watch List in the 2012 Special 301 Report. Concern about counterfeit physical goods, infringing optical discs, and street piracy continued to decline, while increasing levels of piracy over the Internet, especially peer-to-peer downloading, remain a top concern. However, enforcement efforts have not adequately addressed the Internet piracy problem. The United States is concerned by an apparent decrease in the overall commitment to IPR enforcement in Romania, reflected in reduced cooperation among enforcement authorities, decreased cooperation of police and prosecutors with rights holders, and a decline in the number of enforcement actions. In 2010, changes to the Penal Code provided for IPR cases to be adjudicated in lower-level courts, whose judges and prosecutors have substantially less IPR expertise. Deficiencies in IPR protection and enforcement, including overall judicial inefficiency and a failure to impose deterrent sentences, have posed barriers to U.S. exports and investment.

Spain: Spain was removed from the Watch List in the 2012 Special 301 Report in recognition of efforts with respect to IPR protection and enforcement, including the December 2011 adoption of regulations implementing provisions of the Sustainable Economy Law (commonly known as the "*Ley Sinde*"), a law to combat copyright piracy over the Internet. However, the copyright industry continues to be disappointed by the Spanish government's pace of implementation of the *Ley Sinde* and to be concerned with the 2006 Prosecutor General's Circular that appears to decriminalize illegal peer-to-peer file sharing of infringing materials, further perpetuating the ongoing perception by the public and judges that unauthorized Internet downloads are not an illicit activity.

The Ministry of Culture's 2012-2015 Strategic Plan sets objectives and strategies to guide Spain's cultural policy over the next four years including strengthening the legal framework for the protection of rights derived from intellectual property. In 2013, the United States will continue to carefully monitor the implementation of the *Ley Sinde* provisions, as well as the reform of Spain's IP, criminal, and civil procedure laws. Despite enforcement efforts, piracy remains a significant problem.

Sweden: Sweden continues to grapple with widespread piracy on the Internet, but government enforcement efforts have begun to show positive results. Following the entry into force in April 2009 of legislation implementing the EU Enforcement Directive, several major pirate websites left Sweden. Nonetheless, Sweden still hosts some large on-line pirate sites -- several of which are listed in USTR's Notorious Piracy Markets report. Legal sales over the Internet have increased in recent years, in part because of better legal alternatives and Swedish enforcement efforts.

SERVICES BARRIERS

Telecommunications

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

In 2009, the Commission amended EU telecommunications legislation, including the Framework Directive, with a third telecoms package with the aim of harmonizing Europe's telecommunications markets. Perhaps the most significant change was the creation of the Body of European Regulators for Electronic Communications (BEREC). Increased Member State coordination, a larger role for the Commission, and the creation of BEREC were intended to help ensure fair competition and more consistency in the regulation of telecommunications markets within the EU. The Member States were supposed to transpose the new rules into the national laws by May 2011, but most have moved forward with much delay and with various discrepancies in interpretation. The Commission has begun infringement procedures against delinquent Member States.

The Digital Agenda Commissioner has announced that she will present new rules on net neutrality and network investments in early 2013. The new rules on network investment will seek to create a consistent, investment-friendly application of nondiscrimination and price control remedies to broadband networks in all Member States.

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

Member State Measures:

Austria: Austria has implemented all relevant EU directives. Legal reforms effective as of October 2010 anchored the independence of Austria's telecommunications regulators. The incumbent telecommunications provider, Telekom Austria, offers fixed-line networks, mobile telephony, and Internet access, including broadband, and is the market leader in all of these areas. The Austrian mobile market is highly competitive, in contrast to the more concentrated fixed-line market, and continues to expand, and retail rates for mobile communications continue to decline. If EU competition regulators approve a planned merger, the number of wireless operators in Austria will decrease to three. The broadband Internet market (fixed and mobile) is highly dynamic and growing, and while the incumbent's market share is still around 50 percent, currently 35 providers offer retail services.

France: In 2012, France finished enacting the provisions of the 2009 EU Telecommunications Directives. Free Mobile, the country's fourth mobile operator, entered the market in January 2012, forcing prices down. Competition for the fixed market remains strong. France Telecom continues to dominate the sector, notwithstanding its various efforts to partner with other operators to avoid duplication in fiber optic installation.

Germany: Despite increased competition in some sectors of Germany's telecommunications market, Deutsche Telekom (DT) retains a dominant position in a number of key market segments, including local loop and broadband connections. DT's competitors continue to call for more effective regulation of the competitive environment. Nonetheless, since the passage of the Telecommunications Act in 2003, DT's share has decreased to below 60 percent in the fixed-line market and to below 45 percent in the broadband market.

Greece: Greece has incorporated the 2009 EU telecommunications package into national legislation. The 2009 EU telecommunications package includes European Directives 2009/136/EC and 2009/140/EC. Both Directives are included in Law 4070 that was passed on October 4, 2012.

Italy: Telecom Italia (TI), the former state-owned monopoly operator, is the largest telecommunications provider in Italy. Domestic political pressure has prevented foreign operators (*e.g.*, AT&T in 2007) from gaining a controlling interest in TI. However, as of November 2012, Telecom Italia is considering a proposed significant investment by an Egyptian. TI owns most of Italy's fixed-line telecommunications infrastructure, and competitors have complained about high access costs and allegedly unfair practices aimed at retaining TI customers. TI's market share, however, is decreasing, with its share of the fixed-line market declining to approximately 66 percent in the second quarter of 2012 (down from 67.3 percent in the second quarter of 2011). Similarly, TI's share of the Italian retail broadband market was 52.4 percent in the second quarter of 2012 (compared to almost 54 percent in the second quarter of 2011). TI's market share for mobile subscribers was 34.9 percent in the second quarter of 2012 (an increase of 0.6 percent over the second quarter of 2011). Although TI has expressed interest in upgrading its broadband infrastructure, it has also voiced concern that the main beneficiaries of TI broadband investment would be businesses selling goods and services online, in particular, large U.S. companies. At the end of November 2012, Telecom Italia was also considering whether to separate its fixed-line assets into a new company and sell a stake to the state-owned agency *Cassa Depositi e Prestiti* (CDP) in order to free economic resources and to speed up the rollout of a national broadband network.

Television Broadcasting and Audiovisual Services

The 2007 EU Directive on Audiovisual Media Services (AVMS) amended and extended the scope of the Television without Frontiers Directive (which already covered traditional broadcasting, whether delivered by terrestrial, cable, or satellite means) to also cover audiovisual media services provided on-demand, including via the Internet. EU Member State content quotas for broadcasting remain in place. On-demand services are subject to somewhat less restrictive provisions than traditional broadcasting under the AVMS Directive, which does not set any strict content quota, but still requires Member States to ensure that on-demand services encourage production of, and access to, EU works. This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of EU works or to the prominence of EU works in the catalogues of video on-demand services. EU Member States had to implement the AVMS Directive into their national law by December 19, 2009. In its first report on the application of the Directive from May 2012, the Commission announced that 25 Member States have notified complete implementation into their national legislation. Poland and Belgium, however, still need to adapt their legislation, and the former is currently subject to an infringement procedure for failing to fully implement the Directive.

Member State Measures:

Several EU Member States maintain measures that hinder the free flow of some programming or film exhibitions. A summary of some of the more significant restrictive national practices follows.

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

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film with more than two prints, or through staggered and interlocking projection techniques, in such a way as to account for more than 30 percent of the multiplex's weekly shows. Theatrically released feature films are not allowed to be advertised on television.

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

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

Spain: For every three days that a film from a non-EU country is screened, in its original language or dubbed into one of Spain's languages, one EU film must be shown. This ratio is reduced to four to one if the cinema screens a film in an official language of Spain and keeps showing the film in that language throughout the day. In addition, broadcasters and providers of other audiovisual media services must annually invest 5 percent of their revenues in the production of EU and Spanish films and audiovisual programs. In 2010, the government revised the audiovisual law and imposed restrictions on non-EU ownership (limited to no more than 25 percent share) and leasing of AV licenses, which have negatively impacted U.S. investors.

Legal Services

Austria, Cyprus, Greece, Hungary, Lithuania, Malta, and Slovakia require EU nationality for full admission to the bar, which is necessary for the practice of EU and Member State law. Belgium and Finland require EU nationality for legal representation services.

Member State Measures:

Belgium: U.S. nationals may practice foreign law in Belgium only if they are associated with qualified members of the Belgian bar. The Belgian Judicial Code provides that only Belgian or EU lawyers can be fully admitted to the bar. An exception exists for foreign non-EU lawyers who meet certain requirements.

Bulgaria: The July 2010 amendments to the Bulgarian Bar Act allow law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. Foreign lawyers registered in another EU Member State are also allowed to practice law or register a local office in partnership with other foreign or local lawyers. However, at least one of the partners has to be registered both in Bulgaria and in another EU Member State if the local partnership is to use an internationally recognized name.

Czech Republic: U.S.-educated lawyers may register with the Czech bar and take an equivalency exam, but they are limited to practicing home country (U.S.) law and international law. In contrast to EU-based law firms, U.S. law firms cannot establish Czech branches to practice law (*i.e.*, operate directly through their home legal entities). Attorneys from U.S. law firms admitted as foreign lawyers, together with Czech lawyers, may establish local partnerships.

Finland: Citizens of countries outside the European Economic Area (EEA) can practice domestic and international law and represent clients in court, but they are not entitled to the title of Asianajaja (Attorney at Law). Only a Finn or an EEA citizen who meets certain requirements may be accepted as an Asianajaja. In addition to conferring prestige, the Asianajaja designation helps in the solicitation of clients, because Asianajaja may be held accountable for their actions by the Board of the Bar Association and by the Chancellor of Justice, while other lawyers and legal advisers are not subject to such oversight.

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

Portugal: Portuguese law requires that practicing lawyers be members of the Portuguese Bar Association. The Portuguese Bar Association requires that members graduate from a Portuguese or Brazilian law school and that foreign lawyers be citizens of the EU or a country with a reciprocal agreement permitting foreign lawyers to be bar-certified. U.S. citizens with a law degree may apply as legal trainees if the law degree is recognized by a Portuguese law school and if the U.S. citizen has a valid Portuguese residence authorization. The successful completion of legal internship and the mandatory Bar Association exams enable the U.S. citizen to practice law in Portugal.

Accounting and Auditing Services

Member State Measures:

Portugal: Portuguese law requires that practicing accountants and auditors be accredited by one of two Portuguese accounting associations, which require legal residency. Portuguese language ability and citizenship of a country with a reciprocal agreement or EU citizenship are prerequisites for membership.

Energy Services

Member State Measures:

Ireland: Industry reports that bureaucratic delays and other obstacles that benefit vested local interests and state-owned enterprises have impeded new entrants in the energy sector, consequently raising the costs of doing business in Ireland. Significant U.S. investments in a waste-to-energy project and a liquefied natural gas terminal proposal stand to be cancelled as a result of such delays.

EU Enlargement

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

INVESTMENT BARRIERS

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

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

In July 2010, the Commission issued two communications aimed at defining a comprehensive EU international investment policy and establishing transitional arrangements for investment agreements between Member States and third countries. Under these communications, which were presented to the European Parliament and EU Member State governments for endorsement under the co-decision process, the Commission will "authorize" the more than 1,200 BITs concluded by Member States, including some with the United States, to remain in force (though the Commission will evaluate their content to assess their conformity with EU law and the EU's common commercial policy). A regulation establishing transitional arrangements for existing BITs between Member States and third countries, based on the Commission's July 2010 communications, was agreed between the Council and the Parliament in July 2012, and went into effect in January 2013.

Member State Measures:

Bulgaria: Weak corporate governance remains a problem in Bulgaria. Although legislative protection for minority shareholders has been improved through insolvency rules in Bulgaria's Commercial Code and 2007 changes to its Law on Public Offering of Securities, enforcement of these statutory provisions is inadequate.

Cyprus: Cypriot law imposes significant restrictions on the foreign ownership of real property. Non-EU residents may only purchase a single piece of real estate (not to exceed three *donums*, or roughly one acre) for private use (*e.g.,* a holiday home). Exceptions can be made for projects requiring larger plots of land, but are rarely granted. Under the Registration and Control of Contractors Laws of 2001 and 2004, only citizens of EU Member States have the right to register as construction contractors in Cyprus, and non-EU entities are not allowed to own a majority stake in a local construction company. Non-EU natural persons or legal entities may bid on specific construction projects, but only after obtaining a special license from the Cypriot Council of Ministers.

France: Pursuant to a November 2004 law that streamlined the French Monetary and Financial Code, the State Council defined a number of sensitive sectors in which prior approval would be required before foreign acquisition of a controlling equity stake is permitted. A December 2005 government decree (Decree 2005-1739) lists the 11 business sectors in which the French government will monitor, and can potentially restrict, foreign ownership through a system of "prior authorization."

The government of France has expressed concern over the acquisition of "strategic" companies, whose stock prices fell steeply in the wake of the financial crisis. Near the end of 2008, then-President Sarkozy announced the establishment of a "strategic investment fund," to assume stakes in companies with "key technologies." The fund would be run as a "strategic priority" by the *Caisse des Depots et Consignations*, a state-sponsored financial institution and France's largest institutional investor, under parliamentary supervision. The government has also asked the *Caisse des Depots et Consignations* to work as a domestic buffer against foreign takeovers by increasing its stake in French companies. The government may also become directly involved in mergers and acquisitions, using its "golden share" in state-owned firms to protect perceived national interests.

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

Italy: In July 2012, the government announced a new incentive scheme for photovoltaic solar energy production that provides advantages for plants built with EU-made components. All made-in-the-EU photovoltaic (PV) plants smaller than 12kW are automatically eligible for a premium over the normal incentivized feed-in-tariff (FiT). PV plants that do not meet the requirements for direct access to the FiT must enroll in a special register, and their ability to obtain the FiT is based on a ranking, the criteria for which includes whether they use components produced in the EU. In the case of PV plants larger than 12kW, those built with made-in-EU components qualify for a higher ranking position and therefore have a better opportunity of getting both the incentivized tariff and the premium mentioned above.

Lithuania: U.S. citizens and foreign investors report difficulties in obtaining and renewing residency permits. In principle, Lithuanian embassies abroad are able to initiate the application process for residency permits, but in practice, U.S. citizens only are able to begin the residency permit process upon arrival in Lithuania. Decisions by the Migration Office regarding the issuance of residency permits can take up to six months. Non-Lithuanians are generally not able to buy agricultural or forestry land. As part of its EU accession agreement, the Lithuanian government was required to eliminate this restriction by 2011. However, that year the government successfully negotiated with the EU to postpone the removal of the restriction until 2014.

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

GOVERNMENT PROCUREMENT

The EU is a signatory to the WTO Agreement on Government Procurement (GPA).

U.S. suppliers participate in EU government procurement, but the lack of EU statistics makes it difficult to assess the level of U.S. and non-EU participation.

In 2004, the EU adopted a revised Utilities Directive (2004/17), covering purchases in the water, transportation, energy, and postal services sectors. This directive requires open, competitive bidding procedures, but discriminates against bids with less than 50 percent EU content that are not covered by an international or reciprocal bilateral agreement. The EU content requirement applies to foreign suppliers of goods and services in the following sectors: water (production, transport, and distribution of drinking water); energy (gas and heat); urban transport (urban railway, automated systems, tramway, bus, trolley bus, and cable); and postal services.

In 2011 and 2012, the European Commission published four legislative proposals in the area of public procurement. One of these proposals, to regulate access of third-country goods and services to the EU's internal market in public procurement (relative to the access provided to EU goods and services in third-country public procurement markets), is being debated in the European Parliament and in the EU Member States as of the time of drafting of this report. In addition, if this proposal is approved, the above-mentioned provisions in the Utilities Directive would be dealt with under the Regulation on Foreign Access to the EU public procurement market, and become subject to proposed negotiations on reciprocal access. U.S. access to the EU's non-GPA covered procurement would also be dealt with under this new Regulation.

Member State Measures:

Austria: U.S. firms continue to report a strong EU bias in government contract awards. U.S. industry asserts that invitations for bids for the Austrian government's vehicle fleet are tailored for German competitors. Additionally, offset requirements can reach up to 200 percent of the value of the contract for major defense purchases. The ceiling for contracts to be awarded without public tenders is set relatively high at €100,000 ($130,000). Although Austria's power utilities are majority government-owned, under a European Commission ruling (2008/585/EC), they are exempted from having to issue public tenders for power generation projects.

Bulgaria: The public procurement process in Bulgaria is not always transparent. There are persistent complaints that some tenders are so narrowly defined that they appear tailored to a specific company. U.S. companies also complain that they face difficulties having their certification documents accepted to qualify as bidders on public procurement projects.

Czech Republic: In 2012, the Czech government adopted a major public procurement reform bill which addresses some transparency and corruption concerns. The legislation, which came into effect in April 2012, lowers the threshold for the application of procurement rules to one million CZK ($55,000). It also requires more than one bidder for all procurements and publication of tender specifications. The law also requires bidders to disclose more of their ownership structure in the bidding process. However, it maintains loopholes that could permit bidders to subcontract to anonymously-held companies. The Ministry of Justice and the Ministry of Finance are now working on related legislation requiring full identification of ownership for all recipients of public tenders. The Ministry of Regional Development is developing guidelines to make the process clearer for bidders and for state institutions that issue tenders.

France: The French government continues to maintain shares in several major defense contractors (EADS 0.06 percent, Safran 30.20 percent, and Thalès 27.00 percent as of November 2012). It is generally difficult for non-EU firms to participate in French defense procurement and, even when the competition is among EU suppliers, French companies are often selected as prime contractors.

Greece: Greece imposes onerous qualification requirements on companies seeking to bid on public procurement tenders. Companies must submit documentation from competent authorities indicating that they have paid taxes, have not been in bankruptcy, and have paid in full their social security obligations for their employees. All managing directors and board members of companies that want to participate in procurements must submit certifications from competent authorities that they have not engaged in fraud, money laundering, criminal activity, or similar activities. It is difficult for U.S. firms to comply with these requirements, because there are no competent authorities in the United States that issue these types of certifications.

The U.S. Embassy in Athens and the Greek Ministry of Development reached an agreement in late 2008 that would allow U.S. companies to submit sworn, notarized, and translated statements from corporate officers, along with an official statement from the U.S. Embassy in Athens stating that no U.S. federal authority issues the documents otherwise required under Greek procurement law. Despite this agreement, there remains considerable confusion among Greek authorities as to how U.S. firms may comply with these requirements.

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

The Ministry of Development announced a new electronic procurement platform for public sector tenders in February 2013. The National System of Electronic Public Contracts (ESIDIS) began operating a pilot program (www.eprocurement.gov.gr) on February 4 that will become available to all public sector agencies by April and to all local government authorities by May. According to the Greek government, the system, once fully operational, is intended to improve transparency by allowing citizens and suppliers to check on tenders.

Hungary: Inadequate transparency in public procurement continues to be a significant problem in Hungary. Citing governing parties' disinterest, Hungarian non-governmental organizations have abandoned efforts to reach an agreement on the reform of campaign finance laws, which could have helped to reduce politically motivated procurement decisions and make public procurement more transparent and competitive. In January 2012, a new, shorter, and more flexible Public Procurement Act came into force, although some experts consider the new law too vague, and as a result, ineffective. State-owned companies or those close to the government still appear to have an advantage over private players in public tenders.

Italy: Italy's public procurement practice is often criticized for a lack of transparency, which has created obstacles for some U.S. firms bidding on public procurement. Laws implemented in the mid-1990s reduced corruption, but industry asserts that it still exists, especially at the local level. Italian press has reported on alleged corruption involving the abuse of emergency procurement laws. In 2012, the Italian parliament approved an anticorruption bill which, among other things, introduces greater transparency and more stringent procedures in the public procurement process. To increase transparency, the Italian government has also started publishing online information regarding the use of public funds including data on procurement.

Lithuania: The public procurement process in Lithuania is not always transparent. There are persistent complaints that some tenders are so narrowly defined that they appear tailored to a specific company. The government has made procurement reform a top priority and is starting to improve transparency by implementing online public procurement of its central purchasing body, the central project management agency. Now, over 70 percent of public procurement occurs online. Since 2003, the Lithuanian government has often required offset agreements as a condition for the award of contracts for procurement of military equipment.

Portugal: U.S. firms report that the Portuguese government tends to favor EU firms, even when bids from U.S. firms are technically superior or lower in price. U.S. firms also report that they are more successful when bidding as part of consortia or as part of joint ventures with Portuguese or other EU firms. U.S. based firms may bid on public tenders covered by the GPA, while EU subsidiaries of U.S. firms may bid on all public procurement contracts covered by EU directives.

Romania: Romania requires offsets as a condition for the awarding of defense contracts. Romania revised its public procurement law in 2010, particularly with regard to procedures for handling challenges to contract awards. While an award must still be temporarily suspended if a losing bidder challenges it, the revised law allows procuring entities to conclude the contract within 11 days after a decision by the National Complaint Council or a court upholding the initial award, even if the challenger chooses to appeal that decision. Should the Complaint Council find the challenge ungrounded, the procuring entity can withhold a percentage of the plaintiff's bid participation fee as a penalty.

Slovenia: U.S. firms continue to express concern that the public procurement process in Slovenia is non-transparent. Other complaints include short time frames for bid preparation, lack of clarity in tendering documentation, and opacity in the bid evaluation process. One specific complaint involves the quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases. The NRC has extraordinary powers to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. There also are concerns that the NRC favors EU, and especially Slovenian, firms under its ambiguous "national interest" standard, regardless of cost or doubts about a firm's ability to deliver and service its products.

United Kingdom: The United Kingdom (UK) requires offsets in its defense procurement, but has no set percentage for them. Bidders are free to determine their own level of "industrial participation," as well as with whom to do business. The UK defense market is, to an increasing extent, defined by the terms of the 2005 Defense Industrial Strategy (DIS), which highlights specific sectors and capabilities that the government believes are necessary to retain in the UK. In these areas, procurement will generally be based on partnerships between the Ministry of Defense and selected companies. The DIS does not preclude partnerships with non-UK companies, and U.S. companies with UK operations may be invited by the Ministry of Defense to form partnerships in key programs. Outside of those areas of partnership highlighted in the DIS, defense procurement is to a large extent an open and competitive process.

The UK has implemented the EU Defence and Security Procurement Directive through the Defence and Security Public Contracts Regulations 2011. One key provision of the Regulations is a prohibition of industrial participation or offsets. Although the UK's source selection process appears open and competitive, there appears to be a perception among U.S. defense industries that the UK Ministry of Defence prefers national and EU equipment solutions over superior U.S. offerings.

The U.S.-UK Defense Trade and Cooperation Treaty took effect in April 2012 and is designed to ease the burdens associated with obtaining permission to export military technologies between the U.S. and UK. A key aspect of the treaty is to create an approved community of known and trusted corporate entities that have a streamlined export license approval process. Since implementation, the list of these vendors has grown substantially and this is seen as a significant reduction of trade barriers between the United States and the UK.

SUBSIDIES

Government Support for Airbus

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

Airbus SAS, the successor to the original Airbus consortium, is owned by the European Aeronautic, Defense, and Space Company (EADS), which is now the second largest aerospace company in the world. Accounting for more than half of worldwide deliveries of new large civil aircraft over the last few years, Airbus is a mature company that should face the same commercial risks as its global competitors.

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

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

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

In September 2009, the UK government announced it would lend plane maker Airbus £340 million ($540 million) in launch aid to develop its new wide-body aircraft, the A350XWB. The loan for the A350 XWB model comes partly from the UK government's £750 million ($1.2 billion) Strategic Investment Fund. The launch aid is intended to safeguard 1,200 jobs at Airbus's plants in Filton, near Bristol, and Broughton in north Wales. It also secures Britain's share of the work on the Airbus aircraft and a further

5,000 jobs at Airbus suppliers. Airbus's sites in the UK specialize in wing manufacturing, but also make landing gear and fuel integration systems.

Government Support for Airbus Suppliers

Member State Measures:

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

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

France: In addition to the launch aid that the French government provided for the development of the A380 and A350 aircraft, France provides assistance in the form of reimbursable advances for the development by French manufacturers of products such as planes, aircraft engines, helicopters, and onboard equipment. French appropriations for new programs included €148 million in support of research and development in 2011. In 2012, such support decreased to €120 million. The 2011 government budget included €230 million in reimbursable advances for the civil aviation. In 2011, the government financed the military airplane A400 with redeemable advances. To have sufficient redeemable advances available for the A400 the government financed the A350 with €450 million from a government fund "Grand Emprunt" now called "Investment for the future." The government's 2012 budget included €148 million in reimbursable advances, and €143 million was in the budget for 2013.

In July 2008, Airbus, the parastatal *Caisse des Dépôts et Consignations*, and the Safran Group announced the launch of the AEROFUND II equity fund, capitalized with €75 million destined for the French aeronautical sector. The equity fund's objective is to support the development of the small- and medium-sized subcontractors that supply the aeronautical sector. In March 2009, the state's Strategic Investment Fund (FSI) and AEROFUNDs I and II purchased a nearly 20 percent stake in Daher, a French company, for €80 million, to help that private aerospace group accelerate its development and seize strategic opportunities. Since its creation in 2008, AEROFUND II has made investments in about ten companies, including helping to finance Mecachrome's purchase of Mecahers, and Prosnic's acquisition of Industron. The Fund also helped finance the sale of Esterel Technologies to the U.S. group Ansys in 2012. In 2013, its unit ACE Management will work on the creation of a third AEROFUND. On April 14, 2010, the European Commission authorized France to grant reimbursable advances totaling €35.14 million to Daher-Socata and Sogerma for two research and development projects for the future Airbus A350XWB. In addition, the FSI allocated €1.5 billion for the development of environmentally safe planes and €500 million for aerospace, through a combination of development support, reimbursable advances, and direct equity investments. In 2007, OSEO (the state-backed company that provides financial support to innovative small and medium sized enterprises) signed a contract with the French Civil Aviation Authority for European aerospace project development to finance up to 40 percent of spending. In 2010, OSEO announced €80 million in reimbursable advances over two years for French small- and medium-sized enterprise sub-contractors and suppliers of large aerospace firms. Zodiac Aerospace received €230 million in reimbursable advances during the August 2008 to August 2009 period. In 2009, Latécoère received €50.4 million in reimbursable advances. In 2011, Figeac Aero received €10 million and Slicom received €1 million. The government pledged €60 million in aid in 2012 to assist the company Sky Aircraft to continue development of a light passenger aircraft.

Government Support for Aircraft Engines

Member State Measures:

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

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

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

Other Civil Aircraft

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

CUSTOMS ADMINISTRATION

Notwithstanding the existence of customs laws that govern all EU Member States, the EU does not administer its laws through a single customs administration. Rather, there is a separate agency responsible for the administration of EU customs law in each of the EU's 27 Member States. No EU institutions or procedures ensure that EU rules on classification, valuation, origin, and customs procedures are applied uniformly throughout the 27 Member States of the EU. Moreover, no EU rules require the customs agency in one Member State to follow the decisions of the customs agency in another Member State with respect to materially identical issues.

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

Not only are the Committee and other EU-level institutions ineffective tools for achieving the uniform administration and application of EU customs law, the EU also lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided separately by each Member State's tribunals, and rules regarding these reviews can vary from Member State to Member State. Thus, a trader encountering non-uniform administration of EU customs law in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the European Court of Justice (ECJ). The judgments of the ECJ have effect throughout the EU. However, referral of questions to the ECJ generally is discretionary, and ECJ proceedings can take years. Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is a cumbersome and frequently time-consuming process.

The United States has raised each of the preceding concerns with the EU in various fora, including the WTO Dispute Settlement Body. The concerns have taken on new prominence in light of the expansion of the EU and the focus of the WTO on trade facilitation. In the WTO trade facilitation negotiations, WTO Members are considering proposals that would clarify the requirement of GATT 1994 Article X that all WTO Members, including WTO Members that are customs unions, uniformly apply and give effect to a Member's customs laws, regulations, judicial decisions, and administrative rulings. EU officials claim that the Modernized Community Customs Code (MCCC), which formally entered into force in 2008, will streamline customs procedures and will apply uniformly throughout the customs territory of the EU. Implementation of the MCCC is expected to be completed by 2013. The United States will monitor its implementation closely, focusing on its impact on uniform administration of EU customs law.

ELECTRONIC COMMERCE

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

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

Agreement on the Transfer of Air Passenger Name Records to the U.S. Bureau of Customs and Border Protection.

The Safe Harbor Framework provides U.S. companies with a simple, streamlined means of complying with the EU rules. It is the result of an agreement that allows U.S. companies that commit to a series of data protection principles (based on the EU Data Protection Directive) and that publicly state their commitment by "self-certifying" on a dedicated website (http://www.export.gov/safeharbor) to continue to receive personal data from the EU. Signing up to the Safe Harbor Framework is voluntary, but the rules are binding on signatories. A failure to fulfill commitments under the Safe Harbor Framework is punishable either as an unfair or deceptive practice under Section Five of the U.S. Federal Trade Commission Act or, for air carriers and ticket agents, under a concurrent U.S. Department of Transportation statute.

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

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

The United States actively supports the Safe Harbor Framework and encourages EU institutions and Member States to continue to use the flexibility offered by the EU Data Protection Directive to avoid unnecessary interruptions in data flows to the United States. Furthermore, the United States expects the EU and Member States to fulfill their commitment to inform the United States if they become aware of any actions that may interrupt data flows to the United States.

The European Commission is currently reviewing the EU Data Protection Directive as part of a broader review of the EU legislative framework for data protection, encompassing both commercial and judicial/law enforcement uses of data. In January 2012, the Commission issued its legislative proposals, initiating a potentially lengthy process of consultation and negotiation with EU Member States and the European Parliament. Given the importance of this issue to the business models of many U.S. companies, the United States is closely monitoring the development of this revised framework legislation to ensure that it does not adversely impact transatlantic trade and investment.

Member State Measures:

France: Since 2011, sales of electronic books (e-books) by foreign merchants fall under a French law that sets a fixed price that French retailers may charge on a particular hard copy book. Since taking office in May 2012, the Hollande administration has undertaken a review of digital economic policy that may result in moves to levy additional taxes on certain online companies. The government, which has the backing of a consortium of domestic media and telecommunications companies in this effort, is seeking new funding for France's IT infrastructure and cultural industries. In early 2013, the French government is expected to unveil a comprehensive digital economy strategy – known as the Lescure Report -- that will include recommendations in this area, as well as proposals that would update regulations on copyright protection and data privacy.

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was $1.0 billion in 2012, an increase of $600 million from 2011. U.S. goods exports in 2012 were $1.3 billion, up 9.4 percent from the previous year. Corresponding U.S. imports from Ghana were $291 million, down 62.6 percent. Ghana is currently the 73rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ghana was $2.3 billion in 2011 (latest data available), up from $2.1 billion in 2010.

IMPORT POLICIES

Tariffs

Ghana is a member of the World Trade Organization (WTO) and the Economic Community of West African States (ECOWAS). According to the WTO, Ghana's average most favored nation (MFN) applied tariff rate in 2010 was 12.8 percent. For agricultural goods, the average applied tariff is 17.4 percent, and for non-agricultural products it is 12.3 percent. Along with other ECOWAS countries, Ghana adopted a common external tariff (CET) with five bands. The 5 tariff bands are: zero duty on social goods (*e.g.*, medicine, publications); 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 35 percent duty will be charged on goods in certain sectors that the government seeks to protect, such as poultry and rice. Ghana currently maintains 190 exceptions to the CET, and the highest applied tariff is 20 percent.

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

Nontariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 12.5 percent value-added tax (VAT) plus a 2.5 percent National Health Insurance levy on the duty-inclusive value of all imports as well as on locally produced goods, with a few selected exemptions. In addition, Ghana imposes a 0.5 percent ECOWAS surcharge on all goods originating in non-ECOWAS countries and charges 0.4 percent of the free on board (FOB) value of goods (including VAT) for the use of the automated clearing system, the Ghana Community Network. Under the Export Development and Agricultural Investment Fund (EDAIF) Act, Ghana imposes a 0.5 percent duty on all non-petroleum products imported in commercial quantities. Ghana also applies a 1 percent processing fee on all duty free imports.

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

An examination fee of 1 percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 2.5 percent to 50 percent of the CIF value. The

Customs Division of the Ghana Revenue Authority maintains a price list that is used to determine the value of imported used vehicles for tax purposes. There are complaints that this system is not transparent because the price list used for valuation is not publicly available.

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

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

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

GOVERNMENT PROCUREMENT

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Since December 2003, Ghana’s Parliament has enacted six laws designed to implement Ghana’s obligations under the WTO TRIPS Agreement. The new laws pertain to copyright, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Ghana is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the World Intellectual Property Organization (WIPO) Copyright Treaty, and the African Regional Industrial Property Organization. In 2012 Ghana ratified the WIPO Performances and Phonograms Treaty which entered into force on February 16, 2013.

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

There is virtually no government-initiated enforcement. However, the Copyright Office, which is under the Attorney General’s Office, periodically initiates raids on markets for pirated works. The Customs Service has collaborated with concerned companies to inspect import shipments.

SERVICES BARRIERS

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

Ghana's investment code excludes foreign investors from participating in four economic sectors: petty trading; the operation of taxi and car rental services with fleets of fewer than 10 vehicles; lotteries (excluding soccer pools); and the operation of beauty salons and barber shops.

INVESTMENT BARRIERS

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

Foreign investors in Ghana must contend with a highly regulated economy, a politicized business community, and lack of transparency in certain government operations. Entrenched local interests can derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Corruption also remains a concern. The government does not implement anticorruption laws effectively, and some officials engage in corrupt practices. For example, some judicial officials accept bribes to expedite or postpone cases or to "lose" records. Certain government local content and local participation initiatives and measures are also raising concerns. Measures in the oil and gas industry could soon be re-introduced to the new Parliament. Such measures would require a minimum 5 percent Ghanaian ownership in any company receiving a petroleum license and at least 10 percent ownership for companies that provide petroleum services and would also prescribe levels of Ghanaian employment in the industry.

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

Foreign investment projects must be registered with the Ghana Investment Promotion Center. While the registration process is intended to be completed within no more than five business days, the process often takes significantly longer. Foreign investments are also subject to the following minimum capital requirements: $10,000 for joint ventures with a Ghanaian partner; $50,000 for enterprises wholly-owned by a non-Ghanaian; and $300,000 for trading companies (firms that buy or sell finished goods) either wholly or partly owned by non-Ghanaians entities. Trading companies are also required to employ at least 10 Ghanaian nationals.

OTHER BARRIERS

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

Port inefficiencies increase import and export costs. During the last quarter of 2002, Ghana's Customs Service phased in an automated customs declaration system to facilitate customs clearance. Although the new system has reduced the number of days for clearing goods through the ports, inefficiencies remain because complementary services from Ghanaian government agencies, banks, destination inspection companies, and security services have not been effective. Such inefficiencies are a significant contributing factor to the absence of a direct shipping route to Ghana, which in turn has a significant adverse impact on U.S. exports.

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $1.4 billion in 2012, a decrease of $71 million from 2011. U.S. goods exports in 2012 were $5.9 billion, down 3.8 percent from the previous year. Corresponding U.S. imports from Guatemala were $4.6 billion, down 3.4 percent. Guatemala is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was $1.1 billion in 2011 (latest data available), slightly higher than in 2010.

Free Trade Agreement

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

The United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011, and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

Tariffs

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

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

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

Nontariff Measures

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

Guatemala's denial of claims for preferential treatment for U.S. products under the CAFTA-DR continues to be a source of difficulty in exporting to Guatemala. U.S. companies have raised concerns that the Guatemalan Customs Administration (part of the Superintendence of Tax Administration, or SAT) has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information needed for certifications of origin. The United States raised this issue with the Customs Administration and received assurances that future changes would be communicated in advance and be available on the tax and customs website: http://portal.sat.gob.gt/sitio/. Despite prior assurances, these changes are being implemented on a retroactive basis, without advance notification. In 2010, Guatemala also began reviewing some imports from prior years and assessing duties and penalties for certifications of origin that were deemed to have been improperly completed or were found to have clerical or technical errors or mistakes. In October 2011, the CAFTA-DR FTC took a decision agreeing on the "Common Guidelines for the Interpretation, Application and Administration of Chapter Four of the Dominican Republic-Central America-United States Free Trade Agreement," which affirmed that an importer, exporter, or producer, in a CAFTA-DR country shall be given a reasonable period of time to submit corrected certifications of origin. The government of Guatemala had assured the United States that these "Common Guidelines" would help resolve this particular type of problem.

Nonetheless, in 2011 and 2012, there continued to be an increase in the initiation by the Guatemalan Customs Administration of audits of claims for preference under the CAFTA-DR for merchandise that entered in prior years. Such audits have resulted in the denial of preferential treatment under the CAFTA-DR, as well as in collection of the back duties assessed and a 12 percent VAT for up to the three previous years, and a fine of up to double the rate of the tariff. Such penalties have reportedly been imposed in cases in which the claims for the preferential treatment under the CAFTA-DR were not deliberately incorrect. For example, stakeholders report that Guatemalan customs authorities are challenging declared tariff classifications, as to which there should not be any confusion, and trying to reclassify products as products subject to a higher tariff. These practices raise concerns that the Customs Administration appears to be denying U.S. products the preferential treatment under the CAFTA-DR and instead imposing tariffs and other retroactive charges as a means of increasing revenue to meet overall yearly revenue targets. The United States will continue to raise these concerns with Guatemala.

In early 2012, the Guatemalan government also approved a new law that modified customs procedures. Importers of U.S. products and business chambers that represent U.S. companies have raised concerns with the new customs law which have created problems and delays for the importation of goods. Due to complaints about the law, the Guatemalan Congress is considering revisiting the customs law. The United States will continue to monitor the progress of the new customs law to address any possible trade obstacles.

GOVERNMENT PROCUREMENT

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

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

Some U.S. companies have complained that the procurement process is not transparent, especially when the government makes a direct purchase and when a CAFTA-DR covered entity does not provide the required 40 days from the notice of procurement for interested parties to prepare and submit bids. There has been an increased tendency by some government entities to undertake major procurements via unusual special purpose mechanisms, such as on an emergency basis, enabling the procuring entity to make a direct purchase from a pre-selected supplier and avoid competitive bidding and the public tender process. The government has canceled some direct purchases after receiving complaints from interested bidders. The United States will continue to engage with the government of Guatemala to promote fair and transparent procurement procedures consistent with the CAFTA-DR provisions. This practice raises questions regarding Guatemala's government procurement obligations under CAFTA-DR.

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

EXPORT SUBSIDIES

Under the CAFTA-DR, Guatemala may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Guatemala was permitted to maintain such measures through December 31, 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Guatemalan government in an effort to ensure compliance with its CAFTA-DR obligations.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala remained on the Watch List in the 2012 Special 301 Report. The United States recognized that Guatemala continued to make progress in 2011 by passing legislation to create penalties for the production and distribution of counterfeit medications. The report also recognized Guatemala's efforts to increase enforcement actions, highlighting the continued efforts of the intellectual property rights (IPR) prosecutor and the increase in seizures and corresponding convictions of IPR violators. However, inadequate allocation of resources for the IPR prosecutor's office was noted as an area of concern. The report highlighted the need for continued efforts to ensure that proper resources are available for its enforcement activities, to achieve improved coordination among enforcement agencies, and to continue its enforcement efforts against manufacturers of pirated and counterfeit goods.

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

SERVICES BARRIERS

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala.

INVESTMENT BARRIERS

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

Two U.S. companies operating in Guatemala filed claims under the Investment Chapter of the CAFTA-DR against the government of Guatemala with the Centre for the Settlement of Investment Disputes (ICSID) in 2007 and 2010. The ICSID arbitration issued its ruling on the first case in June 2012 and stated that the government had infringed the minimum standard of treatment under Article 10.5 of the CAFTA-DR. The ICSID required the government of Guatemala to pay more than $11.3 million to the company. The second case remains pending before the ICSID.

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

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

OTHER BARRIERS

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

HONDURAS

TRADE SUMMARY

The U.S. goods trade surplus with Honduras was $1.1 billion in 2012, down $559 million from 2011. U.S. goods exports in 2012 were $5.7 billion, down 6.7 percent from the previous year. Corresponding U.S. imports from Honduras were $4.6 billion, up 3.3 percent. Honduras is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras was $930 million in 2011 (latest data available), down from $999 million in 2010.

Free Trade Agreement

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

The United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011, and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

Tariffs

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

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

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

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including Honduras, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR's rules of origin. Honduras passed a law in August 2011 establishing a new inter-institutional Presidential Commission for the Modernization of Customs Services (COPREMSA in Spanish) with the intent to improve the transparency and efficiency of customs procedures. All CAFTA-DR countries, including Honduras, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share with each other information to combat illegal trans-shipment.

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

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Honduran government entities, including key ministries and state-owned enterprises, on the same basis as Honduran suppliers. The anticorruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Since the CAFTA-DR came into effect, Honduran government agencies have routinely declared "emergencies" to circumvent competitive bidding procedures for public procurements, including for large infrastructure projects. Implementation of the CAFTA-DR eliminated the requirement that U.S. firms must act through a local agent (with at least 51 percent Honduran ownership) to participate in public tenders. A positive development was the decision of the Honduran Public-Private Partnership Commission, responsible for designing and implementing public infrastructure tenders, to announce in 2012 that it would offer the construction of a new commercial airport as an international bid covered under CAFTA-DR rather than sole source the construction to an existing concessionaire.

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

EXPORT SUBSIDIES

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2010, Honduras reestablished its intellectual property rights (IPR) prosecutor's office as an independent entity within the Public Ministry, reversing a 2009 decision to merge it into the common crimes office. While the IPR prosecutor's office has achieved successes in seizing counterfeit goods, the United States remains concerned about the prospects for effective IPR enforcement in Honduras given that its IPR enforcement office lacks necessary personnel and resources to wage a truly effective campaign. In 2012, the United States engaged extensively with Honduras as it was redrafting its trademark law. The United States will continue to monitor Honduras' implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

Hondutel, the government-owned incumbent telecommunications operator, officially lost its monopoly on fixed-line telephony services on December 25, 2005. The government of Honduras is currently engaged in a tender offering to private investors of 49 percent of *Empresa Hondureña de Telefonia Movil* (Ehmovitel), a new mobile services subsidiary of Hondutel. Although there are regulations in place that allow the government to grant licenses, permits, and concessions for different telecommunications services in Honduras, competitive services continue to be provided through sub-operator agreements signed between Hondutel and private companies.

INVESTMENT BARRIERS

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

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

OTHER BARRIERS

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

U.S. industry has expressed concern that some investors in Honduras have at times been subject to practices that might be considered anticompetitive. In 2006, the Honduran Congress enacted a competition law, establishing an antitrust enforcement commission, the Commission for the Defense and Promotion of Competition, to combat such conduct. The Commission commenced operations in 2007, and it has been active in investigating complaints and has fined Honduran firms for price collusion. In November 2010, after a two-year investigation, the Commission fined two cement companies lempiras 87 million (approximately USD $4.6 million) and six sugar companies a total of 62 million (approximately USD $3.1 million) for the violation of competition law applying collusive prices. From January 2009 to December 2010, the Commission initiated investigations into the six complaints that were filed. In November 2011, the Commission had resolved all outstanding cases. In 2012, the Commission began reviewing two new cases and those investigations, as of March 2013, remain open.

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

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was $32.0 billion in 2012, a decrease of $8 million from 2011. U.S. goods exports in 2012 were $37.5 billion, up 2.8 percent from the previous year. Corresponding U.S. imports from Hong Kong were $5.4 billion, up 23.6 percent from 2011. Hong Kong is currently the 10th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Hong Kong were $6.1 billion in 2011 (latest data available), and U.S. imports were $6.9 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $30.7 billion in 2010 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $3.3 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was $52.5 billion in 2011 (latest data available), up from $48.2 billion in 2010. U.S. FDI in Hong Kong is primarily concentrated in non-bank holding companies, wholesale trade, and finance/insurance sectors.

IMPORT POLICIES

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

COMPETITION POLICY

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

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

Although the Hong Kong Customs and Excise Department (HKCED) routinely seizes IPR infringing products arriving from Mainland China and elsewhere, stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong, destined for both the local market and places outside Hong Kong. During the period between May and September 2012, HKCED carried out a special operation targeting the sale of counterfeit and infringing goods on Internet auction sites. Customs officers arrested 32 people and seized 27 computers and 3,500 counterfeit and infringing goods, including handbags, clothing, and pirated optical discs.

The United States is concerned that, in June 2012, the HKG unexpectedly shelved a bill to amend the 1997 Copyright Ordinance, after lengthy debate at the Legislative Council. The proposed amendments were drafted in 2010, and introduced to the Legislative Council in June 2011, after industry groups failed to reach agreement on a voluntary framework to address online infringement. At the time, the government said it was shelving the bill to concentrate on passing urgent social and livelihood-related bills before the legislative session ended in July. The United States is continuing to monitor the situation as the government has not indicated whether it will reintroduce the amendments or begin a new round of public consultation.

In February 2011, Hong Kong initiated a dialogue to elicit views from the public on whether to create an original patent grant system in Hong Kong to replace the re-registration system based on patents granted in the United Kingdom, the EU, and Mainland China. Public consultations concluded in December 2011 and the government of Hong Kong is currently considering proposals.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $18.2 billion in 2012, up $3.5 billion from 2011. U.S. goods exports in 2012 were $22.3 billion, up 3.9 percent from the previous year. Corresponding U.S. imports from India were $40.5 billion, up 12.1 percent. India is currently the 18th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were $11.0 billion in 2011 (latest data available), and U.S. imports were $16.9 billion. Sales of services in India by majority U.S.-owned affiliates were $14.2 billion in 2010 (latest data available), while sales of services in the United States by majority India-owned firms were $7.3 billion.

The stock of U.S. foreign direct investment (FDI) in India was $24.7 billion in 2011 (latest data available), down from $24.8 billion in 2010. U.S. FDI in India is largely in the professional, scientific, and technical services, finance/insurance services, and the information services sectors.

IMPORT POLICIES

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

Tariffs and other Charges on Imports

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

The additional duty, which is applied to all imports except for wine, spirits, or other alcoholic beverages, is applied on top of the basic customs duty, and is intended to correspond to the excise duties imposed on similar domestic products. The special additional duty is a 4 percent *ad valorem* duty that applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to an official customs notification. The special additional duty is calculated on top of the basic customs duty and the additional duty. In addition, there is a 3 percent education cess (surcharge) applicable on the total of the basic customs duty and additional duty (not on the customs value of the imported product) on most imports, except those exempted from the cess pursuant to an official customs notification. A landing fee of 1 percent is included in the valuation of all imported products unless exempted through separate notification.

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

India's tariff regime is also characterized by pronounced disparities between bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the WTO, India's average bound tariff rate was 46.4 percent, while its simple MFN average applied tariff for 2010 was 12 percent. Given this large disparity between bound and applied rates, U.S. exporters face tremendous uncertainty because India has considerable flexibility to change tariff rates at any time. While India has bound all agricultural tariff lines in the WTO, over 30 percent of India's non-agricultural tariffs remain unbound, *i.e.*, there is no WTO ceiling on the rate.

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

Many of India's bound tariff rates on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 118.3 percent. While many Indian applied tariff rates are lower (averaging 33.2 percent on agricultural goods since 2010), they still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, apples, grapes, canned peaches, chocolate, cookies, and frozen French fries and other prepared foods used in quick-service restaurants). The large gap between bound and applied tariffs in the agriculture sector allows India to use tariff policy to adjust the level of protection in the market frequently, creating uncertainty for traders. For example, in April 2008, in an effort to curb inflation, India reduced applied duties on crude edible oils and corn to zero, refined oils to 7.5 percent, and butter to 30 percent. However, in November 2008, India raised crude soybean oil duties back to 20 percent, only to reduce them again to zero in March 2009. Most recently, in January 2013, India issued a customs notification announcing a doubling of the tariff on imports of crude edible oils.

In July 2007, after the United States initiated WTO dispute settlement procedures to challenge the additional duty on alcoholic beverages, India, facing pressures from both the U.S. and the E.U., issued a customs notification exempting alcoholic beverages from the additional duty. Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem*, and in some cases higher specific duties. Simultaneously, India raised the basic customs duty on wine from 100 percent to 150 percent. The basic customs duty on distilled spirits remains at 150 percent. When India exempted alcoholic beverages from the additional duty, it announced it was doing so in lieu of applying state-level excise duties on wine and spirits. India eventually won the WTO case in 2008 and since then, there have been no changes on tariff rates for either wines or spirits. These state-level taxes can result in imported wine and spirits being taxed at a significantly higher rate than like domestic products.

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

Import Licenses

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

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

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

Customs Procedures

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. India's valuation procedures allow India's customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price compared to the ordinary competitive price. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and raise the cost of exporting to India beyond applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have reported being subjected to excessive searches and seizures.

Furthermore, as explained above, India does not assess the basic customs duty, additional duty, and special additional duty separately on the customs value of a given imported product. Rather, India assesses each of these duties cumulatively; that is, the additional duty is assessed on the sum of the actual (or transaction) value and the basic customs duty, while the special additional duty is assessed on the sum of the actual (or transaction) value, the basic customs duty, and the additional duty. This can result in importers paying higher duties than they should be liable for on the basis of the actual value of their imported product.

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

Motor vehicles may be imported through only three specific ports and only from the country of manufacture.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy, and as a result, its government procurement practices and procedures vary at the state and central levels and by ministry. Government procurement in India is also not transparent. Foreign firms are disadvantaged when competing for Indian government contracts due to the preference afforded to Indian state-owned enterprises and the prevalence of such enterprises. Similarly, pursuant to the 2006 Micro, Small and Medium Enterprise (MSME) Act, India requires that 21 specific goods and services (*e.g.*, pickles/chutneys, bread, wood furniture, wax candles, safety matches, and fireworks) be purchased from MSMEs. India provides similar preferences to government-registered "small scale industry units" for certain products. India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above 3 billion rupees (approximately $56 million) in Indian produced parts, equipment, or services. It is not uncommon for the Defense Ministry to request significant changes to previously accepted offset proposals.

As part of the Indian government's efforts to improve procurement practices, the Planning Commission and the Ministry of Finance circulated separate draft procurement bills for comment. Each draft contained certain provisions that appear to deviate from international best practices as set out in the revised WTO Government Procurement Agreement approved in December 2011. In May 2012, the government introduced a Public Procurement Bill in Parliament that seeks to harmonize India's various procurement instructions, guidelines, and recommendations into one law and to regulate the award of government contracts above $100,000. This bill remains in Parliament and includes provisions of concern to the United States.

The November 2011 National Manufacturing Policy (NMP) calls for greater local content requirements in government procurement in certain sectors (*e.g.*, information and communications technology (ICT) and clean energy). Consistent with this approach, India issued the Preferential Market Access (PMA) notification in February 2012, which requires government entities to meet their needs for ICT equipment in part by purchasing domestically manufactured products. The government adopted a first set of implementing measures under the PMA in late 2012 and early 2013 that identified specific telecommunications and computer equipment as products subject to this requirement. (*See below under "Other Barriers" for a discussion on the application of the PMA to private firms*.)

India is not a signatory to the WTO Government Procurement Agreement, but became an observer to the WTO Committee on Government Procurement in February 2010.

EXPORT SUBSIDIES

India maintains several export subsidy programs, including exemptions from taxes for certain export-oriented enterprises and exporters in Special Economic Zones and duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment financing to exporters at a preferential rate. India's textile industry enjoys subsidies through various modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. The Duty Exemption Passbook Scheme for cotton and yarn, reinstated by India in 2011, enables exporters to earn credits that they can sell to importers, who can apply for duty-free import status for certain products. Numerous other sectors (*e.g.*, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes, which are tied to export performance.

After several consecutive years of not submitting a subsidies notification, India recently submitted two notifications covering the 2003-2009 time period to the WTO Committee on Subsidies and Countervailing Measures (SCM Committee), both of which notify only one central government program of preferential tax incentives related to Free Trade Zones, Special Economic Zones, and Export Processing Zones. These notifications were substantially incomplete, as they failed to notify several well-known Indian subsidies, including export subsidy programs. Because of India's failure to notify its subsidy programs in a timely manner, USTR "counter-notified" 50 Indian subsidy programs to the WTO Subsidies Committee in October 2011 under Article 25.10 of the SCM Agreement.

The United States submitted a formal request to the SCM Committee in February 2010 requesting a calculation of the export competitiveness of Indian textile and apparel products. The resulting calculation, published in March 2010, indicated that, with respect to textile and apparel products, India had met the definition of "export competitiveness" set out in Article 27.6 of the SCM Agreement. As a result, India must phase out export subsidies for those products over a period of eight years, in accordance with the SCM Agreement. Since the calculation, India has announced some reductions in duty drawback rates for textile products and the intention to eliminate certain subsidy programs. However, India not only continues to offer subsidies to the textiles and apparel sector in order to promote exports, but it has also extended or expanded such programs and even implemented new export subsidy programs that benefit the textiles and apparel sector. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures (e.g., Export-Oriented Units, Special Economic Zones, Export Promotion Capital Goods, Focus Product and Focus Market Schemes) that provide, among other things, exemptions from customs duties and internal taxes based on export performance.

There is a special initiative for agricultural exports in India's Foreign Trade Policy 2009-2014, including a scheme called *Vishesh Krishi Gram Upaj Yojana* (VKGUY – "Special Agriculture Produce Scheme"), aimed at boosting exports of fruits, vegetables, flowers, some forest products, and related value-added products. Under the plan, exports of these items qualify for a duty-free credit that is equivalent to 5 percent of their free-on-board export value. The credit is freely transferable and can be used to import a variety of inputs and capital goods. To mitigate the impact of the global economic slowdown on exports, the government has made several additional agricultural products eligible under VKGUY, such as soybean meal, marine products, and tea.

In March 2013, India moved to release wheat from government public stockholding reserves for export at prices below the cost of production and acquisition. India, the world's second-biggest wheat producer, began allowing private traders to export up to 5 million tons of wheat from government warehouses but set a floor price of 14,800 rupees (approximately $274) per ton plus taxes. This was 2,890 rupees (approximately $53.51) per ton less than the government of India's cost of buying wheat from domestic farmers including charges for local levies, transportation and storage

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2012 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights (IPR). Recent patent-related actions have only heightened these concerns. These include the March 2012 decision of the Controller General of Patents, Designs and Trademarks to effectively require an innovator to manufacture in India in order to avoid being forced to license an invention to third parties, and provisions in India's National Manufacturing Policy that seek to curtail patent rights to facilitate technology transfer in the clean energy sector. India also continues to lack effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products. Stronger protection and enforcement is also needed for trademarks and copyrights, including addressing the failure of India's 2012 Copyright Law amendments to effectively implement the WIPO Internet Treaties and protect against unlawful circumvention of technological protection measures.

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance, while private firms play a preponderant to exclusive role in some of the fastest growing areas of the services sector, such as information technology and business consulting. Foreign investment in major services sectors, including financial services, telecommunications, and retail, is subject to equity limitations, while foreign participation in legal services is prohibited entirely.

Insurance

Foreign investment in the insurance sector is limited to 26 percent of paid-up capital. The Ministry of Finance introduced the Insurance Laws (Amendment) Bill in Parliament in late 2008 to allow foreign equity participation of up to 49 percent and also allow entry of foreign re-insurers. The Parliament's Standing Committee on Finance recommended against increasing the 26 percent foreign equity cap. In September 2012, the Indian Cabinet re-affirmed its commitment to the existing bill that would allow a 49 percent foreign equity ceiling in the insurance sector, and thus, that bill remains for consideration before Parliament.

As lawmakers continue to consider increasing foreign investment in the insurance sector, many existing investors are approaching 10 years of doing business in India. Under current regulations, at the 10 year mark, any partner in an insurance enterprise is required to divest its equity stake down to 26 percent. Given the 26 percent equity cap for foreign investors, this requirement effectively applies only to Indian partners, as a result of which many existing joint ventures may be required to locate new Indian partners or otherwise modify their ownership structure. Although the Insurance Regulatory and Development Authority has said that it will seek to clarify its plans regarding these regulations, foreign investors continue to operate in an environment of extreme uncertainty.

Banking

Although India allows privately held banks to operate in the country, the banking system is dominated by government-owned banks and direct investment by foreign banks is subject to restrictions. State-owned banks account for roughly 76 percent of the advances portfolio and 84 percent of all bank branches in the Indian banking system. According to 2011-2012 data, there were 40 foreign banks with 323 branch offices operating in India under approval from the Reserve Bank of India (RBI), including four U.S. banks with a total of 51 branches. Among the seven new foreign banks that opened branches during fiscal year 2011-2012, none were from the United States. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by nontransparent quotas on branch office expansion. Only one license to open an additional bank branch has been issued to a U.S. bank since March 2009, despite several banks having applied.

In the past, foreign banks have not opened wholly-owned subsidiaries because of RBI-imposed caps on ownership. Foreign banks are not authorized to own more than 5 percent of on-balance sheet assets of an Indian private bank without approval by the RBI, while individual investors, including foreign investors, cannot own more than 10 percent of any private bank. Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent. In addition, voting rights for shareholders in private banks are capped at 10 percent.

Following passage of certain amendments to the Banking Regulation Act at the end of 2012, allowed Indian business conglomerates and non-bank financial institutions to establish new private sector banks. However, the RBI restricted foreign shareholding to 49 percent for the first five years, after which the limit would be as per the extant FDI policy, *i.e.*, 74 percent.

Audiovisual Services

Although India has removed most barriers to the importation of motion pictures, U.S. companies continue to experience difficulty importing film and video publicity materials and are unable to license merchandise in connection with movies due to royalty remittance restrictions. India also charges a service tax on the importation of films, music, and gaming software based on the value of the intellectual property rights, rather than just a customs duty on the value of the carrier medium.

U.S. companies continue to face difficulties with India's "Downlink Policy." Under this policy, international content providers that downlink programming from a satellite into India must establish a registered office in India or designate a local agent. U.S. companies have reported that this policy is overly burdensome and can result in having a taxable presence in India. India also requires that foreign investors have a net worth of Rs. 5 crores (approximately $1 million) in order to be allowed to downlink an initial content channel, and an additional Rs. 2.5 crores (approximately $500,000) of net worth for downlinking each additional channel. While 100 percent foreign ownership is permitted for entertainment and general interest channels, foreign investment in news and current affairs channels up-linking from India is limited to 26 percent.

Accounting

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Foreign accounting firms may only practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign-licensed accountants may not be equity partners in an Indian accounting firm.

The Companies Bill 2011, which contains provisions governing the operations of accounting firms, was passed in 2012 by the Lok Sabha (lower house of Parliament) and is expected to be cleared by the Rajya Sabha (upper house) in 2013. Opinions are divided over provisions requiring the rotation of auditors every five years. Additionally, foreign accounting firms are concerned about provisions that seek to increase third party liability in ways that would depart from the practices employed by most G20 countries. The Companies Bill 2011 is expected to be brought before Parliament in 2013.

Legal Services

The Bar Council of India (BCI) is the governing body for the legal profession in India. Membership in the BCI is mandatory to practice law in India, but is limited to Indian citizens. Foreign law firms are not allowed to open offices in India.

Indian lawyers have filed suit in the Bombay and Madras High Courts against a group of foreign law firms, challenging the ability of foreign attorneys to provide any type of legal services in India, including advising on matters of foreign (*i.e.*, non-Indian) or international law under ambiguous provisions of the 1961 Advocates Act. The Bombay High Court issued a judgment in December 2009, finding that non-litigation advisory services provided by foreign lawyers fell within the purview of the current Advocates Act, and were therefore restricted to Indian lawyers. However, the judgment also noted that the issue of foreign firms being able to practice law in India was under consideration by the government, and directed the government to "take [an] appropriate decision on this issue as expeditiously as possible." In the separate case before the Madras High Court, the court ruled on February 21, 2012 that the Advocates Act did not prevent foreign lawyers from advising clients on foreign law and international legal issues (*e.g.*, in connection with international arbitrations) on a "temporary" basis. The BCI has appealed the Madras High Court judgment to the Indian Supreme Court.

Telecommunications

Foreign investment in wireless and fixed telecommunications providers in India is limited to 74 percent, and U.S. companies have noted that India's initial licensing fee (approximately $500,000 per service or $2.7 million for an all India Universal License) for telecommunications providers serves as a barrier to market entry for smaller market players. The government has yet to announce the guidelines for receiving applications for, and awarding, licenses. In September 2012, India revised the foreign investment limits in cable networks and "direct-to-home" (DTH) broadcasting to allow up to 49 percent foreign direct investment without prior approval either of the government or the Reserve Bank of India and up to 74 percent with prior government approval (if networks invest in technical upgrades that support digitization and addressability).

The government of India continues to hold equity in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private carriers to express concern about the fairness of India's general telecommunications policies. For example, valuable wireless spectrum was allocated and set aside for MTNL and BSNL instead of being allocated through competitive bidding. Although BSNL and MTNL did not pay a preferential price for their spectrum, they received their spectrum well ahead of privately owned firms.

India amended telecommunications service licenses in May 2011 with a view to addressing security concerns posed by telecommunications equipment. These amendments, however, contain provisions of concern to the United States, including: (1) a requirement for telecommunications equipment vendors to test all imported information and communications technology equipment in labs in India; (2) a requirement to allow the telecommunications service provider and government agencies to inspect a vendor's manufacturing facilities and supply chain, and to perform security checks for the duration of the contract to supply the equipment to the telecommunications service provider; and (3) the imposition of strict liability and possible "blacklisting" of a vendor for taking "inadequate" precautionary security measures, without the right to appeal and other due process guarantees.

U.S. satellite operators have long raised concerns about the closed and protected satellite services market in India. Even though current Indian regulations do not preclude the use of foreign satellites, India's uplinking guidelines provide that "proposals envisaging use of Indian satellites will be accorded preferential treatment." In addition, foreign satellite capacity must in practice be provided through the Indian Space Research Organization (ISRO), effectively requiring foreign operators to sell capacity to a direct competitor. U.S. companies have noted that this requirement creates additional costs, allows ISRO to negotiate contract terms with the goal of moving the service to one of its satellites once capacity is available, and puts ISRO in a position of being able to determine the market growth rate. Although the Telecom Regulatory Authority of India (TRAI) has in the past recommended that India adopt an "open skies" policy and allow competition in the satellite services market, no measures have been adopted to date to implement TRAI's recommendations for further liberalization.

Distribution Services

In November 2011, India raised the cap on FDI in single-brand retail from 51 percent to 100 percent, subject to case-by-case government approval and contingent, among other things, on a requirement to source 30 percent of products from Indian small and medium sized enterprises. The government revised this policy in September 2012 to permit the local sourcing to be met by purchases from any Indian firm.

Also in September 2012, the Indian government approved a policy permitting up to 51 percent FDI in the multi-brand retail sector, but left to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where such FDI will be allowed, the policy imposes conditions on entry, including the following: investment of at least approximately $100 million, of which at least 50 percent must be in "back-end infrastructure" (*e.g.,* processing, distribution, quality control, packaging, logistics, storage, and warehouses) within three years of the initial investment; opening stores only in cities identified in the 2011 census as having populations greater than one million residents; and sourcing at least 30 percent of purchases from "Indian 'small enterprises' which have a total investment in plant [and] machinery not exceeding [$1 million]."

The September 2012 retail policy announcements also explicitly prohibit FDI in single-brand and multi-brand retail by means of electronic commerce.

India has periodically interpreted the activities of direct selling companies as violating the Prize Chits and Money Circulation Schemes (Banning) Act of 1978, creating uncertainty for companies operating in this market. This central government legislation contains no clear distinction between fraudulent activities such as Ponzi schemes, on the one hand, and legitimate retail business operations through direct selling, on the other hand. Enforcement of the Prize Chits Act is reserved to the states, which have adopted implementing guidelines and/or taken enforcement actions on the basis of the ambiguous provisions of the Act. Raids and seizures of property were undertaken in 2006 by an Indian state against a U.S. direct selling company operating in India with Foreign Investment Promotion Board approval. The case remains with the courts.

Industry groups have asked the Department of Industrial Policy and Promotion to issue guidance establishing a definition of direct selling and clarifying ambiguities, including ambiguity related to commissions earned in connection with the sale of products, but this is yet to happen. In 2012 the

Ministry of Finance issued draft guidelines designed to guide the preparation of state measures implementing the Prize Chits Act. Rather than clarifying the distinction between fraudulent schemes and legitimate business operations, however, the draft guidelines contain provisions making many standard direct selling activities, including activities that go to the core of the direct selling business model, inconsistent with the Prize Chits Act.

Postal and Express Delivery

In 2011, the Department of Posts announced a proposed bill to replace the 1898 Post Office Act and invited public comment on a draft in 2012. This bill seeks, *inter alia*, to establish a new licensing and registration scheme, potentially granting India Post regulatory authority over its private sector competitors; to establish a governmental monopoly on express delivery of items weighing up to 50 grams and on letters weighing up to 150 grams; and to require that private operators charge twice the Express Mail Service rate in order to provide services falling within the monopoly. Many stakeholders, including unions, raised concerns with these and other aspects of the bill and the draft National Postal Policy during an October 2012 meeting called by the Department of Posts.

Education

Foreign providers of higher education services interested in establishing a presence in India face a number of barriers, including a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research. A Foreign Education Providers Bill was expected to address some of these issues, but it has not yet been introduced in Parliament.

INVESTMENT BARRIERS

Equity Restrictions

India continues to regulate FDI by sector. The Department of Industrial Policy and Promotion (DIPP) periodically revises FDI policies through consolidated press notes. The most recent revision of the Consolidated FDI Policy was made effective from April 10, 2012, and the next revision is expected to be released on March 29, 2013, though it is not uncommon for DIPP to issue amendments to the Policy throughout the year.

Although India has allowed 100 percent FDI in the pharmaceutical sector for several years with no requirement of government approval, in October 2011, the government adopted a requirement that foreign acquisition of pharmaceutical firms be approved by the Competition Commission of India (CCI). In deciding whether to approve acquisitions, the CCI is charged with "balancing" the need to attract FDI with public health concerns. This "balancing" requirement erroneously presumes that FDI in the pharmaceutical sector is in tension with the government's public health objectives. Because such review is beyond the scope of the CCI's existing authority, the Competition Commission of India Act must first be amended. In December 2012, a high-level government meeting chaired by the Prime Minister concluded that all FDI proposals in pharmaceutical sector would go to the Foreign Investment Promotion Board for approval until that amendment.

India's stringent and nontransparent regulations and procedures governing local shareholding inhibit investment and increase risk to new market entrants. Even when legally permissible, attempts by non-Indians to acquire 100 percent ownership of locally traded companies often face regulatory hurdles that render such ownership unobtainable. Price control regulations in some sectors, such as the pharmaceutical sector, have further undermined the attraction to foreign investors of increasing their equity holdings in India.

OTHER BARRIERS

In July 2010, India issued guidelines for the Jawaharlal Nehru National Solar Mission (JNNSM), requiring that eligible solar project developers source certain materials from domestic manufacturers in order to receive preferential power rates. In the first part of Phase I of the JNNSM, all projects based on solar photovoltaic (PV) technology were required to source crystalline silicon modules from manufacturers in India, while solar thermal projects were required to meet a 30 percent local content threshold. These local content requirements were expanded significantly in August 2011, such that solar PV cells as well as modules used in JNNSM projects must be manufactured in India. These restrictions have effectively blocked imports of U.S. equipment based on crystalline silicon technology for use in JNNSM projects, affecting a large segment of U.S. solar manufacturers. In December 2012, India issued a draft policy document for Phase II of the JNNSM, proposing to extend the existing local content requirements to cover thin film modules in addition to crystalline silicon technology. The United States initiated a WTO dispute challenging the JNNSM local content requirements in February 2013.

India's PMA notification not only requires government entities to purchase domestically manufactured products (*discussed above under "Government Procurement"*), but anticipates applying similar domestic purchase mandates to private firms for purchases of "electronic products which have security implications." Neither the PMA nor subsequent government measures articulate precisely how domestic manufacture *per se* would improve India's security. Furthermore, initial draft lists of these products appear to cover an expansive range of electronic products, suggesting that industrial policy rather than security interests is the primary motivation for imposing such requirements.

In a similar vein, in 2011, the TRAI issued a policy proposal styled as "Recommendations on Telecom Equipment Manufacturing Policy." The proposal called for a number of actions to encourage domestic manufacturing in the telecom sector, including requiring government entities and certain private firms to purchase domestically manufactured telecom equipment; requiring government entities and certain private firms to purchase telecom equipment developed using Indian-origin intellectual property; offering subsidies for private firms that purchase a certain percentage of domestically manufactured telecom equipment; and requiring that imported telecom equipment be tested and certified only by a conformity assessment body located in India. Like the PMA, TRAI's policy recommendations will likely do little to foster domestic manufacturing, but instead produce perverse consequences of discouraging investment, weakening ICT infrastructure, and increasing costs to Indian consumers and firms seeking to do business in India. TRAI's proposal appears to remain under consideration by the government of India.

India has steadily increased export duties on iron ore and its derivatives. In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore and its concentrates, but revised the tax to 5 percent in December 2008. In December 2009, India raised this export tax rate to 10 percent, leaving the export duty on iron ore fines at 5 percent. India then increased the export tax on iron ore lumps to 15 percent in April 2010. In February 2011, India increased the export duty on both iron ore lumps and fines to 20 percent, and increased that export duty to 30 percent in January 2012. In February 2012 India changed the export duty on chromium ore from 3,000 rupees (approximately $56) per ton to 30 percent *ad valorem*, an increase at current chromium ore price levels. In recent years certain Indian states and stakeholders have increasingly pressed the central government to ban exports of iron ore. Such export duties and bans affect international markets for raw materials used in steel production. India also requires that exports of high grade iron ore (greater than 64 percent iron content) pass through state trading enterprises, with the state-owned Minerals and Metals Trading Company acting as a clearinghouse. It appears that the Indian government is using these measures to improve supply and lower prices of inputs used by India's rapidly growing steel industry. With 7 percent growth in steel production during 2011-2012, India became the fifth largest steel manufacturing economy in the world.

India implemented export restrictions and bans on cotton and yarn during 2010 and 2011. These restrictions contributed to significant volatility on world cotton markets and appear designed to provide India's textile and apparel producers with a cheaper supply of cotton during a period of record high world cotton prices. Following intensive U.S. engagement and changing conditions in the world cotton market, India now permits the export of cotton and yarn subject only to registration with the government.

The Indian Minerals and Metals Trading Corporation engages in significant countertrade, although the State Trading Corporation also handles a small amount of countertrade. Countertrade is a form of trade in which imports and exports are linked in individual transactions. Private companies also are encouraged to use countertrade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to countertrade.

In the agriculture sector, India has established tariff-rate quotas for corn and dairy products. Access to the tariff-rate quotas is complicated by end-user requirements that often lead to low fill rates.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was $10.0 billion in 2012, down $1.7 billion from 2011. U.S. goods exports in 2012 were $8.0 billion, up 8.1 percent from the previous year. Corresponding U.S. imports from Indonesia were $18.0 billion, down 5.8 percent. Indonesia is currently the 34th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Indonesia were $1.7 billion in 2011 (latest data available), and U.S. imports were $437 million. Sales of services in Indonesia by majority U.S.-owned affiliates were $2.7 billion in 2010 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $87 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was $11.6 billion in 2011 (latest data available), up from $10.6 billion in 2010. U.S. FDI in Indonesia is primarily concentrated in the mining sector.

IMPORT POLICIES

In recent years, Indonesia has enacted numerous regulations on imports that have increased the burden for U.S. exporters. Besides tariffs, import licensing procedures and permit requirements, product labeling requirements, pre-shipment inspection requirements, local content and domestic manufacturing requirements, and quantitative import restrictions impede U.S. exports. Numerous other measures have been adopted or are being considered in the context of draft legislation, including a new food law and a new trade law. The Indonesian government has increasingly adopted such measures as it pursues self-sufficiency objectives. These measures are also being adopted as Indonesia reduces tariffs as part of implementing preferential trade agreements with countries such as China, Australia, Japan, South Korea, New Zealand, and India. The United States will continue to press Indonesia to resolve U.S. concerns regarding these measures.

Tariffs

In 2012, Indonesia’s average most favored nation (MFN) applied tariff was 7.7 percent. Indonesia periodically changes its applied rates. In December 2011, the Ministry of Finance increased applied import duties for designated grain and oilseed products from 0 percent to 5 percent. In August 2012, the Ministry of Finance temporarily reduced import duties on soybeans from 5 percent to 0 percent through the end of 2012 to counter rising international soybean prices. In 2009, 2010, and 2011, Indonesia increased its applied tariff rates for a range of imported goods that compete with locally manufactured products, including electronic products, electrical and non-electrical milling machines, chemicals, cosmetics, medicines, iron wire and wire nails, and a range of agricultural products including milk products, animal or vegetable oils, fruit juices, coffee, and tea.

Indonesia’s simple average bound tariff of 37 percent is much higher than its average applied tariff. Most Indonesian tariffs are bound at 40 percent, although bound tariff levels exceed 40 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 40 percent. Tariffs on fresh potatoes, for instance, are bound at 50 percent, although the applied rate is 20 percent. The high bound tariff rates, combined with unexpected changes in applied rates, create uncertainty for foreign companies seeking to enter the Indonesian market.

U.S. motorcycle exports remain severely restricted by the combined effect of a 60 percent tariff, a luxury tax of 75 percent, a 10 percent value-added tax, and the prohibition of motorcycle traffic on Indonesia's highways. In 2010, Indonesia converted its applied tariff on imported distilled spirits from 150 percent *ad valorem* to 125,000 rupiah (approximately $15) per liter.

Indonesia has extensive preferential trade relationships with other countries. Under the ASEAN Free Trade Agreement, duties on imports from ASEAN countries generally range from 0 percent to 5 percent, except for products specified on exclusion lists. Indonesia also provides preferential market access to Australia, China, Japan, Korea, India, Pakistan, and New Zealand under regional ASEAN agreements and to Japan under a bilateral agreement. In accordance with the ASEAN-China FTA, in August 2012 Indonesia increased the number of goods from China receiving duty-free access to 10,012 tariff lines. Indonesia is currently negotiating bilateral agreements with Iran, India, Australia, New Zealand, and European Free Trade Association, studying potential FTAs with Chile, Turkey, South Korea, Tunisia, Mexico, South Africa, and Egypt.

Indonesia imposes a progressive export tax on cocoa and palm oil exports. The cocoa export tax rate ranges from a minimum of 5 percent to a maximum of 15 percent and is calculated based on a monthly average of export prices. The minimum palm oil tax rate is 1.5 percent, and the maximum rate is 25 percent. The Indonesian government is also considering imposing export taxes on other products, including coconut, base metals, and coal.

Import Licensing

Exporters to Indonesia must comply with numerous and overlapping import licensing requirements that impede access to Indonesia's market. In 2009, the Indonesian government implemented a sweeping regulation imposing non-automatic import licensing procedures on a broad range of products, including electronics, household appliances, textiles and footwear, toys, and food and beverage products. The measure, known as Decree 56, was extended by Ministry of Trade Regulation 57/M-DAG/PER/12/2010 in December 2010, and again in December 2012 through Ministry of Trade Regulation 83/M-DAG/PER/12/2012. Regulation 83/2012 will remain in effect until December 31, 2015. The original extension expanded the scope of licensing restrictions to additional products, including cosmetics. The amended decree also retains a requirement for pre-shipment verification by designated companies (known in Indonesia as "surveyors") at the importers' expense and a restriction that limits the entry of imports to designated ports and airports. Indonesia has informally limited application of the decree to "final consumer goods." The Indonesian government also appears to be exempting select registered importers from certain requirements of this decree. Still, the approval process to qualify as a registered importer is opaque, ill-defined, and potentially discriminatory. The United States continues to seek the measure's withdrawal.

Ministry of Trade Regulation No. 45/M-DAG/PER/9/2009, as amended and clarified by Regulation No.17/M-DAG/PER/3/2010, introduced a requirement that companies can only import goods for further distribution or for their own manufacturing, but not for both. Under these regulations, companies are permitted only one kind of license, and those that need both kinds of licenses need to separate into manufacturing and trading businesses. Effective January 1, 2011 through Regulation No. 39/MDAG/PER/10/2010, Indonesia introduced a new type of importer license, dubbed a PI License, which permits companies to import certain finished products not used in the production process provided such imports also support the development of the company's business in Indonesia.

However, in early 2012, the Supreme Court annulled Regulation No. 39. In response, the Ministry of Trade issued Decree 27/MDAG/PER/5/2012 in May 2012 and amended it with Decree 59/MDAG/PER/9/2012 in September 2012. Under the new 2012 decrees, companies that operate under an import license for their own manufacturing are allowed to import finished products provided they are market test products or complementary goods. However, the new regulations again limit companies to only one kind of license. The decrees also require companies to demonstrate a "special relationship" with the foreign company. The "special relationship" must be authenticated by the Indonesian Embassy located in the country in which the foreign company is located. Only then may the companies import products from more than one section of the HS tariff code. The Ministry of Trade delayed full implementation of Decree 59 until March 31, 2013; until then both the old system and the new system will co-exist.

Import Licensing for Agricultural Products

Import licensing requirements also apply to horticultural products. In September 2012, Indonesia adopted two ministerial regulations on the importation of horticultural products. While the two regulations were separately issued by the Ministry of Trade and the Ministry of Agriculture respectively, both were numbered 60/2012. Both the Ministry of Agriculture's Regulation 60 (replacing Regulation No 3/2012) and Ministry of Trade's Regulation 60 (amending Regulation No 30/2012) regulate the importation of horticultural products into Indonesia. All horticultural products shipped after September 28, 2012 must comply with these two regulations. Ministry of Agriculture's Regulation 60 requires Indonesian importers to obtain an Import Recommendation of Horticulture Products (RIPH) as a prerequisite for applying for an Import Permit Letter (SPI) from the Ministry of Trade. One RIPH application is valid for one HS code, one country of origin, one port of entry, one port of loading, and one supplier. The Ministry of Agriculture has discretion on whether to issue an RIPH and makes decisions based on an evaluation of multiple considerations, including its assessment of national demand analysis. After securing an RIPH from the Ministry of Agriculture, Ministry of Trade Regulation 60 requires the importer to obtain an SPI from the Ministry of Trade before horticulture products can be imported into Indonesia. In addition, the horticultural products to be imported must be verified by Indonesian surveyors and/or their authorized agents in the country of origin and Bahasa Indonesia labels must be attached to the packaging before the products enter the Indonesian customs area.

Before applying for a RIPH, an Indonesian importer must be recognized by the Ministry of Trade as a Registered Importer (IT) and/or a Producer Importer (IP). Before applying to the Ministry of Trade for recognition as an IT or IP, importers must first apply for and receive an API-U (Importer Identification Number – General) or API-P (Importer Identification Number – Producer), and must also prove they meet certain criteria. For example, IT importers (which import for retail) must prove they own "appropriate" cold storage facilities.

Indonesia imposes a similar non-automatic import licensing regime for animals and animal products imports. An importer must first receive an Import Approval Recommendation from the Ministry of Agriculture to import animals and animal products. The importer then must seek an import license from the Ministry of Trade, who grants the licenses based on domestic production and supply considerations.

These licensing regimes for horticulture and animal and animal products have significant trade restrictive effects on imports and the United States has repeatedly raised its concerns with Indonesia in discussions in Jakarta, Washington, Bali, and Geneva. Indonesia failed to address these concerns. As a result in January 2013, the United States requested consultations with Indonesia under the WTO dispute settlement procedures challenging the regimes consistency with obligations under the WTO. After the consultations failed to resolve the concerns, the United States requested the establishment of a WTO dispute settlement panel in March 2013.

Additional opaque, complex, and prohibitive product-specific import licensing and registration requirements apply to other agricultural products, including animal and animal products, sugar, and dairy.

Other Import Licensing Requirements

Indonesia maintains other additional non-automatic licensing requirements on textiles, clothing, and other "made-up goods" such as curtains and blankets, which limit market access for a wide range of products. Only approved local producers are authorized to import products, and these products are permitted for use only as inputs in domestic production, not for resale or transfer. Approval must be obtained for both the quantity and timing of imports. The United States continues to press Indonesia to eliminate these requirements.

New import restrictions on cell phones, laptop computers, and tablets impose burdensome licensing requirements and may prevent U.S. hardware companies from becoming importers of record. Ministry of Trade Regulation 82 and Ministry of Industry Regulation 108 went into effect in January 2013, shortly after their release in late 2012. Under Regulation 82, importers of cell phones, laptop computers, and tablets can no longer sell directly to retailers or consumers, must have at least three years of experience, and must use at least three distributors to qualify for a Ministry of Trade importer license. Under Regulation 108, importers must provide product identification numbers for each imported item in order to receive a Ministry of Industry importer license. Companies are unable to provide identification numbers months in advance and, as such, may need to apply for both licenses on a per shipment basis.

Pharmaceutical Market Access

The United States continues to have serious concerns about barriers to Indonesia's market for pharmaceutical products. Ministry of Health Decree No. 1010/MENKES/PER/XI/2008 requires foreign pharmaceutical companies either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals on its behalf. Under this policy, foreign companies can be barred from the Indonesian market even if they are market leaders in globally recognized good manufacturing and distribution practices and provide high quality pharmaceutical products to Indonesian patients. Among its requirements, Decree 1010 requires local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration. It also contains a technology transfer requirement. A subsequent regulation, Regulation 1799 and BPOM's (Indonesian Food and Drug Regulatory Agency) updated regulation on drug registration, provided additional information about the application of the local manufacturing requirements and lays out several exceptions to local manufacturing and technology transfer requirements. In September 2012, Indonesia issued Presidential Regulation 76/2012 granting compulsory licensing for nine HIV/AIDS and Hepatitis B treatment drugs. The United States will continue to monitor the implementation of these regulations.

A bill on *halal* certification, currently under discussion in Indonesian Parliament, would require mandatory *halal* certification of pharmaceuticals as well as other products. Such a policy could have significant adverse consequences on U.S. and other foreign companies as well as Indonesian patients.

Quantitative Restrictions

Indonesia maintains quantitative restrictions, particularly on imports of agricultural products such as beef, where annual import quantities are determined by Indonesian agencies in nontransparent processes. The U.S. Government has raised its strong concerns regarding these quantitative restriction issues and will continue to press the Indonesian government to address them.

The Ministry of Agriculture sets the quantities of animals and animal products that may be imported into Indonesia, both in the aggregate and by each importer. The Ministry of Trade issues permits for the import and export of these products after receiving a recommendation approval from the Directorate General of Livestock and Animal Health Service of the Ministry of Agriculture per Ministry of Trade regulation No. 24/M-DAG/PER/9/2011 and Ministry of Agriculture regulation No. 50/PERMENTAN/OT.140/ 9/2011 dated September 7, 2011. Both regulations were put into effect on October 1, 2011. These regulations now effectively ban the importation of any chicken product, as well as turkey and duck parts. Importers are required to have a registered importer of animal and animal products number from Ministry of Trade before they are allowed to import animals and animal-based food products.

Ministry of Agriculture Regulation 60 also establishes a mechanism that provides Indonesia with the discretion to apply quantitative restrictions on imports of fresh and processed fruits and vegetables. According to the regulation, the quantity of imports that Indonesia will allow will be based on estimates of domestic production, availability of similar products domestically, and domestic demand, as well as harvest and production periods. The United States included these effective quota measures in its January 2013 WTO consultation request to Indonesia, as well as in its request for the establishment of a WTO dispute settlement panel in March 2013.

Indonesia also recently imposed an "unofficial" restriction on the importation of corn. Unofficially, only feed millers can import corn as of December 2012. They must apply for an import permit from the Ministry of Agriculture. The import permit will specify the volume of corn that can be imported. The volume will be set based on the levels of domestic feed production. A similar unofficial restriction is also being imposed on the imports of alfalfa from the United States.

Indonesia bans salt imports during the harvest season. It requires salt importers to be registered and to purchase domestic supplies as well as imports. Indonesia also maintains a seasonal ban on imports of sugar, in addition to limiting the annual quantity of sugar imports based on domestic production and consumption forecasts.

Indonesia applies quantitative limits on the importation of wines and distilled spirits. Companies seeking to import these products must apply to be designated as registered importers authorized to import alcoholic beverages with an annual company-specific quota set by the Ministry of Trade.

Mining firms operating in Indonesia may not export unprocessed ore unless they have the government's prior approval to do so *via* a contract of work or plans to build a smelter in Indonesia to process that ore. A 2009 mining law requires companies to process ore locally before shipping it abroad. Although scheduled to enter into force in 2014, Indonesia started implementing the law in 2012. Indonesia asserts the earlier implementation was necessary to prevent what it described as accelerated exporting of raw mineral ore to avoid the 2014 effective date. The policy is intended to support the expansion of value-added activities, including the smelting industry. A Supreme Court ruling made public in January 2013, which struck down the unprocessed ore export ban provisions of the Ministry of Energy and Mineral Resources regulation, as well as a Ministry promise to continue with the ban, have further confused the situation. Indonesia also effectively bans the export of steel scrap.

In late 2011, Indonesia banned exports of raw and semi-processed rattan. This ban is still in effect.

Product Registration

Beginning in late 2008 and continuing through 2011, Indonesia's food and drug agency (BPOM) slowed its process for reviewing applications for the registration of processed foods, beverages, and other products, including health supplements. Although there are reports that BPOM has improved the efficiency of its product registration system since 2011, concerns remain about changes BPOM proposed to the registration requirements and submission process in 2012 that would further complicate the process.

Combined with onerous Bahasa language labeling requirements, the process for registering products has become increasingly burdensome and costly to U.S. and other foreign exporters. The United States will continue to monitor developments in this area.

Customs Barriers

U.S. firms continue to report that Indonesian Customs relies on a schedule of reference prices to assess duties on some imports, rather than using actual transaction prices. Customs makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

In late 2010, Indonesian customs changed its methodology for assessing import duties on motion pictures, from import duties "per meter" to a calculation based on royalties, significantly increasing duties payable. Following a disruption in trade and as a result of bilateral consultations between the U.S. and Indonesian Governments, the Ministry of Finance adopted a new specific tariff based on a "per minute" calculation rather than royalties. The Finance Ministry also changed the application of its value-added tax on movie imports. Overall, the incidence of duties and taxes under the current system continues to be higher than it was in 2010, though trade has resumed.

In January 2012, the Ministry of Agriculture announced that, in order to comply with priorities set by the Ministry of Trade, the port of Jakarta and several other major ports would be closed to horticulture imports beginning in March 2012. More than 90 percent of Indonesian imports of U.S. fresh fruits and vegetables (more than $200 million annually) move through the port of Jakarta, Tanjung Priok, and are destined for the Jakarta market. Despite this announcement, since June 2012, U.S. horticulture exports were able to continue using Tanjung Priok port as a result of the U.S. country recognition status, approved by the Ministry of Agriculture. Australia, New Zealand, and Canada have also been allowed to continue using Tanjung Priok. In January 2013, the Ministry of Agriculture renewed the U.S. country recognition status.

Luxury Taxes

Luxury goods (defined as goods not considered necessities), imported or locally produced, may be subject to a luxury tax of up to 200 percent, although the current range is 10 percent to 75 percent for goods listed in the implementing regulations as subject to the luxury tax. The luxury tax on 4,000cc sedans and 4x4 Jeeps or vans is 75 percent, compared with the luxury tax on automobiles with engine capacities of 1500cc or less, which ranges from 10 percent to 30 percent. Passenger cars with engine displacement less than 1500cc comprise 40 percent of the market, including a large group of vehicles predominantly produced in Indonesia that are taxed at a rate of 10 percent. The luxury tax on motorcycles with a cylinder capacity of 250cc up to 500cc is 60 percent.

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise taxes on imported spirits than on domestic spirits.

State Trading

In April 2008, the government of Indonesia granted the National Logistics Agency (BULOG) exclusive authority to import standard unbroken rice. Indonesia cited "food security" (with the Indonesian government separately detailing its aspirations for food self-sufficiency) and price management considerations as the principle objectives of the authorization. BULOG is not allowed to import rice before, during, or immediately after the main harvest period (January/February annually). This requirement effectively prohibits any rice imports during the first quarter of the year. Private firms are only allowed to import broken rice for processing and specialty rice varieties, such as basmati, jasmine, and sushi rice for retail or food service. Importers of broken and specialty rice must obtain a special importer identification number from the Ministry of Agriculture.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulation 54/2010 requires procuring entities to seek to maximize local content in procurement, use foreign components only when necessary, and designate foreign contractors as sub-contractors to local companies. Presidential Regulation 2/2009 stipulates that all state administrations should "optimize" the use of domestic goods and services and give price preferences for domestic goods and providers. Ministry of Industry Regulation 15/2011 provides for the creation of an Accelerated Use of Local Product National Team to optimize local product use in goods or services procurement.

Indonesia's 2012 Defense Law, passed in October, mandates priority for local materials and components and requires defense users to use locally produced defense and security tools whenever available. In addition, when procurement from a foreign defense supplier is made due to lack of availability from an Indonesian domestic supplier, there is a requirement for countertrade, local content and/or offset production. Initially this domestic value requirement is 35 percent of the total contract value and will increase by 10 percent every year for the next 5 years, after which 85 percent of the value should be accounted for by countertrade, local content or offset production. It is expected that the local content/domestic offset requirement may be met in several forms such as coproduction, joint venture, buyback, knowledge transfer, and training. U.S. defense firms have already been meeting existing informal Indonesian government policy on the defense industry that 35 percent of the contract value be sourced domestically.

In 2012, Indonesia became an observer to the WTO Committee on Government Procurement, but is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Indonesia remained on the Priority Watch List in the 2012 Special 301 report. Key concerns in Indonesia include continuing widespread copyright piracy and trademark counterfeiting, an inadequate number of criminal prosecutions, and non-deterrent penalties for those who are convicted. U.S. industry reports that one of its most significant frustrations remains the nontransparent and non-deterrent court system, which also impedes the ability of rights holders to obtain information about cases directly affecting their interests. Rates of physical counterfeiting and piracy, as well as online piracy, are extremely high (an estimated 86 percent of business software was unlicensed in 2011) while piracy rates at malls and in the retail sector are also high. Enforcement efforts were insufficient to keep pace with broad-based piracy and counterfeiting in Indonesia. The Indonesian government also is in the process of amending intellectual property laws, including with respect to industrial designs, trademarks, copyrights, and patents.

SERVICES BARRIERS

Indonesia maintains significant and far-reaching trade and investment barriers in many key services sectors. The United States will continue to press its concerns on these issues with Indonesia.

Legal Services

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may only work in Indonesia as "legal consultants" upon approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Express Delivery and Logistics Services

In September 2009, the Indonesian legislature passed a new law with restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. The law requires that postal service providers be majority-owned by Indonesians and that foreign providers limit their activities to provincial capitals with international airports and seaports. The Ministry of Communication and Information Technology has said that joint ventures will be able to service cities with international airports and seaports, as well as supporting provincial capitals with international airports and seaports, although the draft implementing regulations do not include this clarification. The current draft is with the State Secretary's office awaiting final signature by the President. Ministry of Communication and Information Technology officials state that the Minister will issue further decrees to clarify outstanding issues. The United States will continue to press Indonesia on this issue.

Health Services

Changes to the negative list of foreign investment restrictions in 2010 allow for 67 percent foreign ownership of private specialist hospitals in all regions of Indonesia, in contrast to the previous regulation which limited foreign investors to the cities of Medan and Surabaya. However, foreign ownership is prohibited for health research centers, private maternity hospitals, and general or public hospitals.

Most foreign healthcare professionals may act only as consultants to Indonesian healthcare professionals. Although the Doctors Practice Law 29/2004 and Minister of Health Regulation No. 512/2007 allow foreign doctors to practice in Indonesia, a 2004 technical note by Indonesia's Investment Coordinating Board (BKPM) banned foreign doctors from practicing in Indonesia, creating uncertainty in the market. In practice, it is nearly impossible for foreign doctors to obtain a license due to strong opposition from the Indonesian Doctors Association.

Financial Services

Nonbank financial service (NBFS) providers may do business in Indonesia as a joint venture or be partly owned by foreigners. NBFS providers cannot operate in Indonesia as a branch of a foreign entity. A single entity, either foreign or Indonesian, may own no more than 40 percent of an Indonesian bank. Bank Indonesia may grant exceptions and allow for greater than 40 percent ownership of Indonesian banks in certain cases. In the insurance sector, the 2007 Investment Law limits foreign equity to 80 percent for new investors.

Energy Services

Article 79 of Presidential Regulation No. 35/2004, which regulates contractor activities in the upstream oil and gas sector, provides that contractors must "prioritize" the use of domestic services, technologies, and engineering and design capabilities. Foreign energy and energy services companies have noted that these local preference policies severely undermine their ability to make successful contract bids and make decisions about sourcing and personnel that allow them to function efficiently and profitably in the Indonesian market. Implementation of Indonesia's local preference and local content policies in this sector is also becoming more restrictive.

In 2011, Indonesia's then upstream oil and gas regulator, BP MIGAS, tightened rules relating to how such content is measured with respect to oil and gas projects. The tightened criteria, once fully implemented, are meant to achieve an average of 91 percent local content by 2025, up from 61 percent in 2012. Under the new rules, the goods and services of companies without majority-ownership Indonesian shareholding can no longer qualify as "local" content. Foreign-owned energy services companies would have to divest majority ownership in their Indonesian subsidiaries in order for their sales to qualify as "local" content in a project. As a result, foreign energy service companies have been placed at a disadvantage *vis-à-vis* majority Indonesian-owned companies, which can more easily meet local content requirements but are often less able to meet the technical requirements of a project, often complicating and delaying project tendering processes.

In November 2012, Indonesia's Supreme Court issued a ruling to disband BP Migas, saying the upstream regulator allowed foreign companies too much control over the nation's natural resources. This ruling has created uncertainty in the Indonesian market as the government of Indonesia moves to comply with the Supreme Court ruling. As a result of the Supreme Court ruling, Indonesia established an Interim Working Unit for Upstream Oil and Gas Business Activities (SKSP Migas) in the Ministry of Energy and Mineral Resources to take over the duties and functions of BP Migas. The regulator remains under pressure from the Indonesian House of Representatives to maintain or increase the local content requirements. The United States will monitor developments in this area.

Maritime Cabotage

Indonesia's 2010 Law No. 17 on Shipping requires all vessels operating in Indonesian waters to be Indonesian flagged. However, the Indonesian shipbuilding industry does not have the capacity to build the variety of specialty ships its economy requires and is unlikely to have such capacity in the near to medium term. Full implementation of the law would be particularly problematic for foreign investors in Indonesia's energy and telecommunications sector, which would no longer be permitted to bring in the sophisticated rigs and specialized vessels needed to develop large upstream projects. In response to concerns raised by the United States and others, the Ministry of Transportation issued Regulation No. 22/2011 allowing certain classes of non-transportation vessels to be eligible for a three-month renewable waiver from the domestic flagged vessel requirements when there is no suitable Indonesian-flagged vessel available. The three-month waivers are often not long enough to cover the duration of a project, adding to investor uncertainty. Furthermore, the exceptions themselves are time limited and scheduled to phase out starting in December 2012. The United States will continue to press Indonesia on this issue.

Audit and Accounting Services

Foreign public accounting firms must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentation and disclosures. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. Foreign accountants can operate in the country if they have a license from the Ministry of Finance and are a member of the Indonesian Institute of Certified Public Accountants. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

Film

A September 2009 Law on Film imposed a 60 percent local content requirement for local exhibitors and included, the authority to implement unspecified import restrictions to achieve that quota, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. The law also restricted vertical integration across segments of the film industry, which could have unintended consequences, reducing business efficiency and making the market a less attractive destination for foreign investment. The law has not been fully implemented to date.

The temporary postponement of a 2008 regulation requiring all local and imported movies, both theatrical prints and home video copies, to be replicated locally, with penalties on exhibitors for failing to do so, was replaced by consecutive one-year suspensions issued by the Minister of Culture and Tourism. In January 2013, Tourism and Creative Economy Minister Pangestu issued a decree suspending implementation until January 1, 2014. The United States continues to advocate for the permanent suspension and repeal of this regulation.

Construction, Architecture, and Engineering

Foreign construction firms are only allowed to be subcontractors or advisors to local firms in areas where the Indonesian government believes that a local firm is unable to do the work. For government-financed projects, foreign companies must form joint ventures with local firms.

Education

Indonesia limits foreign investment in primary, secondary, and tertiary educational institutions through special licenses. Foreign investment in non-formal education is limited to 49 percent. Law 12/2012 on Higher Education, passed in July, liberalized the tertiary education sector and allowed foreign universities to operate in Indonesia if they are accredited in their country of origin, collaborate with local universities, are non-profit, support national interests, and prioritize the appointment of Indonesian citizens as faculty and staff. In order for foreign nationals to provide educational services, they must be authorized by the Ministry of Education and the Ministry of Manpower. Authorization is granted on a case-by-case basis and only when there are no Indonesian instructors capable of filling the position.

Franchising

Indonesia's Ministry of Trade recently made two major regulatory changes in the franchising sector that threaten to have a significant chilling impact on future operations of foreign franchisors. First, in August 2012, Indonesia promulgated Ministry Regulation No. 53/2012. That regulation establishes a local content requirement obliging an Indonesian franchisee to domestically source 80 percent of its equipment and inventory, unless a waiver is granted. While implementing rules remain vague, this sourcing requirement could have a significant negative impact in the development of new franchising agreements in Indonesia. This new requirement is not expected to be fully enforced against existing licensed franchisees until 2017.

Second, in October 2012, the Ministry of Trade issued regulation 68/2012 restricting the number of outlets that can be owned by a master franchisee to 150 before they must sub-franchise a portion of additional units to another local sub-franchisee. This new rule could force some major U.S. and other foreign firms to divest a large number of outlets. It remains unclear as to when enforcement of this regulation will commence.

INVESTMENT BARRIERS

Indonesia's investment climate continues to be characterized by legal uncertainty, economic nationalism, and the disproportionate influence of local business interests. Government requirements often compel foreign companies to do business with local partners and to purchase goods and services locally.

Indonesia’s 2007 Investment Law was intended to improve transparency and protections for foreign investors including nondiscriminatory treatment, protection against expropriation, and recourse to international arbitration in the event of a dispute with the government. At the same time, however, that law significantly increased the number of sectors in which foreign investment is restricted and increased foreign equity limitations in sectors of interest to U.S. investors. These sectors include telecommunications, pharmaceuticals, film and creative industries, and construction. While the ongoing process of transferring investment-related decisions from the central level of government to provincial and district level governments has helped to reduce some burdensome bureaucratic procedures, that process has led to inconsistencies between national and regional or local laws.

Indonesia continues to review the 2007 Investment Law and its negative list of restricted sectors. In 2010, Presidential Regulation 36/2010 introduced changes to the negative list, including modest changes to investment limits in individual sectors, such as construction, health care, film technical services, and electricity generation. The revisions also increased restrictions in some sectors, such as postal services, and closed other markets, such as the telecommunications tower sector, to foreign investment. The 2010 Presidential Regulation also addressed retroactive implementation of the list and called for continuous review of those sectors closed to investment.

In 2010, the Indonesian legislature introduced a new horticulture law, which reduced permissible foreign equity in horticulture-related business activities from 95 percent to 30 percent.

Energy and Mining

Over the past several years, other regulatory changes have been introduced to increase government control, government income, and local content levels in the energy and mining sectors. The changes have increased the cost of doing business in Indonesia’s energy and mining sectors. The regulatory changes have also raised questions about the sanctity of contracts already in force with the Indonesian government.

Mandatory changes to contract terms remain a serious concern in the oil and gas sector. Government Regulation 79, signed in December 2010, allows the Indonesian government to change the terms of some existing production sharing contracts, eliminates the tax deductibility of certain expenses, changes the terms and criteria for cost recovery, and places limits on allowable costs for goods, services, and salaries.

Indonesia’s 2009 Mining Law replaced a system based on contracts between a company and the central government with a system based on mining licenses issued by – and subject to – local regencies. The law and its implementing regulations impose onerous requirements on companies doing business in this sector, including local content requirements, domestic demand requirements, and a requirement to process raw materials in Indonesia prior to export. A requirement was introduced in 2012 that foreign license holders must divest a 51 percent stake to Indonesian investors within 10 years after the start of production. The law also reduces the maximum mine work area, diminishing a mining company’s ability to fully recover any resource it discovers. Because the licenses are subject to future regulatory, permit, and tax changes, they provide less certainty than the contract of work system. The Indonesian government is forcing renegotiation of those contracts in order to increase government royalty rates, increase local content requirements, require that smelters be built and operated in Indonesia, decrease the size of mining areas, and make further changes that significantly alter the economic potential of these projects.

Telecommunications

Telecommunications providers face myriad investment restrictions. Foreign ownership of up to 65 percent is generally permitted for suppliers of value-added and mobile telecommunications services and up to 49 percent for suppliers of fixed networks. Foreign ownership of up to 95 percent is allowed for suppliers of certain data communication system services, and foreign firms have obtained licenses in this sector. While these ownership limitations are higher than Indonesia's current GATS commitments, the ownership limitation on suppliers of fixed services represents a step backward from past practice, which allowed up to 95 percent ownership.

A Ministry of Communication and Information Technology regulation issued in 2008 closed the construction, management, and ownership of cell towers to foreign investment. Some foreign firms were forced to exit the market. The President signed regulations in November 2012 to implement the Electronic Transactions Law that may require telecommunications companies operating in Indonesia to build data and disaster recovery centers inside Indonesia, although the specific language of the regulation is vague on the scope of "service providers". If strictly implemented, such a requirement would create a significant hurdle to companies seeking to do business in Indonesia.

In addition, Indonesia has local content requirements that raise concerns. Ministry of Communication and Information Technology Regulation 07/2009 Article 17 states that equipment used in wireless broadband services should contain local content of at least 30 percent for subscriber stations and 40 percent for base stations. It also states that all wireless equipment should contain 50 percent local content within 5 years. Regulation 19/2011 Article 6 has the exact same provision. Decree 41/2009 required Indonesian telecommunication operators to expend a minimum of 50 percent of their total capital expenditures for network development on locally sourced components or services.

OTHER BARRIERS

While the Indonesian government and the Corruption Eradication Commission continue to investigate and prosecute high-profile corruption cases, many investors consider corruption a significant barrier to pursuing business in Indonesia. Other barriers to trade and investment include poor government coordination, the slow rate of land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, and lack of transparency in the development of laws and regulations. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was $7.9 billion in 2012, down $1.2 billion from 2011. U.S. goods exports in 2012 were $14.3 billion, up 2.4 percent from the previous year. Corresponding U.S. imports from Israel were $22.1 billion, down 3.9 percent. Israel is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Israel were $3.9 billion in 2011 (latest data available), and U.S. imports were $4.9 billion. Sales of services in Israel by majority U.S.-owned affiliates were $2.8 billion in 2010 (latest data available), while sales of services in the United States by majority Israel-owned firms were $1.9 billion.

The stock of U.S. foreign direct investment (FDI) in Israel was $9.6 billion in 2011 (latest data available), up from $9.3 billion in 2010. U.S. FDI in Israel is primarily concentrated in the manufacturing sector.

The United States-Israel Free Trade Agreement

Under the United States-Israel Free Trade Area Agreement (FTA), signed in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. While non-agricultural tariffs between the United States and Israel have been eliminated as agreed, tariff and nontariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a successor ATAP was successfully completed in 2004. This agreement was effective through December 31, 2008, and granted improved access for select U.S. agricultural products. The ATAP agreement has been extended four times, most recently through December 31, 2013, to allow time for the negotiation of a successor agreement. The ATAP provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel’s most favored nation rates.

IMPORT POLICIES

Agriculture

U.S agricultural exports that do not enter duty-free under WTO, FTA, or ATAP provisions face restrictions, such as a complicated TRQ system and high tariffs. These products include higher value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, the elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of $30 million to $55 million. The removal of quotas and levies on dried fruits could result in an increase in sales by U.S. exporters of up to $12 million. U.S. growers of apples, pears, cherries, and stone fruits estimate that the elimination of Israeli trade barriers would lead to an increase of $7 million to $26 million in export sales of these products. Industry estimates that free trade in agriculture could result in U.S. almond exports increasing by as much as $12 million. Similarly, industry estimates that removing these levies on food product inputs used in U.S.-based restaurant chains operating in Israel could save these chains millions of dollars annually and allow for their expansion.

Further, the ability of U.S. exporters to use available TRQ in-quota quantities can be hampered by problems with transparency and other issues with the administration of Israel's TRQs. These issues include a lack of data on quota fill-rates and license allocation issues, such as allocation of small non-commercially viable quota quantities, and administrative difficulties in obtaining licenses for in-quota imports. Under the current ATAP, Israel committed to take steps to improve the administration of TRQs, including engaging in regular bilateral consultations.

Customs Procedures

Some U.S. exporters have reported difficulty in claiming preferences for U.S. goods entering Israel under the FTA, specifically related to the presentation of certificates of origin to Israeli customs authorities. In 2012, the U.S. Government engaged in discussions with Israel to clarify and resolve this issue. Significant progress was made in 2012, and discussions will continue in 2013.

GOVERNMENT PROCUREMENT

U.S. firms encounter difficulties in accessing the Israeli government procurement market. Government-owned corporations make extensive use of selective tendering procedures. In addition, the lack of transparency in the public procurement process discourages U.S. companies from participating in major projects and disadvantages those companies when they choose to compete. A proposed regulation not yet passed in the Knesset could impair transparency and access further by allowing an internal committee within each Israeli government ministry to exempt up to four million shekels (approximately $1 million) of procurement from public tenders. Enforcement of public procurement laws and regulations in Israel is not consistent.

Israel also has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies are required to offset government contracts by agreeing to invest in local industry, co-develop or co-produce with local companies, subcontract to local companies, or purchase from Israeli industry. Israel is a signatory to the WTO Agreement on Government Procurement (GPA). Since January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations has been 20 percent of the value of the contract; for procurements excluded from GPA coverage, including most military procurements, the offset is 35 percent.

U.S. suppliers suspect that the size and nature of their IC proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the use of offset proposals in determining the award of a contract. Because small and medium sized U.S. exporters are often reluctant to commit to make purchases in Israel in order to comply with the IC requirements, their participation in Israeli tenders is limited. In the revised GPA, Israel committed in 2012 to phase out its offsets on procurement covered by the GPA.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. However, U.S. suppliers have expressed concern about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from various Ministry of Defense (MOD) tendering opportunities. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the market for U.S. suppliers interested in competing for MOD procurements funded by Israel.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States and Israel reached an understanding on February 18, 2010 concerning several longstanding issues regarding Israel's intellectual property rights (IPR) regime for pharmaceutical products. These issues include improving data protection, the terms of patents for pharmaceutical products, and provisions on the publication of patent applications in Israel. In 2012, Israel completed the first phase of the agreement by submitting legislation specified in the agreement to the Knesset, where two of the three pieces of legislation have been enacted. In September 2012, as a result of this action, the United States moved Israel from the Special 301 Priority Watch list to the Watch list. The United States is currently working with the Israeli government to ensure that the final piece of legislation is enacted in a form consistent with the understanding. The United States is also concerned with Israel's Copyright legislation, lax enforcement over IP infringement, and interpretation of its commitments for data protection on biologics.

SERVICES BARRIERS

Audiovisual and Communications Services

Only selected private Israeli broadcast television channels are allowed to carry advertising. These channels received broadcast licenses and the advertising privilege in exchange for certain local investment commitments. Israeli law largely prohibits other broadcast channels, both public and private, from carrying advertisements. Foreign channels that air through the country's cable and satellite networks are permitted to carry a limited amount of advertising aimed at the domestic Israeli audience. Currently, the regulations allow foreign channels no more than 25 percent of their total advertising time to target the Israeli market.

Israel does not have an independent regulator for the telecommunications sector.

INVESTMENT BARRIERS

Investments in regulated sectors, including electronic commerce, telecommunications, banking, insurance, and defense industries, require prior government approval in Israel.

ELECTRONIC COMMERCE

Israel's Electronic Signature Bill regulates signatures on electronic media. Loopholes in the law allow the consumer to decline to pay for any merchandise for which he or she did not physically sign, which serves as a disincentive to the establishment of online businesses. The Ministry of Justice maintains a register of entities authorized to issue electronic certificates attesting to the signature of the sender of an electronic message. The Registrar of Databases, which falls under the authority of the Ministry, requires that any firm or individual holding a client database secure a license to do so.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was $76.3 billion in 2012, up $13.1 billion from 2011. U.S. goods exports in 2012 were $70.0 billion, up 6.6 percent from the previous year. Corresponding U.S. imports from Japan were $146.4 billion, up 13.5 percent. Japan is currently the 4th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Japan were $44.4 billion in 2011 (latest data available), and U.S. imports were $24.8 billion. Sales of services in Japan by majority U.S.-owned affiliates were $69.8 billion in 2010 (latest data available), while sales of services in the United States by majority Japan-owned firms were $96.0 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was $116.5 billion in 2011 (latest data available), up from $102.6 billion in 2010. U.S. FDI in Japan is mostly in the finance/insurance, and manufacturing sectors.

Overview

The U.S. Government continues close engagement with the Japanese government to urge the removal of a range of trade barriers. This engagement takes place through several means, including through the United States-Japan Economic Harmonization Initiative. The U.S. Government will continue to address trade-related concerns through this as well as other fora.

IMPORT POLICIES

Beef Import System

At the end of January 2013, the United States and Japan agreed on new terms and conditions which pave the way for expanded exports of U.S. beef and beef products to Japan. Under these new terms, which entered into effect on February 1, 2013, Japan now permits the import of beef from cattle less than 30 months of age, compared to the previous limit of 20 months, among other steps. It is estimated that these important changes will result in hundreds of millions of dollars in exports of U.S. beef to Japan in coming years. The two governments also agreed to regular and *ad hoc* consultations to review progress under the agreement and address any issues that may arise. In an accompanying letter exchange, Japan also confirmed its ongoing BSE risk assessment by the Food Safety Commission (FSC), which includes a consideration of raising the age limit above 30 months for beef and beef product imports from the United States, taking into account international standards. *This issue is discussed in detail in USTR's 2013 Report on Sanitary and Phytosanitary Measures.*

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for imported rice limits meaningful access to Japanese consumers. In 1999, Japan established a tariff-rate quota (TRQ) of approximately 682,000 metric tons (milled basis) for imported rice. The Staple Food Department of the Ministry of Agriculture, Forestry and Fisheries (MAFF) manages imports of rice within the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous buy-sell tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice uses in the industrial food processing or feed sector and for re-export as food aid. In calendar year 2012, U.S. rice exports to Japan were valued at $243 million, representing approximately 355,000 metric tons of rice. Only a small fraction of this rice reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high quality rice if it were more readily available. The United States looks to Japan to continue meeting its WTO import volume commitments.

Wheat Import System

Japan requires wheat to be imported through MAFF's Food Department, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices discourage wheat consumption by increasing the cost of wheat-based foods in Japan. In 2007, MAFF revised the wheat import regime to allow more frequent adjustment to the resale price so that prices more closely reflect international price movements, however, the U.S. Government remains concerned by Japan's operation of a state trading entity for wheat and its potential to distort trade.

Pork Import Regime

Japan is the largest export market for U.S. pork on both a volume and a value basis, importing 433,000 metric tons in 2012, worth $1.9 billion. The import tariff for pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is greater than or equal to the administratively established reference price. When the value of imports falls below reference prices, the importer pays an additional duty equal to the difference between the import value and the reference price.

Beef Safeguard

Japan instituted a beef safeguard to protect domestic producers in the event of an import surge. The safeguard is triggered when the import volume of beef increases by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. When triggered, beef tariffs would rise to 50 percent from 38.5 percent for the rest of the Japanese fiscal year.

Fish and Seafood Products

U.S. fish and seafood exports to Japan were valued at $765 million in 2012, ranking Japan as the fourth largest export destination with 14 percent of U.S. fish and seafood exports.

While Japan's tariffs on seafood imports are generally low overall, tariffs on several products remain an impediment to U.S. exports. Other market access issues also remain. For example, Japan maintains import quotas on Alaska pollock, Pacific cod, Pacific whiting, mackerel, sardines, squid, and herring as well as specific products such as pollock and cod roe and surimi. Although Japan reduced tariffs, import quotas remain. Administration of the quota system has improved considerably, and Japan has eased administrative burdens and increased import quota volumes. The U.S. Government looks to Japan to continue to reduce obstacles to U.S. exports of fish and seafood.

High Tariffs on Beef, Citrus, Dairy, Processed Food, and Other Agricultural Products

Japan maintains high tariffs on a number of food products that are important exports for the United States, including red meat, citrus, wine, dairy, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges during winter months (16 percent in the summer), 40 percent on processed cheese, 29.8 percent on natural cheese, 22.4 percent on shredded frozen mozzarella cheese, 20 percent on dehydrated potato flakes, 17 percent on apples, 10.5 percent on frozen sweet corn, 20.4 percent on cookies, up to 17 percent on table grapes depending on the season of the year, and 15 percent to 57.7 percent on wine depending on the tariff classification. These high tariffs generally apply to food products that Japan produces domestically. Addressing tariffs on these and other products continues to be a high priority for the U.S. Government.

Wood Products and Building Materials

Japan maintains tariffs on imports of certain manufactured wood products. The elimination of tariffs on wood products remains a long-standing U.S. Government objective.

Leather/Footwear

Japan continues to apply a TRQ on leather footwear that substantially limits imports into Japan's market, negatively impacting market access for U.S.-made and U.S.-branded footwear. The U.S. Government continues to seek elimination of these quotas.

Customs Issues

The U.S. Government continues to urge Japan to take a variety of steps to improve customs processing and to facilitate other expeditious and lower-cost solutions in the distribution sector. The U.S. Government has encouraged Japan to raise the Customs Law *de minimis* ceiling from 10,000 yen to a higher level. Strengthening Japan's system for advanced rulings would also improve transparency and predictability for U.S. exporters. The customs clearance process and clearance times could also be further facilitated by, for example, allowing all users of Nippon Automated Cargo and Port Consolidated System to select the Customs Office for making customs declarations. These processes could also be facilitated by allowing clearance of quarantine items at a bonded warehouse rather than the first entry airport for express air shipments and by allowing post export declaration for certain shipments.

SERVICES BARRIERS

Japan Post

The U.S. Government remains neutral as to whether Japan Post should be privatized. However, as modifications to the postal financial institutions and network subsidiary could have serious ramifications for competition in Japan's financial market, the U.S. Government continues to monitor carefully the Japanese government's postal reform efforts and to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets.

Amendments to the Postal Privatization Law passed in April 2012 further heightened long-standing level playing field concerns. Among other things, the revisions extended exemptions that the Japan Post companies have from the Insurance Business Law and Banking Law, lessened requirements that Japan Post companies must meet before they are allowed to expand their scope of business, and mandated a merger of the Japan Post mail delivery and network operations companies, amplifying cross subsidization concerns.

In the area of express carrier services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Company and international express delivery providers. The U.S. Government urges Japan to enhance fair competition, including by ensuring that Japan Post Company is subject to customs clearance procedures and costs for competitive services similar to those of other international express delivery service suppliers, and by preventing subsidization of Japan Post Company's international express service with revenue from monopoly postal services.

(*For discussion of Japan Post and postal insurance, see "Insurance" under the Services Barriers section*.)

The U.S. Government also continues to urge the Japanese government to ensure that the postal reform process, including implementation of revisions to the Postal Privatization Law, is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to government officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes is a key element in the postal reform process, as is the continued public release of meeting agendas, meeting minutes, and other relevant documents.

Insurance

Japan's private insurance market is the second largest in the world, after that of the United States, with direct net premiums of approximately 37,925 billion yen (approximately $462.5 billion) in Japanese fiscal year 2011. In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyosai*) and Japan Post Insurance, a wholly government-owned entity of the Japan Post Group, also provide substantial amounts of insurance to Japanese consumers. Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain, the U.S. Government continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Postal Insurance: Japan's postal life insurance system remains a dominant force in Japan's insurance market. At the end of Japanese fiscal year 2011, there were approximately 44.3 million postal life and postal annuity insurance policies in force. In comparison, 138 million life and annuity policies were in force with all other life insurance companies combined. The U.S. Government has long-standing concerns about the postal insurance company's negative impact on competition in Japan's insurance market and continues to monitor the implementation of reforms closely. A critical objective, from the U.S. Government's perspective, is to establish equivalent conditions of competition between the Japan Post companies and the private sector, consistent with Japan's WTO obligations. It is also important for Japan to ensure full transparency in the implementation of laws and regulations related to Japan Post Group companies.

The U.S. Government continues to urge Japan to take a number of steps to address these concerns. For example, Japan should ensure equal supervisory treatment between Japan Post Group's financial institutions and private sector companies. Also, the Japan Post Company should provide private companies access to its network comparable to that given to Japan Post entities, and select and distribute financial products of private providers through its network transparently and without discrimination. In addition, Japan should implement measures to prevent cross-subsidization among the Japan Post businesses and related entities, such as ensuring the Japan Post companies' strict compliance with the Insurance Business Law's arm's length rule and requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring.

The U.S. Government continues to urge Japan not to allow the Japan Post Group to expand the scope of operations for its financial services companies before a level playing field is established. The current restraints on the scope of these operations -- including the cap on the amount of insurance coverage and limits to the types of financial activities and products Japan Post entities could offer -- have helped to limit the extent to which the uneven playing field harms private insurance companies. In addition, before final decisions are made, it is vital that Japan's process for approving new products be transparent and open to all parties, including active solicitation and consideration of private sector views, along with careful analysis and full consideration of actual competitive conditions in the market.

The U.S. Government has expressed deep concerns regarding these issues and continues to closely monitor the Japanese government processing of applications submitted in September 2012 by Japan Post Insurance and Japan Post Bank to offer a modified education endowment insurance product and new housing loan services. In November 2012, after receiving a positive recommendation from the independent Postal Services Privatization Commission (PSPC), the Japanese government granted provisional approval to Japan Post Insurance regarding the educational endowment insurance product with eight conditions that must be met before receiving final approval. In December 2012, the PSPC recommended that the Japanese government also grant conditional approval to allow Japan Post Bank to offer housing loans, but final action by the Japanese government is still pending.

Local Incorporation of Foreign Insurance Operations: In August 2012, Japan's Financial Services Agency (FSA) released its "Annual Supervisory Policy for Insurance Companies, etc. for Program Year 2012" (the Policy), which suggests that it may be appropriate to require branches of foreign insurance companies to incorporate into local subsidiaries. The U.S. Government urges the government of Japan to continue allowing foreign insurance providers choice of juridical form in accessing the Japanese markets and to afford U.S. insurance providers meaningful opportunities to provide their input on any actions that would affect the provision of insurance.

Kyosai: Insurance businesses run by cooperatives, or *kyosai*, hold a substantial share of insurance business in Japan. Some *kyosai* are regulated by their respective agencies of jurisdiction (*e.g.* the Ministry of Agriculture, Forestry and Fisheries or the Ministry of Health, Labor and Welfare) instead of by the FSA, which regulates all private sector insurance companies. These separate regulatory schemes create a nontransparent regulatory environment and afford *kyosai* critical business, regulatory, and other advantages over their private sector competitors. The U.S. Government urges that *kyosai* be subject to the same regulatory standards and oversight as their private sector counterparts, including being brought under the supervision of the FSA, to ensure a level playing field.

The U.S. Government also remains concerned about the reversal of progress toward giving FSA supervisory authority over *kyosai* that have insurance operations that are neither regulated by the FSA nor by any other government agency. The 2005 Insurance Business Law revisions would have achieved this by requiring these unregulated *kyosai* to come under FSA supervision. However, the Japanese government has delayed--and in some cases provided exemptions to--implementation.

Policyholder Protection Corporations: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created to provide capital and management support to insolvent insurers. The current system relies on pre-funding of the PPC by its members and a government "fiscal commitment" in the event that industry funding is insufficient, instead of adopting a system where an insolvency would result in members contributing funds to the PPC as needed (post-funding). In March 2012, the Japanese government extended the existing system of government pre-funding of the PPC for an additional five years, until March 2017. The U.S. Government continues to urge Japan to consider more fundamental changes in the PPC systems, including through full and meaningful deliberations with interested parties, before renewing these measures again.

Bank Sales of Insurance: In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. As a follow-up, the U.S. Government asked Japan to review market conduct rules, including the limits on sales of designated products and treatment of customer data, to ensure they do not limit the effectiveness of bank sales of insurance or impede consumer convenience and choice. The FSA committed to conduct a review of market conduct rules three years after liberalizing the bank sales channel. It published a report in July 2011 announcing minor revisions to the market conduct rules along with the results of the monitoring process. The revisions, effective April 2012, were relatively limited in their commercial impact, as the easing of the restrictions on the sale of insurance products was narrow in scope. The U.S. Government is concerned that the Japanese government has yet to commit to conduct another review and calls on Japan to conduct a fact-based and transparent review of the bank sales channel in the near term. The next review should include meaningful opportunities for input from interested stakeholders and take into account global best practices to further enhance policyholder protection and improve consumer choice.

Other Financial Services

While improvements have been made in Japan's financial services sector, such as the FSA's continued commitment to its Better Markets Initiative, the U.S. Government continues to urge reforms in the areas of online financial services, defined contribution pensions, credit bureaus, and sharing of customer information. More improvement in this sector is needed, particularly with respect to transparent practices such as enhancing the effectiveness of the no-action letter and related systems, providing written interpretations of Japan's financial laws, and soliciting input from all interested parties on concerns and potential improvements related to the inspection process.

Telecommunications

The U.S. Government continues to urge Japan to ensure fair market opportunities for emerging technologies and business models, ensure a regulatory framework appropriate for addressing converged and Internet-enabled services, and strengthen competitive safeguards on dominant carriers. The U.S. Government also continues to urge Japan to improve transparency in rulemaking and ensure the impartiality of its regulatory decision making. In January 2012, Japan agreed with the United States on a set of common trade principles for information and communications technology (ICT) services, a positive step toward addressing many of these issues.

Fixed-line Interconnection: In March 2012, Japan's Ministry of Internal Affairs and Communications (MIC) approved both Nippon Telegraph and Telephone (NTT) East and NTT West's interconnection rates based on the Long Run Incremental Cost Method for Japanese fiscal year 2012. In March 2012, MIC also authorized Japanese fiscal year 2012 interconnection fees for the "Next Generation Network" (NGN), including Ethernet data transmission, operated by NTT East and NTT West. These interconnection rates still remain high by international standards.

Dominant Carrier Regulation: NTT continues to dominate Japan's fixed line market through its control over almost all "last-mile" connections. As Japan's broadband users transition from digital subscriber line (DSL) (where competition, ensured through regulation, was robust) to optical fiber, competitors have raised concerns that the more lightly regulated fiber-based services will allow NTT to expand its dominant position through control of the fiber-to-the-home (FTTH) market, where it holds a market share of about 73.9 percent as of September 2012.

NTT's authority to bundle its fixed-line services with NTT DOCOMO's mobile service is another cause of concern, as it appears to undermine the rationale for structurally separating the companies. In light of Japan's ongoing review of the overall legal structure of NTT, the U.S. Government has urged Japan to remain committed to ensuring competition in the telecommunications market, which affects all players participating in markets for converged services.

Universal Service Program: Current cross-subsidization of NTT West by NTT East using interconnection revenue (ostensibly to address NTT West's higher network costs resulting from the higher number of rural subscribers) appears redundant given the existence of the universal service fund. The U.S. Government has urged the abolition of this cross-subsidy. A Ministry of Internal Affairs and Communications (MIC) panel reviewed the universal service system as part of MIC's New Broadband Superhighway plan. Under the present universal service system, NTT East and NTT West are required to maintain subscribers' copper lines. Nonetheless, the panel recognized a need to avoid letting this requirement become an impediment to the development of fiber optic lines. In December 2011, the panel recommended that the universal service system allow fiber optic Internet Protocol telephony, which is equivalent in voice quality, reliability, and other factors to subscribers' existing wireline telephony.

Mobile Termination: Like most countries, Japan uses the "Calling Party Pays" system, imposing the entire cost of termination on the calling party (enabling mobile subscribers to benefit from free incoming calls). Mobile interconnection rates still remain high by international standards and particularly compared to fixed-line rates in Japan. However, following new guidelines from MIC on calculating interconnection rates, NTT DOCOMO, the dominant incumbent mobile carrier, announced in February 2010 that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. In January 2012, NTT DOCOMO announced a decision to cut interconnection fees for calls to other wireless service operators by up to 21.8 percent, retroactive to April 2011. MIC is encouraging all wireless carriers to follow the new guidelines. In contrast to NTT DOCOMO, however, other mobile operators' termination rates remain high, and mediation efforts to reduce these rates have not been successful. With new entrants in the mobile sector, the U.S. Government has continued to monitor developments and to urge MIC to consider the advantages of moving to a "bill-and-keep" system that is more economically efficient and where interconnection payments are not exchanged between carriers.

New Mobile Wireless Licenses: Starting in 2005, MIC began opening the market to new mobile providers beyond the three main incumbents by assigning blocks of spectrum to a limited number of new wireless entrants. In September 2010, MIC awarded only one license for mobile multimedia broadcasting services, even though the subject spectrum band was able to support two operators. In March 2012, Softbank was awarded 900MHz frequencies, and in June 2012, NTT DOCOMO, KDDI, and eAccess (a carrier that is now in the process of being acquired by Softbank) were awarded 700MHz spectrum. While Softbank plans to launch its 900MHz networks in 2012, the 700MHz frequencies will not be utilized until 2015. The factors MIC used to determine how to evaluate applications raised questions about whether MIC achieved its stated goal of awarding these licenses based on objective criteria. Given the scarcity of spectrum and high demand for new technologies, the U.S. Government continues to urge MIC to consider alternative mechanisms, including auctions to assign commercial spectrum in a timely, transparent, objective, and nondiscriminatory manner that adheres to principles of technology neutrality, particularly for spectrum that became available as a result of broadcasters' switch to digital television in July 2011. In December 2011, MIC announced its intent to introduce a system by 2015 that allows for auctions as an option to assign commercial spectrum, a positive development that the U.S. Government is monitoring. In March 2012, the Japanese government submitted legislation that would amend the Radio Law to authorize MIC to use auctions to assign spectrum, although the Diet did not act on the legislation. In February 2013, the government, under a new administration, decided it would not submit the legislation to the current session of the Diet.

Information Technologies

In January 2012, the Japanese government took a positive step by concluding with the U.S. Government a set of common trade principles for ICT services. These principles cover a range of topics, including regulatory transparency, open access to networks and applications, free flow of information across borders, nondiscriminatory treatment of digital products, and foreign investment in ICT services.

However, the U.S. Government continues to urge the Japanese government to address concerns related to cloud computing, health information technology, privacy, and information technology (IT) and electronic commerce policymaking.

Cloud Computing: Cloud computing, which depends on trans-border data flows, has the potential to increase efficiency and reduce costs in the public and private sectors. The U.S. Government, therefore, has urged Japan to adopt the principle of nondiscrimination between data services offered inside and outside of Japan. The U.S. Government also has urged the Japanese government to ensure full transparency and consult foreign and domestic industry as rules on data centers and cloud computing are formulated and implemented.

Health IT: Government policies that fail to encourage interoperability, technology neutrality, and international harmonization, in addition to providing insufficient reimbursement incentives, inhibit the expansion of Japan's health IT services sector, an important market for U.S. companies. The U.S. Government has urged Japan to improve the quality and efficiency of healthcare by rapidly implementing health IT that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records. In September 2012, U.S. and Japanese government health IT experts met in Tokyo to initiate a dialogue to address health IT issues of mutual interest.

Privacy: Separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment with regard to the storage and general treatment of personally identifiable information in Japan. The U.S. Government has urged Japan to introduce greater uniformity in the enforcement of the Privacy Act across the central government through policy standardization and consistent implementation of guidelines. The U.S. Government also has urged the Japanese government to reexamine the provisions and application of the Privacy Act, so as to foster appropriate sharing of data, to ensure full transparency, and to consult widely as privacy guidelines for online advertising are developed.

IT and Electronic Commerce Policymaking: Insufficient transparency in Japan's policymaking process for IT and electronic commerce has stifled innovation and competitiveness in Japan and constrained U.S. company access. The U.S. Government has urged Japan to improve its policymaking process by seeking and considering industry input at all stages of policymaking. This will help foster development of programs that promote technology neutrality, facilitate private sector participation in government-appointed advisory groups, and provide companies with adequate time to offer public comments and adjust to rule changes.

Consumption Tax on Online Content from Abroad: In 2012, the Ministry of Finance (MOF) announced that it intends to begin levying a consumption (value-added) tax on music and books distributed online from overseas to consumers in Japan. Such products offered by firms with a physical presence in Japan are already subject to a consumption tax. MOF proposes to introduce a mandatory registration system for foreign firms, modeled on that used in the European Union. On March 1, MOF submitted to the Diet a tax reform bill, but it did not include any provisions to levy the consumption tax on music and books distributed online from overseas, and MOF has indicated it is still considering an effective framework of imposing the tax on online content from overseas. The U.S. Government is continuing to monitor developments.

Legal Services

Japan imposes restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government continues to urge Japan to further liberalize the legal services market. Legislation was submitted to the Diet in March 2012 that would allow foreign lawyers to form Japanese professional corporations that are permitted to establish branch offices within Japan. It did not pass, however, and it remains unclear whether it will be reintroduced in the Diet. In addition to this legislation, another important step would be to allow foreign lawyers to establish multiple branch offices in Japan, whether or not they have established a professional corporation. The U.S. Government also urges Japan to take other important measures, including ensuring that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships and accelerating the registration process for new foreign legal consultants.

Educational Services

The U.S. Government continues to urge the Japanese government to work with foreign universities to find a nationwide solution that grants tax benefits comparable to Japanese schools and allows them to continue to provide their unique contributions to Japan's educational environment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Japan generally provides strong intellectual property rights (IPR) protection and enforcement. However, the U.S. Government continues to urge Japan to improve IPR protection and enforcement in specific areas through bilateral consultations and cooperation, as well as in multilateral and regional fora.

Japan's signing of the Anti-Counterfeiting Trade Agreement (ACTA) in October 2011 and ratification of ACTA in September 2012 were positive steps. The ACTA establishes an international framework that will assist parties in their efforts to effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

The U.S. Government also has urged Japan to continue to reduce piracy rates, including adopting methods to protect against piracy in the digital environment. Police and prosecutors lack *ex officio* authority to prosecute IPR crimes on their own initiative, without a rights holder's complaint. The U.S. Government has also pressed for improvements to Japan's Internet Service Provider liability law to provide adequate protection for rights holder's works on the Internet.

Japan took steps to revise its Customs Law and Unfair Competition Law in 2011 and its Copyright Law in 2012, which extended protection for technological protection measures among other provisions. However, the U.S. Government recommends that Japan further strengthen its laws to provide effective criminal and civil remedies against the unauthorized circumvention of technological protection measures used by rights holders to protect their works and against the trafficking in tools used to circumvent them.

In other areas, although Japan provides a 70-year term of protection for cinematographic works, it only provides a 50-year term for all other works protected by copyright and related rights. The U.S. Government continues to urge Japan to extend the term of protection for all subject matter of copyright and related rights in line with emerging international trends. Amendments to the Copyright Law came into effect in 2010 which, among other things, clarified that the statutory private use exception does not apply in cases where a downloaded musical work or a motion picture is knowingly obtained from an infringing source. Additional amendments in 2012 provided for criminal penalties in such cases. The U.S. Government welcomes these steps, but continues to urge the Japanese government to expand this limitation on the private use exception to cover all works protected by copyright and related rights.

In addition, the U.S. Government continues to monitor developments related to Japan's announcement in October 2011 of plans to introduce a *sui generis* system for the protection of geographical indications

(GIs) within five years. The U.S. Government urges Japan to ensure that certain core principles are upheld involving the scope of GI protection and GI registration safeguard procedures, including protecting the prior rights of owners of existing trademarks, safeguarding the use of generic terms, and ensuring objection and cancellation procedures, as it considers changes to its existing system for protecting GIs.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central entities and government enterprises covered under the GPA, Japan applies a threshold of 15 million SDRs (approximately $23.98 million), which is three times the threshold applied by the United States.

Construction, Architecture, and Engineering

U.S. companies annually obtain far less than 1 percent of projects awarded in Japan's massive public works market, estimated at $242 billion in 2012. Two bilateral public works agreements are in effect: the 1988 United States-Japan Major Projects Arrangements (MPA, updated in 1991) and the 1994 United States-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (Action Plan). The MPA includes a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the GPA. The U.S. Government raises public works issues in the Expert-Level Meetings on Public Works under the United States-Japan Trade Forum.

Problematic practices continue to limit the participation of U.S. design/consulting and construction firms in Japan's public works sector, including bid rigging (*dango*), under which companies consult and prearrange a bid winner. (*For more, see "Broadening Measures to Combat Bid Rigging" under the Anticompetitive Practices section*.) The U.S. Government continues to press Japan to take more effective action to address this pervasive problem. The U.S. Government continues to monitor Japan's public works sector.

Specifically, the U.S. Government is paying special attention to certain major projects covered by the public works agreements that are of particular interest to U.S. companies. These include major expressway projects; major public buildings, railroad and railroad station procurements, urban development and redevelopment projects; planned port facilities expansion projects; major Private Finance Initiative (PFI) projects; and the MPA projects still to be undertaken or completed. The U.S. Government is also monitoring developments related to environmental remediation, "green" building, design, and procurement.

Procurement of Information Technology

Lack of transparency, excessive reliance on sole-source contracting, and restrictions on intellectual property ownership, among other factors, hinder the participation of U.S. companies in Japanese government IT procurement. The U.S. Government therefore has urged Japan to introduce greater competition, transparency, and fairness in government procurement of IT through steps such as implementation of national government-wide policies that reflect international technology trends and standards and that follow principles of technology neutrality and interoperability. In August 2012, Japan appointed its first central government Chief Information Officer. The U.S. Government encourages Japan to use the new CIO's position to reform government procurement of IT in the ways described above. In addition, the U.S. Government is urging that Japanese government procurement of cloud computing services be neutral with respect to the technology used by cloud service providers.

INVESTMENT BARRIERS

Despite being the world's third largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD country. According to OECD statistics, FDI stock at the end of 2010 was only 3.7 percent of Gross Domestic Product (GDP) in Japan, compared to 28.8 percent on average for all OECD members. Inward foreign merger and acquisition (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan.

While the Japanese government has previously recognized the importance of FDI to revitalizing the country's economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In June 2012, an inter-ministerial conference established a target of doubling Japan's FDI stock (2011 baseline) by 2020, and this target was incorporated into a national growth strategy endorsed by the Cabinet in July 2012, although it is unclear whether Japan's current government will adopt and continue to promote this target.

While progress toward this new target will be measured in part by the numbers of transactions and monetary values of mergers and acquisitions (M&A), the Japanese government has done little to explicitly encourage inward investment through M&A as a policy priority. Even before the financial crisis of 2008 and 2009, questions existed regarding the adequacy of measures taken to promote a level of cross-border M&A necessary to achieve the government's target. After peaking at 309 in 2007, numbers of annual M&A transactions declined to 145 in 2011. A variety of factors make cross-border M&A difficult in Japan, including attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders, cross-shareholdings, aspects of Japan's commercial law regime (*see section titled "Commercial Law"*), and a relative lack of financial transparency and disclosure.

ANTICOMPETITIVE PRACTICES

Japan has taken significant positive steps in recent years to bolster its competition regime, including increasing fines and penalties, extending the statute of limitations, and strengthening aspects of the Japan Fair Trade Commission's (JFTC) enforcement mechanisms and tools. At the same time, concern persists that the present system for enforcing the Antimonopoly Act (AMA) may not afford sufficient due process protections. Additional measures to combat anticompetitive behavior and provide for basic due process protections would improve the business environment and ensure that enforcement procedures are fair and transparent.

Improving Anti-Monopoly Compliance and Deterrence

The AMA provides for both administrative and criminal sanctions against cartels. Criminal prosecutions, which should have the strongest deterrent effect against anticompetitive behavior, have been few, and penalties against convicted company officials have been weak. The U.S. Government has continually urged Japan to take steps to maximize the effectiveness of enforcement against serious violations of the AMA. The Japanese government has taken certain steps to address these concerns, particularly through AMA amendments enacted in June 2009, most of which came into effect in January 2010. These amendments increased administrative penalty (surcharge) rates for enterprises that played a leading role in cartel activities by 50 percent, extended the statute of limitations to five years, increased maximum prison sentences for criminal cartel and bid-rigging violations to five years, and improved the leniency program to encourage reporting of unlawful cartels. The 2009 AMA amendments also provide for mandatory surcharges on enterprises that engage in exclusionary private monopolization, abuse of superior bargaining position, and repeat violations of certain "unfair trade practices." The JFTC issued guidelines on exclusionary private monopolization in October 2009 after considering public comments. The JFTC's ability to enforce the AMA effectively continues to be hindered by an insufficient number of employees with post-graduate economics training, a factor that undermines the JFTC's ability to engage in the economic analysis necessary to properly evaluate non-cartel behavior. The U.S. Government continues to urge the JFTC to improve its economic analysis capabilities.

Improving Fairness and Transparency of JFTC Procedures

Japan introduced a system in January 2006 that empowered the JFTC to make determinations of AMA violations without a prior formal administrative hearing. Respondents are only afforded the right to seek administrative review of the JFTC decision after the decision is put into place. Although the JFTC allows companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to issuance of a final order, questions have arisen as to whether the current system provides sufficient due process protections. In December 2009, the Japanese government announced its intention to eliminate the *ex post* hearing system and to allow appeals of JFTC orders to go directly to the Tokyo District Court. Although legislation for those purposes was submitted to the Diet, it has not yet been enacted. The U.S. Government continues to raise concerns about procedural fairness questions related to the JFTC's investigative, pre-decisional, and appeals processes.

Broadening Measures to Combat Bid Rigging

Japanese officials have implemented a series of measures to address the problem of bid rigging. In recent years, the Ministry of Land, Infrastructure, Transport, and Tourism (MLIT) strengthened administrative sanctions against companies found by JFTC to have engaged in unlawful public bid rigging. Administrative leniency programs have also been introduced to encourage companies and individuals to report illegal acts. As of April 2009, MLIT and 13 other central government entities are administering an administrative leniency program to complement the JFTC leniency program, which is designed to help encourage individuals and companies to report anticompetitive acts. In addition, Japan has put in place a series of measures aimed at ensuring a competitive bidding process for project contracts tendered at the central and local government levels. The U.S. Government continues to raise concerns that further measures are needed to prevent conflicts of interest in government procurement, improve efforts to eliminate involvement in bid rigging by government officials, and expand administrative leniency programs.

OTHER SECTORAL AND CROSS-SECTORAL BARRIERS

Transparency

Transparency issues remain a top concern of U.S. companies operating in Japan's market. The U.S. Government has strongly urged Japan to adopt new measures to achieve a higher degree of transparency in governmental regulatory and policymaking processes.

Advisory Groups: Although advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan, the process of forming these groups can be opaque and nonmembers are too often not uniformly offered meaningful opportunities to provide input into these groups' deliberations. The U.S. Government continues to urge Japan to ensure the transparency of advisory councils and other groups convened by the government by adopting new requirements to ensure that ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

Public Comment Procedure (*PCP*): Many U.S. companies remain concerned by inadequate implementation of the PCP by Japanese ministries and agencies. Examples include cases where comment periods appear unnecessarily short, as well as cases suggesting comments are not adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The U.S. Government has stressed the need for Japan to ensure that its existing PCP is being fully implemented and to make additional revisions to further improve the system, such as doubling the public comment period for rulemaking to 60 days.

Transparency in Regulation and Regulatory Enforcement: To ensure the private sector has sufficient information about regulations and official interpretations of those regulations that require compliance, the U.S. Government is urging Japan specifically to require its ministries and agencies to make public their regulations and any statements of policy of generally applicable interpretation of those regulations.

Commercial Law

A 2006 reform of Japan's commercial law permitted the use of certain modern merger techniques, including domestic and cross-border (forward) triangular mergers (*i.e.*, mergers structured so that a Japanese company is acquired by a Japanese subsidiary of a foreign parent company, with the shareholders of the target company receiving shares in the foreign parent company as compensation). These provisions did not prove as effective as had been hoped in facilitating foreign investment into Japan, which has been constrained by conditions for using tax-advantaged merger tools for inward-bound investment to Japan, by securities law and capital market issues inherent in cross-border stock-for-stock transactions, and by corporate governance systems that do not adequately reflect the interests of shareholders, among other possible issues.

The U.S. Government continues to urge Japan to identify and eliminate impediments to cross-border mergers and acquisitions, including the availability of reasonable and clear incentives for many such transactions, and to take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements. The U.S. Government has also continued to urge Japan to improve further its commercial law and corporate governance systems in order to promote efficient business practices and management accountability to shareholders in accordance with international best practices. These changes could include facilitating and encouraging active and appropriate proxy voting, setting minimum requirements for and ensuring the independence of outside directors, augmenting the role of outside directors on corporate boards, strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders, and encouraging the stock exchanges to adopt listing rules and guidelines that will improve the corporate governance of listed companies and ensure that minority shareholders' interests are protected.

In November 2012, the Tokyo Stock Exchange took the positive step of publishing its first handbook for company directors on corporate governance. In addition, based on 2012 Legislative Council recommendations, the Japanese government is considering measures that, if realized, could represent some progress, including possible steps such as the establishment of a system for companies to create an audit and supervisory committee, the tightening of the requirements governing outside directors, and the establishment of the multiple derivative action system. If achieved, however, further progress would still be needed to bring Japan into line with international best practices. One important step would be the introduction of a requirement that companies appoint at least one outside director.

Automotive

A variety of nontariff barriers have traditionally impeded access to Japan's automotive market. Overall sales of U.S. made vehicles and automotive parts in Japan remain low, which is a serious concern.

The U.S. Government has expressed concern with the overall lack of access to Japan's automotive market for U.S. automotive companies. Barriers include, but are not limited to, issues relating to standards and certification, the lack of sufficient opportunities for stakeholder input in the development of standards and regulations, barriers that hinder the development of distribution and service networks, and the lack of equivalent opportunities for U.S. models imported under the preferential handling procedure (PHP) certification program to benefit from temporary fiscal incentive programs. The U.S. Government urges Japan to address the full range of barriers in Japan's automotive market.

Medical Devices and Pharmaceuticals

Japan continues to be one of the most important markets for U.S. medical device and pharmaceutical exports. According to the latest official figures from the Ministry of Health, Labour and Welfare's (MHLW's) Annual Pharmaceutical Production Statistics, the Japanese market for medical devices and materials in 2011 was just over $29.9 billion (up 3 percent from 2010 in yen terms). Japan's total imports of U.S. medical devices exceeded $6.4 billion in 2011. According to the American Medical Devices and Diagnostics Manufacturers' Association (AMDD), during the last 7-year period, 58 percent of "new medical devices" approved in Japan were from its member companies. The pharmaceuticals market in Japan was valued at $117.7 billion in 2011 (up 2 percent from 2010 in yen terms). Japan's total imports of U.S. pharmaceuticals totaled $6.5 billion in 2011.

Innovative U.S. medical devices frequently have been introduced elsewhere in the world years before they are available in Japan (device lag) or are not introduced at all into Japan (device gap). The Japanese government has recognized that the device lag and device gap prevent timely patient access to innovative and life-saving products and has been steadily improving review times and processes in accordance with the Five-Year Action Program for Speedy Review of Medical Devices implemented in December 2008. In addition, the medical review process could be further improved through revision of the Pharmaceutical Affairs Law (PAL). The proposed bill for amendment of the PAL includes the creation of a system that considers the characteristics of medical devices separately from pharmaceuticals. The U.S. Government continues to urge Japan to meet the Action Program goals and take additional steps as the Japanese government moves forward with possible changes to the PAL. Japan's reimbursement policies for medical devices also hinder the introduction of innovative medical technology to the market. Of specific concern has been Japan's application of and changes to the "Foreign Average Price" rule. The U.S. Government continues to urge Japan to implement predictable and stable reimbursement policies that reward innovation and provide incentives for companies to invest in the research and development of advanced healthcare products.

With regard to pharmaceuticals, the U.S. Government welcomes Japan's implementation in 2010 (on a trial basis) of a new premium system for the most innovative, research-intensive pharmaceuticals that minimizes downward price revisions on new drugs for which there are no corresponding generics. The new premium system has considerably improved the development of new drugs and unapproved indications in Japan. In the biennial price revision of April 1, 2012, the Japanese government decided to continue the new premium system trial for an additional two years starting from that date. Making this new system permanent would help increase the predictability and attractiveness of the Japanese market, reduce the drug lag, and promote long-term investment in Japanese life sciences discovery. The U.S. Government continues to urge the Japanese government to make the new premium system permanent and to refrain from implementing other aspects of its reimbursement policies that hinder the development and introduction of innovative pharmaceuticals, such as Japan's approach to re-pricing based on market expansion.

Although the level of transparency in Japan's drug and medical device reimbursement decision making processes has improved in recent years, including potential additional systemic changes, the U.S. Government continues to urge Japan to build further on recent improvements to foster a more open and predictable market.

Nutritional Supplements

Japan has taken steps to streamline import procedures and to open its 1,150 billion yen (approximately $14.4 billion) nutritional supplements market, although many significant market access barriers remain. Burdensome restrictions on health claims are a major concern. Only those products approved as Foods for Specified Health Uses (FOSHU) or Foods with Nutrient Function Claims (FNFC) are allowed to have health or structure/function claims. Producers of most nutritional supplements, however, are unable to obtain FOSHU or FNFC approval due to FOSHU's costly and time-consuming approval process and due to the limited range of vitamins and minerals that qualify for FNFC. These processes apply to both imported and domestic products. Other concerns include long lead times for food additive applications; inability to use food ingredients and food additives, including organic solvents for processing ingredients to be used in nutritional supplements; high import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); lack of transparency in new ingredient classifications; and lack of transparency in the development of health food regulations. The U.S. Government continues to discuss these issues with the Japanese government.

Cosmetics and Quasi-Drugs

Japan is the world's second largest market for cosmetics and quasi-drugs after the United States. In 2011, U.S. exports of cosmetics and personal care products to Japan were estimated at $373 million, second only to France. Despite this market presence by U.S. products, regulatory barriers continue to limit timely consumer access to safe and innovative products, generating unnecessary costs. Unlike the over-the-counter drug monograph system in the United States, Japan requires premarket approval for certain products, such as a category called "medicated cosmetics" that are classified as quasi-drugs under the Pharmaceutical Affairs Law. The approval process of the quasi-drugs includes requirements that are burdensome, lack transparency, and do not appear to enhance product safety, quality, or efficacy. In addition, restrictions on advertising claims for cosmetics and quasi-drugs prevent companies from informing customers of product benefits so that consumers can make an informed choice. Enhanced communication between both the U.S. and Japanese Governments and industries has led to some improvements in the Japanese regulatory system. For example, in the summer of 2011, the Japanese government agreed to allow a new advertising claim for "the appearance of reduced fine lines" for cosmetics. The U.S. Government continues to urge Japan to address pending issues of concern.

Proprietary Ingredient Disclosure Requirement for Food and Dietary Supplements

As part of its product classification process for new-to-market food and dietary supplement products, Japan mandates that all ingredients and food additives be listed by name along with content percentages, and include a description of the manufacturing process. In addition to being burdensome, this process risks the release of proprietary information to competitors.

Aerospace

Japan is among the largest foreign markets for U.S. civil aerospace products. The civil aerospace market in Japan is generally open to foreign firms, and some Japanese firms have entered into long-term relationships with U.S. aerospace firms. The U.S. Government continues to monitor Japan's development of indigenous aircraft.

Military procurement by the Ministry of Defense (MOD) accounts for approximately half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan, many contracts for defense equipment are not open to foreign bids. MOD's general preference is that defense products and systems be developed and produced in Japan, and it will often opt for local development and/or production, even when a foreign option exists that could fulfill the requirements more efficiently, at a lower cost, and with better inoperability with Japan's allies.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems. Japan is also developing a global positioning system navigation satellite constellation known as the "quasi-zenith" system. At the conclusion of the United States-Japan Consultative Committee meeting on June 21, 2011, the Governments of the United States and Japan released a joint statement in which the two nations recognized recent progress to deepen our bilateral space security partnership through the United States-Japan Space Security Dialogue, and possible future cooperation in areas such as space situational awareness, a satellite navigation system, space-based maritime domain awareness, and the utilization of dual use sensors. In line with this statement, the U.S. Government is working to ensure U.S. companies have full opportunities to participate in Japan's satellite market.

Business Aviation

Japan has been taking steps to bolster business aviation operations through the liberalization of regulations and investment in infrastructure, most notably at Tokyo's Narita airport. The U.S. Government will continue to work with the Japan Civil Aviation Bureau (JCAB) to promote greater liberalization in the business aviation sector, including through APEC's Transportation Working Group, which aims to forge consensus among APEC economies on best practices in the economic treatment of international business aviation operations.

Civil Aviation

Japan is the United States' largest aviation partner in the Asia-Pacific region. Operations between the United States and Tokyo's Haneda Airport are limited. The U.S. Government continues to be interested in a commercially meaningful expansion of access to Haneda for U.S. airlines.

Transport and Ports

The U.S. Government has had longstanding concerns about barriers to entry to, and the lack of competitiveness in, Japanese ports. Long-term relationships, a lack of transparency, licensing requirements, and other practices and requirements have greatly limited the ability of foreign shipping companies to do business in Japan. On January 26, 2011, the U.S. Federal Maritime Commission (FMC) issued an Order terminating a proceeding that it had opened in 1995 to investigate these practices. In its 2011 Order, the FMC stated that concerns about practices and requirements in Japan had not been completely eliminated, and that it will remain watchful for unfavorable conditions in the U.S.-foreign ocean-borne trade.

JORDAN

TRADE SUMMARY

The U.S. goods trade surplus with Jordan was $556 million in 2012, up $163 million from 2011. U.S. goods exports in 2012 were $1.7 billion, up 17.7 percent from the previous year. Corresponding U.S. imports from Jordan were $1.2 billion, up 9.0 percent. Jordan is currently the 66th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Jordan was $145 million in 2011 (latest data available), up from $99 million in 2010.

The United States-Jordan Free Trade Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA), which entered into force on December 17, 2001, the United States and Jordan completed the final phase of tariff reductions on January 1, 2010. Jordan now imposes zero duties on nearly all U.S. products, with limited exceptions, *e.g.* for alcoholic beverages.

IMPORT POLICIES

Tariffs and Other Charges

Jordan is a member of the WTO and is in the process of reducing its tariffs as called for by its WTO accession commitments. Currently, Jordan's average applied MFN tariff is 10 percent, with a maximum applied tariff rate of 30 percent in certain sectors. Most raw materials and intermediate goods used in industry face zero duties.

Jordan's General Sales Tax law allows the government to impose a "Special Tax" at the time of importation or local production. For example, the government currently imposes a 17.5 percent tax on automobiles and trucks.

Agriculture

Import licenses, or advance approvals for importation, are required for specific food and agricultural goods. The Ministry of Agriculture and the Ministry of Health are the authorities charged with granting these licenses and approvals.

Import Licenses

In addition to Jordan's special licensing and approval requirements for the importation of certain agricultural products, Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. On October 6, 2010, the government of Jordan issued directives requiring a special import license prior to the importation of telecommunications and security equipment for all trading partners, including the United States.

GOVERNMENT PROCUREMENT

Jordan is an observer to the WTO Committee on Government Procurement. In 2002, it commenced the process of acceding to the WTO Agreement on Government Procurement (GPA), with the submission of its initial entry offer. Subsequently, it has submitted several revised offers, in response to requests by the United States and other GPA Parties for improvements. Negotiations on Jordan's accession continued in 2012.

EXPORT SUBSIDIES

Net profits generated from most export revenue will remain fully exempt from income tax except for net profits from exports in the mining sector, exports governed by specific trade protocols, and foreign debt repayment schemes, which are subject to income tax. Under WTO rules, the income tax exemption was initially set to expire on January 1, 2008. At the request of Jordan, WTO Members extended the waiver through December 2015, subject to an annual review.

In addition, 98 percent of foreign inputs used in the production of exports are exempt from customs duties; all additional import fees are assessed on a reimbursable basis.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Jordanian government continues to take steps to provide more comprehensive protection of intellectual property rights (IPR). The special prosecutor for IPR is working to enforce existing laws more effectively. However, enforcement in certain areas, such as digital media, remains weak. Jordanian agencies responsible for IPR enforcement lack resources and capacity. Prosecution efforts should be strengthened, particularly with respect to utilizing *ex officio* authority to bring charges in criminal cases. Jordanian authorities have participated in enforcement-related training led by the United States.

INVESTMENT BARRIERS

Jordanian laws set limitations on foreign ownership in certain sectors, subject to exceptions where the government deems appropriate. This exceptions policy is viewed as too selective by some potential U.S. investors. The Jordanian government expects to conclude the process of adherence to the Organization of Economic Cooperation and Development (OECD) Declaration on International Investment and Multinational Enterprises in early 2013. In 2012, the United States and Jordan endorsed a set of voluntary joint principles that is designed to facilitate investment.

ELECTRONIC COMMERCE

In August 2012, an electronic transactions law to address issues such as electronic payments and signatures was drafted and submitted to the Council of Ministers for approval. No tariffs are collected on electronic transactions.

KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $681 million in 2012, down $172 million from 2011. U.S. goods exports in 2012 were $881 million, up 6.7 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.6 billion, down 7.0 percent. Kazakhstan is currently the 80th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $9.2 billion in 2011 (latest data available), down from $9.4 billion in 2010.

WTO Accession

Kazakhstan intensified its work on negotiations for its accession to the WTO in 2012, advancing both technical and substantive aspects of the negotiations. The accession package under negotiation consists of: (1) schedules of goods and services market access commitments; (2) a Working Party report and Protocol of Accession recording how Kazakhstan will implement WTO provisions; and (3) commitments on domestic agricultural support and export subsidies.

The United States and Kazakhstan signed a WTO bilateral agreement on market access for goods on November 22, 2010, and a market access agreement on services on September 21, 2011. Kazakhstan concluded bilateral market access negotiations on goods and services with almost all WTO Members participating in its Working Party during 2011, and the WTO Secretariat spent most of 2012 consolidating these agreements into draft schedules.

During 2012, Kazakhstan's Working Party met four times, developing a revised draft Working Party report to reflect the changes that have taken place in Kazakhstan's trade regime and legal framework as a result of its entry into a customs union (CU) with the Russian Federation and Belarus. Kazakhstan provided revised legislation and relevant CU legal acts that implement WTO agreements in many of the key areas affected by Kazakhstan's participation in the CU, *e.g.*, customs practices, technical barriers to trade, and import licensing. Other major issues that remain the subject of negotiations include: Kazakhstan's localization policies in procurement by state-owned and state-controlled enterprises; trade-related investment measures that Kazakhstan enforces in the oil, gas, and mining industries; Kazakhstan's agricultural policies (including domestic support, export subsidies, value-added taxes on imports, and tariff-rate quotas (TRQs)); Kazakhstan's commitments on SPS measures; and adjustments to Kazakhstan's tariff commitments in light of its membership in the CU.

IMPORT POLICIES

Kazakhstan implemented a common external tariff (CET) with Belarus and the Russian Federation on January 1, 2010. In early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational body charged with implementing external trade policy for CU members and with coordinating economic integration among CU Parties with the goal of establishing a Eurasian Union by 2015. They adopted a harmonized customs code, which is implemented through national customs laws. These countries are also in the process of forming a Common Economic Space, which is intended to be a step toward further economic integration. Many agreements for the Common Economic Space are still being negotiated. The first 17 came into force on January 1, 2012. Establishment of the CU also introduced new customs control procedures for importers from non-EEC countries. Generally, industry reports that the cost of importing has gone up due to an increase in fees for registration and import duties on some products, as well as new licensing requirements for numerous goods. Industry has also cited Kazakhstan's transition to new CU policies and procedures as a source of additional delay and uncertainty in the customs clearance process.

As a result of its membership in the CU, Kazakhstan increased the tariff rate on some 5,400 tariff lines, and its average import tariff in 2010 increased from 6.7 percent to 9.2 percent. In July 2012, CU countries adopted a new common external tariff (CET) that reflects Russia's tariff commitments that became effective when it became a WTO Member in August 2012. Under the new CET, approximately 90 percent of Kazakhstan's applied tariff rates remained the same, while the applied rates for 1000 lines, including food products, household electronics, carpets, apparel, chemical substances, iron ore, raw materials, and lubricating oils decreased.

Under the CET, Kazakhstan has applied tariff rates of zero percent for approximately 12 percent of individual tariff lines, including light aircraft with fewer than 50 passenger seats, high-speed railway locomotives, spare parts for certain types of vehicles, aircraft engines, spare parts for aircraft, agricultural equipment, food products such as tropical fruits, children's food, coffee, cacao beans, and certain types of metals. In addition, imported equipment and spare parts designated for priority investment projects under the government's industrialization program are exempted from customs duties.

According to CU regulations, Kazakhstan is allowed to apply tariffs that differ from the CET on 72 tariff lines, but those tariffs must be harmonized with the CET rate by 2015. The 72 tariff lines cover pharmaceuticals, medical equipment, and prefabricated buildings. In addition, a CU Party can increase tariffs for up to six months on selected goods without the consent of the other CU Parties. In 2012, Kazakhstan introduced protective tariffs on candy and cotton wool which will be applied through September 2014.

In 2010, Kazakhstan established tariff-rate quotas on imports of poultry, beef, and pork, as part of its obligations within the CU. In 2012, U.S. exporters became increasingly concerned about the trade-limiting effects of these quotas and the manner in which they are calculated and distributed. In December 2012, Kazakhstan established revised in-quota quantities for beef, pork, and poultry that fell short of the level of U.S. traditional exports to that market.

Kazakhstan increased the number of goods subject to import or export licensing in connection with its membership in the CU. Precious metals and stones, documents from national archives, and items of cultural value are among the products now subject to export licensing. Any product incorporating encryption technology, even if only for everyday commercial applications, is subject to import and export licensing procedures. On the other hand, as a result of CU implementation of Russia's WTO commitments, Kazakhstan is in the process of eliminating some of its import licensing requirements for alcoholic beverages and pharmaceuticals. Kazakhstan maintains a ban on the export of light distillates, kerosene, and gasoline.

In terms of regional trade relations beyond the CU, Kazakhstan signed a Free Trade Zone treaty with Commonwealth of Independent States countries in October 2011. The treaty came into force in Kazakhstan on December 8, 2012.

Although Kazakhstani officials have attempted to reform customs agencies, industry asserts that customs administration and procedural implementation remains a significant barrier to trade. In 2010, Kazakhstan ratified the 1990 Istanbul Convention on temporary admission, which will help bring its procedures for temporary admission of goods into conformity with international standards.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government procurement remains a major challenge for local and foreign companies. The government recognizes this, and is taking steps to streamline its procurement process. Kazakhstan moved to an electronic procurement system on July 1, 2012. Resident and non-resident companies may participate in electronic tenders once they receive an electronic signature from the Ministry of Transport and Communication. The system's performance to date has been uneven.

The government's strong support for increased use of local content adversely impacts U.S. suppliers and is a subject of intense discussions in Kazakhstan's WTO accession process. In 2009 and 2010, Kazakhstan amended its Law on Government Procurement to increase the percentage of local content required in government procurement and purchases not for government use by state-owned and state-controlled enterprises, which applies to both domestic and foreign suppliers. A supplier must receive a certificate from the Ministry of Industry and New Technologies that confirms the extent of the goods or service's local content. Starting January 1, 2014, companies from EEC countries will enjoy local content treatment for the goods and services that they supply.

The National Welfare Fund and government-owned holding company, Samruk-Kazyna, accounts for at least 16 percent of Kazakhstan's GDP. Through share ownership, Samruk-Kazyna manages some of Kazakhstan's largest national companies, such as Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electricity transmission company), and their subsidiaries. These enterprises are subject to the Samruk-Kaznya local content requirements. Samruk-Kaznya and the organizations in which the Fund owns, directly or indirectly, 50 percent or more of the voting shares, conduct procurement of goods and services in accordance with the Rules of Procurement, approved by the Board of Directors of the Fund on May 26, 2012. These Rules stipulate criteria for the evaluation of bids and provide for price preferences for up to 20 percent for locally produced goods and services.

Kazakhstan is not a member of the WTO Government Procurement Code.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To facilitate its WTO accession and attract foreign investment, Kazakhstan is modernizing its legal regime for protecting intellectual property rights (IPR). In the period 2009-2011, Kazakhstan adopted several amendments to its IPR law, including the recognition of vendors that have the legal right to sell certain print and digital media. This amendment allows licensed vendors to seek damages from unauthorized dealers selling pirated versions of that media. Kazakhstan also amended its patent law to clearly define types of patent infringements and establish accountability for patent infringers, as well as to define the relationship between an employer and an employee with respect to an employee's invention. In January 2012, Kazakhstan adopted amendments to IPR laws targeting piracy over the Internet. Over the course of 2012, local authorities enforced the new provisions and stopped the activity of several websites identified as distributors of pirated content.

Kazakhstan has taken steps towards implementing international IPR standards. For example, the government introduced amendments to its trademark legislation with a view to complying with the WTO TRIPS Agreement. Kazakhstan has also ratified 16 of the 24 treaties endorsed by the World Intellectual Property Organization (WIPO). In 2010, Kazakhstan joined the Madrid Agreement on the Repression of False or Deceptive Indications of Source on Goods and the Agreement Concerning the International Registration of Trademarks. It also ratified the Nairobi Treaty on the Protection of the Olympic Symbol.

In 2011, Kazakhstan ratified the WIPO Patent Law Treaty. In June 2011, Kazakhstan ratified the Agreement of Common Economic Space on unified principles of regulation in the area of IPR protection. In 2012, Kazakhstan ratified the Singapore Treaty on the Law of Trademarks and the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations.

Pursuant to statutes enacted in November 2005 that authorized stronger penalties, authorities have conducted numerous raids against distributors of pirated products. The government's efforts have helped to expand the Kazakhstani market for licensed, non-infringing products. Customs controls need to be applied more effectively against imported IPR-infringing goods. In addition, although civil courts have been used effectively to stem IPR infringement, judges often lack technical expertise in the area of IPR, which is a significant obstacle to further improvement in Kazakhstan's IPR enforcement.

In terms of protection of intellectual property of innovative pharmaceuticals, Kazakhstan still lacks effective means to protect pharmaceutical test and other data against unfair commercial use, as well as disclosure. Kazakhstan, however, has stated its willingness to provide such protection as of the date of its accession to the WTO.

SERVICES BARRIERS

Telecommunications

Kazakhstani law restricts foreign ownership to 49 percent in telecommunications companies that provide long distance and international telecommunication services and that operate fixed line communication networks (cable, optical fiber, and radio relay). This restriction was addressed during bilateral negotiations with Kazakhstan within the context of its WTO accession. Kazakhstan agreed that, after a two and a half year transition period, it will remove this foreign ownership restriction for telecommunications operators, except for the country's main carrier KazakhTeleCom.

The law "On Communication" and Decree 1499 together require placing and registering Network Control Centers for very small aperture antennas within the borders of Kazakhstan. The U.S. satellite industry has expressed concerns regarding restrictions on the transport of video programming through foreign satellites, and restrictions barring foreign firms from providing these services to the government. In its WTO accession, Kazakhstan has agreed not to restrict services provided by foreign satellite operators to companies that hold a license for telecommunication services.

Other

Foreign banks and insurance companies are allowed to operate only through joint ventures with Kazakhstani companies. However, Kazakhstan has agreed to eliminate the joint venture requirement and to permit direct branching, following a transition period of 5 years after WTO accession. Kazakhstan's law also restricts foreign ownership in mass media companies, including news agencies, to 20 percent, a limitation that will still remain in force after WTO accession.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. Some U.S. investors have expressed concern about certain aspects of the law, including its investment contract stability provision, the lack of clear provisions for access to international arbitration, and the narrow definition of an investment dispute. In February 2012, the law was amended to extend the deadline for the drafting and approval of "project documents" for companies in extractive industries. These documents include performance indicators and assessments of the economic feasibility of the project, which must take into the account potential Kazakhstani suppliers of goods and services, *i.e.*, the willingness of the investing firm to localize its procurements. The requirement to draft and approve project documents was introduced in the June 2010 Law on Subsoil and Subsoil Use, but not all extractive companies have managed to meet this requirement.

Approximately 70 percent of foreign direct investment in Kazakhstan is in the oil and gas sector. The government remains eager to generate foreign investment in this sector, but expanding local content requirements have created a more challenging environment for subsoil operations. Kazakhstani goods do not always fully comply with international standards, and Kazakhstani service suppliers are not always able to provide the technically complex services necessary to support projects in oil and gas sector. Companies have thus found it difficult to comply with the government's local content requirements and they report that local administrators continue to take an increasingly inflexible approach to these regulations. Government agencies led by the Ministry of Industry and New Technologies are currently drafting an Action Plan on the Enhancement of Local Content in Procurements for Major Subsoil Users and Strategic Mining and Petroleum Companies, which is scheduled for submission to the Presidential Administration in the first quarter of 2013. The Action Plan will require local content to comprise 50 percent of front-end engineering and design (FEED) work; ban the export of geological information (core samples, rocks, and reservoir fluids); and require the nomination of Ministry of Industry and New Technologies representatives onto the boards of directors of key subsoil use projects. The Foreign Investors Council has been given a draft of the Action Plan for comment.

On June 25, 2010, the government established the National Agency for Local Content Development to increase local content alternatives to imports, monitor subsoil procurement procedures, and assist local companies to provide competitive goods and services. The June 2010 Law on Subsoil and Subsoil Use established strict local content requirements and harsh penalties for failure to meet them, including the potential cancellation of contracts. Additionally, the Subsoil Law included a preemption clause that guarantees Kazakhstan the right of first refusal when a party seeks to sell any part of its stake in a subsoil project. The law allows the Government to amend or terminate existing subsoil contracts deemed to be of "strategic significance." In April 2012, the government issued a new decree that listed 361 hydrocarbon fields and mineral deposits as having "strategic significance."

The June 2010 Law on Subsoil and Subsoil Use also authorizes the government to amend contracts if it determines that the actions of a subsoil user could lead to a substantial change in Kazakhstan's economic interests or could threaten Kazakhstan's national security. The Law provides no guidance on how to determine whether there is a "substantial change in economic interests" or whether there is a threat to national security. While no contract has to date been annulled on either of these grounds, the Ministry of Oil and Gas (MOG) can and does annul contracts when subsoil users fail to meet their contractual obligations (*e.g.*, no well drilled during exploration stage or violation of local content requirements). The MOG annulled 28 subsoil contracts in 2010 for failure to meet contractual obligations, and in 2011 sent subsoil users a total of 169 notifications on violations of contractual obligations (which can, but do not necessarily, result in cancellation of contracts). In April 2012, the National Agency for Local Content Development accused 38 mining companies of violating local content regulations, and threatened to impose penalties, including unilateral termination of subsoil use contracts.

In 2010, the government reintroduced a duty on the export of crude oil that triggered a $1 billion dispute with the consortium of international oil companies operating the Karachaganak condensate field. In 2011, the government determined that export duties do not apply to Production Sharing Agreements, which have tax stability clauses and thus settled the dispute.

On January 9, 2012, the President of Kazakhstan signed the Law on Natural Gas and Gas Supply to regulate gas transportation, distribution, and pricing. The law also introduces a national gas operator which is entitled to exercise the state's preemptive right to buy gas from subsoil license holders at "cost plus 10 percent." The new law's stated aims include ensuring Kazakhstan's energy and environmental security, guaranteeing uninterrupted gas supply to as many households as possible, increasing gas supply and consumption, and expanding the utilization and consumption of associated gas within Kazakhstan. International oil companies with preexisting subsoil contracts fear that the government will use the Gas Law as an impetus to force companies to renegotiate terms related to existing associated gas arrangements.

For all subsoil projects, 1 percent of the project budget must be earmarked for training programs and workforce development, including overseas assignments with the lead operator. When seeking to appoint certain specialists, international oil companies must consult a list of qualified Kazakhstani specialists included in a database maintained by the Ministry of Industry and New Technologies. As a result of amendments to the Expatriate Workforce Quota and Work Permit Rules, from January 1, 2012, only 30 percent of company executives and 10 percent of engineering and technical personnel may be foreign nationals. These requirements impose significant burdens on foreign subsoil users. (Kazakhstan's three largest hydrocarbon projects – Tengiz, Karachaganak, and Kashagan – have been exempted from these requirements until 2015).

In October 2012, the Procurator General's Office proposed tightening control over the employment of foreign nationals by revising the current procedures for issuing expatriate workforce quotas, granting regional labor departments control over local content requirements in the workforce, and creating a register of employers violating these requirements.

OTHER BARRIERS

Kazakhstan also has a burdensome tax monitoring system, which companies report requires them to maintain excessively large staffs to deal with the cumbersome rules and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable.

Corruption at many levels of government is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and the judicial system.

KENYA

TRADE SUMMARY

The U.S. goods trade surplus with Kenya was $191 million in 2012, up $110 million from 2011. U.S. goods exports in 2012 were $581 million, up 25.5 percent from the previous year. Corresponding U.S. imports from Kenya were $390 million, up 2.1 percent. Kenya is currently the 92nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kenya was $292 million in 2011 (latest data available), up from $251 million in 2010.

IMPORT POLICIES

Tariffs

Kenya is a member of the World Trade Organization (WTO), the Common Market for Eastern and Southern Africa (COMESA), and the East African Community (EAC). As a result, the country has undertaken substantial trade liberalization initiatives, including reduction of its most favored nation (MFN) tariffs, removal of quantitative restrictions, improvement of the business environment, and trade facilitation.

High *ad valorem* import tariffs and a value-added tax (VAT) inhibit trade, especially in the agricultural sector. The government of Kenya (GOK) sometimes waves these tariffs when domestic agricultural prices exceed acceptable levels, and in doing so oftentimes imposes restrictions to limit the number and types of imports. According to the WTO, Kenya's average applied tariff rate for all products was 12.5 percent in 2011.

Kenya applies the EAC Customs Union's Common External Tariff (CET), which includes three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products. "Sensitive" products and commodities, comprising 58 tariff lines, have applied *ad valorem* rates above 25 percent. This includes a 60 percent rate for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 35 percent for wheat, and 60 percent for wheat flour. For some products and commodities, the tariffs vary across the five EAC member states.

During the June 2012 AGOA Forum, U.S. Trade Representative Ron Kirk, the Secretary General of the East African Community (EAC), and the Trade Ministers from each of the five EAC Partner States jointly announced their intention to move forward on a new U.S.-EAC Trade and Investment Partnership which will include a regional investment treaty, a trade facilitation agreement, continued trade capacity building assistance, and a commercial dialogue. These and other activities will help to promote EAC regional integration and economic growth, and expand and diversify U.S.-EAC trade and investment. They could also serve as building blocks towards a more comprehensive trade agreement over the long term.

Nontariff Measures

Kenya justifies its existing import controls as necessary to address health, environmental, and security concerns. All importers pay an import declaration fee set at 2.25 percent of the customs value of imports and are required to furnish several documents. Importers must provide a Certificate of Conformity (CoC) after export certification by pre-shipment inspection companies (SGS or Intertek International) contracted by the GOK. After a CoC is issued, the Kenya Bureau of Standards issues the Import Standardization

Mark, a stick-on label to be affixed to each imported item. Other import documents include valid *pro forma* invoices, Bill of Lading or Airway Bill, and a Packing List from the exporting firm.

Customs Procedures

Numerous bureaucratic procedures at the Port of Mombasa increase the cost of imported goods significantly. Multiple agencies (i.e. customs, police, ports authority, and standards inspection agencies) subject importers to excessive and inefficient inspection and clearance procedures. These procedures can create opportunities for graft and unnecessary delays. For every 24-hour delay, trucking companies lose an estimated $400, and shippers lose roughly $25,000.

The Kenya Revenue Authority's (KRA) online customs clearance system was implemented in 2005 and has contributed to improvements in overall efficiency and transparency. However, according to the World Bank's *Doing Business 2013* report, it still takes an average of 26 days and costs $2,350 to import a standardized container of cargo into Kenya.

In April 2011, the KRA introduced new rules that require cargo owners to file additional documents to clear goods at the port. The change requires importers to provide the KRA with cargo manifests and a bay plan from the port of origin to ensure full and accurate collection of required duties. Previously, shippers presented the KRA with cargo manifests only, while the bay plan was provided to port authorities. KRA officials said the change was meant to prevent customs revenue leakages and the importation of illicit goods, including narcotics and weapons. Shippers have complained that the new rules add to inefficiency at the port and raise overall costs.

GOVERNMENT PROCUREMENT

U.S. firms have experienced little success in bidding on government projects in Kenya, despite technical proficiency and reasonably priced bids. Foreign firms, some without track records, that have won government contracts have typically partnered with well-connected Kenyan firms. Reportedly, corruption often influences the outcome of public tenders.

With assistance from the World Bank and the U.S. Treasury Department, the GOK is attempting to upgrade the legal framework and operating environment for public-private partnerships. Parliament is expected to consider a new Public-Private Partnership Bill, though the timing is unclear.

In 2007, the GOK established a Public Procurement Oversight Authority (PPOA) to ensure compliance with rules and regulations surrounding government procurement. The PPOA's nine members are selected by the Minister of Finance, subject to Parliamentary approval. The total value of public procurement within Kenya's central government is estimated at 10 percent of GDP.

The GOK designed the Public Procurement and Disposal Act to make procurement more transparent and accountable, and establish penalties for violations of its provisions. The Act permits procurement agencies to establish a list of pre-qualified firms annually. It also allows for exclusive preferences for Kenyan citizens if the funding is 100 percent from the GOK or a state-related entity, and if the amounts are below Ksh 50 million (approximately $540,000) for goods or services and Ksh 200 million (approximately $2.1 million) for public works. It also sets margins of preference: 15 percent in evaluation of bids for goods manufactured, mined, extracted, or grown in Kenya; 10 percent in cases where locals have over 51 percent of shareholdings; 8 percent in cases where locals have shareholdings below 51 percent but above 30 percent; and 6 percent in cases where locals have below 20 percent of shareholdings.

Additionally, the Act allows for restricted tendering under certain conditions such as when the complex or specialized nature of the goods or services requires the pre-qualification of contractors. The Act may impose restrictions if the time and costs required to examine and evaluate a large number of tenders would be disproportionate to the value of the tender.

With the support of the World Bank and in collaboration with the Kenya Information and Communications Technology Board, the PPOA is developing a web-based Market Price Index and an e-Procurement system. Additional measures underway at the PPOA include implementation of an internal procurement performance monitoring tool, improvements to the process for reviewing tendering complaints, and development of general and sector-specific procurement manuals.

Parliament enacted the Supplies Management and Practitioners Act in 2007. This law addresses a loophole left by the Public Procurement and Disposal Act by entrusting only a procurement professional with the responsibility of procurement within any public entity. However, implementation of the Act has been inconsistent.

Kenya is neither a party nor observer to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The GOK's lax enforcement of intellectual property rights (IPR) continues to be a serious challenge for U.S. firms. Pirated and counterfeit products in Kenya, mostly imported from Asia, present a major impediment to U.S. business interests in the country. Imported pharmaceutical drugs, shoes, textiles, office supplies, tubes and tires, batteries, shoe polish, soaps, and detergents are the most commonly counterfeited items.

According to a survey released by the Kenya Association of Manufacturers (KAM) in April 2012, the Kenyan economy is losing at least $433 million annually due to counterfeiting. The study estimated that the GOK is losing approximately $72 million in potential tax revenue, and that some Kenyan companies could be losing as much as 65 percent to 70 percent of their regional market share due to counterfeiting.

Kenya's EPZs have served as a conduit for counterfeit and sub-standard goods. These products enter the EPZ ostensibly as sub-assembly or raw materials, but are actually finished products. These counterfeit and sub-standard goods also end up in the Kenyan marketplace without responsible parties paying the necessary taxes. Counterfeit batteries have been particularly problematic.

Transit shipments destined for neighboring countries are also a significant source of counterfeit goods. Intellectual property authorities are limited in their ability to seize transit goods and authorities suspect that some of these goods are actually consumed in Kenya.

The Kenya Copyright Board (KCB) has the authority to inspect, seize, and detain suspect articles and to prosecute offenses. The KCB continues to work jointly with U.S. rights holders in conducting raids, but remains severely understaffed.

Parliament passed the Anti-Counterfeit Act in 2008. Long sought by the business community, the law provided for the creation of an Anti-Counterfeit Agency (ACA), and strengthened the ability of Kenyan law enforcement agencies to investigate and prosecute manufacturers and distributors of counterfeit and pirated goods. The ACA became operational in June 2010; however, it is poorly funded and under--resourced.

Kenyan artists have formed organizations to raise IPR awareness and to lobby the government for better enforcement. IPR enforcement against pirated Kenyan and foreign works, however, remains weak.

The Kenyan Association of Manufacturers continues its intensive efforts to increase government focus on the counterfeit and piracy issues that impact virtually every legitimate manufacturer in Kenya. Working with U.S. rights holders, local authorities have seized thousands of counterfeit products in recent years.

SERVICES BARRIERS

Political interference with the actions of the telecommunications regulator, the Communications Commission of Kenya (CCK), in particular President Mwai Kibaki's actions to override the CCK's decisions to lower the mobile termination rate, has raised concerns about the CKK's independence and effectiveness. The Kenyan legislature has under consideration the "Independent Communications Commission of Kenya" bill, which would create a new regulatory body with seven commissioners and would prohibit the commissioners from participating in matters where the commissioners or their family members have an interest.

The government still holds a significant level of ownership in the sector. Although a private sector company has a 60 percent equity stake in Telkom Kenya, the government retains 40 percent ownership. Telkom Kenya was wholly state-owned until December 2007.

INVESTMENT BARRIERS

The Kenyan judicial system has made significant steps towards increasing efficiency and limiting corruption. Nevertheless, a backlog of cases, including those that are investment-related, burdens the system. Despite efforts to increase public confidence in the judiciary, corruption—both perceived and real—reduces the system's credibility. Companies cite these deficiencies as obstacles to investment because they discourage lending and results in higher interest rates when financing is provided. Following the promulgation of the new constitution in August 2010, the GOK appointed a new Chief Justice who pledged to reform the judicial sector and restore public confidence, and a series of actions has been taken to ease judicial congestion.

Foreign ownership of firms listed on the Nairobi Securities Exchange (NSE) is limited to 75 percent. The Capital Markets Authority allows foreign investors to increase their investment with prior written approval if the shares reserved for local investors are not fully subscribed. Kenya imposes foreign ownership limitations in the telecommunications and insurance sectors of 70 percent and 66.7 percent, respectively.

The new constitution prohibits foreigners from holding a freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. The cumbersome and opaque process required to purchase land raises concerns about security of title, particularly given past abuses relating to the distribution and redistribution of public land.

Kenya has been slow to open public infrastructure to competition because the government considers state-owned companies that control infrastructure as "strategic" enterprises. As a result, reform and partial privatization of the telecommunications, power, and rail sectors have fallen behind schedule. A new Public-Private Partnership (PPP) law failed to pass in 2008, but the Kenyan Parliament is expected to again consider a similar bill. Meanwhile, the Finance Ministry is developing rules and regulations for PPPs and has organized a Secretariat to help review and oversee proposed partnerships.

The effect of certain fees and security bonds is to discourage the employment of foreign labor. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees.

OTHER BARRIERS

Corruption remains a substantial trade barrier in Kenya. U.S. firms find it difficult to succeed against competitors who are willing to ignore or engage in corruption, and a number of U.S. firms have exited Kenya at least in part due to corruption issues. The government has not implemented anticorruption laws effectively, and officials have often engaged in corrupt practices with impunity. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence the outcomes in large numbers of civil cases. The *2011 Business Climate Index* published by the East African Business Council revealed a deteriorating business environment in the region, with over $10 million paid in bribes to police and customs officials every year. According to the *2012 East Africa Bribery Index* published by Transparency International-Kenya, close to 84 percent of respondents rated Kenya as being corrupt or extremely corrupt. In the International Finance Corporation's most recent *Assessment of the Investment Climate in Kenya*, 75 percent of firms surveyed said they have made informal payments to "get things done." The report estimated that corruption costs Kenyan firms roughly 4 percent of annual sales.

The 2011-2012 report issued by the World Economic Forum cited corruption, access to financing, and inadequate infrastructure as the three most problematic factors for doing business in Kenya. The World Bank's *Doing Business 2013* report cited bureaucratic complexity and a high overall cost of doing business in Kenya.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $16.6 billion in 2012, up $3.3 billion from 2011. U.S. goods exports in 2012 were $42.3 billion, down 2.5 percent from the previous year. Corresponding U.S. imports from Korea were $58.9 billion, up 3.9 percent. Korea is currently the 8th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Korea were $16.6 billion in 2011 (latest data available), and U.S. imports were $8.4 billion. Sales of services in Korea by majority U.S.-owned affiliates were $10.7 billion in 2010 (latest data available), while sales of services in the United States by majority Korea-owned firms were $10.0 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was $31.8 billion in 2011 (latest data available), up from $27.0 billion in 2010. U.S. FDI in Korea is led by the manufacturing and finance/insurance sectors.

United States-Korea Free Trade Agreement

On March 15, 2012, the United States-Korea Free Trade Agreement (KORUS) entered into force, providing preferential access for U.S. businesses, farmers, ranchers, services providers, and workers to what is the United States' seventh largest trading partner, while helping to strengthen and expand ties with an important strategic partner in Asia.

The agreement provides for the elimination of tariffs on over 95 percent of U.S. exports of industrial and consumer goods within 5 years, and through a combination of tariff elimination and expansion of tariff rate quotas, nearly two-thirds of U.S. agricultural exports became duty-free immediately. The agreement levels the playing field and enhances market access for U.S. exporters, including those in the automotive sector. In addition, KORUS provides meaningful market access commitments across virtually all major services sectors, including improved access for telecommunications and express delivery services, and the opening up of the Korean market for foreign legal consulting services. The agreement increases access to the Korean financial services market and ensures greater transparency and fair treatment for U.S. suppliers of insurance and other financial services. KORUS also addresses nontariff barriers in a wide range of sectors and includes strong provisions on intellectual property rights, competition policy, labor, environment, and regulatory transparency.

IMPORT POLICIES

Tariffs and Taxes

Under KORUS, Korean tariffs on almost two-thirds of U.S. agricultural exports were eliminated upon entry into force, including elimination of tariffs on wheat, corn, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, orange juice, grape juice, and wine. Other farm products received some immediate duty-free access under new tariff-rate quotas (TRQs) including skim and whole milk powder, whey for food use, cheese, dextrins and modified starches, barley, popcorn, oranges, soybeans for food use, dehydrated and table potatoes, honey, and hay.

Korea applies annual "adjustment tariffs" or a variable tariff on some agricultural, fishery, and plywood products. These adjustment tariffs do not exceed KORUS or WTO bound rates. To help offset the increasing cost of food, in 2012 Korea announced voluntary duty-free MFN TRQs on a wide range of agricultural commodities including whey for feed, manioc chips and pellets for feed, oil cakes for feed, malting barley, live swine, frozen mackerel, powdered milk, frozen cream, processed milk and cream, butter, cheese and curd, egg powder, wheat, vegetable oils, some sugars, lactose, chocolate confectionery, cocoa preparation, potato flakes, soybeans, corn for feed and processing, and frozen pork and pork belly.

Under the KORUS, Korea will eliminate tariffs on over 95 percent of originating industrial and consumer goods by 2017.

Beef

Following a 2008 bilateral agreement to fully re-open Korea's market to U.S. beef and beef products, Korean beef importers and U.S. exporters have operated according to a voluntary, commercial understanding that imports of U.S. beef and beef products will be from animals less than 30 months of age, as a transitional measure, until Korean consumer confidence improves. In 2012, the U.S. exported $582 million worth of beef (including variety meats) to Korea, making Korea the fourth-largest export market for U.S. beef. The United States will continue to urge Korea to open its market fully to U.S. beef and beef products based on science, the OIE guidelines, and the United States' risk status. This issue is discussed in greater detail in USTR's 2013 Report on Sanitary and Phytosanitary Measures.

Rice

Korea negotiated a 10-year exception to "tariffication" of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a 10-year extension of the MMA arrangement in April 2005 with members of the World Trade Organization. The extension called for Korea to increase its total rice imports over the succeeding 10 years, from 225,575 metric tons in 2005 to 408,700 metric tons in 2014. The arrangement included country specific quota commitments to purchase minimum amounts of imports from China, Thailand, Australia, and at least 50,076 metric tons annually from the United States until 2014.

Access to the Korean rice market for U.S. exports has improved significantly under this arrangement. Under the 2012 MMA, the U.S. rice industry obtained 27 percent of Korea's total MMA imports by winning tenders for 100,901 metric tons of (milled) rice, valued at $78 million. Over 40,000 of the 100,901 metric tons will be marketed to consumers as table rice.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). Under KORUS, U.S. suppliers now have the right to bid on the procurements of more than 50 Korean central government entities, nine more than are covered under the GPA. The agreement also expands the scope of procurements to which U.S. suppliers will have access by reducing by more than one-half the threshold for eligible procurement contracts applied under the GPA, from at least $203,000 to at least $100,000. The KORUS does not cover procurement by Korean sub-central and government enterprises; however, such procurement is covered under the GPA. Under the GPA, for procurement of construction services, Korea applies a threshold of over $23 million, which is three times the threshold applied by the United States.

Encryption Technology for Public Procurement of Networking Equipment

Korea requires network equipment incorporating encryption functionality to be certified by Korea's National Intelligence Service (NIS) in order to be procured by public sector agencies. NIS will only certify encryption modules based on the Korean ARIA and SEED encryption algorithms, rather than the internationally-standardized AES algorithm that is in widespread use worldwide. Some U.S. suppliers have been unable to sell virtual private network and firewall systems to Korean public sector agencies due to this restriction. The United States will continue to urge Korea to ensure that equipment based on widely used international standards has full access to Korea's public sector market.

INDUSTRIAL SUBSIDY POLICY

Historically, the Korea Development Bank (KDB) has been one of the government's main sources of policy-directed lending to favored industries. Korea plans to privatize a wide range of state-owned enterprises, including the KDB. As a first step, Korea adopted a holding company system in 2009 and divided the Korean Development Bank (KDB) into two new companies: (1) the KDB, and (2) the Korea Finance Corporation (KFC). While still government-owned, the KDB is to operate as a commercial bank under this restructuring plan, and the KFC is to operate as a policy lending bank. The Korean government plans to list the KDB on the Seoul stock exchange and overseas stock markets. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Korean law generally provides for strong intellectual property rights (IPR) protections. In addition, KORUS contains state-of-the-art protections for all types of intellectual property, requirements to join key multilateral IPR agreements, and strong enforcement provisions. Korea is also a signatory to the Anti-Counterfeiting Trade Agreement, which, when it enters into effect, will establish an international framework to more effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy.

The 2009 amendments to Korea's Copyright Law included measures to deter copyright infringement via file-sharing platforms on the Internet. In 2010, the Korean government imposed sanctions against serial infringers under the "three strikes" law. In 2011, the Korean government passed a law requiring online high-volume storage lockers ("webhards") to register with the Korea Communications Commission to address technical challenges related to online copyright enforcement; Korea also passed an amendment to the Copyright Act closing a sound recording protection gap for works produced between July 1987 and June 1994 that expanded copyright protection for these works from 20 years to 50 years, the same level of protection afforded for all other works; and it amended the Patent Act and Trademark Act in 2011 to reflect commitments under KORUS.

The United States recognizes the importance the Korean government places on IPR protection, a development that has accompanied Korea's shift toward becoming a significant creator of intellectual property. However, some concerns remain over new forms of online piracy, corporate end-user software piracy, unauthorized use of software in the public sector, book piracy in universities, and counterfeiting of consumer products. In particular, there have been concerns that the Ministry of National Defense has reportedly used substantial amounts of unlicensed software. The United States has urged the Korean government to ensure that all government agencies fully comply with the Korean Presidential Decree mandating that government agencies use only legitimate, fully licensed software.

SERVICES BARRIERS

Screen and Broadcast Quotas

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time on a semi-annual basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial broadcasts and to 80 percent for cable and satellite broadcasts; foreign animation to 55 percent of all animation content for terrestrial broadcast and 70 percent of all animation content for cable and satellite broadcasts; and popular music to 40 percent of all music content. Another quota, on a quarterly basis, limits content from any one country to 80 percent of the quota available to foreign films, animation, or music. KORUS protects against increases in the amount of domestic content required and ensures that new platforms, such as online video, are not subject to these legacy restrictions.

Restrictions on Voiceovers and Local Advertisements

The Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. industry, as they limit the accessibility of such channels in the Korean market.

Legal Services

Under KORUS, Korea has begun to open its legal services market. The first step, implemented in 2012, created a legal status for foreign legal consultants and allowed foreign law firms to open offices in Korea. The law allows foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. The second stage, to be implemented by 2014, will allow cooperative agreements between foreign and domestic firms. The third stage, to be implemented by 2017, will address the ability of foreign-licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

Insurance and Banking

Korea is the second largest insurance market in Asia and the seventh largest in the world. Korea's laws and regulations permit foreign financial service providers to establish subsidiaries or branches in Korea.

KORUS contains provisions to level the regulatory playing field for private insurers by requiring that certain activities of government-sanctioned insurance cooperatives be subject to regulation by the Korean Financial Services Commission, as are private insurers. Although Korea has until 2015 before it is required to implement these provisions, Korea has already begun the process and revised the National Agricultural Cooperative Federation (NACF) Act to create two holding companies: Nonghyup Economic Holding Company and Nonghyup Financial Holding Company. The Nonghyup Financial Holding Company includes two insurance subsidiaries, Nonghyup Life Insurance and Nonghyup Non-Life Insurance, which have been subject to the Insurance Business Act, and thus subject to the same regulatory regime as private insurers, since March 2012. While full implementation of relevant KORUS provisions will address many such concerns, Korea Post, the National Agricultural Cooperative Federation (NACF), and the National Federation of Fisheries Cooperatives are not yet regulated by the Korean Financial Services Commission and therefore still operate under different rules that may advantage these entities.

USTR will closely monitor the implementation relevant laws and regulations to ensure that Korea complies with KORUS financial services provisions.

Under KORUS, implementation of improvements in notice and comment periods and with respect to the issuance of "administrative guidance" is enabling financial services suppliers to play a greater role in the regulatory process and is addressing the historic lack of transparency in the adoption of financial regulations.

Korea's strict data privacy rules require financial services providers to locate their servers physically in Korea and limit the transfer of data outside Korea, thus hampering foreign suppliers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity. Korea undertook commitments under both KORUS and the Korea-European Union Free Trade Agreement to substantially reduce these restrictions and to revise its system to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed in affiliates outside Korea. The Korean government is required to make these changes by March 15, 2014 to comply with KORUS, although any changes for U.S. suppliers will be made by July 1, 2013, when Korea will implement virtually identical obligations under its FTA with the European Union. The United States will monitor Korea's reform process closely and engage actively with Korea to ensure that these commitments are fully implemented.

Telecommunications

Korea currently prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end-users without going through a company established in Korea. Given the current investment restrictions in place (see below) and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market.

Internet and Cloud Computing Services

Restrictions on storing customer information outside of Korea have posed barriers to the provision of some Internet-based services, in particular online vending and payment processing. Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms selling goods in Korean Won are prohibited from storing Korean customers' credit card numbers in company information systems (U.S. electronic commerce firms continue to legally sell into the Korean market from abroad, setting prices in dollars, but are being prevented from accepting Korean branded credit cards). As a result, U.S. electronic commerce firms that are unwilling to develop Korea-specific payment systems have been prevented from entering the Korean market. The United States has raised the issue with Korea on multiple occasions, urging it to lift what appear to be unreasonable and unnecessary restrictions.

Prohibitions against storing high resolution imagery and related mapping data outside Korea – which Korea justifies on security grounds – have led to a competitive disadvantage for international online map services, since their locally-based competitors are able to provide several services (such as turn-by-turn driving/walking instructions, live traffic updates, interior building maps) that international service providers cannot. Since map data supplied by such competitors is visible outside of Korea, it is unclear how a prohibition on foreign storage furthers security goals. This type of local storage requirement may be considered a localization barrier to trade which disadvantages U.S. market access. The United States is highly sensitive to Korea's national security concerns and is working with Korea to explore possible ways to update its mapping data-related system in a manner that reflects the globalized nature of the Internet.

The United States and U.S. industry have also raised concerns with a legislative proposal by the Korea Communications Commission (KCC) to provide a jurisdictional basis for regulating cloud computing services. Following engagement by the United States and extensive comments from U.S. and other foreign industry groups, the KCC has announced its intention to significantly revise the draft to try to address stakeholder concerns, and seek further stakeholder comments on the revision. The United States will continue to monitor this issue closely.

INVESTMENT BARRIERS

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership, and foreign investment in the government, corporate, and special bond markets. These reforms have also liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. Some U.S. investors have raised concerns, however, about a lack of transparency in investment-related regulatory decisions, including by tax authorities, highlighting concerns about possible discrimination.

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. This restriction will be lifted in March 2014 when, under KORUS, Korea will permit U.S. companies to own up to 100 percent of a telecommunications operator in Korea. Foreign investment is not permitted in terrestrial broadcast television operations, and the Korean government also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent. In 2011, foreign equity restrictions on previously closed areas were relaxed to 20 percent for program providers of channels that carry a range of programs and 10 percent for specialized news channels. For satellite broadcasts, foreign participation is limited to 33 percent. Foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels. For multi-genre or news-focused Internet multimedia content operators and signal transmission network business operators, foreign investment is limited to 20 percent.

In addition to the investment restrictions in telecommunications and key services sectors described above, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also restricts foreign investment in the areas of news agency services and publishing and printing, where it has foreign equity limitations of 30 percent for enterprises publishing newspapers and 50 percent for enterprises publishing other types of periodicals.

The Korean government also operates several Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff-free importation, relaxed labor rules (primarily exemptions from workforce quotas for disabled and older workers, and mandatory paid leave), and improved living conditions for expatriates in areas such as housing, education, and medical services. The Korean government has promoted these zones as an important step in making Korea's business environment more open, liberal, and responsive to economic needs.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has played an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. The KFTC has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment for small and medium-sized enterprises, and restraining the concentration of economic power. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring and patent right abuses, the KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigators. In April 2012, the KFTC began monitoring and publicizing the prices of select imports from the United States to ensure pricing structures reflected the tariff reductions under KORUS. The United States has raised concerns over this practice, noting that market mechanisms will lead to reductions in consumer prices in the wake of tariff reductions under the FTA, but that individual pricing practices are subject to numerous factors.

Under an amendment to the Monopoly Regulation and Fair Trade Act passed in December 2011 to implement provisions of the KORUS FTA, the KFTC has been given authority to enter into settlement agreements with respondents as of March 15, 2012 (KORUS entry into force). In an attempt to curb illegal abuse of investigative power, the KFTC also created an ombudsman to respond to problems experienced by businesses during investigations. Furthermore, the examiner's recommended sanction is now provided in most cases to the respondent along with the examiner's report. The KFTC also amended regulations to increase its operational transparency, requiring examiners to inform claimants promptly of its conclusions and the grounds for those conclusions.

OTHER BARRIERS

Regulatory Reform and Transparency

Reflecting the strong concerns of U.S. stakeholders, KORUS includes a wide range of provisions across all chapters to improve regulatory transparency in Korea. Implementing a key KORUS commitment, Korea's Administrative Procedures Act (APA) was revised in October 2012 to increase the public comment period for draft regulations subject to the APA from a minimum of 20 days to a minimum of 40 days. In addition, Korea enacted other legal reforms pursuant to KORUS increasing notice and comment periods related to pharmaceuticals, medical devices, as well as measures in other sectors. The United States will monitor compliance with transparency-related KORUS commitments, including the obligation to address significant, substantive comments received and to explain substantive revisions made in any final regulation.

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the U.S. Government. Upon entry into force of KORUS on March 15, 2012, Korea immediately reduced the tariff on passenger vehicles from 8 percent to 4 percent and eliminated the 10 percent tariff on commercial vehicles. In addition, KORUS contains provisions designed to address nontariff barriers, including Korean acceptance of U.S. automotive safety standards for motor vehicles built in the United States and regulatory transparency provisions, which are contributing to leveling the playing field for U.S. automobiles in the Korean market. U.S. exports of passenger cars and trucks to Korea in 2012 increased by 50 percent compared to 2011, with the bulk of the increase occurring after the entry into force of KORUS.

Korea enacted regulations for motor vehicle average fuel economy standards and greenhouse gas emission standards in 2011. These regulations contain small-volume manufacture provisions that permit standards 19 percent more lenient than the regular standard for the period from 2012 to 2015 for manufacturers with sales of no more than 4,500 units in 2009. Korea also allows emissions credit sharing between passenger cars and SUVs, credit carryover, and offset purchases.

In 2012, the Ministry of Environment proposed establishing an incentive/penalty ("bonus/malus") system based on automotive greenhouse gas emissions, under which a consumer of a new car would receive either a subsidy or a surcharge to the price of the car, at the point of sale, depending on that car's emission profile. U.S. automakers have raised concerns with the proposed system. Although Korea has announced its intention to implement this system in January 2015, the authorizing legislation has yet to be passed by the National Assembly. Additionally, the Ministry of Environment must issue implementing regulations in order to put such a system in place. The United States has urged the Korean government to consult fully with the U.S. automobile industry and with the U.S. Government on its plans in this area. The United States will engage with Korea to ensure that its automotive emissions policies are implemented consistent with the KORUS.

A separate report issued in conjunction with the National Trade Estimate Report, the Report on Technical Barriers to Trade, contains further information on Korean measures affecting U.S. automotive exports.

Motorcycles

Although progress has been made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain including a highway ban on motorcycles, high tax levels, and the inability of motorcycle owners to obtain ownership titles and financing for a motorcycle purchase that uses the motorcycle as collateral. A 2011 study on the safety of motorcycles on highways commissioned by the Korean National Police highlighted inadequacies in Korea's regulatory and safety practices surrounding the licensing of motorcycle drivers and the proliferation of young, untrained motorcycle riders driving dangerously on city streets. The United States maintains that heavy motorcycles riding on highways do not pose the same safety concerns as do riders of smaller, lighter motorcycles, and continues to urge Korea to eliminate the ban on riding large motorcycles on highways.

Pharmaceuticals and Medical Devices

Under KORUS, any new Korean regulations affecting general pricing and reimbursement of pharmaceuticals and medical devices will be published in advance for notice and comment, and the Korean government will be required to respond to public comments in writing and explain any substantive revisions made to proposed regulations. KORUS also contains provisions designed to appropriately recognize the value of patented pharmaceuticals and medical devices. The United States continues to urge Korea to refrain from implementing reimbursement policies that not only discourage companies from introducing advanced medical products to the Korean market, but that also serve as a disincentive to innovation and investment in research and development.

In April 2012, Korea's Ministry of Health and Welfare (MOHW) began implementing a new drug pricing reduction plan that mandated significant price cuts on off-patent and generic drugs. The Ministry had also announced plans to develop a new system for pricing innovative drugs. The United States has urged Korea to seriously consider stakeholders' concerns and ensure that pharmaceutical pricing is conducted in a fair, transparent, and non-discriminatory manner that recognizes the value of innovation, as set forth in KORUS. The United States will continue to monitor the situation closely in 2013.

U.S. companies have continued to express concern that a legacy of insufficient transparency in the regulation of pricing and reimbursements has impeded efficient introduction of medical devices to the Korean market. In February 2011, MOHW published a pricing plan for medical devices based on import price (for imported products) or manufacturing cost (for domestic products) and began phasing in its implementation in May. In October 2012, MOHW notified medical device companies of possible cuts across five categories that would adversely affect over half of the U.S. medical device industry's sales in Korea, valued at approximately $90 million to $100 million. U.S. industry has raised concerns regarding this new pricing plan, in particular the concern that an import price is not an accurate reflection of the value of a product. Industry also raised concerns that MOHW does not appropriately recognize the value of innovation. The United States has expressed its concern that the pricing of medical devices should be determined in a fair, non-discriminatory, and transparent manner and urged MOHW to engage directly with concerned stakeholders to address their concerns.

KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $10.3 billion in 2012, up $5.3 billion from 2011. U.S. goods exports in 2012 were $2.7 billion, down 1.6 percent from the previous year. Corresponding U.S. imports from Kuwait were $13.0 billion, up 66.7 percent. Kuwait is currently the 54th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait was $117 million in 2011 (latest data available), up from $83 million in 2010.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of 5 percent, with a limited number of GCC-approved country-specific exceptions. Kuwait's exceptions include tobacco (100 percent), and some 417 other food and agriculture items that are exempt from customs duties.

Import Prohibitions and Licenses

Kuwait prohibits the importation of alcohol and pork products. Used medical equipment and automobiles over five years old generally cannot be imported. The importation of books, periodicals, or movies that insult religion and public morals, and of any materials that promote political ideology, is prohibited. Kuwait requires a special import license for firearms. All imported meat requires a health certificate issued by the country of export and a halal food certificate issued by an approved Islamic center in that country.

Customs

The import clearance process in Kuwait has historically been time consuming, requiring extensive paperwork and involving numerous redundancies. In 2010, the Ministry of Commerce and Industry formed a committee to focus on trade facilitation and streamlining required paperwork. In September 2011, the committee submitted a proposal to the Cabinet Council to establish a one-stop shop that would facilitate the issuance of commercial licenses. The National Assembly passed a new Commercial Companies Law in February 2013 that implemented this proposal.

GOVERNMENT PROCUREMENT

The public tenders law (Law Number 37 of 1964) regulates government procurement in Kuwait, and requires that any procurement with a value greater than KWD 5,000 ($18,000) must be conducted through the Central Tendering Committee. Kuwait's government procurement policies require the purchase of local products, where available, and provide a 10 percent price preference for local firms.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kuwait remained on the Watch List in the 2012 Special 301 Report. Although Kuwait continues to make progress on enforcement against copyright piracy and trademark counterfeiting, there are areas of intellectual property rights (IPR) protection and enforcement that continue to represent barriers to U.S. exports and investment. Key issues include the lack of deterrent criminal penalties and excessive delays in the enactment of key pieces of IPR-related legislation, which have been pending for years. As of March 2013, a draft revised copyright law was under review within the legal committee of the Cabinet. The United States provided comments on the most recent version of the law in February 2013 and continues to encourage Kuwait to implement legislation consistent with its WTO obligations.

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

SERVICES BARRIERS

Banking

Kuwait continues to limit investment in the banking sector under the 2001 Direct Foreign Capital Investment Law. Foreign banks operating in Kuwait may open only one branch, offer investment banking services only, and are prohibited from competing in the retail banking sector. Furthermore, foreign banks are subject to a maximum credit concentration equivalent of less than half the limit of the largest local bank and are expressly prohibited from directing clients to borrow from external branches of their bank or taking any other measures to facilitate such borrowing.

INVESTMENT BARRIERS

Major barriers to foreign investment in Kuwait include: regulations limiting participation of foreign entities from investing in the petroleum and real estate sectors, long delays associated with starting new enterprises, difficulty in finding a required local agent, and obstacles created by a business culture heavily influenced by clan and family relationships. Foreign investment is not allowed in projects involving oil and gas exploration and production. Kuwait does permit foreign firms to participate in some midstream and downstream activities, but foreign investors in this sector have faced numerous challenges.

The Kuwait Foreign Investment Bureau, which currently operates under the Ministry of Commerce and Industry, established the "Investor Service Center" in July 2012, which will act as a one-stop shop for foreign investors to operate in Kuwait and coordinate with other government entities.

Offset Requirements

Kuwait's National Offset Company (NOC) administers requirements that foreign companies awarded any procurement tenders in Kuwait invest 35 percent of the contract amount in projects that add value to the Kuwaiti economy. The NOC requires that these projects create jobs for Kuwaitis, train Kuwaitis or transfer technology, but the NOC has not provided clear, consistent guidance on how companies can fulfill the offset requirements, creating obstacles to implementation for some companies.

LAOS

TRADE SUMMARY

The U.S. goods trade surplus with Laos was $8 million in 2012, shifting from a deficit of $33 million in 2011. U.S. goods exports in 2012 were $33 million, up 27.5 percent from the previous year. Corresponding U.S. imports from Laos were $25 million, down 57.5 percent. Laos is currently the 176th largest export market for U.S. goods.

Laos ratified its accession to the World Trade Organization (WTO) on December 6, 2012, after being accepted for membership by the WTO General Council in October. Laos became a full member of the WTO on February 2, 2013.

IMPORT POLICIES

Tariffs

Laos' membership in the WTO and its preparations for the Association of Southeast Asian Nations (ASEAN) Economic Community in 2015 have spurred trade liberalization, improvements to the business environment, and trade facilitation.

The average bound tariff rate under Laos' WTO commitments is 18.8 percent. The average applied tariff rate is currently 14.9 percent. The average bound tariff rate will be 18.7 percent for industrial goods and 19.3 percent for agricultural products. As part of its services market opening commitments under the WTO, Laos provided market access in 10 sectors, including business services, distribution, insurance and banking, private education, courier and telecommunications, and private hospital services.

Under the terms of the United States-Laos Bilateral Trade Agreement, which entered into force in 2005, the United States granted Normal Trade Relations treatment to products of Laos.

Nontariff Barriers

In 2012, Laos launched the Lao Trade Portal, an online resource that seeks to provide all trade-related information from Lao government agencies on a single site: http://www.laotradeportal.gov.la/

According to the Trade Portal, all importers must register with the Ministry of Industry and Commerce (MOIC), Department of Import/Export. Certain products, including motor vehicles, petroleum and gas, timber products, cement, and steel, are subject to import licensing.

Customs Procedures

In 2012, Laos implemented a new automated customs declaration processing system, referred to as "ASYCUDA," at the country's main customs entry point in Vientiane, to facilitate a shift away from physical inspection of every import shipment. Nevertheless, most containers that enter Laos at a formal border checkpoint are still inspected, and U.S. businesses complain of irregularities and corruption in the clearance process. A large volume of goods enter Laos informally due to weak border controls. According to the MOIC's Diagnostic Trade Integration Survey 2012, customs clearance at border posts outside the capital requires 5 to 10 signatures with total informal fees amounting to $50 per shipment. Authorities have only recently begun to centralize customs operations, removing the ability of provincial authorities to regulate customs on their own.

The Lao Customs Department has not yet fully implemented transaction value processes, although administrative pricing and the use of reference prices are being phased out in accordance with its WTO accession commitments.

Taxation

Laos amended its tax law in 2012, eliminating the business turnover tax. The value-added tax (VAT) is expected to fully replace the turnover tax after a transition. The standard VAT rate of 10 percent applies to most domestic and imported goods and services, with some limited exemptions.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In order to meet commitments under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Laos passed an amended intellectual property rights (IPR) law in late 2011 and issued implementing regulations in September 2012, including on copyrights, trademarks, and patents. In practice, Laos does not yet afford adequate levels of IPR protection due to a lack of government capacity, coordination, and legal infrastructure. In addition, resource constraints have hampered the Lao government's ability to establish an effective system of civil litigation and criminal IPR enforcement to implement its commitments. As a result, pirated entertainment content and counterfeit goods are easily obtained in the Lao marketplace.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to issues of corruption, an underdeveloped judicial system, overlapping and contradictory regulations, and limited access to financial services. The Lao government requires an annually renewable business license, receipt of which is contingent on a certification that all taxes have been paid. However, taxes are often assessed in a nontransparent, arbitrary, and inconsistent manner. The U.S. Government continues to urge the Lao government to address these issues.

ELECTRONIC COMMERCE

Despite growing Internet usage, electronic commerce is just emerging in Laos. Online transactions are limited and do not normally encompass commercial activity. The Lao National Assembly is expected to pass a law on electronic transactions, covering both electronic commercial and government transactions, in early 2013.

OTHER BARRIERS

Corruption remains a major barrier to trade for U.S. businesses seeking to operate in or trade with Laos. Informal payments to low level officials in order to expedite administrative procedures are common. In a 2009 enterprise survey, 88 percent of firms surveyed were expected to give gifts to public officials to obtain an operating license.

In 2012, the Lao government passed the *Law on Making Legislation* to strengthen transparency by requiring public notification and comment periods, as well as publication of all new laws in an official gazette.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $13.1 billion in 2012, up $1.5 billion from 2011. U.S. goods exports in 2012 were $12.9 billion, down 9.8 percent from the previous year. Corresponding U.S. imports from Malaysia were $25.9 billion, up 0.6 percent. Malaysia is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Malaysia were $2.6 billion in 2011 (latest data available), and U.S. imports were $1.4 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $6.8 billion in 2010 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $255 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia was $13.9 billion in 2011 (latest data available), up from $12.0 billion in 2010. U.S. FDI in Malaysia is led by the manufacturing and mining sectors.

Trade Agreements

Malaysia is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Malaysia, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Mexico, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs and Import Licenses

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with a simple average applied tariff rate of 6.5 percent in 2010. Duties for tariff lines where there is significant local production are often higher. In general, the level of tariffs is lower on raw materials than for value-added and processed goods. U.S. companies state that tariff reductions on such products as frozen uncooked poultry parts, restaurant equipment, and food and confectionary products would allow them to increase exports and investment into Malaysia.

Malaysia imposes extremely high specific tariff rates on roughly 80 products, mostly agricultural goods. The simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent. Non-alcoholic and alcoholic beverages, including wine, are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined.

A large number of Malaysian tariff lines related to import-sensitive or strategic industries (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are subject to import licensing requirements. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in Foreign Trade Zones.

Tariff-Rate Quotas on Selected Agricultural Products

Malaysia maintains tariff-rate quota (TRQ) systems for 17 tariff lines, including live poultry, poultry meat, milk and cream, pork, and round cabbage. These products incur in-quota duties of between 10 percent and 25 percent and out-of-quota duties as high as 168 percent.

Import Restrictions on Motor Vehicles

Malaysia applies substantial tariffs of up to 35 percent in the automobile sector, and its National Auto Policy (NAP) includes nontariff measures that significantly raise the cost of imported vehicles, including an import permit and a government-imposed pricing system, excise duties that disproportionately affect imported vehicles, and special tax reductions for vehicles with components manufactured in Malaysia. Malaysian auto policy distinguishes between "national" cars, (*e.g.*, vehicles manufactured by domestic producers Proton and Perodua) and "non-national" cars, which include vehicles assembled in Malaysia by foreign companies. The NAP sets out a system of "approved permits," which confer the right to import and distribute cars and motorcycles. Currently, the cap on imported new and used vehicles is set at 10 percent of the domestic market. This system has been extended through 2020.

Other policies further limit the competitiveness of foreign auto imports. The value of imported automobiles is established by the Malaysian government, with the set price published in the official gazette. The officially set price serves as the basis for the assessment of import duties and excise taxes imposed by Malaysia. The effect of this policy is to raise the price of imported vehicles so that it is substantially higher than that of domestically produced autos. In addition, development of the large motorcycle market has been affected by Malaysian traffic restrictions and noise standards.

In 2011, the Malaysian government began another review of the NAP. The government has not provided any official details on the scope or timing of the review process. However the Minister of Trade has repeatedly said that the focus in revising the NAP will be on promoting production of energy-efficient vehicles.

Halal Certification Requirements

All domestic and imported meat (except pork) is required to be certified halal (produced in accordance with Islamic practices) by Malaysian authorities. Inspection and approval of producers' halal practices and verification of compliance with Malaysian standards is required on a plant-by-plant basis prior to import into Malaysia. Malaysian halal standards are stricter than the multilaterally-agreed Codex Alimentarius halal standard.

For example, in 2011, the Malaysian government began requiring that slaughter plants maintain dedicated halal facilities and ensure segregated transportation for halal and non-halal products. These new requirements exceed the Codex guidelines, which allow for halal food to be processed, transported, or stored using facilities which have previously been used for non-halal foods, provided that proper cleaning procedures conforming to Islamic religious requirements have been observed.

In January 2012, the Malaysian Department of Standards implemented MS2424:2012 General Guidelines on Halal Pharmaceuticals, a voluntary certification scheme. The guidelines enabled manufacturers of pharmaceutical products to apply for halal certification beginning on October 15, 2012 and established basic requirements for manufacturing and handling.

Pork Import Licenses

Pork may be imported into Malaysia only if Malaysia's Department of Veterinary Services (DVS) issues a permit authorizing its importation. DVS only allows the importation of 10 cuts of pork meat. The permits are granted on a case-by-case basis and are sometimes refused without explanation. In 2011, DVS proposed to ban the importation of pork bellies and spare ribs into Malaysia. Malaysia subsequently stated that it will impose a new quota system for pork bellies and spare ribs, but that until such time as individual foreign plants are inspected and approved by DVS, these products cannot be imported.

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, steel scrap, and timber products in order to encourage domestic processing. Malaysia is the second largest producer and exporter of palm oil and products made from palm oil, and accounts for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes of 10 percent to 30 percent *ad valorem* to discourage the export of crude palm oil and to encourage development of the local refinery sector. Refined palm oil and products made from palm oil are not subject to export taxes.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used procurement to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia’s export capabilities. In domestic tenders, preferences are provided to *bumiputera* suppliers and other domestic suppliers. In most procurement, foreign companies must take on a local partner before their tenders will be considered. Procurement also often goes through middlemen rather than being conducted directly by the government, or is negotiated rather than tendered. Many state-owned enterprises in Malaysia also apply procurement policies that favor *bumiputera* suppliers. International tenders generally are invited only where domestic goods and services are not available. The U.S. Government continues to raise concerns about the procurement process in Malaysia.

Malaysia is not a signatory to the WTO Agreement on Government Procurement, but became an observer to the WTO Committee on Government Procurement on July 18, 2012.

EXPORT SUBSIDIES

Malaysia maintains several tax programs that appear to provide subsidies for exports. The NAP increases the income tax exemption for high value-added exports of motor vehicles and parts (the level of income tax exemption is based on the percentage increase in the domestic value-added of exports). Other programs include: Single or Double Deduction for the Promotion of Exports; Tax Exemption on the Value of Increased Exports; Market Development Grants; Tax Exemption for Malaysia International Trading Companies and Free Industrial Zones.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia was removed from the Special 301 Watch List in 2012 following improvements in recent years in protecting intellectual property rights (IPR). In December 2011, the Malaysian Parliament passed amendments to the copyright law designed to, *inter alia*, bring the country into compliance with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, define Internet Service Provider liabilities, and prohibit unauthorized camcording of motion pictures in theaters. In September

2012, Malaysia acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty.

In addition, the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) took steps to enhance Malaysia's enforcement regime, including active cooperation with rights holders on matters pertaining to IPR enforcement, ongoing training of prosecutors for specialized IPR courts, and the reestablishment of a Special Anti-Piracy Taskforce. In recent years, the MDTCC has also instructed its enforcement division to begin to take *ex officio* action, resulting in significant seizures of pirated products. Furthermore, the Malaysian government has blocked access to several international pirate web sites and continues to be willing to take action against local sites featuring pirated content.

The Ministry of Health issued directives in 2011 to provide regulatory data protection for pharmaceutical products for a five-year term. However, data protection is only granted to products introduced first in Malaysia.

Despite Malaysia's success in improving its effective protection of IPR, issues remain, including relatively widespread availability of pirated and counterfeit products in Malaysia, high rates of piracy over the Internet, and continued problems with book piracy. The United States continues to encourage Malaysia to accede to the WIPO Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure**.**

SERVICES BARRIERS

Telecommunications

Malaysia began allowing 100 percent foreign equity participation in application service providers in April 2012. However, liberalization of foreign equity ownership in telecommunications services for network facilities providers and network service providers is yet to be implemented, with only 70 percent foreign participation currently permitted. In certain instances, Malaysia has allowed greater equity participation, but the manner in which such exceptions are administered is not clear. In the GATS, Malaysia made limited commitments on most basic telecommunications services, capped foreign equity commitments at 30 percent, and only adopted parts of the WTO reference paper on regulatory commitments.

Distribution Services

Malaysia began allowing 100-percent foreign ownership of department and specialty stores in 2012. However, foreign-owned larger retailers ("hypermarkets") and locally incorporated direct selling companies must still have 30-percent *bumiputera* equity. Malaysian government guidelines define a "hypermarket" as a stand-alone self-service store with a sales floor area of 5,000 square meters or more and selling a very wide variety of food and non-food consumer products. The guidelines also include requirements that department stores, supermarkets, and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. These guidelines are currently under review by the Malaysian government. The Malaysian government also issues "recommendations" for local content targets, which are in effect mandatory.

Legal Services

Malaysia amended its Legal Professions Act in July 2012. The amendments, which have yet to come into force, will allow foreign law firms to practice in Malaysia through an international partnership or qualified foreign law firm license, and empower local firms to employ foreign lawyers subject to certain conditions. However, the amendments will prohibit foreign lawyers from litigating except on an ad hoc basis, and will restrict foreign lawyers from practicing real property law. The Attorney General's Chambers is working with the Malaysian Bar Council to develop implementing rules for the amended law, but has not indicated when the amendments will come into force. Until the amended law is implemented, foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm.

Architectural Services

Architectural services are among the 18 services sub-sectors the Malaysian government pledged to liberalize in 2012. However, the necessary legislation to allow foreign equity of 100 percent in architectural firms has yet to be presented in Parliament. Currently, a foreign architectural firm may operate in Malaysia only as a joint-venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia, but are allowed to be managers, shareholders, or employees of Malaysian firms.

Engineering Services

The engineering sector is expected to be liberalized once pending amendments to relevant laws have been completed. Until then, foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. Also, under current law, a foreign engineering firm may establish a permanent commercial presence only if all directors and shareholders are Malaysian.

Accounting and Taxation Services

As of January 2012, foreign accountants and auditors are allowed to wholly own a practice in Malaysia. All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the MIA.

Audiovisual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming must originate from local production companies owned by ethnic Malays and 60 percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and is limited to an equity share of 20 percent in cable and satellite operations. As a condition for obtaining a license to operate, video rental establishments are required to have local content comprise at least 30 percent of their inventories.

Financial Services

In December 2011, Malaysia released a new 10-year Financial Sector Blueprint that envisages further opening of the financial sector to foreign banks, although it does not contain specific market-opening commitments or timelines. The new Blueprint, which follows the previous 10-year Financial Services Masterplan, does not significantly deviate from the existing approach of the central bank, Bank Negara Malaysia (BNM), of granting foreign banks access to Malaysia on a case-by-case basis. Under the Blueprint, issuance of new licenses will be guided by prudential criteria and a "best interests of Malaysia" test. In determining the "best interests of Malaysia", BNM considers the contribution of the investment in promoting new high value-added economic activities, addressing demand for financial services where there are gaps, enhancing trade and investment linkages, and providing high-skilled employment opportunities. BNM has also stated that it wants to ensure that local banks control at least 50 percent of total banking assets in Malaysia. Presently, foreign banks are not allowed to open ringgit correspondent bank accounts with local banks, as this is deemed to be a conduit for "branching" by foreign banks. In addition, BNM sets controls on both foreign and local financial products.

As part of a liberalization effort in 2009, foreign equity limits were increased from 49 percent to 70 percent for domestic Islamic banks, investment banks, insurance companies, and Islamic insurance operators. Foreign equity above 70 percent is considered on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Foreign equity of 70 percent is allowed for unit trust management companies providing retail services and for stock broking companies. Foreign equity of 100 percent is allowed for fund management companies providing wholesale services. Malaysia conditions, prohibits, or limits the offering of certain financial services, including in the areas of asset management and reinsurance. BNM currently allows a foreign bank to open four additional branches throughout Malaysia, subject to restrictions. BNM has conditioned foreign banks' ability to offer certain services on commitments to undertake back office activities in Malaysia.

To encourage multinational corporations to establish their treasury management services in Malaysia, the government announced in its 2012 budget an income tax exemption of 70 percent for five years, a withholding tax exemption on interest payments on borrowings, and stamp duty exemption on loan and service agreements. Malaysia has extended a concessionary tax rate of 10 percent on dividends of non-corporate institutional and individual investors in real estate investment trusts through December 2016. It provides an income tax exemption of 100 percent for 10 years and stamp duty exemption on loan and service agreements for Kuala Lumpur International Financial District status companies.

INVESTMENT BARRIERS

Foreign investment in certain sectors, including large retail stores, telecommunications, financial services, professional services, petroleum and gas, and mining is subject to extensive restrictions. Such restrictions may include prohibitions or limitations on foreign equity and requirements that foreign firms enter into joint ventures with local partners. Foreigners seeking to acquire land must obtain prior approval from the relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. State authorities may impose conditions, including thresholds for foreign ownership. For example, in the state of Selangor, a company must have Malaysian interest of at least 49 percent to acquire agricultural land, whereas the state of Johor prohibits any foreign ownership of agricultural land.

OTHER BARRIERS

Transparency

Following an announcement by Prime Minister Najib in February 2012, the Chief Secretary to the Cabinet in April 2012 issued a circular instructing all ministries to post all draft laws and regulations on the Internet for a public comment period of 30 days. However, implementation of this new requirement remains uneven, and many ministries continue to consult selected stakeholders in an opaque, invitation-only manner.

The Malaysian government has identified fighting corruption as a high a priority in its Government Transformation Program. The Malaysian Anti-Corruption Commission is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Malaysia's anticorruption legislation makes bribery of foreign public officials a criminal offense.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $61.3 billion in 2012, down $3.2 billion from 2011. U.S. goods exports in 2012 were $216.3 billion, up 9.1 percent from the previous year. Corresponding U.S. imports from Mexico were $277.7 billion, up 5.6 percent. Mexico is currently the 2nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Mexico were $25.2 billion in 2011 (latest data available), and U.S. imports were $13.7 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $34.4 billion in 2010 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $4.8 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was $91.4 billion in 2011 (latest data available), up from $84.3 billion in 2010. U.S. FDI in Mexico is primarily concentrated in the manufacturing, nonbank holding companies, and finance/insurance sectors.

Trade Agreements

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

In 2012, Canada and Mexico became participants in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States, Canada and Mexico, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial products and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated its remaining tariffs and tariff-rate quotas on all U.S. agricultural exports. *(See the section on agriculture below for additional details on specific farm products.)*

Mexico imposes a value-added tax (VAT) on sales of goods and services. Certain food products are exempt from the VAT. U.S. producers have complained that, while Mexico imposes the VAT on imports of U.S. nutritional supplements at the time of entry, it does not collect the VAT on sales of similar domestic products at the point of sale.

Agricultural Products

The United States exported $20.1 billion in agricultural products to Mexico in 2012, compared to $19.5 billion in 2011. Mexico is the United States' third largest agricultural export market.

On February 8, 2011, the Secretariat of Economy (SECON) announced an antidumping investigation on U.S. fresh, chilled, or frozen chicken leg quarters (CLQ). SECON issued the final determination in the investigation on July 31, 2012. Final antidumping duties ranging from 25 percent to 129 percent were identified but not imposed. Rather, the Mexican Foreign Trade Commission (COCEX) determined that additional duties might increase prices at a time when Mexico's chicken industry was suffering an outbreak of highly pathogenic avian influenza. On September 3, 2012, interested U.S. parties filed an appeal of the final antidumping determination with the NAFTA Secretariat. Subsequently, on October 9, 2012, members of the Mexican poultry industry filed a notification with SECON asking it to rescind its decision not to apply antidumping duties and to deem illegal its decision to use lower duties in its final determination (from its preliminary determination). The U.S. Government continues to monitor the situation.

Administrative Procedures and Customs Practices

Despite improvement in some areas, U.S. exporters continue to express concerns about Mexican customs administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; alleged under-invoicing of agricultural products; and uneven enforcement of Mexican standards and labeling rules. Numerous U.S. companies reported in 2012 that the *Servicio de Administración Tributaria* (SAT), Mexico's tax authority, is verifying NAFTA origin for the entry of products dating back to 2007. While verifications are permitted under NAFTA, the breadth of these audits and the extent of the information being requested are reportedly overly burdensome and require the submission of confidential business information with no assurance that it will be protected from disclosure. In some cases, SAT reportedly has denied an exporter's claim for NAFTA preference, even after the submission of documentation demonstrating that the products meet NAFTA's rules of origin. The fines and penalties in such cases can be very high (in excess of $10 million), and there are substantial costs associated with complying with the audit and even greater legal costs for appealing the rulings. Following discussions with various stakeholders, SAT committed to adopt new procedures to address industry complaints, but as yet has not announced a target implementation date. The U.S. Government will continue to monitor the situation and urge the SAT at the highest levels to implement the revised procedures as soon as possible.

Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level (below which shipments are exempt from customs duties) from $1 to $50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

GOVERNMENT PROCUREMENT

The Mexican government uses several "electronic government" Internet sites to increase the transparency of government procurement processes and to provide guidelines for the conduct of government officials. One such site, Compranet, provides an online interface for conducting government procurement at the federal level. Procurement transparency standards still need to be harmonized at the Mexican state level, however, to avoid corruption and to foster competition. There is a need for further regulatory and technological improvements throughout the Mexican government, as well as a need to provide authorities with more power to respond effectively to corruption and collusion.

In 2012, the Mexican Congress approved the Federal Anti-Corruption in Government Contracting initiative, which imposes penalties against national or foreign individuals and legal entities for irregular conduct (including bribes) during their direct or indirect participation in federal government procurement. For individuals, fines range from 62,000 Mexican pesos (approximately $4,900) to 3 million Mexican pesos (approximately $237,000) and a 3-month to 8-year ban from participation in federal contracting. For corporations, the potential fines may be from 623,000 Mexican pesos to 124 million Mexican pesos and a 3-month to 10-year ban from competing for federal contracts.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Mexico was listed on the Watch List in the 2012 Special 301 report. The report noted that pirated and counterfeit goods remain widely available. Criminal enforcement of intellectual property rights (IPR) suffers from weak coordination among federal, state, and municipal officials, limited resources for prosecutions, and the need for deterrent level penalties. The United States continued to encourage Mexico to provide its customs officials with *ex-officio* authority and to enact legislation to strengthen its copyright regime, including by implementing Internet Treaties under the World Intellectual Property Organization (WIPO) and by providing stronger protection against the unauthorized camcording of motion pictures in theaters. The United States continues to work with Mexico to resolve IPR concerns through bilateral, regional, and other means of engagement.

There were some positive developments in 2012. In June 2012, Mexico issued a regulation to provide protection against the unauthorized disclosure of test or other data submitted during the marketing approval process for pharmaceuticals. Mexico also improved certain administrative tools used to ensure that companies that submit pharmaceuticals for marketing approval are the appropriate owner or licensee of the patent for the product. Mexico also joined the Madrid Protocol, which provides a simple streamlined process for rights holders to apply for trademark protection in Mexico and other member countries.

Mexico was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010. Mexico signed the ACTA in July 2012, but has not yet submitted the agreement to the Mexican Senate for ratification.

SERVICES BARRIERS

Telecommunications

OECD surveys of Mexico have recommended improving mandatory access to the local loop, formally regulating fixed-to-mobile termination charges, which have been significantly reduced with the threat of regulation, and introducing mandatory roaming to enable smaller mobile companies to use the network of Telcel, (Mexico's largest mobile phone company) network at a regulated price. The OECD also suggests that the industry regulator Cofetel (the Federal Telecommunications Commission) needs greater independence both from leading companies in the sector and from its parent ministry, the Secretariat of Communications and Transportation (SCT).

Enhancing competition in Mexico's telecommunications sector continues to be a challenge. The Mexican company America Movil, the parent company of wireless carrier Telcel and wireline carrier Telmex, dominates both the fixed and mobile segments of the Mexican telecommunications market. A combination of weak regulatory oversight and an inefficient court process has meant that disputes involving this carrier with respect to the terms of competition in the market have lingered for years. A decision by Mexico's Supreme Court making it more difficult to stay regulatory decisions on interconnection was a major step forward, however, and should result in smoother implementation of such orders in the future.

Although Cofetel has attempted on numerous occasions to set lower long distance and mobile termination rates, existing suppliers have used judicial proceedings to frustrate these efforts. SCT and Cofetel have attempted to overcome these tactics by withholding approval for new services that Telmex seeks to supply until Telmex consents to enhanced competition for existing services. In October 2012, Mexico's Supreme Court ruled that Cofetel has the power to impose interconnection rates in disputes between operators. The case arose from Cofetel's intervention in a dispute between Axtel and Telcel over interconnection rates.

Cofeco (the Federal Competition Commission) has also sought to introduce greater competition in the telecommunications market. It concluded a formal investigation into Telmex and Telcel market dominance in 2010 by finding that these companies indeed have market dominance. This finding gives Cofeco authority to impose more stringent requirements on the companies. As of 2012, Telcel had approximately 70 percent of Mexico's mobile subscribers, while Telmex accounted for approximately 80 percent of Mexico's fixed line users. Telcel's closest competitor is Movistar, which claims 20 percent of mobile subscribers, while Axtel trails Telmex with only 6 percent of fixed line users. In May 2012, Cofeco reached a settlement with Telcel, whereby Telcel made commitments intended to ensure that it does not hinder future wireless competition. As part of that settlement, Telcel agreed to drop any outstanding lawsuits against interconnection rulings, work with regulators to further reduce interconnection rates after 2014, and stop giving its customers discounted rates on calls only to other Telcel users, thereby disadvantaging other wireless providers.

Although there have been several recent legislative attempts to open the Mexican fixed line telecommunications sector to increased foreign investment, which could increase opportunities for the emergence of additional competitive providers, prospects for legislation are unclear. Currently, the Foreign Investment Law limits foreign ownership in the wireline segment to 49 percent. The restriction deprives new entrants of capital that a foreign entity could provide and hinders the development of the Mexican telecommunications network.

Under Mexican law, foreign companies must form joint ventures with Mexican partners to obtain authorizations (called "concessions" under Mexican law) to provide satellite-based services in Mexico. Mexico requires mobile satellite service operators to construct gateway earth stations in Mexico, ostensibly to satisfy security policies. Such local siting requirements serve as a localization barrier to market entry for new competitors, since such requirements may make many services economically infeasible.

In his inaugural address, Mexican President Enrique Peña Nieto specifically highlighted the need for enhanced competition in the telecommunications sector and universal access to broadband Internet. On December 2, 2012, the new Mexican administration reached agreement on a "Pact for Mexico" ("the Pact") with representatives of two other political parties. This document calls for greater competition in all sectors of the economy, but with particular emphasis on telecommunications, transportation, financial services, and energy. Specifically, the Pact seeks greater competition in telephony and data services, the adoption of new laws to promote competition in telecommunications, the strengthening of Cofetel's autonomy, the strengthening of Cofeco's power to break up monopolies, and the creation of a specialized court for telecommunication issues. The Pact also reiterated the right to universal broadband access and the need for a national digital agenda (*see section on Anticompetitive Practices*).

Broadcasting

In Mexico, pay television, which is the primary outlet for foreign programmers, is subject to significantly more stringent advertising restrictions than free-to-air broadcast television, which is supplied by domestic operators. The two national broadcasters, Televisa and TV Azteca, control about 90 percent of the national broadcast television market. In June 2012, after a decade in which pay TV programmers were allocated up to 12 minutes per hour for advertising (without exceeding 144 minutes per day), and with no official change in law or regulation, the Dirección General de Radio, Televisión y Cinematografía (RTC) notified certain cable channels that the programmers were now limited to six minutes per hour of advertising. On the other hand, free-to-air broadcasters may allot their permitted 259 minutes per day of advertising with no hourly limits. Mexican authorities have indicated that they are working on new regulations "to establish a clear legal framework" for pay TV advertising.

INVESTMENT BARRIERS

Mexico's oil and gas sector remains largely closed to private investment, with the exception of the liquefied natural gas sector, natural gas distribution, and the marketing of petroleum products. Only Mexican nationals may own gas stations.

The Mexican constitution mandates state ownership of hydrocarbons. Mexico's 2008 energy reform law gave Pemex more independence and allowed the company to tender incentive-based contracts for hydrocarbon exploration and production of mature fields. Pemex awarded three such contracts in 2011, one contract in 2012, and has announced its intention to conduct further public tenders in 2013, such as in Chicontepec, where six blocks will be up for bidding. Production-sharing or profit-sharing concessions are still prohibited. Mexico's new administration is considering reforms in the oil and gas sector (including refining).

Other laws limit participation in certain sectors or activities (*e.g.*, forestry) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). An interagency National Foreign Investment Commission reviews foreign investment in Mexico's restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and which have a value greater than $165 million (adjusted annually based on Mexico's nominal Gross Domestic Product).

ANTICOMPETITIVE PRACTICES

Mexico revised its competition law in June 2006 to give Cofeco additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. Cofeco has administrative enforcement powers, but no criminal enforcement powers. In April 2011, the Mexican Congress passed a law that grants Cofeco more authority to promote competition through stronger sanctions, surprise inspection visits, and temporary injunctions. The 2011 amendments also provide for criminal sanctions enforceable by the public prosecutor.

The Pact for Mexico (*see section on Telecommunications*) calls for the strengthening of Cofeco. Specifically, it calls for reforms to grant Cofeco more legal tools with which it can identify and punish dominant market positions and empower it to break up monopolies. The reform will also create a specialized court for antitrust issues. These measures will be submitted to the Mexican Congress in the first half of 2013, with implementation planned for the second half of 2013 and 2014.

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was $1.3 billion in 2012, a decrease of $502 million from 2011. U.S. goods exports in 2011 were $2.3 billion, down 20.0 percent from the previous year. Corresponding U.S. imports from Morocco were $933 million, down 6.3 percent. Morocco is currently the 57th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Morocco was $350 million in 2011 (latest data available), down from $445 million in 2010.

The United States–Morocco Free Trade Agreement

The United States-Morocco Free Trade Agreement (FTA) entered into force on January 1, 2006. Duties on 95 percent of bilateral trade in industrial and consumer goods were eliminated upon entry into force, with duties on other such goods phased out in stages over the subsequent 10 years, *i.e.*, by January 1, 2016. Some sensitive agricultural products have longer periods for duty elimination or are subject to other provisions, such as tariff-rate quotas (TRQs). In addition to provisions which grant key U.S. export sectors immediate duty-free access to the Moroccan market, the FTA includes commitments for increased regulatory transparency and the protection of intellectual property rights. Through assistance programs, the United States continues to provide Morocco targeted technical assistance supporting FTA compliance and Moroccan regulatory reform.

IMPORT POLICIES

Morocco has undertaken liberalizing reforms as a member of the WTO and as a party to several bilateral free trade agreements. Under the United States-Morocco FTA, goods of key U.S. sectors, such as information technology, machinery, construction equipment, chemicals, wheat, and textiles, enjoy either duty-free or preferential duty treatment when entering Morocco.

In order further to facilitate the flow of trade, the United States and Morocco concluded negotiation of a trade facilitation agreement in December 2012. The agreement includes new commitments reflecting practices developed since the FTA was signed in 2004, such as the submission of information before goods arrive and the electronic payments of duties, taxes and fees. The Parties expect to sign the agreement in early 2013.

Agriculture

The FTA allows preferential access to Morocco for U.S. durum and common wheat exports through two TRQs. The Moroccan government's administration of these wheat TRQs, however, has led to difficulties for U.S. producers attempting to benefit from the preferential access provided under the FTA. The U.S. Government is continuing its efforts to improve access for U.S. wheat producers.

GOVERNMENT PROCUREMENT

The FTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for covered procurement. Under the FTA, U.S. suppliers are permitted to bid on procurements for most Moroccan central government entities, as well as procurements for the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers. However, the 45-day and 90-day timeframes given to foreign companies to respond to government tenders are often too short, guidance for bidders issued by procuring entities is often vague, and channels for distributing information are limited to local newspapers and circulars sent to foreign embassies.

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

SERVICES BARRIERS

Although U.S. companies in principle enjoy the same treatment in Morocco's insurance market as their Moroccan counterparts, the policies and practices of Morocco's insurance regulatory body have effectively prevented U.S. insurance companies from introducing competing products. In practice, the regulatory body is only likely to approve applications that bring new products or "added value" to the sector. Applications must first be reviewed by a Consultative Committee composed principally of other companies active in the sector. While this committee's recommendations are not binding, the Ministry of Economy and Finance generally has followed its advice when considering applications.

In 2012, the United State and Morocco endorsed two sets of voluntary joint principles that are designed to facilitate trade in services and investment: Trade Principles for Information and Communication Technology Services and Principles for International Investment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Morocco has enacted legislation to enhance protection for trademarks, copyrights, patents, and undisclosed pharmaceutical and agricultural chemical test data. This legislation includes provisions concerning disputes regarding Internet domain names, strong anti-circumvention provisions to prohibit tampering with technologies designed to protect copyrighted content, and specific protections for temporary copies, which are critical in the digital environment. The Moroccan Copyright Office has reported that Morocco's capacity to detect and address Internet-based intellectual property rights (IPR) violations is insufficient.

Morocco is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), which is awaiting ratification by the Moroccan parliament. The ACTA establishes an international framework that will assist parties in their efforts to effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

OTHER BARRIERS

The greatest obstacles to trade in Morocco are irregularities in government procedures, lack of transparency in the operation of governmental and judicial bureaucracies, inefficient transport systems, and corruption among junior-level officials. Morocco's cumbersome tax and employment regimes, property registration, and investor protections also impede business. Although the government is working to liberalize the business environment and improve the efficiency of government operations related to business, foreign corporations still complain that these negative factors can limit their access to the Moroccan market.

U.S. companies report that the absence of a viable credit reporting agency in Morocco presents a serious hurdle in vetting potential partners and thus constitutes a significant barrier to trade.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was $216 million in 2012, shifting from a surplus of $408 million in 2011. U.S. goods exports in 2012 were $3.2 billion, down 9.7 percent from the previous year. Corresponding U.S. imports from New Zealand were $3.4 billion, up 8.7 percent. New Zealand is currently the 52nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to New Zealand were $2.1 billion in 2011 (latest data available), and U.S. imports were $1.8 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $2.7 billion in 2010, while sales of services in the United States by majority New Zealand-owned firms were $270 million.

The stock of U.S. foreign direct investment (FDI) in New Zealand was $6.7 billion in 2011 (latest data available), up from $6.2 billion in 2010. U.S. FDI in New Zealand is mostly in the manufacturing, finance/insurance, and non-bank holding sectors.

Trade Agreements

New Zealand is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and New Zealand, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Malaysia, Mexico, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s. At 2.0 percent, New Zealand has one of the lowest average most favored nation (MFN) applied tariff rates among industrialized countries. In 2011, the average applied MFN tariff rate was 1.4 percent for agricultural products and 2.1 percent for industrial goods. In the WTO, New Zealand has bound 47.5 percent of its tariff lines at zero duty. New Zealand applies zero duty on 64.7 percent of its tariff lines. The New Zealand government has stated that tariff rates will be reviewed in 2013, but will remain at their current levels until at least 2015.

GOVERNMENT PROCUREMENT

On August 15, 2012, New Zealand announced its intention to join the WTO Government Procurement Agreement, with the accession process expected to be completed within two years. New Zealand is currently an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

New Zealand generally provides for strong intellectual property rights protection and enforcement. Recent developments include the introduction of the Patents Bill (to replace the Patents Act 1953). The latest version of the draft bill contains improvements to New Zealand's patent system. The United States had concerns over certain elements, including language in an earlier draft that excluded computer programs from patent eligibility, which departs from standards in other developed economies. The revised bill addressed this concern, effectively including software within the patent regime, although New Zealand reportedly is facing some pressure to retain the exclusion. It is unclear when the bill might be enacted into law.

However, the revised bill lacks other provisions that would bring New Zealand's patent law in line with international best practices. For instance, the bill does not include provisions allowing for patent term restoration, which would enable rights holders to recover the effective patent term lost due to delays in the marketing approval process. The absence of such a provision makes it more difficult for innovators to recoup their investments in developing products, such as medical products, that must complete a marketing approval process before they can be sold.

In April 2011, the New Zealand Parliament passed the Copyright (Infringing File Sharing) Amendment Bill, which established a mechanism for New Zealand to fight online piracy. The legislation created a framework for a new regime designed to deter illegal file sharing. Although many rights holders were initially optimistic about the legislation, they have since expressed concerns regarding implementing regulations issued by the Ministry of Economic Development, which permit Internet service providers to charge up to NZ$25 (approximately $21) per issuance of an infringement notice. The cost has deterred some rights holders from using the system and is currently under review by the New Zealand government following submissions by stakeholders.

The United States continues to encourage the New Zealand government to accede to and implement the World Intellectual Property Organization (WIPO) Performance and Phonograms Treaty and the WIPO Copyright Treaty. New Zealand was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, and signed the ACTA in October 2011. The ACTA establishes an international framework that will assist parties in their efforts to effectively combat the infringement of intellectual property rights, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

SERVICES BARRIERS

Telecommunications

Mobile termination rates (MTRs), a charge mobile network suppliers levy on other operators for completing calls to the mobile network's subscribers, have until recently been unregulated in New Zealand. New Zealand's dominant telecommunications companies, Vodafone and Telecom, have historically maintained termination rates among the highest of all industrialized countries. The incumbents appear to have used these rates to put new, smaller mobile entrants at a competitive disadvantage. On a national basis, Vodafone and Telecom control 51 percent and 46 percent of the market, respectively.

In May 2011, the New Zealand Commerce Commission issued a decision requiring cost-based rates for MTRs, thereby increasing competition and reducing wholesale termination rates for mobile calls and text messages. Pursuant to the decision, termination rates for text messages were immediately reduced, and mobile call termination rates were reduced in early 2012, with additional rate reductions mandated by 2014, resulting in rates that are now very competitive by global standards.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens any foreign investment that would result in the acquisition of 25 percent or more of ownership in, or of a controlling interest in, "significant business assets" (defined as assets valued at more than NZ$100 million (approximately $84 million)). In addition, it screens foreign investors or entities that acquire 25 percent or more of a fishing quota, either directly or through the acquisition of a company that already possesses a quota, as well as acquisitions of land defined as "sensitive" by the Overseas Investment Act (OIA) 2005.

In September 2010, the New Zealand government announced new implementing rules under the OIA, which provide New Zealand government ministers increased power to consider a wider range of issues when evaluating overseas investment applications involving sensitive land (such as farmland greater than five hectares, land adjoining the foreshore, or conservation land). Under the rules, two additional factors are evaluated under a benefit test: an "economic interests" factor that allows ministers to consider whether New Zealand's economic interests are "safeguarded," and a "mitigating" factor that enables ministers to consider whether an overseas investment provides adequate opportunities for New Zealand oversight or involvement.

OTHER BARRIERS

Pharmaceuticals

The Pharmaceutical Management Agency (PHARMAC), created in 1993, determines which medicines to fund for use in community and public hospitals, negotiates prices with pharmaceutical companies, and sets subsidy levels and reimbursement criteria. U.S. stakeholders have expressed strong concerns about PHARMAC's regulatory process, including the lack of transparency, timeliness, and predictability in the funding process and unreasonable delays in reimbursing new products. These longstanding concerns have been exacerbated as PHARMAC expands into areas of funding that were previously unregulated, including medical devices. PHARMAC reportedly is working to improve transparency and increase stakeholder involvement in its processes.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $1.6 billion in 2012, up $76 million from 2011. U.S. goods exports in 2012 were $1.1 billion, up 6.6 percent from the previous year. Corresponding U.S. imports from Nicaragua were $2.7 billion, up 5.6 percent. Nicaragua is currently the 76th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was $320 million in 2011 (latest data available), up from $268 million in 2010.

Free Trade Agreement

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

The United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011 and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

Tariffs

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

Approximately 95 percent of tariff lines are harmonized at this rate or lower. In response to rising prices, in 2007, Nicaragua issued a series of decrees to unilaterally eliminate or reduce to 5 percent tariffs on many basic foodstuffs and consumer goods. These decrees have been extended every six months and are currently in effect through June 30, 2013.

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

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

Nontariff Measures

Under the CAFTA-DR, all of the CAFTA-DR countries, including Nicaragua, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR's rules of origin. The Nicaraguan government levies a 15 percent or less "selective consumption tax" on some luxury items, with a few exceptions. The tax is not applied exclusively to imports; domestic goods are taxed on the manufacturer's price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

U.S. companies report that difficulties with the Nicaraguan Customs Administration are a significant impediment to trade. Complaints concern bureaucratic delays, arbitrary valuation of goods, technical difficulties, corruption, and politicization. U.S. exporters and importers of U.S. goods also complain that customs authorities deliberately misclassify goods to boost tariff revenue, and detain goods and donations in customs without legal justification.

GOVERNMENT PROCUREMENT

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

Procurement by government entities not covered by the CAFTA-DR has historically been subject to highly nontransparent and irregular practices. These entities include the National Electricity Company, the National Assembly, the National Basic Foods Company, the Ministry of Tourism, the Supreme Court, the Ministry of Energy and Mines, and some public universities. These entities have, among other things, abused procedures for emergency tenders that allow the suspension of competitive bidding. In 2010, the Nicaraguan National Assembly amended the 1999 Government Procurement Law, also known as Law 323, in order to close certain loopholes. The amendment eliminated exclusions to the established bidding process that had allowed favoritism and unfair competition. However, there are still many allegations of irregularities in the procurement process, in particular involving procuring entities splitting procurements into smaller lots, an action which allows them to use a less competitive bidding process.

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

EXPORT SUBSIDIES

ALBANISA, the state-owned company that imports and distributes Venezuelan petroleum, provides preferential financing to parties that agree to export their products to Venezuela.

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government continues to work with the Nicaraguan government in an effort to ensure compliance with its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, Nicaragua undertook legislative reforms providing for stronger IPR protection and enforcement. Despite Nicaragua's efforts, the United States continues to be concerned about the piracy of optical media and trademark violations in Nicaragua. The United States has expressed concern to the Nicaraguan government about inadequate IPR enforcement, as well as a lack of transparency about its legislative and regulatory processes. The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

Under the CAFTA-DR, Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers. The executive branch has proposed legislation that would strengthen the enforcement capacity of the telecommunications regulator (TELCOR) and improve competitive conditions in Nicaragua's telecommunications market. The United States is monitoring this process, as well as TELCOR's efforts to implement new telecommunications regulations. In 2012, there are also allegations that recent telecommunications concessions were not conducted in a transparent and competitive manner and that the tender winners were pre-determined.

INVESTMENT BARRIERS

During the 1980s, the Nicaraguan government confiscated some 28,000 properties in Nicaragua. Since 1990, thousands of individuals have filed claims for the return of their property or to receive compensation. Where granted, compensation is most commonly provided via low interest bonds issued by the government. Since taking office in January 2007, the administration of President Ortega has resolved nearly 300 U.S. citizen claims; as of March 2013 a total of 280 U.S. claims registered with the U.S. Embassy remain outstanding. The United States continues to press the Nicaraguan government to resolve these outstanding claims.

OTHER BARRIERS

Some U.S. firms and citizens report corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. Administrative and judicial decision making appear at times to be inconsistent, nontransparent, and very time consuming. Courts have frequently granted orders (called "*amparos*") that enjoin official investigatory and enforcement actions indefinitely. Such delays appear to protect individuals suspected of white collar crime.

With monetary support from Venezuela, the government has increased its role in the economy and private companies face increasing competition from state-run corporations. Moreover, despite the legal framework CAFTA-DR provides, property rights and intellectual property rights are especially difficult to defend, and there appears to be no reliable means of resolving disputes. The legal system is regarded as weak, cumbersome, corrupt, and subject to political pressure.

Investors regularly complain that regulatory authorities are negligent and slow to apply existing laws (or are likely to continue to apply laws that should have been superseded by CAFTA-DR provisions), act arbitrarily, and often favor one competitor over another. Investors cite arbitrariness in taxation and customs procedures, as well as a failure to delegate decision-making authority to an appropriate level. There is concern that the frequency and duration of tax audits of foreign investors could interfere with normal business operations.

Law 364

U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liability on foreign companies that manufactured or used the chemical pesticide 1,2-Dibromo-3-Chloropropane (DBCP) in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies have expressed concern that Law 364 and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, Law 364 allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, the imposition of a $100,000 nonrefundable bond per defendant as a condition for firms to mount a defense in court, and escrow requirements of approximately $20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from $25,000 to $100,000). Some plaintiffs seek to lay claim to U.S. company assets in other countries. In 2009 and 2010, courts in California dismissed with prejudice three Nicaraguan DBCP cases, citing plaintiff fraud. In another case a federal district court in Florida denied recognition of a $97 million Nicaraguan judgment under Law 364, because the court found that the "case did not arise out of proceedings that comported with the international concept of due process." The court also found "the presumption of causation in Special Law 364 contradicts known scientific fact." The district court judgment was affirmed by the 11th Circuit Court of Appeals in March 2011. In October 2011, a U.S. company announced the signing of a definitive settlement agreement, which with full implementation will bring to an end all lawsuits brought against the company. The U.S. Government will continue to work with other affected U.S. companies and the Nicaraguan government to facilitate resolution of this issue.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $14.0 billion in 2012, down $14.9 billion from 2011. U.S. goods exports in 2012 were $5.1 billion, up 4.1 percent from the previous year. Corresponding U.S. imports from Nigeria were $19.1 billion, down 43.5 percent. Nigeria is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was $5.0 billion in 2011 (latest data available), about the same as in 2010. U.S. FDI in Nigeria is concentrated in the mining sector.

IMPORT POLICIES

Following the government of Nigeria's August 2011 creation of the new Ministry of Trade and Investment, an experts committee was inaugurated to develop recommendations for a new Nigeria trade policy regime. This trade policy review, however, has yet to be submitted to the Nigerian President, and there is resistance among some Nigerian constituencies – both in government and in the private sector – to enacting and implementing any further trade policy reforms.

Nigeria is a member of the Economic Community of West African States (ECOWAS) and the World Trade Organization.

Tariffs

Nigeria's most recent tariff review occurred in September 2008, when the Nigerian government issued the 2008-2012 Common External Tariff (CET) Book, which harmonizes its tariffs with the ECOWAS Common External Tariff (CET), under the ECOWAS Trade Liberalization Scheme. Nigeria had partially implemented the ECOWAS CET since 2005. The 2008-2012 CET has five tariff bands: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 35 percent duty on goods in certain sectors that the government seeks to protect. According to the Nigerian government, 70 percent of existing tariffs have been aligned with the CET.

Adoption of the 2008-2012 CET is part of the Nigerian government's economic reform agenda, aimed at improving Nigeria's trade and investment environment and harmonizing economic policies within ECOWAS. According to the WTO, Nigeria's average MFN applied tariff rate is 11.7 percent. The average applied tariff is 15.5 percent for agricultural goods and 11.2 percent for non-agricultural products.

In 2012, Nigeria added a number of levies on selected agricultural imports that significantly raise effective tariff rates. These include an increase in the effective duty on wheat grain imports from 5 percent to 20 percent, on wheat flour imports from 35 percent to 100 percent, on brown rice imports from 5 percent to 35 percent, and on milled rice imports from 30 percent to 80 percent. In addition, the government has announced that, as of January 1, 2013, effective tariffs on imports of raw sugar will be raised from 5 percent to 60 percent. Companies report that high tariffs, nontransparent valuation procedures, frequent policy changes, and unclear interpretations by the Nigerian Customs Service (NCS) make importing difficult and expensive, and often create bottlenecks for commercial activities. Nigeria's dependence on imported raw materials and finished goods aggravates this problem, affecting both foreign and domestic manufacturers. Reportedly, many importers resort to undervaluing and smuggling to avoid paying full tariffs.

Nontariff Measures

Nigeria uses nontariff measures to achieve "self-sufficiency" in certain commodities. In line with an Agricultural Transformation Action Plan that seeks to increase domestic food production and employment, the government plans to supplement its 2012 increase in wheat import tariffs with a policy requiring flour millers to substitute up to 40 percent of wheat flour produced in the country with cassava flour by 2015.

The government continues to ban certain imports, citing the need to protect local industries. The list of prohibited imports currently includes: bird's eggs; cocoa butter, powder, and cakes; pork; beef; live birds; frozen poultry; refined vegetable oil and fats; cassava; bottled water; spaghetti; noodles; fruit juice in retail packs; nonalcoholic beverages (excluding energy drinks); and bagged cement.

The government has announced plans to boost the development of domestic sugar cane production to meet the raw sugar needs of existing and new domestic sugar refining companies. In January 2013, to supplement the planned increase in effective tariffs on the import of raw sugar, the government banned imports of refined sugar and offered a variety of tariff breaks on imports of sugar processing equipment and tax holidays for investors in the sugar value chain.

Customs Administration

Nigerian port practices continue to present major obstacles to trade. Importers report erratic application of customs regulations, lengthy clearance procedures, high berthing and unloading costs, and corruption. These factors can sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes between Nigerian government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. Nigeria uses a destination inspection policy for imports. Under this policy, all imports are inspected on arrival into Nigeria. Such actions delay the clearing process and increase costs.

Although the Nigerian government recognizes that port delays significantly increase the cost of doing business in Nigeria, a 48-hour cargo clearance policy at ports announced in 2010 has yet to be fully implemented. Plans to automate all customs payments and modernize NCS operations similarly have yet to be implemented. In October 2011, Minister of Finance Okonjo-Iweala announced additional plans to facilitate goods clearance through Nigerian ports by reducing the number of government agencies in the ports from 14 to 6. However, implementation of this new policy has reportedly been uneven, and there has been no significant reported reduction in the time required to clear goods through the ports. Roads entering and leaving ports are decaying and ports lack rail systems to transport freight into and out of ports. The resulting congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports.

GOVERNMENT PROCUREMENT

The Nigerian government has made modest progress on its pledge to conduct an open and competitive bidding process for government procurement. The Public Procurement Act of 2007 established the Bureau of Public Procurement (BPP). The public procurement reforms seek to ensure that the procurement process for public projects adheres to international standards for competitive bidding. The BPP acts as a clearinghouse for government contracts and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurement above 50 million naira (approximately $320,000) remains subject to review by the BPP. The 36 state governments have also agreed to enact the Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria receive national treatment in government procurement, government tenders are published in local newspapers, and a "tenders" journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Unfortunately, some of these companies have had trouble getting paid, often as a result of delays in the national budgetary process.

The National Petroleum Investment and Management Services (NAPIMS) agency must approve all procurement in the oil and gas sector with a value above $500,000. Slow approval processes can significantly increase the time and resources required for a given project.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Nigeria is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Patent Law Treaty. Nigeria has also signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation intended to implement WTO obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights has been pending in the Nigerian National Assembly for several years.

The Nigerian government's lack of institutional capacity to address intellectual property rights (IPR) issues is a major barrier to enforcement. Relevant Nigerian government institutions suffer from low morale, poor training, and limited resources. Piracy remains a problem despite Nigeria's active participation in the conventions cited above and the growing interest among Nigerians to protect their IPR. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly. Piracy of books and optical disc products is also a problem. Business software piracy is also a concern. U.S. software firms estimate that nearly 80 percent of all computer software in Nigeria in 2011, worth a commercial value of over $250 million, was pirated. Industry reports contend that intellectual property infringers from other countries appear increasingly active in using Nigeria as a base for the production of pirated goods.

Patent and trademark enforcement remains weak and judicial procedures are slow and reportedly compromised by corruption. However, the government has taken steps to improve enforcement. Efforts to combat the sale of counterfeit pharmaceuticals, for example, have yielded some results. The United States has provided training to government IP officials through various training programs offered by the United States Patent and Trademark Office's Global Intellectual Property Academy and the U.S Department of Commerce Commercial Law Development Program under the Trade and Investment Framework Agreement between the United States and Nigeria.

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally complied with, but some cable providers transmit foreign programs illegally. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions. Nigeria has strong film and music industries, and the Nigerian Copyright Commission (NCC) works to strengthen copyright protection. However, the NCC is not sufficiently funded. Furthermore, widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors.

SERVICES BARRIERS

In 2010, Nigeria's enacted a restrictive Oil and Gas Sector Local Content Act that requires that all projects in Nigeria's oil and gas sector use and give preference to Nigerian goods and services. The Act's coverage is broad; it includes any activity or transaction carried out in, or connected with, the oil and gas industry, a sector that accounts for roughly 30 percent of Nigeria's GDP. The Act's local sourcing mandate applies to an extensive list of goods and services supplied to the oil and gas industry, and has been a particular concern of U.S. oil and gas service suppliers.

Restrictions also apply with respect to the movement of personnel. Nigeria imposes quotas on foreign personnel based on the issued capital of firms. Such quotas remain especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers, unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geosciences and management positions may be filled by foreign workers with the approval of the NAPIMS agency. Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process and in the approval of visas for foreign personnel present serious challenges to the oil and gas industry in acquiring the necessary personnel for their operations. According to industry representatives, the Local Content Act is adversely affecting a diverse range of companies, including operators, contractors, subcontractors, and service providers.

INVESTMENT BARRIERS

A variety of barriers restrict potential U.S. investment in Nigeria. Investors must contend with insecurity, complex tax procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and crime. International monitoring groups routinely rank Nigeria among the most corrupt countries in the world. Companies report that contracts are often violated and that Nigeria's system for settling commercial disputes is weak and often biased. Frequent power outages, as well as poor road, port, rail, and aviation transportation infrastructure pose a major challenge to doing business in Nigeria. Such infrastructure deficits hinder Nigeria's ability to compete in regional and international markets.

A Petroleum Industry Bill (PIB), currently under review by the National Assembly, would further and significantly change the way Nigeria's oil and gas sector is structured and regulated. Years of delays in the passage of the PIB has created uncertainty in the investment community, which has delayed significant investment in infrastructure needed to sustain and grow Nigeria's oil and gas production.

NORWAY

TRADE SUMMARY

The U.S. goods trade deficit with Norway was $3.0 billion in 2012, down $1.6 billion from 2011. U.S. goods exports in 2012 were $3.5 billion, down 3.5 percent from the previous year. Corresponding U.S. imports from Norway were $6.5 billion, down 21.2 percent. Norway is currently the 49th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Norway were $3.1 billion in 2011 (latest data available), and U.S. imports were $1.9 billion. Sales of services in Norway by majority U.S.-owned affiliates were $6.0 billion in 2010 (latest data available), while sales of services in the United States by majority Norway-owned firms were $1.3 billion.

The stock of U.S. foreign direct investment (FDI) in Norway was $28.5 billion in 2011 (latest data available), down from $28.8 billion in 2010. U.S. FDI in Norway is primarily concentrated in the mining and manufacturing sectors.

IMPORT POLICIES

Norway, along with Switzerland, Iceland and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway grants preferential tariff rates to EEA members. As an EEA signatory, Norway assumes most of the rights and obligations of EU member states, except in the agricultural and fishery sectors.

Norway has implemented, or is in the process of implementing, most EU trade policies and regulations. Except for agricultural products and processed foods, Norway's market is generally open. Norway has continued to dismantle tariffs on industrial products on a unilateral basis. The average most favored nation (MFN) tariff on nonagricultural products has fallen from 2.3 percent in 2000 to 0.5 percent in 2012. More than 95 percent of industrial tariff lines are currently duty free.

Although Norway maintains a liberal trade and investment regime with respect to industrial products, its agricultural sector remains highly protected, and U.S. exporters of agricultural products face trade barriers that are at least as high as those that they face in the EU.

Tariffs

Norway bound its tariffs for agricultural commodities in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of several quotas with high *ad valorem* or specific tariffs on agricultural products. According to the WTO, Norway's simple average applied tariff in 2012 was 40.9 percent for agricultural goods and 0.5 percent for non-agricultural goods. These averages often change annually as Norway's applied rates vary greatly from bound rates.

Although Norway is only 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to ensure that domestic farmers as well as producers in the food processing industry have little competition until all domestic production has been consumed. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments, generally only two days to five days before implementation, favor nearby European suppliers and make imports from the United States, especially of fruits, vegetables, and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on a product formula, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and, as a result, their products are subject to maximum tariffs.

Agricultural Products

Although agriculture accounts only for 0.5 percent of gross domestic product (GDP) (based on 2009 data), support provided by Norway to its agricultural producers as a percentage of total farm receipts is among the highest in the world. Agricultural subsidies made up 60 percent of farmers' income from 2009 to 2011, which was the highest level among OECD countries. Norway emphasizes the importance of "non-trade concerns," which include food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas, as justification for high domestic support levels. One of Norway's concerns in the WTO Doha Development Round has been the preservation of its highly subsidized agricultural sector.

Norway also imposes problematic sanitary barriers on agricultural products, including prohibiting the import of beef from animals treated with hormones, despite decades of scientific evidence demonstrating that this practice poses no risks to health. In addition, Norway applies extremely restrictive policies to genetically engineered crops. Norwegian legislation – which is not fully aligned with the relevant European Union legislation under the EEA – requires that genetically engineered varieties meet criteria that are not related to the protection of health, food safety or the environment.

Tariff-Rate Quotas

Although Norway has 232 tariff-rate quota (TRQ) commitments in its WTO tariff schedule, most of these TRQs are not active, as current applied rates are either equal to or lower than the in-quota bound rate. Norway has TRQs for 64 agricultural and horticultural products, and the Norwegian Agricultural Authority holds online auctions for the allocation of quotas for 54 of these products. Norwegian importers are primarily interested in TRQs for grains or niche products. However, participating in the auctions is inexpensive, and importers that secure a quota allocation are not actually required to import any products. The Agricultural Authority does not have a system to reallocate any unused quota.

Raw Material Price Compensation

Although the EEA does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement with the EU within the EEA framework that results in the application of a preferential duty on EU processed food products. The agreement covers a wide range of products, including bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups, and sauces. This preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Norway also maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets and ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically-produced raw materials.

Wines and Spirits

The wine and spirits retail market in Norway is controlled by the government monopoly Vinmonopolet. Wine and spirits sales in ordinary retail stores are not allowed. Obtaining approvals to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, leading to complaints from U.S. wine exporters about the limited variety of U.S. wines available to Norwegian consumers. Vinmonopolet's six-month marketing and product plans for selecting and purchasing wines are so detailed and narrow as to significantly constrain competitive supply. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the basic list inventory. Existing wine suppliers benefit from exposure in Vinmonopolet stores, a situation exacerbated by the strict ban on advertising alcoholic beverages.

After constructive discussions between the United States and Norway on ways to raise awareness and sales of quality U.S. wines in Norway, sales of U.S. red wines through Vinmonopolet grew by 56 percent in 2009, 21 percent in 2010, 27 percent in 2011, and 7 percent in 2012. While U.S. red wines' overall market share has grown to 5.3 percent, U.S. white wines' market share has dropped to 1 percent. Challenges with Vinmonopolet's subjective tender system, a relative lack of opportunities for new market entrants, and as a result, relative low awareness of U.S. wines, remain.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Norway remained on the Watch List in the 2012 Special 301 Report. The key concern cited in the report was the lack of product patent protection for certain pharmaceutical products. U.S. industry has expressed concern that the regulatory framework in Norway regarding process patents that were filed prior to 1992 and were pending in 1996 denies adequate patent protection for a number of pharmaceutical products currently on the Norwegian market. U.S. stakeholders have also raised concerns about Norway's policy on pediatric extension and a proposal to allow biosimilar substitution.

U.S. industry also reports concerns regarding private use exceptions under Norway's copyright laws. In 2011, the Norwegian government conducted a public hearing regarding proposed revised legislation that would enhance copyright protection. A draft of that legislation is to be debated in Parliament in early 2013.

The United States and Norwegian authorities held constructive discussions in 2012 regarding several intellectual property rights (IPR) matters, including: pharmaceuticals product patent protection; the need to educate the public about IPR and to promote public awareness of IPR-infringing activity that occurs over the Internet; the role of Internet service providers in combating piracy; and the need to dedicate the necessary public resources to combat counterfeiting and piracy and to prosecute offenders.

SERVICES BARRIERS

Financial Services

For certain types of financial institutions, Norway requires that at least half the members of the board and half the members of the corporate assembly be nationals and permanent residents of Norway or another EEA country.

INVESTMENT BARRIERS

Norway generally welcomes foreign investment and grants national treatment to foreign investors, with exceptions in the mining, fisheries, hydropower, maritime, and air transport sectors. Foreign companies wishing to own or use various kinds of real property must seek prior approval from the government. In the petroleum sector, Norway's concession process continues to be operated on a discretionary basis, with the government awarding licenses based on subjective factors other than competitive bidding. Direct foreign ownership of hydropower resources is prohibited, except in rare instances when the government may grant foreign investment limited to 20 percent equity.

OMAN

TRADE SUMMARY

The U.S. goods trade surplus with Oman was $393 million in 2012, shifting from a trade deficit of $775 million in 2011. U.S. goods exports in 2012 were $1.7 billion, up 21.8 percent from the previous year. Corresponding U.S. imports from Oman were $1.4 billion, down 38.7 percent. Oman is currently the 64th largest export market for U.S. goods.

The United States-Oman Free Trade Agreement

Upon entry into force of the United States-Oman Free Trade Agreement (FTA) in January 2009, Oman provided immediate duty-free access on virtually all industrial and consumer products, and will phase out tariffs on the remaining handful of products by 2019. In addition, Oman provided immediate duty-free access for U.S. agricultural products in 87 percent of its agricultural tariff lines. Oman will phase out tariffs on the remaining agricultural products by 2019.

IMPORT POLICIES

Import Licenses

Companies that import goods into Oman register with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, livestock, poultry and their respective products, as well as firearms, narcotics, and explosives, requires a special license. Media imports are subject to review for potentially offensive content and possible censorship.

Customs

Some firms continue to report difficulties in receiving duty-free treatment under the FTA for goods that enter Oman overland via the United Arab Emirates.

GOVERNMENT PROCUREMENT

Procuring entities in Oman are required to conduct procurement covered by the FTA in a fair, transparent, and nondiscriminatory manner.

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. However, Oman may not apply such price preferences to tenders offering goods and services from the United States in procurement covered by the FTA. For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants. Suppliers are requested to be present at the opening of tenders, and interested persons may view the process on the Tender Board’s website. Some U.S. companies report that tenders’ costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the tendering is reopened with modified specifications and, typically, short deadlines. In 2011, the Omani government took steps to improve the tender process by changing the leadership at the Tender Board, launching State Audit Institution investigations of previous questionable tenders, and enacting a new decree barring relatives “to the second degree of kinship” from participating in procurements. In 2012, a large number of cases of government contracts were forwarded to the Prosecutor’s Office, and more than 30 cases are under review in the court system as of early 2013.

Oman's Ministry of Defense may require that companies involved in defense-related transactions participate in its offset program, entitled "Partnership for Development."

Oman is an observer to the WTO Committee on Government Procurement. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO Agreement on Government Procurement in 2001, but it has not completed the accession process.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Oman committed to provide strong intellectual property rights (IPR) protection and enforcement in the United States-Oman FTA. Oman revised its IPR laws and regulations to implement its FTA commitments, and it acceded to several international IPR treaties. While IPR laws in Oman are generally enforced, cases of online piracy, which can be difficult to detect, remain common.

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

SERVICES BARRIERS

Banking

Oman does not permit representative offices or offshore banking.

Legal Services

By a decree from the Ministry of Justice in October 2009, non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance.

INVESTMENT BARRIERS

U.S. companies had reported difficulty obtaining registrations to operate in Oman on terms required under the FTA, as a result of onerous government requirements to document the nationality of all company shareholders. Following discussion of this issue during the September 2012 FTA Joint Committee meeting, Omani officials have eliminated the requirements, unblocking pending business applications.

U.S. companies remain concerned about rules governing the acquisition of space in Oman. Although U.S. investors are permitted to purchase freehold property in designated residential developments, businesses must adhere to more restrictive guidelines when acquiring real estate for commercial purposes. With the exception of certain tourism-related property agreements, only companies or enterprises with at least 51 percent Omani shareholding are permitted to own real estate for the purpose of establishing an administrative office, staff accommodation, warehouse or show room, or other building with a similar purpose. Other enterprises, including foreign majority-owned businesses, must seek "usufruct" rights that enable them to exploit, develop, and use land granted by a third party.

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $2.1 billion in 2012, up $258 million from 2011. U.S. goods exports in 2012 were $1.5 billion, down 23.1 percent from the previous year. Corresponding U.S. imports from Pakistan were $3.6 billion, down 5.2 percent. Pakistan is currently the 68th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan was $762 million in 2011 (latest data available).

IMPORT POLICIES

Pakistan's overall average applied tariff in 2012 was 14.32 percent. There are 14 different *ad valorem* tariff levels, ranging from 0 percent to 150 percent. Specific duty rates are applied on 45 products. In the 2012-2013 budget, Pakistan reduced duties on 293 items from 35 percent to 30 percent (including for dairy products, preparations of vegetables or fruits, tobacco, cosmetics, soaps, ceramic products, and furniture). In the same budget, the government reduced the maximum general tariff rate from 35 percent to 30 percent (except for vehicles) and simplified the tariff structure by reducing the number of duty brackets from 8 to 7.

Pakistan imposes higher tariff rates (50 percent) on imports of automobile parts that compete with domestically manufactured products than the tariff rates (35 percent) it imposes on imports of automotive parts where there is no domestic production. Pakistan grants sector- or product-specific duty exemptions, concessions, and other protections through promulgation of Statutory Regulatory Orders (SROs). Pakistan also provides concessionary tariffs for the import of raw materials used as active ingredients in pharmaceutical production. In the 2012-2013 budget, the government reduced duties on 88 pharmaceutical raw materials and other input goods from 10 percent to 5 percent. A list of SROs and other trade policy and regulatory documents can be found on the Federal Board of Revenue's website: http://www.cbr.gov.pk.

In January 2000, Pakistan implemented the WTO Customs Valuation agreement and modified its system for valuation of goods. Since then, a number of traders in the food and consumer products sectors have expressed concerns regarding a lack of uniformity in customs valuation. Similarly, a few major U.S. companies in the machinery and materials sector have reported specific concerns that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transactional value.

On October 5, 2009, Pakistan began to enforce a 2005 regulation requiring that commercial invoices and packing lists be included inside each shipping container. This requirement presents challenges to industry: invoice and packing lists do not always originate in the same location as the shipment and invoices and packing lists may be created after the shipment departs. The penalty for non-compliance is $526 per container.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement. The Public Procurement Regulatory Authority (the Authority), established in 2002, is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures. According to a 2004 public procurement framework, international tender notices must be publicly advertised, and sole source contracting tailored to company-specific qualifications is prohibited. There are no official “buy national” policies.

Political influence on procurement awards, charges of official corruption, lack of transparency, and long delays in bureaucratic decision making are common in government procurement. Suppliers have reported instances in which the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid as required by regulation.

EXPORT POLICIES

Pakistan promotes the export of Pakistani products (such as textiles, surgical products, leather, and sporting goods) through measures such as tariff concessions on imported inputs, along with income and sales tax concessions. Three SROs (SRO 565, 567 and 575) provide exemptions and concessions on imports of certain machinery and imports of a large number of raw materials used by domestic industries.

The government established the Export Processing Zone (EPZ) Authority in 1980 to establish and administer EPZs. In 1989, Pakistan established its first EPZ in Karachi. Export oriented industries, defined as those that export 80 percent to 100 percent of their production, receive various incentives for operating in the EPZ. These incentives include exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts, and packing material), and indefinite loss carry-forward. Import and foreign exchange control regulations are not applicable in these zones. The EPZ Authority has the exclusive right to collect estimated taxes on exports. Final taxes are 1 percent of the total profits. The EPZ Authority also collects a “development surcharge” of 0.5 percent of the total profits. Exports from EPZ companies are otherwise exempt from all other federal, provincial, and municipal taxes. Companies in the EPZ do not pay sales taxes on input goods, including electricity and gas.

Besides the EPZ in Karachi, Pakistan has authorized eight additional EPZs. These EPZs are located in Risalpur in Khyber Pakhtunkhwa Province; Gujranwala and Sialkot in Punjab; and Saindak, Gwadar, Reko Dek, and Duddar in Balochistan. Of these, only Risalpur, Sialkot, Saindak, and Duddar are operational. Foreign investors are eligible to establish businesses in the EPZ and are guaranteed full repatriation of capital and profits. There are no minimum or maximum limits for investment. Up to 3 percent of defective goods/waste can be sold in the domestic market after payment of applicable duties. Despite the various incentives offered, most EPZs have failed to attract significant investment. Pakistan enacted the Special Economic Zones (SEZ) legislation in September 2012; unlike EPZs, the SEZs have no performance requirements and offer more incentives for investors. Specifically, SEZs create industrial clusters through the provision of incentives, infrastructure, and investor facilitation services to reduce business costs. The law permits private companies to establish these zones in addition to public/private partnerships.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Pakistan remains on the Priority Watch List in the 2012 Special 301 report, and the 2013 Special 301 Report will be released in late April, 2013. The report cites weak protection and enforcement of intellectual property rights (IPR), particularly with respect to copyrights, pharmaceutical data, and media piracy.

While the government took some steps in 2012 to improve copyright enforcement, especially with respect to addressing optical disc piracy, it appears that only a very small proportion of arrests resulted in prosecutions, and the few verdicts that were issued resulted in minor prison sentences. Pakistan is reportedly being used as a conduit for infringing products from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka, for onward distribution to third countries. Book piracy also continues to undermine legitimate trade and investment. The Intellectual Property Organization law was adopted in December 2012, and provides for specialized IPR tribunals to adjudicate cases and a policy board with private sector representation to assess policy decisions. It is too early to evaluate the effectiveness of the tribunal.

Pakistan has not made progress in providing effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. While the government and international and local pharmaceutical companies have been negotiating a draft data protection law for the past four years, it has still not been enacted. Pakistan also lacks an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. With respect to patents, the processing of pending patent applications has been hampered due to a 2009 ordinance that removed an 18 month deadline for the processing of patent applications.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to certain provisions. These provisions unless specified otherwise, include a minimum initial capital investment requirement of $150,000. Foreign investors in services and other non-manufacturing sectors are limited in remittance of royalty payments to a maximum of $100,000 for the first payment. Royalty payments are capped at 5 percent of net sales for the subsequent five years.

Pakistan deregulated the telecommunications sector in order to comply with its WTO commitments and encourage growth in the sector. The Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services, and the government issued 14 licenses to long distance telephone companies (13 of which are currently in use), 84 licenses to 37 local loop companies (of which 17 are in use), and 93 licenses to 16 wireless local loop companies (of which 11 are in use).

The ability of telecommunications companies to operate in Pakistan is dependent upon access to PTCL infrastructure. The government combined a number of value-added services, including provision of Internet service, vehicle tracking systems, and data network operations, into one license, the Class Value Added Services (CVAS) license. Applicants which applied prior to the announcement of this policy were given the option to either continue their old licenses or convert to CVAS licenses. To date, the government has issued 465 new CVAS licenses and converted 527 old licenses to CVAS. At present, the government does not issue licenses specifically for Voice over Internet Protocol (VoIP), but long distance/local loop telephone license holders may also provide VoIP services.

On October 1, 2012, the Ministry of Information Technology and Telecommunication (MoITT) ordered establishment of an International Clearing House (ICH) that effectively quadrupled charges and curtailed competition for international calls to Pakistan. The United States, the Competition Commission of Pakistan (CCP), and cellular operators expressed serious concern with this change. In November 2012, the Lahore High Court (LHC) rolled back the MoITT's international call termination rate increases, declaring the ICH to be in conflict with The Competition Act of 2010. The court additionally described the increase in termination rates as an additional tax, and stated that the MoITT does not have the mandate to levy such taxes. Following the decision, the MoITT scaled back rates to pre-October 1 levels. The Pakistan Telecommunication Authority (PTA) supposedly ordered carriers to revise their international termination rates back to the levels that existed prior to the adoption of the ICH agreement. However, multiple international carriers have informed U.S. officials the increased rate of $0.088 per minute remains in effect, even though PTA no longer officially mandates it. From October until

February, the Pakistan LDI operators seemingly worked together to fix prices through one carrier, PTCL. In February 2013, the Pakistan Supreme Court (SC) overturned the LHC ruling and directed the matter to the jurisdiction of the CCP.

On March 5, 2013 the U.S. Federal Communications Commission (FCC) released an Order concluding that "recent and ongoing actions by certain Pakistani long distance international carriers (Pakistani LDI carriers) to set rate floors over previously negotiated rates with U.S. carriers for termination of international telephone calls to Pakistan are anticompetitive and require action to protect U.S. consumers in accordance with FCC policy and precedent. Their continuation would result in a substantial increase in the cost of and repress demand for calling Pakistan[2]." The FCC ordered all U.S. carriers not to pay termination rates to Pakistani carriers in excess of "the rates that were in effect immediately prior to the rate increase on or around October 1, 2012."

Banking and Insurance

Foreign banks that do not have a global Tier-1 paid up capital (*e.g.*, equity and retained earnings of $5 billion or more) or are not from countries that are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization and the South Asian Association for Regional Cooperation), and that wish to conduct banking business in Pakistan, must incorporate a local company because a foreign bank may hold a maximum of 49 percent of the shares of a bank in Pakistan. The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets and properties. The government has discretion to grant exemptions to this requirement pursuant to Section 166 of the Insurance Ordinance 2000. Private sector firms may seek foreign reinsurance facilities to meet up to 65 percent of their re-insurance needs. The government has allowed 100 percent of foreign equity in an insurance business. The Investment Policy 2013 was approved on March 13, 2013. The new policy eliminated the minimum capital requirements for the insurance sector. Nonetheless, the Investment policy retained the 49 percent equity cap for foreign investors in the banking sector and 60 percent equity cap in the non-corporate agriculture sector.

INVESTMENT BARRIERS

Foreign investors are generally free to establish wholly-owned business enterprises in Pakistan with the exception of five restricted sectors: arms and munitions; high explosives; currency/mint operations; radioactive substances; and new, non-industrial alcohol plants. The Investment Policy 2013 abolished the minimum foreign investment requirements for all non-restricted sectors.

OTHER BARRIERS

Businesses operating in Pakistan consistently call for strengthening Pakistan's domestic security. Foreign businesses are equally vocal in expressing concern over corruption and a weak judicial system, as these are substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and the 1999 National Accountability Bureau (NAB) Ordinance. Previously, the NAB, the Federal Investigation Agency, and provincial anticorruption departments shared official responsibility for combating corruption. In October 2002, Pakistan's Cabinet approved the National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended the implementation of reforms to combat corruption. The NACS recognized the NAB as the sole federal anticorruption agency. In mid-2009, the Supreme Court directed

2 See Petition for Protection from Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route, Memorandum Opinion and Order, DA No. 13-341, IB Docket No. 12-324 (Int'l Bur. 2013), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0305/DA-13-341A1.txt

that legislation replace the executive ordinance establishing the NAB, but as of the date of publication of this report, the National Assembly has yet to pass such legislation.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. Parties pursuing legal remedies in the Pakistani judicial system may face years of delays and unpredictable outcomes in the country's overloaded courts. In July 2005, Pakistan's Cabinet ratified the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) by ordinance. That ordinance expired in August 2010. A law ratifying the New York Convention was enacted by the Parliament on July 15, 2011.

The Drug Regulatory Authority (DRA) ceased to exist after the 18th Constitutional Amendment returned the provision of health services to the provinces. In the absence of the DRA, the Cabinet Division was to approve drug registration and licenses, but close to 14,000 drug registration cases remained pending in 2012. On October 15, 2012, the National Assembly approved the Drug Regulatory Authority Act, re-establishing the DRA.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $9.4 billion in 2012, an increase of $1.5 billion 2011. U.S. goods exports in 2012 were $9.9 billion, up 20.3 percent from the previous year. Corresponding U.S. imports from Panama were $542 million, up 39.2 percent. Panama is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was $5.7 billion in 2011 (latest data available), up from $5.6 billion in 2010. Reported U.S. FDI in Panama is led by the finance/insurance, mining, and wholesale trade sectors.

The United States-Panama Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (TPA) was signed on June 28, 2007. The U.S. Congress enacted legislation approving and implementing the TPA on October 12, 2011, and President Obama signed the implementing legislation October 21, 2011. Panama completed its domestic procedures in October 2012 and the TPA entered into force on October 31, 2012.

The TPA is a comprehensive free trade agreement and includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection, in addition to significant liberalization of trade in goods and services, including financial services. Under the TPA, U.S. firms will have better access to Panama's services sector than Panama provides to other WTO Members under the General Agreement on Trade in Services. All services sectors are covered under the TPA, except where Panama has made specific exceptions. Moreover, Panama agreed to become a full participant in the WTO Information Technology Agreement (ITA).

Before the U.S. Congress approved the implementing legislation, the Obama Administration worked with the government of Panama to address concerns regarding Panama's labor regime and its tax transparency rules. As a result, Panama implemented several labor and tax transparency reforms in 2010 and 2011. The United States-Panama Tax Information Exchange Agreement was signed on November 30, 2010, and entered into force on April 18, 2011.

IMPORT POLICIES

Tariffs

Panama's average tariff (non-preferential or MFN) on consumer and industrial goods is 7 percent, although tariffs on some products are as high as 81 percent. Panama's average tariff (non-preferential or MFN) on agricultural goods is 15 percent, but some agricultural imports face tariffs as high as 260 percent.

Over 86 percent of U.S. exports of consumer and industrial products to Panama became duty free on October 31, 2012, when the TPA entered into force. Tariffs on the remaining consumer and industrial products will be phased out over the course of 10 years. Almost all U.S. products within each of the following key industrial sectors gained immediate duty-free access to the Panamanian market: information communications and telecommunications equipment; agricultural and construction equipment; aircraft and parts; medical and scientific equipment; environmental products; pharmaceuticals; fertilizers; and agro-chemicals. Apparel products made in Panama will be duty free under the TPA if they use U.S. or Panamanian fabric and yarn. In 2012, Panama notified the WTO of its ITA tariff schedule and thereby achieved membership in the ITA. As an ITA participant, Panama has committed to provide duty-free treatment on imports of products covered by the ITA to all WTO Members.

The TPA provides for immediate duty-free treatment for over half of U.S. agricultural exports to Panama (by value), including high quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of processed products. Under the terms of the TPA, duties on most other agricultural goods will be phased out within 5 years to 12 years depending on the product. Sensitive products will see tariffs phased out within 15 years to 20 years. In some cases, the current applied MFN tariff for agricultural goods is lower than tariff commitment under the TPA and will continue to apply to U.S. products.

The TPA also provides for some immediate improved market access opportunities through tariff-rate quotas (TRQs) for certain U.S. agricultural products. The TRQs permit immediate duty-free access for specified quantities of certain agricultural products during the tariff phase-out period, with the duty-free amount expanding during that period. The TRQs are administered using four different mechanisms depending on the product: auctions; first-come, first-served; licensing; and an export trading company. The government of Panama issued the Implementing Regulations for TRQ administration systems under the TPA in Executive Decree No. 154 of October 10, 2012. Customs Resolution No. 246 of October 22, 2012 governs the implementation of the first-come, first-served TRQ administration system.

Strong customs cooperation commitments between the United States and Panama under the TPA will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

Nontariff Measures

In addition to tariffs, all goods, except for foods and feeds, and most services sold in Panama, are subject to a 7 percent ITBMS (value-added tax). In the case of imported goods, the ITBMS is levied on the cost, insurance, and freight value, as well as on import duties and other handling charges. The tax is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone are exempt from the tax under most circumstances. In 2012, the government introduced an excise tax on vehicle sales, which varies from 5 to 25 percent based on the value of the vehicle and other characteristics of the vehicle, for example, if the vehicle is a hybrid.

Importing entities are required to hold a license to operate in Panama in order to import manufactured goods into the country. The license may be obtained through Panama's online business registration service, *Panama Emprende*. Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006, as amended by Law 48 of 2011 and Law 62 of 2012, among others, regulates government procurement and other related issues. Law 22 requires publication of all proposed government purchases, and established *Panama Compra*, an Internet-based procurement system. Panama has an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by Panama's Supreme Court.

Despite the oversight of the administrative court, many observers believe that political interests often appear to influence procurement decisions. Panamanian business leaders have requested that sole-source contracting be used only on an exceptional basis, and U.S. firms have expressed concern about how the government of Panama establishes and evaluates the criteria used to select a procurement winner.

The TPA introduced new disciplines on certain government procurements. The goal of the disciplines is to ensure competitive, transparent, and predictable procurement practices. The TPA applies to procurements by entities covered by the TPA above certain dollar thresholds. The thresholds vary, but for covered central government entities, the threshold for procurements of goods and services is at least $193,000, while the threshold for construction procurements is $7.407 million. Higher thresholds apply to other government agencies or enterprises.

To enhance the competitive bidding process, the TPA requires that all covered procurements allow at least 40 days for the presentation of bids, although in cases of emergencies the minimum is 10 days. The TPA requires that all information relevant to a bid be published as part of the bidding process. In addition, technical specifications must not be written in a way that favors a particular supplier. The TPA also requires that Panama ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense or is subject to non-criminal penalties where criminal responsibility is not applicable. There have been numerous news articles about alleged corruption involving an Italian company and the donation of six patrol boats to Panama, and a sole-source purchase of radar equipment and helicopters for reportedly inflated prices.

When Panama became a WTO Member, it committed to accede to the WTO Agreement on Government Procurement (GPA). While Panama is an observer to the WTO Committee on Government Procurement, it has not proceeded with accession to the GPA.

EXPORT SUBSIDIES

In December 2009, Panama's National Assembly passed Law 82 of 2009, which created an agricultural export promotion program, known as the Certificate of Promotion of Agricultural Exports (CEFA) program. The CEFA gives incentives to agricultural exporters to reduce packing and transportation costs for specified nontraditional agricultural products.

A number of export industries, such as tourism, and special economic areas, such as free trade zones, are also exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that benefit from these exemptions are not eligible to benefit from the CEFA program for their exports. The 99 companies operating in Panama's 15 free zones may import inputs duty free, if products assembled in the zones are to be exported.

Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods or the use of domestic content in the production of goods).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Law 61 of October 5, 2012, amending Panama's industrial property law, and Law 64 of October 10, 2012, amending Panama's copyright law, introduced important updates to Panama's legislative framework in order to, among other things, implement certain intellectual property rights (IPR) obligations of the TPA. The TPA provides for improved standards for the protection and enforcement of a broad range of IPR, including protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos. The TPA also provides for improved IPR enforcement, including further deterrence of piracy and counterfeiting. These recent changes to these laws build on Panama's efforts over the last decade to improve IPR enforcement.

The Panamanian government also reports that it investigated 934 intellectual property violations (July 2011 to June 2012), of which 437 were crimes against copyrights and related issues, 456 for crimes against industrial property, 41 for crimes against information system security, and 54 for reinstatement. As a result, there were 239 convictions and 11 acquittals for IPR-related violations (down from 339 and 26 respectively in 2011).

The Colon Free Zone created a special office for IPR enforcement in 1998. As of October 2012, the office had performed 22 inspections, compared to 24 inspections in 2011. Given Panama's importance as a hub for regional and global trade, enforcement against trans-shipment of pirated and counterfeit goods is and will continue to be crucial.

SERVICES BARRIERS

Under the TPA, U.S. service suppliers are granted better access to Panama's services sector than other WTO Members under the General Agreement on Trade in Services. All services sectors are covered under the TPA, except where Panama has scheduled specific exceptions. Panama agreed to provide improved access in sectors such as express delivery, and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama. Under the TPA, U.S. insurance suppliers will be permitted to operate as a branch or a subsidiary.

Telecommunications

On October 5, 2012, Panama amended its telecommunications law to eliminate the universal service program contribution amount charged on inbound international traffic to Panama that was significantly higher than the amount collected from carriers engaged in domestic telecommunications. Under the revised law, which took effect January 1, 2013, all carriers engaged in telecommunications in Panama will contribute up to 1 percent of their taxable income to Panama's universal service program. This change eliminates the competitive imbalance Panama's former law had imposed on foreign competitors.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, the U.S. Government has received numerous property dispute complaints from U.S. investors and individual property holders. Many of the complaints seem to arise from a general lack of titled land in Panama and an inadequate government system for the administration of property. Panama enacted a law in 2009 (Law 80) that attempts to address the lack of titled land in certain parts of the country. Decisions taken by the National Land Authority established by this law, however, have reinforced investors' concerns regarding inadequate government administration, perceived corruption, and the inability of the judicial system to resolve these issues.

There is a low level of confidence in the competency and independence of the judicial system. The United States continues to stress the need to increase transparency and accountability in land titling and to reinforce the rule of law in Panama.

The United States-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 with additional amendments in 2001. Among other protections, the BIT and the investment chapter of the TPA ensure that, subject to some exceptions, investors of both Parties receive fair, equitable, and nondiscriminatory treatment and have the right to make free transfers. The BIT also ensures that both Parties abide by international law standards relating to expropriation. The investor protection provisions in the TPA supplant those in the BIT. However, until October 31, 2022 (10 years after the TPA entered into force), investors may invoke dispute settlement under the BIT with respect to investments covered by the BIT.

ELECTRONIC COMMERCE

Under the TPA, Panama must provide nondiscriminatory treatment of digital products transmitted electronically and not impose customs duties, fees, or other charges on digital products transmitted electronically. Additionally, under the TPA, Panama must have in place procedures for resolving disputes about trademarks used in Internet domain names.

OTHER BARRIERS

The Panamanian judicial system continues to pose a problem for investors due to poorly trained personnel, case backlogs, and a perceived lack of independence from political influence. The Martinelli administration campaigned in 2009 on a promise to "eradicate corruption" and continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, but it has not yet delivered concrete results. Domestic anticorruption mechanisms exist, such as asset forfeiture, protection for witnesses and whistleblowers, and conflict-of-interest rules. In addition, Panama ratified the Organization of American States Inter-American Convention Against Corruption in 1998 and the United Nations Convention Against Corruption in 2005. However, the general perception is that anticorruption laws are not applied rigorously, and that government enforcement bodies and the courts have lacked effectiveness in pursuing and prosecuting those accused of corruption, particularly in high profile cases. There is also a perception that Panama could do more to implement the conventions and respond to official recommendations.

The anticorruption provisions in the TPA require Panama to ensure that bribery in matters affecting trade or investment is treated as a criminal offense or is subject to comparable penalties under its law.

PARAGUAY

TRADE SUMMARY

The U.S. goods trade surplus with Paraguay was $1.5 billion in 2012, a decrease of $320 million from 2011. U.S. goods exports in 2012 were $1.7 billion, down 11.8 percent from the previous year. Corresponding U.S. imports from Paraguay were $197 million, up 79.1 percent. Paraguay is currently the 65th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Paraguay was $193 million in 2010 (latest data available).

IMPORT POLICIES

Tariffs

Paraguay is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, Uruguay and Venezuela. Venezuela was admitted as a full member in July 2012. Since June 26, 2012, following the impeachment of Paraguayan President Fernando Lugo, Paraguay has been suspended from participating in MERCOSUR meetings.

MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Paraguay's average bound tariff rate in the WTO is significantly higher at 33.5 percent. According to current MERCOSUR procedure, any good introduced to any member country must pay the CET to that country's customs authorities. If the product is re-exported to any other MERCOSUR country, the CET must be paid again to the second country. Thus, for any U.S. good imported into landlocked Paraguay via any other MERCOSUR country, all of which have ocean ports, the CET is effectively doubled.

Paraguay's import tariffs tend to be much lower than the CET, ranging from 0 percent to 20 percent, with an average applied tariff rate of 10.2 percent. Paraguay is permitted to maintain a list of 649 exceptions to the CET until December 31, 2019. At the MERCOSUR Common Market Council (CMC) ministerial meeting in December 2011, MERCOSUR members agreed to allow member countries to increase import duty rates temporarily to a maximum rate of 35 percent on 100 items per member country. In June 2012, the MERCOSUR CMC authorized each member country to increase tariffs on an additional 100 products. To date, Paraguay has not raised tariffs pursuant to these ministerial decisions.

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

Nontariff Barriers

Paraguay requires non-automatic import licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, insecticides, agrochemicals and poultry. Obtaining a license requires review by the Ministry of Industry and Commerce. Imports of personal hygiene products, cosmetics, perfumes and toiletries also require a health certification and therefore must undergo a review by the

Ministry of Health. The process usually takes 10 days but can take up to 30 days for goods that require a health certification. Once issued, the health certifications are valid for 30 days.

With support from the Millennium Challenge Corporation's Threshold II Program, in July 2010 the Paraguayan Customs Office launched a "single window" web-based system for imports (referred to by its Spanish acronym, VUI- *Ventanilla Unica de Importación*). The cost and time required to process import permits from government institutions has since been reduced, improving competitiveness and transparency in customs operations.

Since 2000, Paraguay has prohibited the importation of used cars that are over 10 years old and used clothing.

Customs Procedures

Paraguay requires specific documentation for imports, such as the commercial receipt, certificate of origin and cargo manifest, to be certified by either the Paraguayan consulate in the country of origin or at the Ministry of Foreign Affairs in Paraguay; the latter requires an additional fee.

Paraguay requires all companies operating in the country to contract the services of a customs broker. The customs broker fees are standardized by Paraguayan law.

GOVERNMENT PROCUREMENT

Paraguay is not a signatory to the WTO Agreement on Government Procurement. In September 2011, the government of Paraguay passed a law that provides preference to a locally produced good in public procurements open to foreign suppliers, even if the domestic good is up to 20 percent more expensive than the imported good. This law remains in effect.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1998, the United States initiated a Section 301 investigation of Paraguay and determined that Paraguay's acts, policies and practices with respect to the protection and enforcement of intellectual property rights (IPR) were unreasonable and discriminatory and constituted a burden or restriction on U.S. commerce. The United States subsequently suspended the Section 301 investigation and negotiated a Memorandum of Understanding (MOU), which was intended to resolve the underlying IPR issues. The MOU was originally concluded in November 1998 and was extended several times thereafter. The MOU was renegotiated in 2008 and then extended in December 2009 and again in December 2011. The MOU expired on April 30, 2012, and the United States and Paraguay have not been able to agree on the terms for a new MOU.

While Paraguayan authorities have engaged in some raids and seizures of pirated and counterfeit goods, significant concerns remain because of weak border enforcement which allows, for example, for the trans-shipment of blank media from Paraguay into neighboring countries, ineffective prosecution of IPR violators, and court sentences that are insufficient to deter infringement. For example, Cuidad del Este has been included in the 2012 Out-of-Cycle Review of Notorious Markets due to the prevalence and sale of counterfeit and pirated goods, including circumvention devices and modified game systems. Infringing goods sold at this and other similar markets in Paraguay are often found in neighboring countries Argentina and Brazil.

Serious concerns also remain about inadequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for agrochemical or pharmaceutical products and the shortcomings in Paraguay's patent regime. Laws enacted in 2007 and 2008 (Law 3283 and Law 3519, respectively) require that for data protection to be available, Paraguay must be the first country in which marketing approval for agrochemical or pharmaceutical is sought.

INVESTMENT BARRIERS

Under Paraguayan Law 194 from 1993, foreign companies must demonstrate "just cause" to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and high fines may result if a court determines that the foreign company ended the relationship with its distributor without first having established that just cause exists. This requirement often leads to expensive out-of-court settlements. In a few cases, the courts have upheld the rights of foreign companies to terminate representation agreements after finding the requisite showing of just cause. However, the effect of the law is to discourage foreign investment, given concerns about potential lawsuits and contractual interference.

Corruption in Paraguayan government agencies is also a concern. The judiciary has been unreliable in enforcing the laws that protect foreign investment. In addition, executive branch ministries, regulatory agencies and the tax agency often lack the resources, expertise, or impartiality necessary to properly carry out their respective mandates, creating uncertainty for investors.

Two laws, Article 195 of the Civil Procedural Code and Law 1376/1988, read in tandem, raise a particular concern for potential investors. A plaintiff pursuing a lawsuit may seek reimbursement of legal costs from the defendant regardless of the merits of the underlying suit, and the plaintiff is entitled to retain reimbursed costs irrespective of the outcome of the suit. In larger suits, the amount of reimbursed legal costs often far exceeds the actual legal costs incurred. Such measures are a significant disincentive to foreign investment in Paraguay.

PERU

TRADE SUMMARY

The U.S. goods trade surplus with Peru was $2.9 billion in 2012, an increase of $1.2 million from 2011. U.S. goods exports in 2012 were $9.4 billion, up 12.3 percent from the previous year. Corresponding U.S. imports from Peru were $6.4 billion, down 2.7 percent. Peru is currently the 32nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was $7.8 billion in 2011 (latest data available), up from $6.4 billion in 2010. U.S. FDI in Peru is led by the mining sector.

Trade Agreements

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009. The PTPA is a comprehensive free trade agreement that is resulting in significant liberalization of trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

Peru is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Peru, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

Under the PTPA, more than 80 percent of U.S. exports of consumer and industrial products now enter Peru duty free. All remaining tariffs on these goods will be phased out by 2018. More than two-thirds of current U.S. agricultural exports enter Peru duty free, and remaining tariffs on U.S. agricultural exports to Peru will be completely phased out by 2025. In accordance with its PTPA commitments, Peru has eliminated its price band system on trade with the United States.

Imported spirits are assessed an effective tax rate that is higher than the tax assessed on domestically-produced pisco products, thus putting distilled spirits produced in the United States at a competitive disadvantage.

Nontariff Measures

The government of Peru already has eliminated many nontariff barriers, and, under the PTPA, is subjecting remaining measures, including subsidies, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations), used tires, cars over five years old, and heavy trucks (weighing three tons or more) more than eight years old. The value-added tax does not apply to charitable donations, although this charitable exemption requires prior registration by the importer with APCI (the Peruvian government's Agency for International Cooperation). A 45 percent excise tax applies to used cars and trucks (compared to 20 percent for a new car). However, if these used cars and trucks undergo refurbishment in an industrial center in the south of the country (located in Ilo, Matarani, or Tacna) after importation, no excise tax applies.

Peru currently requires that biopharmaceutical companies submit a "Batch Release Certificate" issued by the competent authority of the country of origin. The United States Food and Drug Administration (FDA) does not issue such certificates for all types of biological pharmaceuticals. As a result, this requirement adversely affects market access for some biologics produced in the United States. Other administrative processing requirements and duplicative product testing have a negative impact on access to the Peruvian market.

GOVERNMENT PROCUREMENT

The PTPA requires that procuring entities use fair, nondiscriminatory, and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurements covered by the Agreement. Under the PTPA, U.S. suppliers also can bid on procurements of most Peruvian central government entities on the same basis as Peruvian suppliers. This includes procurements by state-owned enterprises, such as Peru's oil company and Peru's public health insurance agency.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Peru was listed on the Watch List in the 2012 Special 301 Report. Pirated and counterfeit goods remain widely available in Peru. Inadequate resources for law enforcement and the need for improvements at Peru's border and in its judicial system are evident. Piracy over the Internet is a growing problem, especially with respect to music. There has been improvement in removing pirated and unlicensed software from government computers, but the problem persists. A further concern is the lack of deterrent penalties in criminal intellectual property rights (IPR) cases and against businesses found to have engaged in infringing activity. In addition, Peru needs to clarify its system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval of agricultural chemical products. In accordance with provisions of the PTPA, Peru must also clarify its protections for biotechnologically-derived pharmaceutical products.

In order to address IPR-related trade barriers, the United States is engaging in discussions with Peru, facilitating training for Peruvian prosecutors on IPR issues, and organizing programs highlighting the benefits to Peru and its citizens.

SERVICES BARRIERS

Telecommunications

In 2012, Peru promulgated a privacy law that has caused concern among companies dependent on cross-border data flows, as it is unclear how certain provisions, particularly consent requirements, can be implemented. The United States will continue to monitor the development of implementing regulations for this new regime.

INVESTMENT BARRIERS

Peruvian law prohibits majority foreign ownership in the broadcast media sector. Peruvian law also restricts foreigners from owning land or investing in natural resources located within 50 kilometers of its border, although the Peruvian government may grant special authorization to operate within those areas. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll.

Both U.S. and Peruvian firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. U.S. and Peruvian investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by Peru’s tax agency, *Superintendencia Nacional de Administracion Tributaria*.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $1.5 billion in 2012, up $81 million from 2010. U.S. goods exports in 2012 were $8.1 billion, up 4.6 percent from the previous year. Corresponding U.S. imports from the Philippines were $9.6 billion, up 4.8 percent. The Philippines is currently the 33rd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to the Philippines were $2.2 billion in 2011 (latest data available), and U.S. imports were $3.0 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $3.3 billion in 2010 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $37 million.

The stock of U.S. foreign direct investment (FDI) in Philippines was $5.3 billion in 2011 (latest data available), down from $5.4 billion in 2010. U.S. FDI in the Philippines is mostly in the manufacturing sector.

IMPORT POLICIES

Tariffs

In the Philippines, the simple average most favored nation (MFN) tariff applied to imports is 6.1 percent. Five percent of applied tariffs are 20 percent or greater. All agricultural tariffs and about 60 percent of non-agricultural tariff lines are bound in the World Trade Organization (WTO). The simple average bound tariff in the Philippines is 25.7 percent. Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fibers, footwear, headgear, fish, and paper products. Applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries are between 7 percent and 15 percent whereas bound rates are much higher at 40 percent and 45 percent.

High in-quota tariffs for agricultural products under the Minimum Access Volume (MAV) system range from 30 percent to 50 percent, significantly inhibiting U.S. exports to the Philippines. Sugar has the highest in-quota tariff at 50 percent, followed by rice, poultry products, and potatoes at 40 percent. The in-quota tariff for corn is 35 percent, while pork and coffee have in-quota tariffs of 30 percent.

The Philippines has reduced tariffs to below MFN rates through preferential trade agreements with trading partners such as China, Australia, and New Zealand. The Philippines has eliminated tariffs on approximately 99 percent of all goods from ASEAN trading partners.

Quantitative Restrictions

Under the MAV system, the Philippines imposes a tariff-rate quota on numerous agricultural products, including corn, coffee/coffee extracts, potatoes, pork, and poultry and poultry products. Since 2005, the Philippines has maintained MAV quota levels at its Uruguay Round commitments despite increasing Philippine demand for MAV products.

The National Food Authority (NFA) controls rice imports through quantitative restrictions and provides price support to domestic growers of rice. NFA's stated objectives are to achieve self-sufficiency and to ensure sufficiently high and stable food prices to enhance farm incomes and alleviate rural poverty.

According to the WTO, NFA's policies have contributed to the sector's non-competitiveness by reducing incentives for farmers to reduce production costs and improve efficiency.

The special treatment for rice accorded to the Philippines under Annex 5 of the WTO Agreement on Agriculture, under which the Philippines maintains a rice quota of 350,000 metric tons, expired on June 30, 2012. The Philippines is negotiating to extend its exemption from WTO tariffication obligations through 2017 with other WTO Members, including the United States.

Automobile Sector

The Philippines continues to apply high tariffs on finished automobiles and motorcycles, including a 30 percent tariff on passenger cars; tariffs of 20 percent to 30 percent on vehicles for the transport of goods; and tariffs of 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. ASEAN countries and Japan enjoy preferential import tariffs on new vehicle imports under the ASEAN Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement, respectively. The Philippines continues to extend zero duty treatment on importation of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered under the Board of Investments (BOI).

Motor vehicle production is covered under the Philippine Motor Vehicle Development Program (MVDP). This program, implemented by BOI, is designed to encourage local assembly through low tariffs on components in order to encourage Philippine automotive exports. A 1 percent tariff applies to completely knocked-down kits (CKDs) imported by MVDP-registered participants. CKDs of alternative fuel vehicles enter duty free. Japan and ASEAN nations enjoy zero import tariffs on all CKDs. The policy also prohibits the importation of used motor vehicles.

Manufacture and assembly of motor vehicles, parts, and components is a preferred activity under the 2012 Philippine Investment Priorities Plan (*see Subsidies*).

Safeguards

The Philippines continues to levy safeguard duties on imports of glass products, steel angle bars, and testliner boards. The Safeguard Measures Act allows interested parties a short five-day comment period. An amendment to extend this comment period to 30 days has been pending since 2007.

The Department of Agriculture has a price-based special safeguard on imports of chicken, effectively doubling the effective rate of protection for out-of-quota imports. The imposition of the special safeguard reportedly stems from domestic industry pressure for import protection.

Excise Tax on Distilled Spirits

In March 2010, the United States and European Union brought disputes at the WTO challenging the Philippines tax system on distilled spirits. The Philippines had for many years applied lower taxes to distilled spirits made from typical local raw materials, such as sugar. Under this system, other spirits, including almost all imported spirits, were taxed at a higher rate. In August 2011, a WTO panel found that the Philippine excise taxes on imported distilled spirits are discriminatory and inconsistent with the Philippines' WTO obligations under Article III:2 of the GATT 1994. The WTO Appellate Body affirmed these findings in December 2011.

On December 20, 2012, President Aquino signed into law a new excise tax system for distilled spirits. Under the new system, all distilled spirits are subject to a 20 peso tax, based on a standard size bottle. An additional *ad valorem* tax of 15 percent by value is being imposed for two years and will increase to 20 percent by value on January 1, 2015. The specific tax of 20 pesos will increase 4 percent per year every year starting January 1, 2016. The United States will carefully monitor implementation of the new system to ensure that it does not discriminate against imported products.

Customs Barriers

Reports of corruption and irregularities in customs processing persist, including undue and costly delays, irregularities in the valuation process (*e.g.*, use of reference prices rather than declared transaction values, 100 percent inspection and testing of some products, and customs officials seeking the payment of unrecorded facilitation fees). Some exporters report, for instance, that the Bureau of Customs arbitrarily will not accept the prices in the documentation provided to it and instead applies a higher dutiable value that is based on information from unspecified sources.

GOVERNMENT PROCUREMENT

Government procurement laws and regulations favor Philippine-controlled companies and locally produced materials and supplies. The Government Procurement Reform Act of 2003 aimed to consolidate procurement laws, simplify prequalification procedures, introduce objective and nondiscretionary criteria in the selection process, and establish an electronic single portal for government procurement activities. However, implementation remains inconsistent. U.S. companies have expressed concern about delayed procurement decisions, delayed payment, and different interpretations of the procurement law among Philippine government agencies.

Since 1993, the Philippines has maintained a countertrade requirement of 50 percent of the price of imports for procurement by government agencies and government-controlled corporations, with penalties for nonperformance of countertrade obligations.

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

SUBSIDIES

The Philippines offers a wide array of fiscal incentives for export-oriented investment, particularly investment related to manufacturing.[3] These incentives are available to companies located in export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority. Incentives include: income tax holiday or exemption from corporate income tax for four years, renewable for a maximum of eight years; after the income tax holiday period, payment of a special 5 percent tax on gross income, in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, spare parts and supplies, and raw materials; domestic sales allowance of up to 30 percent of total sales; exemption from wharfage dues, imposts, and fees; zero VAT rate on local purchases, including telecommunications, electricity, and water; and exemption from payment of local government fees (*e.g.*, mayor's permit, business permit, health certificate fee, sanitary inspection fee, and garbage fee). Furthermore, under the Omnibus Investment Code, which is administered by the Board of Investments, tax incentives are available to producers of non-traditional exports and for activities that support exporters.

[3] The WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement") contains provisions prohibiting certain subsidies contingent on export performance ("export subsidies"). Per Annex VII of the SCM Agreement, certain developing countries are not subject to these provisions until particular conditions are met. The Philippines, however, has met those conditions and is subject to the disciplines on export subsidies.

The Philippine government also offers incentives for investment in less developed economic areas. Companies may qualify for fiscal incentives for their activities in preferred sectors and geographic areas, as outlined in BOI's Investment Priority Plan. Such incentives include income tax holidays; tax deductions for wages and some major infrastructure investments; tax and duty exemptions for imported breeding stock and genetic materials; and tax credits on local purchases of breeding stock and materials. An enterprise with less than 60 percent Philippine equity may also enjoy incentives if its projects are classified as "pioneer" under the Investment Priority Plan or if it opts to be an export-oriented firm by meeting an export requirement of at least 70 percent of actual production.

The Philippines has not filed a subsidy notification under the WTO SCM Agreement. The time period covered by the Philippines' last subsidy notification to the WTO is 1996.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Philippines is on the U.S. Special 301 Watch List. In recent years, the Philippines has launched numerous initiatives to improve its intellectual property rights (IPR) regime. Recent developments include new rules governing the handling of IPR cases in the regional courts designated as special commercial courts, new legislation to strengthen the copyright law and provide new enforcement authorities to the Intellectual Property Organization (IPO Philippines), a reduction in detections of illegal camcording following passage of an anti-camcording law in 2010, and significant enforcement action to reduce the number of counterfeit and pirated goods available for sale in markets such as Quiapo. IPO Philippines continues to seek the expanded cooperation of rights holders in its efforts to improve enforcement.

U.S. rights holders continue to report concerns regarding Internet-based piracy, cable signal piracy, difficulties in prosecuting IPR cases in the judicial system, and amendments to the patent law that preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. The United States continues to engage with the Philippines on these issues.

SERVICES BARRIERS

Telecommunications

Philippine law defines telecommunications services as a public utility and limits foreign investment to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of foreign directors allowed is tied to the proportion of foreign investment in the company. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. The applicability of the public utility designation to value-added services is particularly burdensome and inconsistent with international practice. Foreign equity in private radio communications is limited to 20 percent, and foreign ownership of cable television and all other forms of broadcasting and media is prohibited.

Insurance

The Philippines permits up to 100 percent foreign ownership in the insurance sector; however, its GATS commitment for foreign ownership is 51 percent. Minimum capital requirements increase with the degree of foreign equity.

Generally, only the Government Service Insurance System (GSIS) may provide insurance for government-funded projects. A government order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the extent of the government's interest. All reinsurance companies operating in the Philippines must cede to the industry-controlled National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

The Philippines applies two general restrictions on foreign participation in the banking sector. First, foreign banks that meet specific requirements, such as diversified ownership, public listing in the country of origin, and global or national rankings, are limited to owning 60 percent of the equity in a locally incorporated banking subsidiary. However, banks that do not meet the criteria, as well as non-bank investors, are subject to a 40 percent ownership ceiling.

Second, majority Philippine-owned domestic banks must control at least 70 percent of the resources or total assets in the banking system. This requirement acts as a secondary limit on foreign participation in the banking system.

Since 1999, foreign investment is limited to existing banks due to a central bank moratorium on the issuance of new bank licenses. Furthermore, foreign banks allowed in the Philippines market under the 1994 Foreign Bank Liberalization Act cannot open more than six branches. Four foreign banks, those which operated in the Philippines prior to 1948 may operate up to six additional branches each.

In June 2011, the Philippine Central Bank announced a phased lifting of branching restrictions for locally incorporated commercial and thrift banks in eight key Metro Manila cities. Before branching restrictions in these key cities are fully lifted in July 2014, priority will be given to banks with fewer than 200 branches in the previously restricted areas. This process will benefit foreign banks with commercial and thrift banking subsidiaries in the Philippines.

Financial institutions must set aside loans for certain preferred sectors. The Agri-Agra Law requires banks to earmark at least 25 percent of their loan portfolios for agricultural credit, with at least 10 percent dedicated to agrarian reform program beneficiaries. Although amendments to the Agri-Agra Law in 2010 widened the scope of eligible credits and investments, the new law also scrapped previously allowed, alternative modes of compliance (*i.e.*, financing of educational institutions, hospitals and other medical services, low cost housing, and cooperatives). In addition, the Magna Carta for Micro, Small, and Medium Enterprises (MSMEs) requires banks to set aside at least 10 percent of their loan portfolios for MSME borrowers. These mandatory lending provisions are more burdensome on foreign banks for a number of reasons, including constrained branch networks and foreign land ownership restrictions that impede their ability to enforce rights over land accepted as collateral.

Financial Services

With respect to mutual funds, all members of the board of directors must be Philippine citizens, although no foreign ownership restrictions apply. Current laws limit foreign ownership of financing and of securities underwriting companies to 60 percent of voting stock.

The 2007 Lending Company Regulation Act requires majority Philippine ownership for credit enterprises not clearly under the scope of other laws.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. Philippine law defines "public utility" to include a range of sectors including water and sewage treatment, electricity transmission and distribution (although not electricity generation), telecommunications, and transport. All executive and managing officers of public utility companies must be Philippine citizens, and foreign investors may serve on governing bodies only in proportion to their equity.

Professional Services

The Philippine Constitution limits licensing for the practice of professions to Philippine citizens. Under Philippine law, practice of professions is defined to include law, medicine, nursing, accountancy, engineering, architecture, and customs brokerage.

Express Delivery Services

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Retail Trade

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-up capital of approximately $2.5 million or more, an $830,000 minimum investment per store (approximately), and parent company net worth of over approximately $200 million. In addition, the retailer must either own at least five retail stores elsewhere or have at least one outlet with capitalization of approximately $25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is approximately $250,000 and the net worth of the parent company must exceed approximately $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

Civil Aviation

The Philippine government applies the Common Carrier Tax and Gross Philippine Billing Tax on cargo traffic carried by non-Filipino airlines. In March 2013 the government amended its internal revenue code to exempt airlines from these taxes for passenger traffic.

INVESTMENT BARRIERS

Significant restrictions apply to foreign investment in the Philippines. The Foreign Investment Negative List (FINL) enumerates foreign investment restrictions in two parts: restrictions mandated by the Constitution and specific laws (List A), and restrictions mandated for reasons of national security, defense, public health and morals, and protection of small-and medium-sized enterprises (SMEs) (List B). The FINL sets out sectors in which foreign investment is prohibited outright (*e.g.*, mass media, practice of professions, small-scale mining) or subject to limitation (*e.g.,* natural resource extraction, investment in SMEs). The list is updated every two years, most recently in October 2012. The Philippine Securities and Exchange Commission is set to issue implementing rules and regulations that will monitor, investigate, and impose penalties relating to compliance with the foreign equity restrictions by the FINL.

The Philippine Constitution prohibits foreigners from owning land in the country, but allows for 50 year leases (with one 25 year renewal). An ambiguous deed and property system can make it difficult to establish clear ownership of leased land, however, and an inefficient judiciary results in land disputes that can extend indefinitely. U.S. investors report that these disputes can be a particularly significant barrier to investment in the mineral exploration and processing sectors.

Trade Related Investment Measures

The Board of Investment imposes a higher export performance requirement on foreign-owned enterprises (70 percent of production) than on Philippine-owned companies (50 percent of production). U.S. stakeholders have also reported that the Philippine government imposes unwritten "trade balancing" requirements on firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme.

OTHER BARRIERS

The Aquino Administration continues to implement the anticorruption reforms outlined in its Philippine Development Plan 2011-2016 and has committed to actively pursue corruption charges involving prominent public officials. Nevertheless, corruption remains a pervasive and longstanding problem in the Philippines and one that can place U.S. companies at a disadvantage in the Philippine market. Both foreign and domestic investors express concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in judicial and regulatory processes. Some also have reported cases of courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was $2.5 billion in 2012, an increase of $984 million 2011. U.S. goods exports in 2012 were $3.6 billion, up 27.8 percent from the previous year. Corresponding U.S. imports from Qatar were $1.0 billion, down 16.7 percent. Qatar is currently the 48th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Qatar was $8.2 billion in 2011 (latest data available), down from $10.0 billion in 2010.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external tariff of 5 percent, with a limited number of GCC-approved country-specific exceptions. Qatar's exceptions include alcohol (100 percent) and tobacco (150 percent), as well as wheat, flour, rice, feed grains, and powdered milk. In addition, Qatar applies a 20 percent tariff on the import of iron bars and rods, steel and cement, a 30 percent tariff on urea and ammonia, and a 15 percent tariff on imports of musical records and instruments.

Import Licenses

Qatar requires that importers have a license for most products, and only issues import licenses to Qatari nationals. The government has on occasion established special import procedures via government-owned companies to help ease demand pressures.

Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. However, this requirement may be waived if the local agent fails to provide the necessary spare parts and customer services for the product.

Imports of pork and pork products were prohibited until 2012, when the Qatar Distribution Company (QDC), a subsidiary of the national air carrier Qatar Airways, was granted sole authority to import these products. QDC is also the sole authority authorized to import alcohol.

Documentation Requirements

To clear goods from customs zones at ports or land borders in Qatar, importers must submit a set of documents including a bill of lading, certificate of origin, invoice, and where applicable, import license. The Qatari Embassy, Consulate, or Chamber of Commerce in the United States must authenticate all documents, including a certificate of origin. Commercial consignments lacking a certificate of origin may be imported provided the appropriate documentation is submitted within 90 days of entry. Imported beef and poultry products also require a health certificate and a halal slaughter certificate issued by an approved Islamic authority.

In 2011, Qatar launched its "Customs Clearance Single Window." The new electronic service allows authorized users to complete customs procedures electronically for goods entering and exiting Qatar ports, streamlining the process of customs clearance. Qatari customs authorities have prepared a list of importers and exporters who have good records of compliance with customs regulations, which gives them priority in consignment clearance procedures.

GOVERNMENT PROCUREMENT

Qatar provides a 10 percent price preference for goods with Qatari content and a 5 percent price preference for goods with GCC content. Tenders with a value less than QR1,000,000 ($275,000) are limited to local contractors, suppliers and merchants registered with the Qatar Chamber of Commerce.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

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

SERVICES BARRIERS

Agent and Distributor Rules

Only Qatari entities are allowed to serve as local agents or sponsors. However, exceptions are granted for 100 percent foreign-owned firms in the agriculture, industry, tourism, education and health sectors, and some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the government. The Qatar Distribution Company has the exclusive right to import and distribute alcohol and pork and pork products.

Banking

Although foreign banks are permitted to open branches and authorized to conduct all types of business in the Qatar Financial Center (QFC), including provision of Islamic banking services, foreign banks are informally "advised" not to offer services related to retail banking business. Laws and regulations applied to foreign banks registered in the QFC are different from the ones adopted by the Central Bank, and more closely resemble international standards.

INVESTMENT BARRIERS

The Organization of Foreign Capital Investment Law allows foreign investors to own up to 100 percent of projects in the agriculture, industry, health, education, tourism, development and exploitation of natural resources, energy, and mining sectors, with prior government approval; in all other sectors, foreign equity is limited to 49 percent. Qatar amended this law in 2004 to allow 100 percent foreign investment in the insurance and banking sectors if the investment is approved by a decree from the Cabinet of Ministers. For companies listed on Doha Securities Market, foreign investors' total share cannot exceed 25 percent.

In October 2009, the Council of Ministers agreed to further amendments to the Organization of Foreign Capital Investment Law that permit 100 percent foreign ownership in consulting services, the information and technology sector, cultural services, sports services, entertainment services, and distribution services. Although a decree has been issued, detailed regulations to implement the amendments have yet to be finalized.

The investment law permits foreign investors to lease land for up to 99 years, though renewal requires government approval. Foreign ownership of residential property is limited to select real estate projects. Foreigners can be issued residency permits without a local sponsor if they own residential or business property, but only if the property is in a designated "investment area."

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was $18.6 billion in 2012, down $7.7 billion from 2011. U.S. goods exports in 2012 were $10.7 billion, up 28.7 percent from the previous year. Corresponding U.S. imports from Russia were $29.3 billion, down 15.4 percent. Russia is currently the 28th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Russia was $9.7 billion in 2011 (latest data available), up from $8.3 billion in 2010. U.S. FDI in Russia is led by the manufacturing, banking, and mining sectors.

Membership in the World Trade Organization

On August 22, 2012, Russia became the 156th member of the World Trade Organization (WTO). On December 14, 2012, President Obama signed legislation authorizing the termination of the application of the Jackson-Vanik amendment and the extension of permanent normal trade relations to Russia. On December 21, 2012, the United States and Russia each simultaneously filed a letter with the Director General of the WTO notifying the WTO that they each withdrew their notices of non-application and consented to the application of the WTO Agreement between them. As a consequence, following nearly 20 years of negotiations, the United States and Russia are applying the terms and conditions of the WTO Agreement to each other.

Russia-Kazakhstan-Belarus Customs Union

On January 1, 2010, the Russia-Kazakhstan-Belarus Customs Union (the Customs Union or CU) adopted a common external tariff (CET) with the majority of the tariff rates established at the level that Russia applied at that time. On July 1, 2010, a common CU Customs Code entered into effect, and on July 1, 2011, the CU Parties abolished all customs posts on their internal borders, allowing for the free flow of most goods among the CU countries. As a result of Russia joining the WTO, the CU adopted Russia's WTO schedule of tariff bindings. Beginning in early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational body charged with implementing external trade policy for CU members and with coordinating economic integration among CU Parties with the goal of establishing a Eurasian Economic Union by 2015.

As a consequence of its membership in the CU, Russia's import tariff levels, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on the CU legal instruments. On these and other issues involving goods, CU Agreements and CU/EEC Decisions establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. CU Agreements and CU/EEC Decisions also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary measures.

IMPORT POLICIES

Customs Issues, Taxes, and Tariffs

Excise tax rates for alcoholic beverages have increased steadily and significantly. In 2012, excise tax rates rose 29.8 percent on spirits with more than 9 percent ethyl alcohol content; in January 2013, they rose an additional 33.3 percent. For spirits of 9 percent and less ethyl alcohol content, excise tax rates increased 42 percent in 2012 and another 18.5 percent in 2013. In 2012, the excise tax rates for table wine, sparkling wine, and beer rose 20 percent, 28.6 percent, and 20 percent, respectively; in January 2013, those rates rose further by 7 percent, 24 percent, and 15 percent, respectively. Imported spirits, wine and beer tend to be higher priced than their domestic counterparts, resulting in higher excise taxes.

A long-standing challenge faced by importers of alcoholic products is the requirement that all customs duties, excise taxes, and value-added taxes on alcohol be paid in advance using a bank guarantee and deposit. Because the actual amount of the duties and fees may not be known when the guarantees are obtained, the government of Russia has established fixed guarantee amounts. On occasion, these amounts exceed the final actual amounts due, especially for lower value products. In addition, industry has reported that refunds of these guarantees are sometimes delayed for as long as seven months. The advance payment requirement for duties and taxes, and the length of time the bank guarantee refund is held open, may limit trade volumes due to the amount of money that must be dedicated to these guarantees.

Customs authorities in Russia continue to assess tariffs on the royalty amounts for the domestic use of imported audiovisual materials, such as television master tapes. U.S. industry has complained that this practice represents a form of double taxation, because royalties are also subject to withholding, income, value-added, and remittance taxes. U.S. consumer goods companies have also reported that Russian customs authorities calculate customs duties based on the value of the product plus the amount of royalty payments that the Russian subsidiary must pay to the overseas parent company for the use of the parent company's trademarks. U.S. companies contend that this methodology leads to inflated valuations for tariff purposes.

U.S. industry has also raised concerns about copyright levies which generally are assessed on imported goods which can duplicate copyrighted materials, and provided to an accredited royalty collecting society for distribution to rights holders. Although Russia accredited a collecting society to undertake this collection and distribution, U.S. industry has raised concerns regarding the lack of transparency in the collection and distribution of the royalties. The legitimacy of that collecting society has also been challenged in court, creating uncertainty as to its credibility and reliability. In addition, U.S. industry has questioned the equivalence between the list of domestic products subject to copyright levies and the list of imported products subject to the levies.

Importers continue to report that Russian customs officials inappropriately challenge declared import values. In these instances, customs officials cite reference prices contradicting the invoice valuation, and this practice results in the application of higher import values, and hence higher duty payments. Importers also complain that Russian customs officials' documentation requirements are unpredictable and inconsistent, and vary from port to port. U.S. Government officials have raised concerns about such practices with Russian Customs.

U.S. industry also reports that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application to customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that frequent changes in regulations are unpredictable, adding to costs and delays at the border. In its WTO commitments, Russia has committed to publish all trade-related measures and implement notification, public comment, and other transparency requirements for a broad range of trade-related measures.

U.S. companies continue to face a wide array of other, often company-specific, nontariff trade barriers when exporting to Russia, making Russia an unpredictable and nontransparent market.

Import and Activity Licenses

Although Russia simplified its licensing regimes when it became a WTO Member, the processes to obtain an import or activity license remain burdensome and opaque.

When Russia became a WTO Member, it abolished the requirement to obtain an import license for alcohol. However, activity licenses are still required to warehouse and distribute alcohol in Russia, and industry asserts that the difficulty and expense involved in obtaining them is disruptive to trade. For example, in 2010, Russia's Federal Service for Alcohol Market Regulation (FSR) issued regulations governing the warehousing of alcoholic beverages (Order #59n). These regulations imposed onerous and unnecessary restrictions on the warehousing of alcoholic beverages, such as prohibiting the storage of different types of alcohol on one pallet; requiring that alcohol products be stored at least 15 cm from the floor; precluding the storage of other goods with alcohol products; and requiring certificates from third-party government agencies that require a great deal of time and effort to obtain. Several U.S. exporters have experienced months of delays and expended thousands of dollars seeking to bring their warehousing practices into conformity with the regulation after FSR inspections raised compliance issues. In mid-2012, FSR announced proposed amendments to the warehousing regulations. These proposed amendments do not, however, eliminate many of the burdensome and unnecessary provisions found in the original Order #59n. The United States will continue to work with FSR to seek modifications to Order #59n that ensure that Russia's regulation of alcoholic beverages does not add overly burdensome and duplicative requirements on business operators.

Russia continues to limit the importation of products with cryptographic functionalities ("encryption products") through the use of import licenses or one-time "notifications". As part of its WTO accession, Russia committed to reform its import licensing regime for such encryption products. One such measure was to allow the importation under a one-time notification procedure of consumer electronic products considered to be "mass market" products under the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. However, the necessary amendments to the CU regulations governing the import licensing of these products still have not been made, inhibiting trade in these products. In addition, in 2012, Russia amended the regulations governing activity licenses for the distribution, among other activities, of encryption products. In doing so, Russia reasserted control over many consumer electronic products that had previously not required an activity license to distribute. Since an activity license to distribute encryption products is required to obtain an import license, this new requirement imposes an additional indirect burden on importation.

Import licenses and/or activity licenses to engage in wholesale and manufacturing activities are also necessary for the importation of pharmaceuticals, explosive substances, narcotics, nuclear substances, equipment to be used at nuclear installations and corresponding services, hazardous wastes (including radioactive waste), and some food products (*e.g.*, unprocessed products of animal origin). The process for obtaining these licenses is often unpredictable, nontransparent, time-consuming and expensive.

Automotive and Vehicle Recycling Fees

On September 1, 2012, Russia introduced a "recycling fee" on automobiles and certain other wheeled vehicles. Under the new law, importers and manufacturers in Russia of automobiles and certain other wheeled vehicles pay a fee, determined by the age and engine size of the vehicle, intended to cover the cost of recycling the automobile at the end of its useful life. Rates range from 26,800-110,000 rubles (approximately $838-$3,438) for new vehicles to 165,200 -700,200 rubles (approximately $5,163-$21,881) for used vehicles. However, domestic automobile manufacturers are not required to pay this fee if they agree to establish procedures designed to dispose of a vehicle at the end of its useful life. In addition, automobiles imported from Kazakhstan and Belarus are exempt from the recycling fee. Russian government officials have justified the new program on environmental grounds, and promised that the fee is temporary. At the same time, however, some officials have acknowledged that the purpose of the program is, at least in part, to counterbalance the reduction in tariffs on imported automobiles that resulted from Russia's WTO membership. Russia's President Vladimir Putin has suggested establishing a similar recycling fee for agricultural machinery, and instructed the government to develop a proposal.

Tariff-Rate Quotas

Russia maintains tariff-rate quotas (TRQs) on a number of agriculture products, including beef, pork, poultry, and select whey products. Since 2010, the CU Commission, and now the EEC, has established the overall TRQ volume for a product and its allocation among the three CU Parties based on the overall CU production and consumption forecasts for that product. For 2013, the EEC allocated Russia's TRQ volumes in accordance with the volumes agreed in Russia's WTO schedule. Each CU Party then decides whether to make country-specific allocations of the TRQ volume and issues the import licenses used to administer the TRQ. Consistent with Russia's WTO obligations, a new TRQ has been established for select whey products, with in-quota and out-of-quota tariff rates of 10 percent and 15 percent, respectively. As described in the 2013 Report on Sanitary and Phytosanitary Measures, access to Russia's market for U.S. exports of pork, poultry and beef, even within the TRQ volumes, is often blocked by Russia's application of sanitary and phytosanitary measures that do not appear to be consistent with the WTO SPS Agreement.

Quotas

On August 23, 2012, the EEC issued Decision No. 143 imposing import quotas on stainless pipes and tubes imported into the Customs Union. These quotas replace the special safeguards duty on stainless steel pipes imported into the Customs Union which lapsed in September 2012. The quotas will be in force until November 2014. Quotas are, in general, prohibited under the WTO rules.

Import Substitution Policies

Russian government officials have called for more local production of pharmaceuticals, including with foreign active ingredients and formulations. Pharma 2020, the government's pharmaceutical industry development plan, calls for Russian manufacturers to account for at least 50 percent of total domestic sales (based on value) by 2020. Policies that discriminate against U.S. exporters in favor of domestic production include a reimbursement system that allows only domestic companies to request annual adjustment of registered prices, and a 15 percent price preference for Russian (and Belarusian) companies in federal and municipal procurement auctions. Balancing Russia's desire to develop an indigenous pharmaceutical industry with market access for non-Russian firms will remain an ongoing challenge.

In August 2011, the Ministry of Economic Development and the Ministry of Industry and Trade set the parameters for determining what constitutes domestic telecommunications equipment, and therefore what equipment could be used in specified applications and/or projects. The localization level depends on the scope of the research activities and technological operations carried out in Russia, resulting in localization levels from 60 percent to 70 percent. Moreover, to qualify, a company manufacturing telecommunications equipment must be a Russian resident with no less than 50 percent ownership by the Russian party. Also, the manufacturer must have the legal rights to the technologies and software, possess its own production base, manufacture printing boards, and carry out final assembly of the telecommunications equipment in Russia.

Russia has developed a global navigation positioning technology called GLONASS as an alternative to the U.S. GPS system and Europe's Galileo. The Russian Federal Air Transport Agency (FATA) issued a rule in March 2012 requiring that all Russian registered/owned aircraft that carry dangerous goods must carry GLONASS compatible satellite navigation equipment starting January 1, 2013, and that all Russian registered/owned commercial passenger aircraft must do so by January 1, 2017. Because U.S. aircraft are not currently configured for GLONASS, modifications to the aircraft would be necessary to meet this new rule. The FATA, however, has not yet provided the details necessary for aircraft manufacturers to comply with the requirement.

EXPORT POLICIES

Although Russia has eliminated export duties on a few products, it maintains export duties on 240 types of products for both revenue and policy purposes. For example, a variety of agricultural products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed as strategic, such as hydrocarbons and scrap metals. Russia has also committed, as part of its WTO accession protocol, to eliminate export duties on nickel, copper, aluminum and steel scrap within five years of joining the WTO. Although Russia also committed to decrease export duties on timber to levels between 5 percent and 15 percent, domestic industry pressure has led to delays in implementation.

On December 26, 2011, the government of Russia issued Decree No. 1148 prohibiting the export of ferrous scrap (an important raw material for steel production) and other metals from all ports in the Russian Far East, except Magadan. Because ferrous scrap is globally traded and Russia is a significant scrap producer-exporter, Russia's actions contributed to a reduction in global ferrous scrap supplies, creating upward pressure on global scrap prices outside of Russia. Although Decree No. 1148 was eventually reversed by the courts, Russia is still actively considering similar port closures for its exports of ferrous scrap. In January 2012, Russia issued a draft Decree to prohibit the export of steel scrap from most of Russia's northwestern ports, including the largest scrap export port, St. Petersburg. Although this Decree is still only in draft, the possibility of excluding St. Petersburg as a potential point of export for scrap has again caused concern among U.S. stakeholders of possible market disruptions.

Historically, Russia's government has established high export duties on crude oil to encourage domestic refining. However, certain priority fields in Eastern Siberia and the Caspian Sea enjoy a significant discount on the crude oil export duty. In October 2011, the Russian government lowered export duties of crude oil from 65 percent to 60 percent and increased the export tax rate for heavy fuel oil and other refined products. Separately, the government maintains a 90 percent export duty on gasoline. These changes were intended to spur production by making it more profitable for oil exploration and extraction, to ensure adequate gasoline supplies to the Russian market, and to encourage the development of domestic refining capacity by raising the cost of exporting heavy fuel.

Russia has burdensome procedures for obtaining export certificates for some items, including samples collected during research expeditions and raw data. Additionally, Russia has strict licenses to control the export of precious stones and metals.

GOVERNMENT PROCUREMENT

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

When it joined the WTO, Russia committed that its government agencies would award contracts in a transparent manner according to published laws, regulations, and guidelines. Russia also committed to become an observer to the WTO Committee on Government Procurement upon joining the WTO, and to initiate negotiations for accession to the GPA by 2016. Russia has not yet requested GPA observer status.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Russia remained on the Priority Watch List in the 2012 Special 301 Report. Key concerns cited included piracy on the Internet and intellectual property rights (IPR) enforcement generally, which are among the issues included in a United States-Russian Federation IPR Action Plan finalized on December 20, 2012. Weaknesses in Russia's IPR regime create obstacles to its efforts to create a more innovative and diversified economy.

In 2010, Russia passed amendments to the Law on the Circulation of Medicines that provide six years of regulatory data protection once Russia joined the WTO. When Russia became a Member of the WTO on August 22, 2012, it undertook TRIPS Agreement commitments, including with respect to regulatory data protection. U.S. companies, however, have raised concerns about the lack of protection in Russia of undisclosed test and other data provided as a condition of marketing pharmaceutical products. Russia's Ministry of Health has indicated that it is in the process of preparing a new bill which would propose changes in the registration procedure for new drugs. It was scheduled to be submitted to the government in December 2012, but so far this step has not occurred. The United States will engage with Russia on any legislative or regulatory developments in this area, as envisioned in the December 2012 IPR Action Plan.

Piracy over the Internet remains a serious and growing concern. Copyright violations of films, videos, music, and software, for example, remain rampant, with Internet piracy on the rise. The United States continues to engage with Russia on the issue of piracy on the Internet, for example encouraging the adoption of a fair legislative framework establishing the liability of Internet service providers in appropriate cases of infringement of intellectual property rights over the Internet. The United States also continues to press Russia to address the problems of websites hosting infringing material and of services that are intended to promote the infringement of copyright. One method to address these problems would be to enact requirements for notice and takedown that provide for the swift removal of infringing content. Russia can also take steps to disrupt the functioning of websites that facilitate criminal copyright infringement, including services affiliated with social networking sites such as vKontakte and odnoklassniki.ru.

Related concerns with respect to copyright protection in Russia involve illegal optical media and illegal camcording. Although legitimate DVD sales are on the rise, partly due to increased law enforcement action against makers of pirated DVD, a 2008 ban on camcording in movie theaters, and a growing preference for high-quality products, Russia's optical disc production capacity in 2012 continued to exceed domestic demand, highlighting concerns that optical disc piracy is oriented toward exports. According to industry, Russia remains one of the world's largest producers and distributors of illegal optical media and one of the largest sources of illegally-camcorded movies.

U.S. and multinational companies continue to report counterfeiting of trademarked goods, especially of consumer goods, distilled spirits, agricultural chemicals and biotechnology, and patent-protected pharmaceuticals. In the past, U.S. firms complained about "trademark squatting" by Russian enterprises attempting to appropriate well-known trademarks not active or registered in Russia. Although the number of counterfeiting complaints has been declining, some remain, including with respect to trademark squatting.

Enforcement of IPR in Russia is a continuing problem. In the November 2006 Bilateral IPR Agreement with the United States, Russia agreed to improve IPR enforcement while the United States agreed to intensify IPR training programs and technical assistance for Russian customs and law enforcement officials. Although the United States has held seminars and training programs on IPR enforcement, U.S. concerns regarding Russian enforcement persist, in particular regarding the need for deterrent-level criminal penalties and increased Internet-related IPR enforcement. Russian police continue to carry out end-user raids against businesses using pirated products.

SERVICES BARRIERS

Russia's services market is relatively open to U.S. services suppliers, including in areas such as financial services, education, legal services, and distribution.

However, specific problems remain in particular areas. Russia continues to prohibit foreign banks from establishing branches in Russia. In addition, the ability to provide services to public utilities and certain energy-related services remains limited. Russia had imposed a 25 percent quota on the aggregate share of foreign capital in the insurance sector. However, Russia amended its law to raise this limit to 50 percent. The increase entered into force on December 27, 2012. Russia has not yet amended its legislation to reflect its WTO commitment to remove the limitation on sales of biologically active substances in pharmacies and specialized stores only.

Industry reports that the process for an individual or a company to obtain a license to provide a service remains difficult, and limitations on the form of commercial establishment adversely affect some sectors.

INVESTMENT BARRIERS

Russia's foreign investment regulations and notification requirements can be confusing and contradictory, which has an adverse effect on foreign investment. The Russian government has made improving Russia's investment climate a priority, but U.S. and other foreign investors continue to cite corruption in commercial and bureaucratic transactions as a barrier to investment. Notwithstanding an Anti-Corruption Council created in the summer of 2008 and significant anticorruption legislation passed in May 2011, various internationally-recognized measures of corruption suggest there has been little progress to date. Further obstacles to investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority stockholder rights, the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms, and problems with enforcement of the rule of law.

The 1999 Investment Law allows for a number of exceptions to the general principle of national treatment, including, where necessary, "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons and the defense of the state." These broadly defined exceptions give the Russian government considerable discretion in prohibiting or inhibiting foreign investment in a discriminatory fashion. The Investment Law included a "grandfather clause" that stipulates that existing (as of 1999) "priority" foreign investment projects with foreign participation of over 25 percent will be protected from certain changes in the tax regime or new limitations on foreign investment. The law defines "priority" projects as those with a foreign charter capital of more than $4.1 million and with a total investment of more than $41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded investors by this clause is, at most, very limited.

Telecommunications and media services companies report specific investment restrictions. Article 19 of the Mass Media Law (last amended on November 10, 2011) limits investment in the broadcast sector by foreign entities, Russian entities that are more than 50 percent foreign-owned, and Russian citizens holding dual citizenship. The Law also prevents foreigners, stateless citizens, and Russian legal entities that are more than 50 percent foreign-owned from establishing television companies and owning shares in television broadcasting companies that broadcast to more than half of Russia's regions or have a potential audience of over half the nation's population. Even tighter investment restrictions have been imposed on security firms. As of January 1, 2010, the Law on Private Detective and Security Activities prohibits the participation of any foreign capital in a private security company.

The government enacted the Strategic Sectors Law (SSL) in May 2008. The SSL establishes a list of 42 "strategic" sectors in which purchases of "controlling interests" by foreign investors must be preapproved by Russia's Commission on Control of Foreign Investment ("Commission"). In 2012, amendments to the SSL removed two activities from the list: banks' activities in cryptography and radiation sources usage. It also reduced the number of circumstances in which companies need to seek pre-merger approval.

According to Russian officials, the Commission has approved 129 of 137 applications for foreign investment since its creation in 2008. However, the majority of these transactions involved Russian investors investing back into the country through foreign offshore holding companies.

In September 2012, President Putin signed a Presidential Order requiring that open joint-stock companies on a list of strategic enterprises (currently 57 companies) and their subsidiaries obtain prior consent from a "respective federal executive body authorized by the Russian Government" before supplying information requested by authorities and agencies of foreign governments, international organizations, associations and groups of foreign countries. Permission is also required for amending contracts concluded with foreign counterparts, as well as for other similar documents pertaining to the companies' business on foreign soil. The authorized federal executive body can refuse permission if the actions could harm Russian economic interests.

Privatization

While private enterprises are technically allowed to compete with state corporations on the same terms and conditions, in practice, the market is skewed in favor of state corporations. State corporation holding structures and management arrangements (*e.g.*, representatives of state interests as board members) make it difficult for private enterprises to compete. Furthermore, specific legal constructions can result in preferential treatment of state corporations. For example, state corporations have no unified legal framework, being established and operated under different legislation than that which applies to other corporations. Such a case-by-case approach leaves much scope for discretion and lobbying by company insiders at the expense of private enterprises.

The government maintains a list of 196 companies which are either wholly- or partially-owned by the Russian state (separate from the SSL) that cannot be privatized due to their national significance. The government's privatization plans with respect to other companies is proceeding slowly. An expanded privatization plan through 2017 was approved in August 2011, but revised in June of 2012, as a result of delays in the original plan's timeline. It was revised again in October 2012 but information about the changes has not been released. Notwithstanding these plans, the Russian government intends to retain controlling stakes in major Russian companies such as Rosneft, Transneft, the Federal Grid Company, Russia Railways, and banking giants Sberbank and VTB. Moreover, in some of the companies to be fully privatized, the state will keep what is referred to as a "golden share," a nominal holding that allows the state to retain certain veto powers.

Taxes

Companies report that VAT refunds to Russia-based exporters, which should be provided within three months of a claim's submission, often do not occur on time, with customs and tax authorities applying a number of burdensome additional requirements. In addition, leasing companies have reported that VAT assessed on inputs to exported final products is often not refunded at all. In addition, in some cases, local tax inspectorates have initiated audits and attempted to seize bank accounts of the leasing companies, thus forcing exporters to seek very expensive and time-consuming court enforcement. A variety of Russian and U.S. companies indicate that in many cases, companies have to resort to court action to receive their VAT reimbursements. They report that VAT refunds on exports are the source of significant fraud, and actions to prevent fraud makes it even more difficult for legitimate exporters to obtain refunds.

U.S. companies have also raised concerns about Russian tax authorities' scrutiny of payments that cross Russia's border, but remain, for tax purposes, in the legal structure of the same Russian company. This tax issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee temporarily to the company's Russian office from another office outside Russia; and (2) in intra-company payments for the use of intellectual property. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, Russian tax inspectors have in the past disputed such expenses as "economically unjustified" and, consequently, not permissible under the Russian Tax Code. In consultation with foreign firms, Russia developed and adopted a new Law on Transfer Pricing that took effect on January 1, 2012. Transfer pricing on domestic transactions will be phased in over three years. For 2012, domestic transactions are subject to transfer pricing regulations if the aggregate annual income from the parties exceeds 3.2 billion rubles (approximately $1 million) in 2012, decreasing to 2 billion rubles (approximately $625,000) in 2013 and decreasing once more to 1 billion rubles for 2014 (approximately $320,000) and thereafter. In the first year of this system there have not been major complaints regarding implementation but experts state that a more accurate picture of the impact of these changes won't be seen until the entirety of the regulations are phased in by the end of 2014.

Automotive Sector

Russia has maintained an investment incentive regime in the automotive sector since 2005 with domestic content requirements and production targets. In 2011, Russia added a second program that imposes conditions that are more stringent and requires much higher domestic production volumes (300,000/350,000 units for each manufacturer as compared with 25,000 units under the original program).

As part of its WTO accession protocol, Russia agreed to limit the domestic content requirement for automobile producers in Russia which previously stipulated a certain amount of labor and components be domestically sourced. Russia has also agreed to end the problematic elements of both programs by July 1, 2018.

ELECTRONIC COMMERCE

Electronic commerce is growing rapidly in Russia, and was estimated to exceed $16.6 billion by the end of 2012, a 26 percent growth over electronic commerce sales in 2011. The tax aspects of electronic commerce are virtually unexplored, and this area of the law is still developing. Foreign companies have ample opportunities for entry into the Russian electronic commerce market, but the unreliability and capacity issues of delivery of goods by the Russian postal service, especially outside of Moscow, impedes growth of both foreign and domestic online merchants.

The Law on Electronic Signatures came into force on April 8, 2011. The law considerably widened the permitted use of electronic signatures, and envisages that foreign electronic signatures will also be valid. The law states that electronic documents signed by electronic signatures will have the same legal effect as paper documents signed by hand, provided that in case of simple electronic signatures and advanced signatures the parties have explicitly agreed to it or the use of electronic signatures is provided for by Russian law.

SAUDI ARABIA

TRADE SUMMARY

The U.S. goods trade deficit with Saudi Arabia was $37.5 billion in 2012, up $3.9 billion from 2011. U.S. goods exports in 2012 were $18.1 billion, up 31.0 percent from the previous year. Corresponding U.S. imports from Saudi Arabia were $55.7 billion, up 17.3 percent. Saudi Arabia is currently the 20th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Saudi Arabia were $5.3 billion in 2011 (latest data available), and U.S. imports were $590 million. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were $2.1 billion in 2010, while sales of services in the United States by majority Saudi Arabia-owned firms were not available in 2010 ($2.8 billion in 2007, latest data available).

The stock of U.S. foreign direct investment (FDI) in Saudi Arabia was $8.7 billion in 2011 (latest data available), up from 7.9 billion in 2010. U.S. FDI in Saudi Arabia is concentrated mostly in the nonbank holding companies sector.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external tariff of 5 percent, with a limited number of GCC-approved country-specific exceptions. Saudi Arabia's exceptions include duty-free treatment for 666 products; a 12 percent tariff on 294 products; a 15 percent tariff on confectionary products with cocoa and bulk cocoa products; a 15 percent tariff for tents, aluminum bars and rods, and furniture; a 20 percent tariff on plastic bags and matches; a 25 percent tariff applied during certain seasons on nine types of fresh or chilled vegetables; a 40 percent tariff on fresh, dried and processed dates; and a 100 percent tariff on cigarettes and other tobacco products. Saudi Arabia ties the level of import duties to the level of local production of similar products and continues to subsidize its agricultural sector with the stated goals of diversifying the country's economic development and achieving food security. As a general rule, Saudi Arabia applies a maximum tariff of 40 percent when local production of a food or agricultural product exceeds the level required for self-sufficiency.

Import Prohibitions and Licenses

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from the appropriate authorities. Saudi Arabia prohibits the importation of alcohol, pork products, firearms, used clothing, and automobiles and automotive parts over five years old. Special approval is required for the importation of live animals, horticultural products, seeds for use in agriculture, products containing alcohol, chemicals and harmful materials, pharmaceutical products, wireless equipment, radio-controlled model airplanes, natural asphalt, archaeological artifacts, books, periodicals, audio or visual media, and religious materials that do not adhere to the state-sanctioned version of Islam or that relate to a religion other than Islam. The import of some media products is subject to censorship.

Documentation Requirements

For some products, most notably agricultural biotechnology products, Saudi Arabia requires a certificate attesting to the product's fitness for human consumption and to its sale in the country of origin to be authenticated by the local chamber of commerce in the country of origin in order to import the product into the country.

GOVERNMENT PROCUREMENT

Contractors must subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. Foreign suppliers are also required to establish a training program for Saudi nationals. The Saudi government may favor joint venture companies with a Saudi partner and provide preferential treatment for companies that use Saudi goods and services. In addition, Saudi Arabia provides a 10 percent price preference for GCC goods for procurements in which foreign suppliers participate.

Foreign companies can provide services to the Saudi government directly without a local agent and can market their services to other public entities through an office that has been granted temporary registration from the Ministry of Commerce and Industry. Foreign companies solely providing services to the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry within 30 days of signing a contract.

In 2003, the Saudi Council of Ministers increased the transparency of government procurement, requiring public availability of procurement information, including the names of the parties, financial value, a brief description, duration, place of execution, and a point of contact.

Most defense procurement is not subject to the general procurement decrees and regulations; instead, tenders are negotiated on a case-by-case basis. For large military projects, there is frequently an offset requirement that is determined on a project-by-project basis.

In its accession to the WTO, Saudi Arabia committed to initiate negotiations for accession to the WTO Agreement on Government Procurement (GPA) once it became a WTO Member. Although Saudi Arabia became an observer to the WTO Committee on Government Procurement in December 2007, it has not begun GPA accession negotiations, stating that it would begin accession when the revised text of the GPA was adopted. With approval of the revised text in December 2011, Saudi Arabia has begun an Arabic translation and review of the text.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States removed Saudi Arabia from the Special 301 Watch List in February 2010 in recognition of the significant progress that Saudi Arabia has made in improving its intellectual property rights (IPR) regime. As noted in the announcement of that step, the United States continues to carefully monitor the adequacy and effectiveness of IPR protection and enforcement in Saudi Arabia, including the imposition of deterrent level penalties for violations of Saudi copyright law, action to increase the use of legal software within the Saudi government, and adequate protection for patented pharmaceutical products.

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

SERVICES BARRIERS

Insurance

The 2003 Control Law for Co-Operative Insurance Companies requires that all insurance companies in Saudi Arabia be locally incorporated joint-stock companies, with foreign equity limited to 60 percent and a requirement that the remaining 40 percent be sold in the Saudi stock market. The companies must operate on a cooperative or mutual basis, in effect requiring distribution of any the profits between policyholders and the insurance company.

Banking

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation. The 2004 Saudi Capital Markets Law provides for the creation of investment banks and brokerages in Saudi Arabia, with foreign equity limited to 60 percent.

INVESTMENT BARRIERS

Foreign investment is currently prohibited in 16 manufacturing and service sectors and subsectors, including oil exploration, drilling and production, and manufacturing and services related to military activity. All foreign investment in Saudi Arabia requires a license from the Saudi Arabian General Investment Authority (SAGIA), which must be renewed annually or biannually, depending on the sector. While SAGIA is required to grant or refuse an investment license within 30 days of receiving a complete application, bureaucratic impediments arising in other ministries sometimes delay the process. Companies can also experience bureaucratic delays after receiving their license, for example in obtaining a commercial registry or purchasing property. SAGIA has been working to develop an automated system to streamline the process and reduce delays.

Direct foreign participation in the Saudi stock market is prohibited, except for GCC citizens. Non-GCC investors are permitted to purchase shares in bank-operated investment funds, though total foreign participation in these funds is limited to 10 percent of the total value of the fund. Equity held by foreign partners in a joint venture business is limited to 60 percent.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was $10.3 billion in 2012, a decrease of $1.7 billion from 2011. U.S. goods exports in 2012 were $30.6 billion, down 2.1 percent from the previous year. Corresponding U.S. imports from Singapore were $20.2 billion, up 5.8 percent. Singapore is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Singapore were $10.5 billion in 2011 (latest data available), and U.S. imports were $4.4 billion. Sales of services in Singapore by majority U.S.-owned affiliates were $40.1 billion in 2010 (latest data available), while sales of services in the United States by majority Singapore-owned firms were $4.6 billion.

The stock of U.S. foreign direct investment (FDI) in Singapore was $116.6 billion in 2011 (latest data available), up from $104.3 billion in 2010. U.S. FDI in Singapore is primarily concentrated in nonbank holding companies and the manufacturing sectors.

Singapore is a major trans-shipment hub for world trade, handling approximately one-fifth of world container trans-shipments and almost 2 million tons of airfreight.

Trade Agreements

The United States-Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. Exports from the United States increased 85 percent between 2003 and 2012, with steady growth in exports of medical devices, machinery, and electronics components. The United States and Singapore meet annually to review the implementation of the FTA and resolve outstanding trade issues.

Singapore is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Singapore, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, and Vietnam.

IMPORT POLICIES

Import Licenses/Internal Taxes

Singapore maintains a tiered motorcycle operator licensing system based on engine displacement which, along with a road tax based on engine size, adversely affects U.S. exports of large motorcycles. Singapore also restricts the import and sale of non-medicinal chewing gum. For social and/or environmental reasons, it levies high excise taxes on distilled spirits and wine, tobacco products, and motor vehicles.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In connection with its FTA commitments and obligations under international treaties and conventions, Singapore has developed a generally strong intellectual property rights (IPR) regime, with the second lowest rate of software piracy in Asia. Nonetheless, some concerns have been raised about the trans-shipment of infringing goods through Singapore, insufficient deterrent penalties for end-user software piracy, and the lack of effective enforcement against online peer-to-peer infringement.

Singapore is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), but has not yet ratified the agreement. ACTA establishes an international framework that will assist parties to the agreement in their efforts to effectively combat IPR infringement, in particular the proliferation of counterfeiting and digital piracy, which undermines legitimate trade and the sustainable development of the world economy.

U.S. content holders have noted concerns regarding pirated online content access from Singapore. The Media Development Authority (MDA), a sub-agency of the Ministry of Information, Communications and the Arts, has been consulting on this issue with stakeholders for the past year and recently issued recommendations to reduce online piracy. MDA is soliciting public feedback regarding site-blocking solutions to reduce online piracy.

SERVICES BARRIERS

Pay Television

In August 2011, MDA implemented new regulations requiring pay television providers to "cross carry" exclusive broadcasting content acquired after March 12, 2010. Under the rules, a pay TV company with an exclusive contract for channels/content is required to offer that content to customers of other pay TV companies at similar commercial rates. The United States is concerned that these regulations may interfere in the competitive marketplace by denying the ability of content holders, many of which are U.S. based, to freely negotiate contractual arrangements and determine access to their product. The policy is scheduled for review in March 2013.

The United States will continue to monitor the implementation of this regulation, particularly in regard to how it will be applied to content services provided over the Internet, where the rationale for regulatory intervention appears less relevant, given the ability of consumers to easily access Internet-based services. Since the cross-carriage provisions entered into force, only one contract, the Union of European Football Association Euro 2012, has been subject to the measure. In October 2012, SingTel announced it had secured broadcast rights for the English Premier League for another three seasons (starting in the second half of 2013) in a non-exclusive deal, leaving the door open for its competitor StarHub to separately negotiate for the rights to broadcast the games.

Audiovisual and Media Services

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. MDA must license the installation and operation of broadcast receiving equipment, including satellite dishes for TV reception.

Distribution, importation, or possession of any "offshore" or foreign newspaper must be approved by the government. Singapore has curtailed or banned the circulation of some foreign publications based on perceived defamation of the Singapore government in the publication.

Legal Services

U.S. and other foreign law firms with offices in Singapore cannot practice Singapore law or employ Singapore lawyers to practice Singapore law unless specifically approved to do so. In addition, foreign law firms are not permitted to litigate in local courts, even through Singapore lawyers. Six foreign law firms have been granted "Qualifying Foreign Law Practice" (QFLP) licenses to practice Singapore law, except in certain excluded areas such as litigation, family law, and probate. In 2013, Singapore plans to award a second round of licenses to foreign law firms. Twenty-three firms had filed applications for QFLP licenses by the end of the application period in August 2012.

Banking

Foreign banks and other financial institutions that issue credit cards in Singapore are unable to provide ATM services through local networks for holders of those cards. Foreign banks can only provide ATM services to locally-issued credit card holders through their own network or through a foreign bank's shared ATM network. However, foreign banks that have been awarded Qualifying Full Bank privileges can negotiate with the local banks on a commercial basis to let their credit card holders obtain cash advances through the local bank's ATM networks. Foreign banks do not face the same restrictions for credit cards that they issue outside of Singapore.

The Minister in charge of the Monetary Authority of Singapore must approve the merger or takeover of a local bank or financial holding company, as well as the acquisition of voting shares in such institutions above specific thresholds. Although it has lifted the formal ceilings on foreign ownership of local banks and finance companies, Singapore has indicated that it will not allow foreign controlling stakes or takeovers of its three major local financial institutions.

Cloud Computing Services for Financial Institutions

Despite the acceptance of multitenant computer data center architecture (*i.e.*, data from multiple customers stored in a single data center) by financial regulators in major markets, MAS has sought, through informal means, to discourage financial institutions in Singapore from using the technology. This approach could deter the adoption of cloud computing in this sector, undermining the efficiency gains such technology provides and Singapore's leadership role as both a cloud computing and financial services center in the region. The United States will continue to raise this issue with Singapore and discuss ways that vendors can demonstrate how they can meet MAS regulatory goals while implementing innovative computing technologies.

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was $1.1 billion in 2012, down $1.1 billion from 2011. U.S. goods exports in 2012 were $7.6 billion, up 4.1 percent from the previous year. Corresponding U.S. imports from South Africa were $8.7 billion, down 8.7 percent. South Africa is currently the 35th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to South Africa were $2.8 billion in 2011 (latest data available), and U.S. imports were $1.8 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $4.4 billion in 2010 (latest data available), while sales of services in the United States by majority South Africa-owned firms were $372 million.

The stock of U.S. foreign direct investment (FDI) in South Africa was $6.5 billion in 2010 (latest data available), roughly the same as in 2010. U.S. FDI in South Africa was led by the manufacturing, professional/scientific/technical services, and wholesale trade sectors.

IMPORT POLICIES

Tariffs

South Africa is a member of the World Trade Organization (WTO), the Southern African Development Community (SADC), and the Southern African Customs Union (SACU). As a member of SACU, South Africa applies the SACU common external tariff (CET). In practice, South Africa effectively sets the level of most favored nation (MFN) tariffs applied by all SACU countries. In 2011, South Africa's average MFN duty was 7.7 percent. South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area (EFTA), and SACU; and is working towards an African Tri-Partite Free Trade Agreement among the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and SADC. South Africa is also negotiating a preferential trade agreement with India.

U.S. companies have cited preferential tariff treatment of EU origin products as an impediment to doing business in South Africa. The South Africa-EU trade agreement resulted in about 12 percent lower tariffs on EU goods; in some categories, EU products enjoy up to a 50 percent tariff advantage compared to U.S. products. Key categories in which the U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, trucks, agricultural machinery, and arms and ammunition. EU apparel products have an average 15 percent tariff advantage across a broad number of product categories. On men's and women's clothing, the EU advantage is between 20 percent and 25 percent, depending on the material. The advantage is 45 percent for pantyhose and socks of synthetic fibers. The United States highlights the tariff disparity consistently in bilateral discussions with South Africa.

Nontariff Measures

The Department of Trade and Industry prohibits specified classes of imports into South Africa by notice in the Government Gazette, unless the products are imported in accordance with a permit issued by the International Trade Administration Commission (ITAC). ITAC requires importers to apply for permits on used goods, if such goods are also manufactured domestically. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications. Other often-cited nontariff barriers to trade include customs valuation above invoice prices, requirements for ITAC import permits for products other than used goods, antidumping measures, excessive regulation, standards, and sanitary and phytosanitary measures.

Antidumping Measures

Antidumping (AD) duties have been in place on imports of frozen bone-in chicken pieces from the United States for 12 years. Before imposing AD duties, South Africa imported approximately $10 million to $24 million of chicken meat from the United States annually; however, the imposition of AD duties has effectively priced U.S. exports of chicken meat to South Africa out of the market and allowed other countries such as Brazil to gain market share. South African producers petitioned South Africa's investigating authority, ITAC, in 2011 to renew the duties for another five-year term. As a result, AD duties were extended until 2017. The United States has raised antidumping issues with South Africa at all appropriate levels, including during the June 2012 United States-South Africa Trade and Investment Framework Agreement (TIFA) discussions.

GOVERNMENT PROCUREMENT

Government purchases are made through competitive tenders for goods, services, and construction. South Africa's Preferential Procurement Policy Framework Act of 2000 and associated implementing regulations created the legal framework and formula for evaluating tenders for government contracts.

The South African government actively uses its expansive fiscal policy and regulatory framework for government tendering to fight unemployment. The 2011 Local Procurement Accord commits the government to significantly expand the value of goods and services it procures from South African suppliers. The Accord includes an "aspirational target" of 75 percent sourced locally, in a bid to boost industrialization and to create jobs. South Africa's National Industrial Participation Program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment, or services with an imported content greater than or equal to $10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation requires that the seller/supplier engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the total goods purchased or leased under a government tender.

South Africa also uses government procurement to empower the historically disadvantaged populations through its Broad-Based Black Economic Empowerment (B-BBEE) strategy. *See the section on Investment Barriers for more detail on B-BBEE.*

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government has appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Under South African law, complainants can take both civil and criminal action against IPR offenders. However, in practice, civil litigation in South Africa is such an expensive and time-consuming process that it usually deters rights holders from bringing suit.

The number of arrests for trading in pirated or counterfeit goods has increased in recent years. The South African government has an interagency counterfeit division including the DTI, the South African Revenue Service (SARS), and the South African Police Service to improve coordination of intellectual property rights (IPR) enforcement. The DTI is also working with universities and other local groups to incorporate IPR awareness into college curricula and training of local business groups. The private sector and law enforcement cooperate extensively to stop the flow of counterfeit goods into the marketplace.

Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high. U.S. industry is concerned about illegal commercial photocopying, especially at universities, libraries, and other on-campus venues. U.S. industry has also expressed concern about software and online piracy, the growing number of counterfeit production facilities, advertisements of "burn-to-order" services, and the unwillingness of South African internet service providers (ISPs) to take measures to combat illegal counterfeiting and piracy enterprises operating online. South African authorities reported that industry cooperation on digital media has improved enforcement in that sector. However, in other manufacturing sectors, industry is not as well organized and progress has been more difficult. Imported counterfeit medicines are also prevalent. South Africa and the United States continue to work together on intellectual property issues of mutual interest through regular dialogue among experts and extensive education and training programs.

SERVICES BARRIERS

Telecommunications regulation is divided between the Department of Communications (DOC) and the Independent Communications Authority of South Africa (ICASA). ICASA replaced the South African Telecommunications Regulatory Authority and the Independent Broadcasting Authority in July 2000 under the ICASA Act (No. 13), and receives funding from the DOC. The government-owned former monopoly supplier, Telkom, dominates fixed-line telecommunications services in South Africa. Despite its parallel regulatory role, the DOC retains South Africa's ownership interest in Telkom. An ICASA proceeding has been pending since 2009 to determine whether ICASA should regulate foreign direct investment in electronic communications.

The DOC has implemented liberalization measures that have addressed some problems facing smaller operators. As a result, more mobile operators may now install their own fixed lines to link cell towers into their networks, Value Added Network Service (VANS) providers may use infrastructure not owned by Telkom, and VANS providers may offer voice services. In addition, private telecommunications network operators may sell spare capacity.

VANS providers, however, continue to be concerned over Telkom's domination of the local market. In August 2012, the South African Competition Tribunal fined Telkom ZAR 449 million ($50.27 million) for abusing its dominance in the telecommunications market over a five-year period from 1999 to 2004. The Competition Tribunal concluded that "Telkom leveraged its upstream monopoly in the facilities market to advantage its own subsidiary in the competitive VANS market," and "Telkom's conduct caused harm to both competitors and consumers alike and impeded competition and innovation in the dynamic VANS market."

Broadcasting

ICASA requires local content for satellite, terrestrial, and cable subscription services. Foreign ownership of each broadcaster is capped at a maximum of 20 percent.

In 2006, an agreement with the International Telecommunications Union (ITU) committed South Africa to achieve digital migration by June 1, 2015. After this date, the 11.5 million South African households with a television will require a set-top box (STB) for terrestrial broadcasting transmission signals as the analog broadcasting frequencies' exclusivity will be lifted, resulting in signal interruptions. Six years later, however, the DOC's efforts to migrate from analog to digital broadcasting have been met with repeated delays, and there are concerns that South Africa will miss the deadline. The DOC is attempting to begin a dual-illumination period, in which digital television signals would be launched and broadcast concurrently with analog television signals. During this transition, South Africa needs to convert all of its analog television households to digital STBs.

In the meantime, telecommunications operators have requested access to the 2.6 GHz band and frequencies below 850 MHz that will be freed up as a result of this analog to digital migration to build next-generation mobile broadband networks. However, until the analog to digital migration is complete, the spectrum cannot be allocated. This has frustrated telecommunications operators.

ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law governs electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but has been criticized as imposing significant regulatory burdens. The law requires government accreditation for certain electronic signatures, takes government control of South Africa's ".za" domain name, and requires a long list of disclosures for websites that sell via the Internet. In early 2006, the South African Law Reform Commission submitted draft legislation on privacy and data protection to the National Assembly, which is still pending.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield foreign direct investment, merger-and-acquisition-related foreign direct investment is, however, scrutinized closely for its impact on jobs and local industry. Private sector and other stakeholders remain concerned about politicization of South Africa's posture towards this type of investment. The Black Economic Empowerment (BEE) Codes of Good Practice promulgated in 2007 created a certification system that rates a company's commitment to the empowerment of historically disadvantaged people in South Africa. A high rating is particularly important in competition for public tenders, as the BEE scorecard will account for 10 percent of a bid's assessment. Multinationals have struggled to score well on the "ownership" element of empowerment assessment, particularly where their corporate rules prevent the selling of discounted equity stakes in their South African subsidiary.

Sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to promote accelerated empowerment within these sectors. As of November 2011, the integrated finance, transport, forest products, construction, tourism, and chartered accountancy sectors' charters have the force of law in South Africa. Many other sectors, including information and communication technology (ICT) and property, have transformation charters that do not have the force of law, yet express the sector's commitment to "economic transformation."

South Africa is currently reviewing its BEE requirements, with a view to emphasizing enterprise-development and procurement over simple equity ownership. The government also hopes an increased focus on enterprise- and skill-development on the BEE scorecard will produce more transformation of the South African economy. The government released proposed amendments to the 2003 BEE Act for public comment in October 2012. U.S. firms are wary that the proposed changes would prevent them from gaining certification in the future.

OTHER BARRIERS

Transparency and Corruption

Several laws have been enacted in the last decade and a half to increase transparency and reduce corruption in South Africa's government, although some of the laws suffer from deficiencies. For example, the 2000 Protected Disclosures Act, intended to protect whistleblowers, is limited by a stipulation that a whistleblower is protected only in disclosing information regarding his or her employer; the same protection does not apply if the whistleblower discloses information about an organization with which his or her employer has a contract. In 2011, in a step said to take the government away from greater transparency, South Africa's National Assembly passed a controversial "Protection of State Information bill" to regulate the classification, protection, and dissemination of State information. The bill has not been passed by the upper house, the National Council of Provinces, and has been criticized by academics, civil society groups, international organizations, and the media as limiting transparency and freedom of expression.

Implementation of transparency and anticorruption laws also suffers from challenges. South Africa has no fewer than ten agencies engaged in anticorruption activities, including those, such as the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, that are constitutionally mandated to address corruption as part of their responsibilities. However, high rates of violent crime strain overall law enforcement capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts. A number of high-level officials were investigated for corruption during 2012, and in June, President Zuma fired the then-National Police Commissioner after he served a seven month prison sentence.

Labor Constraints

Companies in many economic sectors experience difficulty in recruiting because of skills shortages and emigration. Businesses also alleged labor laws are too stringent and limit job creation and expansion. For a number of years, U.S. and other foreign companies have complained about the difficult procedures for obtaining temporary work permits for their skilled foreign employees.

SRI LANKA

TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was $2.0 billion in 2012, up $251 million from 2011. U.S. goods exports in 2012 were $224 million, down 26.0 percent from the previous year. Corresponding U.S. imports from Sri Lanka were $2.3 billion, up 8.2 percent. Sri Lanka is currently the 130th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Sri Lanka was $156 million in 2011 (latest data available), up from $150 million in 2010.

Trade and Investment Framework Agreement

The United States and Sri Lanka held their annual trade discussions under the Trade and Investment Framework Agreement (TIFA) on March 27, 2012. The United States raised a wide range of trade and investment issues including market access, the U.S. Generalized System of Preferences (GSP) program, labor, trade promotion efforts, intellectual property rights (IPR), agriculture, promoting women entrepreneurs and sector-specific investment challenges. The United States and Sri Lanka agreed to establish a number of TIFA Committees to continue work throughout the year. The new TIFA Committees cover intellectual property, customs cooperation, and labor affairs.

IMPORT POLICIES

Despite efforts to open the economy to foreign trade and investment, the pace of reform in Sri Lanka has been uneven. In 2011, Sri Lanka faced a large current account and balance of payments (BOP) deficit due to increased imports, including rising petroleum imports. The government took several policy measures to stem import growth. For example, it depreciated the rupee and moved to a flexible exchange rate policy in early 2012. Sri Lanka also increased tariffs on motor vehicles in a bid to curb imports.

The Trade and Investment Policy Department of the Ministry of Finance and Planning is charged with the formulation and implementation of trade and investment policies. The Trade and Tariff subcommittee of the National Council of Economic Development (NCED) also examines trade and tariff issues and sends recommendations to the Ministry of Finance and Planning. Based on the Presidential Taxation Commission’s recommendations, the government simplified the tax structure in 2010, including eliminating some but not all supplementary charges on imports.

The government continues to stress the need to promote import substitution policies. The 2012 budget proposed investment incentives for selected sectors identified as “strategic import replacement enterprises.” The manufacture of cement, steel, pharmaceuticals, fabric, and milk powder are encouraged through new government incentives. The import duty regime for these items was largely unchanged. Sri Lanka’s 2013 budget stressed the importance of agriculture self- sufficiency. The government subsidizes fertilizer and seeds to support farmers. In addition, import charges on dairy products, meat, flowers, vegetables, fruits and confectionary were increased.

Import Charges

Sri Lanka's main trade policy instrument has been the import tariff. According to the WTO, Sri Lanka’s average applied agricultural tariff in 2010 was 25.4 percent, but its bound rates are significantly higher, averaging 50 percent. However, the compounded duty rates for imported agriculture products are routinely between 80 percent and100 percent of the cost, insurance, and freight (CIF) value. In 2010, Sri Lanka's average applied tariff for nonagricultural goods was 9.2 percent. However, less than 30 percent of Sri Lanka's nonagricultural tariffs are bound under WTO rules.

Sri Lanka's import tariff structure consists of "bands" in which all products covered by a particular band are subject to the same tariff rate. The import tariff structure was simplified in June 2010 by reducing the number of tariff bands from five to four. The current tariff bands are: 0 percent; 5 percent; 15 percent; and 30 percent. Textiles, pharmaceuticals and medical equipment, machinery, basic raw materials, computers, software, solar lights, sports footwear and selected consumer electronics enter Sri Lanka duty free. Tariffs on semi-processed raw material tariffs are 5 percent, while intermediate product tariffs are at 15 percent. Most tariffs on finished product are 30 percent. There continue to be a number of deviations from the four-band tariff policy. Some items are subject to an *ad valorem* or a specific tariff, whichever is higher, and there is intermittent use of exemptions and waivers. Footwear, ceramic products, and agricultural products carry specific tariffs.

In addition to the import tariff, there are a number of supplementary taxes and levies on imports. The government has introduced unit-based specific taxes on textiles and fruits, replacing the existing *ad valorem* taxes. The 2012 and 2013 budgets increased some supplementary taxes on selected goods. For example, the levy on biscuits increased from 35 percent or Rs 60 (approximately $0.51) to 35 percent or Rs 80 (approximately $0.62) per kg and cheese, butter and dairy spreads increased from 30 percent or Rs 100 (approximately $0.86) per kg to 30 percent or Rs 200 (approximately $1.56) per kilogram.

In general, the frequent changes—mostly upward—of these taxes and other levies have added unpredictability to foreign exporters' and local importers' cost calculations. Affected products from the United States include fruits, processed/packaged food, and personal care products.

Other charges on imports include:

An Export Development Board (EDB) levy, often referred to as a "cess", ranging from 10 percent to 35 percent *ad valorem* on a range of imports identified as "nonessential." Most of the items are subject to specific duties as well. Also, when calculating the EDB levy, an imputed profit margin of 10 percent is added onto the import price. In some cases, such as on biscuits, chocolates and soap, the levy is charged not on the import price but on 65 percent of the maximum retail price. Locally manufactured products are not subject to the EDB levy. The government keeps increasing the EDB levy, most recently in November 2012, when the EDB was increased on a range of items including dairy products, meat, fruits, vegetables and confectionary.

A Ports and Airports Development Levy of 5 percent is applied on most imports. Locally manufactured products are not subject to the Ports and Airports Development Levy.

When calculating the Value Added Tax (VAT), an imputed profit margin of 10 percent is added on to the import price. Locally manufactured products are also subject to VAT, but not the imputed profit margin.

Excise fees are charged on some products such as aerated water, liquor, beer, motor vehicles, and cigarettes. When calculating the excise fee, an imputed profit margin of 15 percent is added on to the import price. The excise fee is applied on the price inclusive of other duties. Locally manufactured products are also subject to excise fees.

A Special Commodity Levy (SCL) is charged on some food items including oranges, grapes and apples from November 21, 2011. The items subject to the SCL are exempted from all other taxes. The SCL on oranges is Rs 60 per kg, on grapes Rs 130 per kg, and on apples Rs 45 per kg. The SCL on grapes was increased in 2012.

In November 2011, the government introduced an all-inclusive tax of Rs 75 per kg (approximately $0.65) on imported textiles not intended for use by the apparel export industry, replacing an Export Development Board Levy of Rs 50 (approximately $0.45) per kg, a Ports and Airports Tax of 5 percent, and a VAT of 12 percent. This all-inclusive tax was increased to Rs 125 per Kg (approximately $0.97) in November 2012.

Currently, apparel imports are subject to a 15 percent import duty, Rs 75 (approximately $0.65) per unit EDB Levy, a 12 percent VAT, and a 5 percent Ports and Airports Levy.

Import Licenses

Sri Lanka requires import licenses for over 400 items at the 6-digit level of the Harmonized Tariff System, mostly for health, environment, and national security reasons. Importers must pay a fee equal to 0.222 percent of the import price with a minimum fee of Rs 1,000 (approximately $9) to receive an import license.

GOVERNMENT PROCUREMENT

Government procurement of most goods and services is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement may also be undertaken outside the normal competitive tender process. The government publicly subscribes to principles of international competitive bidding, but charges of corruption and unfair awards are common. In 2006, Sri Lanka published guidelines and a procurement manual to improve the public procurement process. However, in early 2008 the government disbanded the National Procurement Agency, which it had established in 2004, and shifted its functions to a unit in the Ministry of Finance. A special Cabinet-appointed review committee reviews unsolicited development proposals, and this committee has considered the most important infrastructure projects and investment proposals, which occur outside the tender process. These moves have raised concerns about the government’s commitment to improve the transparency of procurements.

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement and has indicated it has no plans to join despite its status as an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although intellectual property rights (IPR) enforcement has improved in Sri Lanka, piracy levels continue to remain very high for sound recordings and software. According to an industry-commissioned study, the rate of software piracy in Sri Lanka was 84 percent in 2011 compared to 86 percent in 2010, 89 percent in 2009 and 90 percent in 2008. However, the commercial value of pirated software rose to $86 million in 2011 from $83 million in 2010 due to increased personal computer sales. There has been an improvement in the use of legal software in the corporate sector. The government of Sri Lanka published a policy in 2010 requiring all government ministries and departments to use only licensed software. Licenses can be for either proprietary software or for open source software. This has enabled government organizations to legalize the software they use.

Redress through the courts for IPR infringement is often a frustrating and time-consuming process. While police can initiate action against counterfeiting and piracy without complaints by rights holders, they rarely do so. In the apparel, software, tobacco and electronics sectors, however, rights holders have had some successes in combating trademark counterfeiting through the courts.

There has been more focus on, and awareness of, IPR in Sri Lanka over the past few years. The Sri Lankan government's Director General of Intellectual Property, along with international experts, continues to conduct IPR legal and enforcement training for customs, judicial and police officials. Moreover, Sri Lankan Customs has created a computer based Customs Trade Mark recordation system, although it is not yet fully operational. Additionally, a new IP unit has been established within the Criminal Investigative Division of the Sri Lankan police and it has successfully carried out several raids against IPR violators. The United States will monitor the effectiveness of these new programs.

SERVICES BARRIERS

Insurance

Sri Lanka does not allow the cross-border supply of insurance, with the exception of health and travel insurance. In order to provide all other insurance services to resident Sri Lankans, insurance companies must be incorporated in Sri Lanka. Branch offices are not permitted. The Sri Lankan government requires all insurance companies to reinsure 20 percent of their insurance business with a state-run insurance fund.

Broadcasting

The government imposes taxes on foreign movies, programs, and commercials to be shown on television, ranging from Rs 25,000 (approximately $200) for an imported English-language movie to Rs 90,000 (approximately $700) per half hour of a foreign-language program dubbed in the local language, Sinhala. Foreign television commercials are taxed at Rs 500,000 (approximately $3,900) per year. Rates for non-English foreign programming are higher. Government approval is required for all foreign films and programs shown on television.

INVESTMENT BARRIERS

While Sri Lanka welcomes foreign investment, there are restrictions in a wide range of sectors. For example, foreign investment is not permitted in certain types of money lending activities, in the coastal fishing sector, and in retail trade for investments of less than $2 million (approximately $150,000 in the case of international brands and franchises). In other sectors, foreign investment is subject to case-by-case screening and approval when foreign equity exceeds 40 percent. These sectors include shipping and travel agencies, freight forwarding, mass communications, deep sea fishing, local timber industries, mining and primary processing of natural resources, and the cultivation and primary processing of certain agriculture commodities. Foreign equity restrictions also apply in the air transportation, coastal shipping, lotteries, and gem mining sectors, as well as in "sensitive" industries such as military hardware.

Sri Lanka prohibits the sale of public and private lands to foreigners despite the fact that there is no basis in law for this prohibition. The government has instructed land registries to enforce this policy with immediate effect in advance of amendments to existing law. Any investment with over 25 percent foreign equity will be treated as a foreign investment for the purpose of these measures. The measures will not apply to the purchase of condominium properties above the fourth floor. The government has also proposed to impose a tax in the amount of 100 percent of the lease value when state land is leased to foreign investors. The tax for the entire lease periods would be due at the time the lease is signed, unless the investors pay the entire lease in a foreign currency.

On November 9, 2011 the government approved a new law, the Revival of Underperforming Enterprises and Underutilized Assets Act, which allows for the nationalization of assets belonging to 37 companies deemed by the government to be underperforming and not meeting lease conditions. Although many of the companies were defunct, several were operating businesses, including one that was owned by a prominent member of the opposition. The measure was passed under procedures that limited Parliamentary debate to one day. While the Central Bank noted that the enactment of the law was a "one-off" measure, the government subsequently announced plans to retake 25,000 hectares of tea plantation leased land that was not being fully utilized according to the government. The law significantly increases investor uncertainty regarding property rights in Sri Lanka.

OTHER BARRIERS

The private sector, including prospective investors, report that public sector corruption, including bribery of public officials, remains a significant challenge for U.S. firms operating in Sri Lanka. While the country has generally adequate laws and regulations to combat corruption, enforcement is weak and inconsistent. U.S. firms identify corruption as a constraint on foreign investment. In particular, U.S. industry has expressed concern about corruption in large projects and in respect to government procurement.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade surplus with Switzerland was $475 million in 2012, up $407 million from 2011. U.S. goods exports in 2012 were $26.2 billion, up 7.1 percent from the previous year. Corresponding U.S. imports from Switzerland were $25.7 billion, up 5.5 percent. Switzerland is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Switzerland were $23.5 billion in 2011 (latest data available), and U.S. imports were $19.3 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $59.2 billion in 2010 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $50.0 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland was $125.0 billion in 2011 (latest data available), down from $127.8 billion in 2010. U.S. FDI in Switzerland is led by the nonbank holding companies, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Switzerland, along with Norway, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). However, unlike other EFTA members, Switzerland does not participate in the European Union (EU) single market through the European Economic Area (EEA) accord. According to the WTO, Switzerland's simple average applied tariff is 27.2 percent for agricultural goods and 1.9 percent for non-agricultural goods.

Agricultural Products

Access for U.S. agricultural products is restricted by high tariffs on certain products, preferential tariff rates for other trading partners, and government regulation. Switzerland's tariff schedule is comprised only of specific (non-*ad valorem*) duties. Imports of nearly all agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products that are not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

GOVERNMENT PROCUREMENT

Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA), which covers both cantonal and federal procurement. However, since cantons are allowed to implement the GPA independent of federal intervention, disparities in procedures may be found among the cantons, which may hamper participation by foreign firms.

In contrast to cantonal and communal practice, federal authorities are not required to inform unsuccessful bidders of the selected tender or give reasons why the successful bidders were awarded the contract.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although Switzerland generally maintains high standards of intellectual property rights (IPR) protection, U.S. copyright holders have expressed concerns about the subsequent interpretation by prosecutors and judges of a verdict of the Swiss Supreme Court in 2010 prohibiting the use of IP addresses to identify copyright infringers. In practice, this leaves copyright holders unable to defend their intellectual property from piracy over the Internet.

Switzerland was a participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations. However, it is unclear if or when Switzerland will sign or ratify the Agreement.

SERVICES BARRIERS

Insurance

The manager of a foreign-owned branch must be a resident in Switzerland and the majority of the Board of Directors of the Swiss subsidiary must have citizenship in an EU or EFTA country. Public monopolies exist for fire and natural damage insurance in 19 cantons and for the insurance of workplace accidents in certain industries.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was $14.5 billion in 2012, down $1.0 billion from 2011. U.S. goods exports in 2012 were $24.4 billion, down 5.9 percent from the previous year. Corresponding U.S. imports from Taiwan were $38.9 billion, down 6.1 percent. Taiwan is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Taiwan were $10.4 billion in 2011 (latest data available), and U.S. imports were $6.8 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were $9.5 billion in 2010 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were not $2.0 billion.

The stock of U.S. foreign direct investment (FDI) in Taiwan was $15.8 billion in 2011 (latest data available), down from $21.8 billion in 2010. U.S. FDI in Taiwan is mostly in the manufacturing, wholesale trade, and finance/insurance sectors.

IMPORT POLICIES

Tariffs

When Taiwan became a WTO Member in January 2002, the authorities implemented tariff-rate quotas (TRQs) on small passenger cars and 24 agricultural products. Taiwan subsequently eliminated TRQs for 8 agricultural items and currently, 16 agricultural products are subject to TRQs. On January 1, 2007, in accordance with its WTO commitments, Taiwan made additional tariff cuts and increased TRQ amounts on the remaining products. Beginning in January 2011, Taiwan fully eliminated TRQs on small passenger cars. In addition, the commodity tax on small passenger cars dropped from 35 percent to 30 percent. This tax is waived for electric cars until 2014 in an effort to promote energy conservation.

Taiwan maintains Special Safeguards (SSGs) for a number of agricultural products covered by TRQs. SSGs, which are generally permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, SSG trigger volumes are relatively low. Over the last few years, Taiwan has applied SSG provisions in several agricultural product categories, including poultry meat, certain types of offal, and milk.

U.S. industry continues to request that Taiwan lower tariffs on many goods, including large motorcycles.

Import Controls

The Economic Cooperation Framework Agreement includes early harvest lists of 267 goods permitted to enter Taiwan from the PRC with tariff reductions and exemptions. The early harvest lists were implemented in three stages that achieved the goal of eliminating tariffs on all of the 267 items as of January 1, 2013. Taiwan still retains import bans on approximately 2,000 products from the PRC.

Agriculture and Fish Products

Beef and Pork

Despite administrative measures implemented in September 2012 that led to improved market access for U.S. beef, the United States remains concerned about Taiwan's other trade practices affecting U.S. meat exports, including beef offal and pork. For details, please see the 2013 USTR Report on Sanitary and Phytosanitary Barriers.

Rice

Upon accession to the WTO in 2002, Taiwan committed to lifting the ban on rice imports and opened up an import quota of 144,720 metric tons (MT) on a brown rice basis under a "special treatment" regime. Taiwan's annual WTO TRQ is divided into two portions - 35 percent or 50,652 MT for private sector imports and 65 percent or 94,068 MT for public sector imports. The amount allocated to public sector imports is divided by both country of origin and tender type (i.e., the simultaneous buy-sell [SBS] scheme and normal tenders.)

Taiwan shifted its rice importation from a special treatment regime to a complex TRQ system that includes a ceiling price mechanism. After the United States and other WTO members raised objections to Taiwan's quota allocation, Taiwan subsequently agreed that its import quota would be allocated based on a country-specific quota (CSQ) regime, with the U.S. quota accounting for the largest share at 64,634 metric tons valued at approximately $45 million at current world prices.

In 2007 and 2008, Taiwan rejected all bids for U.S. rice under Taiwan's WTO CSQ, arguing that high U.S. bids had exceeded Taiwan's ceiling price. The United States has continued to urge Taiwan to fill the 2007 and 2008 shortfalls (approximately 80,000 metric tons on a brown rice basis). However, since 2009, Taiwan has fully met its obligations for purchase of U.S. rice.

The United States remains concerned about the 2012 decision by Taiwan authorities to unilaterally shift a larger percentage of the U.S. CSQ to SBS tenders, though Taiwan filled its quota in 2012. Since the SBS places bear all costs of importing, storing and distributing the rice on private importers, relatively low default penalties create a situation where successful bidders could simply walk away from a purchase for any reason, leaving the quota unfilled. The United States continues to engage Taiwan on these issues and reiterates that Taiwan has a commitment to fill its quota.

Automobiles and Motorcycles

Although the Ministry of Transportation and Communications (MOTC) opened most expressways to large motorcycles with engine displacement of 550cc or more in 2007, the MOTC has not allowed motorcycles with engine displacement of over 550cc on the highways based on the results of a feasibility study made by Directorate General of Highways (DGH) in 2009. The Legislative Yuan on November 8, 2011 passed an amendment to the "road traffic management and penalty act" which would allow motorcycles with engine displacement over 550cc to travel on highways during specific time periods and on certain road segments as determined by local authorities. MOTC has not yet approved any section of highway for 550cc or larger motorcycles.

Industry has raised concerns over emissions and fuel-consumption standards imposed on automobiles and motorcycles. On automobiles, this includes Environmental Protection Administration diesel auto emissions testing methods and procedures that are based on the Japanese model with reference to European Union (EU) models. The Taiwan Environmental Protection Agency plans to simplify testing methods and will announce new procedures later in 2013. The motorcycle industry has also raised concerns with Taiwan authorities about proposed stricter emissions standards currently under review, which would require emissions certificates for each motorcycle sold.

Distilled Spirits

Differential taxation for domestic and imported distilled spirits has been a contentious issue between Taiwan and a number of its important trading partners in the past, and it was the subject of negotiations during Taiwan's WTO accession process. Actions taken by Taiwan in 2010 have again raised concerns for the United States and other trading partners, including the European Union.

Specifically, on September 16, 2010, Taiwan implemented a significant tax reduction on domestic mijiu rice wine. This tax reduction resulted from the amendment of Taiwan's "Enforcement Rules of the Tobacco and Alcohol Tax Act" which created a new subcategory of "cooking rice wine" that covers mijiu rice wine, a domestically produced distilled spirit. Prior to this amendment, the enforcement rules required that "cooking alcoholic products" must contain a minimum salt content of more than 0.5 percent of total volume, ensuring that such products would be distinguished from other distilled spirits and not consumed as a beverage. The 2010 amendment categorized cooking wine into two subgroups, one group with a salt content requirement, and the other under "cooking alcoholic products" for products with alcohol content no greater than 20 percent, labeled "exclusively used for cooking." Based on these specifications, mijiu rice wine under these categories is taxed at NT$9 ($0.30) per liter, a much lower tax rate than what is applied to non-cooking alcoholic products, NT$2.5 ($0.08) per liter per degree (percentage) of alcohol content.

The United States and other trading partners continue to express their strong concerns to the Taiwan authorities that steps should be taken to ensure that the domestic mijiu rice wine will not compete with, or substitute for, like imported alcoholic beverages, and that imported alcoholic beverages would not be taxed at a higher rate than like domestically produced alcoholic beverages.

EXPORT SUBSIDIES

Taiwan provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Taiwan has notified the WTO of these programs. The Ministry of Finance in October 2011 resumed tax rebates for customs duties on certain components and raw materials that are imported into Taiwan and then used to produce goods for export. The rebate applies to 1,269 products in categories including electronics, textiles, machinery, chemicals, and plastics.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Taiwan generally provides effective intellectual property rights (IPR) protection and enforcement. Rights-holders continue to express concern, however, regarding infringement of copyrighted material on the Internet, illegal textbook copying on university campuses and nearby businesses, inadequate protection for the packaging, configuration, and outward appearance of products (trade dress), end-user piracy of software, signal theft of cable television, trade secret theft and misappropriation, and the continued availability of counterfeit pharmaceuticals in Taiwan. The importation and trans-shipment of counterfeit products and online copyright infringement and file sharing are also problems, as well as the collusion of some Taiwanese companies in supplying components to factories in China producing "Shanzhai" counterfeits (e.g., mobile phones, netbooks, and other electronic devices) and the transfer of proprietary technology by company employees to mainland businesses. The United States also continues to encourage Taiwan to provide an effective system to address patent-related issues expeditiously in connection with applications to market pharmaceutical products.

The Legislative Yuan amended the Taiwan Copyright Law in 2009 to require Internet service providers (ISPs) to undertake specific and effective notice-and-takedown actions against online infringers to avoid liability for the infringing activities of users on their networks. The law's provisions, however, failed to indicate clearly what constituted an infringement, how notifications should be handled, and other procedural matters. Rights-holders and ISPs, despite extensive negotiations, have not yet reached consensus on how to implement the law effectively.

In May 2011, the Legislative Yuan passed an amendment to the Trademark Law which extends the scope of goods eligible for protection as trademarks, broadens the conditions for which infringement is deemed to have occurred, and strengthens customs enforcement mechanisms for trademarked goods. The amendment to the law took effect on July 1, 2012.

Over the past several years, there have been a number of high profile cases of serious theft of trade secrets which have raised questions about the effectiveness of Taiwan’s industrial espionage laws. In order to address these concerns, on January 11, 2013, Taiwan’s Legislative Yuan passed an amendment to Taiwan's Trade Secrets Act significantly increasing the criminal and civil penalties for corporate intellectual property theft, including up to 10 years imprisonment for trade secrets stolen and transferred to other countries. The United States will review the provisions and monitor implementation of the law as amended, and will engage Taiwan authorities as required.

SERVICES BARRIERS

Banking Services

In some cases, financial regulators have required foreign banks to convert their branch operations to subsidiaries. These types of requirements limit a financial institution’s choice of juridical form. In addition, foreign banks continue to be concerned with requirements to establish onshore data centers.

Pay Television Services

The Cable Radio and Television Law restricts foreign investment in pay television services to a total equity share of 20 percent for direct investment, or 60 percent for direct plus indirect investment. In addition, continuing caps on monthly cable television fees and previous limitations that prevented cable franchises from servicing more than one district have hampered the Taiwan public's access to a broader range and higher quality of programming. These relatively low subscriber fees and franchise restrictions have reduced the cable industry's incentives to invest in expensive digitalization of Taiwan's largely analog cable system, which is more susceptible to signal theft.

The National Communications Commission (NCC) announced in July 2012 relaxed restrictions on cable television operators, which permitted new cable television operators to enter the market. Taiwan is divided into 51 cable television districts serviced by 63 cable operators. Prior to July 2012, operators could only service a single district. Since July, however, operators have been permitted to expand to additional districts under certain conditions, including the requirement to provide digital cable. Firms new to Taiwan's market are also required to provide at least $6.8 million in capital investment. At the end of September 2012, Taiwan's cable digital television (DTV) penetration rate was 18.16 percent, but 100 percent of Taiwan’s cable subscribers will receive digital service by 2014 under the new policy.

Telecommunications Services

The National Communications Commission (NCC) is an independent agency modeled after the U.S Federal Communications Commission. It regulates Taiwan's telecommunications and broadcasting sectors and supports the development of these industries. In 2008, the NCC began accepting and reviewing license applications when submitted, rather than on a quarterly basis. In addition to authorizing NT$35 billion (approximately $1.1 billion) of broadband network construction that has been ongoing since 2003, the NCC in July 2007 issued 6 regional licenses to Worldwide Interoperability for Microwave Access (WiMax) operators. WiMax operators began services in 2009, but immediately faced operational difficulties because of low consumer interest, with consumers reluctant to switch from existing 3G and 2G services. Furthermore, WiMax technology now faces a strong challenge from the competing 4G wireless data standard, Long Term Evolution. As a result, Taiwan's six WiMax operators had only 136,000 users by the end of September 2012. Taiwan's WiMax operators are merging and plan to upgrade their technology to the competing 4G standard, Time-Division Long-Term Evolution (TD-LTE).

The NCC has been ineffective in integrating telecommunications and broadcasting regulations, causing Taiwan's telecommunications industry to fall behind in an era of digital convergence. For example, current regulations prevent Taiwan's principal fixed line phone company, Chunghwa Telecom (CHT), from running multimedia-on-demand programs. In addition, existing fixed line operators report that they still face difficulties in negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, Chunghwa Telecom (CHT).

To enhance efficiency in decision making and administration, the Legislative Yuan passed an amendment to the NCC Organization Act in December 2011, which authorized and subsequently led to the appointment of Chairman and Vice Chairman positions in the NCC in July 2012. Goals under the reformed structure include: (1) to offer a free and fair digital convergence platform; (2) to issue licenses with advanced technology for 4G operations; (3) to reduce mobile termination rates and intermediation costs among telecom carriers; and (4) to enact anti-monopoly legislation to regulate the concentration of media content owned by a specific owner or group.

INVESTMENT BARRIERS

Taiwan prohibits or restricts foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, and public utilities. In June 2012, national treatment was accorded in beer and wine production, pharmaceutical manufacturing, and harbor service operations. Shipping companies registered in Taiwan are subject to a foreign ownership limit of 50 percent. Foreign ownership of Taiwan-registered merchant ships is limited to a 50 percent stake for ships engaged in both domestic and international shipping, increased from a previous 33 percent limit for domestic shipping. For vessels operating between Taiwan and the PRC, there is no foreign ownership restriction as long as a Taiwan-registered company registers the shipment.

The total direct and indirect foreign ownership limit on wireless and wire line telecommunications firms is 60 percent, including a direct foreign investment limit of 49 percent. Separate rules exist for CHT -- the legacy carrier still partially owned by the Ministry of Transportation and Communications. CHT controls 97 percent of the fixed line telecommunications market. For CHT, the cap on direct and indirect foreign investment is 55 percent, including a direct foreign investment limit of 49 percent. The total direct and indirect foreign ownership limit on cable television broadcasting services is 60 percent, which includes a 20 percent limit on foreign direct investment.

Foreign ownership in satellite television broadcasting services, power transmission and distribution, piped distribution of natural gas, high speed railways, airport ground handling firms, air cargo terminals, air catering companies, and air cargo forwarders is limited to 49 percent of the total shares issued. Taiwan maintains extensive barriers against mainland Chinese investments, but is reviewing ways to liberalize these rules gradually.

Portfolio Investment

Foreign portfolio investors are required to register and can do so via the Internet. Up to 30 percent of funds remitted for purposes of portfolio investment may be held in money market or other similar instruments. Funds for futures trading, however, must be remitted to Taiwan specifically for that purpose and are segregated from funds remitted for equity investment. The cap on the balance of a foreign investor's NTD omnibus account resulting from profits gained from futures trading in Taiwan is NT$300 million ($10 million). If the balance exceeds the limit, the foreign investor is required to convert the excess NT dollars into U.S. dollars within five working days.

Except for investors from the PRC, offshore foreign portfolio investors may trade in Taiwan's stock market regardless of their size. Since April 2009, Taiwan has allowed PRC-based qualified domestic institutional investors (QDIIs) to engage in portfolio investment and futures trading in Taiwan. Chinese investors may invest in the following Taiwan securities: shares of listed companies; beneficial certificates; public sector bonds; financial bonds; corporate bonds issued by public companies; asset-backed securities; and call warrants. Taiwan regulators are considering raising the QDII investment quota above the current $500 million ceiling. A PRC-based institutional investor that engages in futures trading can only do so using foreign currencies.

Foreign hedge funds have been permitted to trade in Taiwan's stock market since 2003, but they are subject to Taiwan authorities' close surveillance. Foreign individual investors are subject to an investment limit. Onshore foreign individuals and institutional investors are also subject to annual inward and outward limits of $5 million and $50 million, respectively.

OTHER BARRIERS

Pharmaceuticals

The United States has been encouraging Taiwan to adopt a system of actual transaction pricing in order to address the significant gap between the amount that the Taiwan government reimburses for a pharmaceutical product and the price actually paid to the provider of that product. The gap distorts pharmaceutical trade and prescription patterns in Taiwan. These distortions are compounded by another aspect of the Taiwan health care system that permits doctors to both prescribe and dispense pharmaceuticals. Research-based pharmaceutical companies see separating these functions as essential to resolving the long-term pricing problem.

Taiwan implemented its national health insurance program in 1995 based on the National Health Insurance Act (NHIA). Biennial Price Volume Surveys (PVS) conducted by Taiwan’s Bureau of National Health Insurance (BNHI) have long been a major concern to the United States. The practice involves BNHI conducting a comprehensive market survey and, based on these results, implementing a series of reimbursement price reductions for products that appear to have been subject to significant discounts or gaps, as mentioned above. This nontransparent PVS process has created significant uncertainty in Taiwan's market, as it has often resulted in sudden, sharp reductions in reimbursement rates for many patented pharmaceutical products. Seven price volume surveys have been conducted since the establishment of Taiwan's national health insurance system, resulting in pharmaceutical prices in Taiwan that are currently estimated on average to be approximately 28 percent of the price of original industry-developed products marketed in the United States. Low reimbursement rates, negative rates of return and targeted pricing referencing Taiwan’s reimbursement prices by other countries in the region are all factors that increasingly are prompting drug firms to consider a delayed entry or complete withdrawal of their products from Taiwan.

In January 2010, Taiwan announced a new reimbursement scheme for pharmaceutical products designed to encourage the research and development of new drugs, increase product quality, and reduce the widening gap between reimbursement rates and market prices. U.S. industry remains concerned over the very strict criteria for defining breakthrough drugs, which reduce incentives to bring new technologies and innovative products to Taiwan. The United States encourages Taiwan to continue to consult with relevant stakeholders in implementing policies that will facilitate the private sector's development of innovative products and improve patients' access to such products.

On January 4, 2011, Taiwan lawmakers passed an amendment to the NHIA to reduce the program's NT$50 billion (approximately $1.6 billion) deficit, as well as introduce more equitability and efficiency into the health insurance system. One of the core elements of the 2011 health system reforms was a Drug Expenditure Target (DET). Under the DET, medical and pharmaceutical industries and BNHI were to negotiate an annual target for pharmaceutical expenditures with the previous year as a baseline, plus a nominal growth rate to account for increasing costs and demand. Proponents of these reforms hoped that they would reduce incentives that create the price gap between reimbursement rates and actual prices paid for the pharmaceutical products, improve the predictability of reimbursement rates, improve reimbursements for breakthrough drugs, and adjust reimbursement mechanisms to more adequately match reimbursement rates to the value of innovative and generic pharmaceutical products. Following extensive consultations with stakeholders, the Ministry of Health established a mechanism to implement the DET for a two-year trial, effective January 1, 2013. The United States urges Taiwan to consult closely with industry stakeholders in implementing the DET in order to improve the mechanism and expand its coverage.

Taiwan formally established the Taiwan Food and Drug Administration (TFDA) on January 1, 2010 to replace the Bureau of Pharmaceutical Affairs. The TFDA is comprised of the agencies responsible for food and drug policy, license issuing, and product testing. Healthcare product manufacturers, including producers of pharmaceutical products and medical devices, must first apply to the TFDA for registration license approval and then to the BNHI for reimbursement in order to launch products in market. Under new drug review and registration procedures developed with U.S. industry input designed to fast-track drug approvals, a firm can apply to BNHI for drug reimbursement based on an approval letter issued by TFDA prior to obtaining a drug registration license. The United States continues to urge BNHI and TFDA to expedite the process to shorten the current three-year to four-year licensing and reimbursement approval period.

Medical Devices

The medical device industry welcomed the introduction of a balanced billing mechanism in the amended NHIA, which allows partial patient self-pay for higher-end devices or new technologies. Application approval is required for all devices, including those that might not qualify for reimbursement. Patients will be required to pay in full for those devices that are not listed on BNHI’s reimbursement list. BNHI plans to set up clear self-payment guidelines to allow patients earlier access to new devices, so that they are available prior to an issued reimbursement price. However, the mechanism provides BNHI the right to implement price limitations on certain transactions and to cap the total amount of optional patient self-payment. U.S. trade officials and industry have raised concerns that arbitrary limitations could negatively affect Taiwan consumers of advanced medical devices and have urged BNHI to set clear self-payment guidelines that allow for maximum flexibility and choice.

The medical device industry (like the pharmaceutical industry) has proposed suspending the PVS, arguing that it lacks transparency and does not reduce budgetary waste as intended. The medical device industry has expressed concern over reimbursement policies that specify a single purchase price for all medical devices that treat a given indication. This policy does not take into account differences in quality and effectively subsidizes lower-cost devices while underpaying for more advanced, higher quality devices, thereby discouraging the introduction of these devices into the Taiwan market.

Both pharmaceutical products and medical devices are governed under the Pharmaceutical Affairs Law. In response to industry concerns, TFDA has agreed to establish a separate charter governing medical devices in the near future.

TFDA officials continue to coordinate with industry to improve the medical device registration process. This year TFDA agreed that medical device companies can be considered "legal manufacturers," in that they have legal liability for their products no matter the manufacturing location and therefore can be deemed responsible for post-market surveillance of their products.

TFDA, in coordination with Taiwan Customs, announced in March 2012 that both the location of a legal manufacturer and country of origin (COO) listed on labels are acceptable for customs clearance if firms have provided the names of legal manufacturers and assembly companies and the name of the COO of key components in the original registration documents.

The Department of Health is also revising its testing and registration guidelines for in-vitro diagnostic drugs to adopt a more flexible procedure. The new guidelines are expected to allow importing companies to follow either U.S. or EU procedures, which could reduce excessive documentation and redundant testing for products made in Europe by U.S. companies.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $15.2 billion in 2012, up $1.2 billion in 2011. U.S. goods exports in 2012 were $11.0 billion, up 0.5 percent from the previous year. Corresponding U.S. imports from Thailand were $26.1 billion, up 5.2 percent. Thailand is currently the 27th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Thailand were $2.2 billion in 2011 (latest data available), and U.S. imports were $1.9 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $4.1 billion in 2010 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $151 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $11.3 billion in 2011 (latest data available), up from $10.5 billion in 2010. U.S. FDI in Thailand is mostly in the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

High tariffs in many sectors remain an impediment to market access. While Thailand's average applied most favored nation (MFN) tariff rate was 9.8 percent *ad valorem* in 2011, *ad valorem* tariffs can be as high as 50 percent to 80 percent, and the *ad valorem* equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. About one-third of Thailand's MFN tariff schedule involves duties of less than 5 percent, and almost 30 percent of tariff lines are MFN duty free, including for products such as chemicals, electronics, industrial machinery, and paper. Thailand has bound all tariffs on agricultural products in the WTO, but only approximately 70 percent of its tariff lines on industrial products. The highest *ad valorem* tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, wine, beer and spirits, and textiles and apparel.

Thailand has bound its agricultural tariffs at an average of 39.9 percent *ad valorem*, compared with its average applied MFN tariff on agricultural products of 22 percent. MFN duties on imported processed food products typically range from 30 percent to 50 percent, which limits the ability of U.S. exporters of such products to compete in the Thai market. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. For corn, the in-quota tariff is 20 percent and out-of-quota tariff is 70 percent. High tariffs are sometimes applied to products even when there is little domestic production. The type of potato used to produce frozen French fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears, cherries, and table grapes range from 30 percent to 40 percent. Application of preferential tariffs as a result of free trade agreements with countries such as China, Australia, and New Zealand has eroded the competitiveness of U.S. products, including agricultural products, in recent years.

Thailand's average bound tariff for non-agricultural products is approximately 25.5 percent. Thailand's applied tariffs on industrial goods tend to be much lower than its bindings, averaging 8 percent in 2011. However, Thailand imposes high tariffs in some sectors. For example, Thailand applies import tariffs of 80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, 54 percent to 60 percent on distilled spirits, and 30 percent on certain articles of plastic and restaurant equipment. Among the range of products on which Thailand charges tariffs of 10 percent to 30 percent are certain audiovisual products, reception apparatus, and other consumer electronics¸ despite the importance of the electronics sector to its economy. Thailand applies a 10 percent tariff on most pharmaceutical products, including almost all products on the World Health Organization list of essential medicines.

Nontariff Barriers

Import licenses are required for a limited range of products including certain chemical and pharmaceutical products, including clenbuterol, albuterol or salbutamol; unfinished garments, parts, or components except collars, cuffs, waistbands, pockets, and cuffs for trousers; worked monument or building stone; used automobiles, including cars, motorcycles and six-wheeled buses having 30 seats or more; certain used diesel engines; machinery and parts that can be used to violate copyrights via cassette tape, video tape and compact disc; intaglio printing machines and color copier machines; waste and scraps of plastic; chainsaws and accessories; fish meal with protein content less than 60 percent; caffeine; and potassium permanganate. Imports of used motorcycle parts and gaming machines are prohibited. Import licenses for used automobiles and used motorcycles are granted only for imports intended for re-export or for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, U.S. industry reports that the government has maintained excessively burdensome import requirements for feed products containing dairy ingredients. Nontransparent tariff-rate quotas (TRQs) on some products of export interest to the United States include non-fat dry milk and corn. Thailand imposes domestic purchase requirements for several TRQ products, including soybeans and soybean meal. It also applies a limited import window for its corn TRQ.

Thailand bans all motorcycles from highways even though heavyweight motorcycles are designed for highway use, most countries accept their use, and many traffic studies demonstrate there is no underlying safety rationale for such bans.

Price Controls

The Thai government retains authority to control prices or set *de facto* price ceilings for selected goods and services, including staple agricultural products (such as sugar, pork, cooking oil, condensed milk, and wheat flour), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Price control review mechanisms are nontransparent. In practice, the Thai government also uses its control of state monopoly suppliers of products and services, such as in the petroleum, aviation, and telecommunications sectors, to influence prices in the local market.

Excise Taxes

Excise taxes are high on some items such as unleaded gasoline, beer, wine, and distilled spirits. When import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on imported spirits and wines are approximately 300 percent and 400 percent, respectively. U.S. industry has expressed concern that the current excise tax structure imposes higher taxes on imported spirits than on locally produced white and brown spirits.

Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004, Thailand revised its excise tax structure, but the tax calculation remains complex and heavily favors domestically manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks, mostly produced in Thailand, are taxed at a rate of 3 percent. However, small passenger cars using E-20 gasoline and "eco" cars face reduced excise taxes of 25 percent and 17 percent, respectively.

Customs Barriers

The United States continues to have serious concerns about the lack of transparency in the Thai customs regime and the significant discretionary authority exercised by Customs Department officials. The Customs Department Director General has the authority and discretion to increase the customs value of imports for reasons that are not linked to the WTO Agreement on Customs Valuation. The United States has raised concerns with the Thai government regarding this authority and has urged Thailand to eliminate this practice. The U.S. Government and industry also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and reports of repeated use of arbitrary values by the Customs Department. In addition, overly punitive penalties and the threat of criminal prosecution over minor or technical issues in Customs import documentation are significant concerns for importers.

The U.S. Government and exporters continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws, regulations, and providing notifications and allowing sufficient time for comments on these proposals. Additional concerns involve the failure to publish customs rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty for importers.

U.S. companies also continue to report serious concerns about corruption and the cost, uncertainty, and lack of transparency associated with the penalty/reward system. This system creates conflicts of interest for customs officials and encourages customs investigations for personal financial gain. In August 2009, the Thai government proposed a series of reforms to its customs laws and procedures that were to be sent to the Thai Parliament in 2011. However, following the change of government in August 2011, the proposed legislation stalled and must be reintroduced to Parliament for it to be considered.

GOVERNMENT PROCUREMENT

A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment be accorded to all potential bidders and open competition be applied in all procurements, state enterprises and ministries typically apply additional procurement policies and practices that are inconsistent with these requirements. Preferential treatment is provided to domestic suppliers, including subsidiaries of U.S. firms registered as Thai companies, through an automatic 7 percent price advantage over foreign bidders in evaluations in the initial bid round.

Where corruption is suspected during the bidding process, government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements. This allows considerable leeway for government agencies and state-owned enterprises to manage procurements, while denying bidders recourse to challenge procedures. There are frequent allegations that the Thai government makes changes to technical requirements for this purpose during the course of procurements.

Despite an official commitment to transparency in government procurement by the Thai government, U.S. companies and the Thai media have reported allegations of irregularities. Arbitration clauses included in concessions and government contracts require cabinet approval, and are considered on a case-by-case basis. Complaints may be made in administrative and judicial courts governed by Thai laws.

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

SUBSIDIES

Price support programs to support the domestic rice industry result in substantial government owned stockpiles of rice (approximately 14 million to 15 million metric tons of rice). U.S. rice exporters have expressed concern that these stockpiles are subsequently released on global markets, depressing prices to below the cost of acquisition.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Thailand was listed on the Priority Watch List in the 2012 Special 301 Report. The United States recognizes the Thai government's continuing efforts to strengthen intellectual property rights (IPR) protection and enforcement, but concerns regarding IPR protection and enforcement remain. Key concerns relate to widespread copyright piracy and trademark counterfeiting, including recent increases in optical disc piracy and illegal camcording, and growing challenges in the areas of Internet, cable, and signal piracy. The United States continues to encourage Thailand to quickly enact proposed legislation to amend its copyright law to, among other things, implement the WIPO Internet Treaties, address landlord liability for infringement, take sustained and effective action against illegal camcording, and enhance the authority of Thai Customs to take enforcement actions ex officio. The United States continues to be concerned about the lack of transparency and opportunities for stakeholders to be meaningfully included in IPR policy discussions taking place at the Ministry of Public Health. The United States continues to encourage Thailand to consult and engage in a meaningful and transparent manner with all relevant stakeholders, including IP rights holders, as it considers ways to address Thailand's public health challenges while maintaining a patent system that promotes investment, research, and innovation.

SERVICES BARRIERS

Audiovisual Trade Barriers

The Motion Picture and Video Act gives the Film Board the authority to establish ratios and quotas against foreign firms. Foreign ownership and investment in terrestrial broadcast networks is prohibited.

Telecommunications Services

Thailand has taken steps to reform its telecommunications regulatory regime, but significant obstacles to foreign investment remain. Despite capping foreign equity at 20 percent in its provisional 1997 WTO commitments, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher levels for providers of value-added services that do not own their own telecommunications network, such as Internet service providers, audio text providers, and resale service providers (prepaid calling cards). Thailand is delinquent, however, in revising its WTO schedule, as it committed to do in 1997, to reflect both these higher foreign equity limits and the pro-competitive regulatory measures it subsequently enacted.

In September 2011, Thailand adopted regulations to restrict "foreign dominance" in telecommunications. The regulations prohibit foreign ownership beyond 49 percent and look beyond traditional accounting methods for classifying shareholdings. Though the regulations were modified in July 2012, the criteria by which foreign dominance is determined remain unclear and have prompted concern that implementation of the regulations will be inconsistent and nontransparent. U.S. and other foreign telecommunications companies also have expressed concern that the regulations may be extended to other telecommunications businesses or applied to other industries.

Other issues in the telecommunications sector include the phasing-out of the concession contracts of the state-owned TOT and CAT Telecom; preferences accorded to TOT and CAT with respect to spectrum; the privatization of TOT and CAT; and enforcing the interconnection obligations of these two operators.

Legal Services

U.S. investors may own law firms in Thailand with a requirement to enter into commercial association with local attorneys or local law firms, but U.S. citizens and other foreign nationals (with the exception of “grandfathered” non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.

Financial Services

Significant restrictions remain on foreign participation in the financial services sector. By law, a foreign bank can only open branches subject to a licensing requirement, but in practice foreign banks’ only channel to enter the market by acquiring shares of existing domestic financial institutions. The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act and a 1979 law on financial services, only allows foreign equity ownership up to 25 percent.

Thailand has removed some barriers to foreign ownership of domestic financial institutions. The 2008 Financial Institutions Business Act gave power to the Bank of Thailand (the country’s central bank) to raise the foreign ownership limit in a local bank from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Minister of Finance, with a recommendation from the Bank of Thailand, to authorize foreign ownership above 49 percent if deemed necessary to support the stability of the overall financial system during an economic crisis. Following the 1997-98 Asian financial crisis only four locally incorporated Thai commercial banks had foreign ownership above 49 percent and over the last decade plus, just four more have been authorized to exceed 49 percent.

Thailand continues to implement the terms of its five-year (2010 to 2014) Financial Sector Master Plan Phase II consisting of measures to reduce system-wide operating costs, promote competition, and strengthen financial infrastructure. While the initial phase did not include the entry of new service providers, new licenses may be considered in 2014. Beginning in 2012, the Bank of Thailand permitted foreign banks to upgrade existing full branches to subsidiaries, allowing foreign banks to open up to 20 branches and 20 off-premise ATMs across Thailand. Qualifying branches must maintain a capital adequacy ratio of no less than 12 percent, compared with a domestic minimum requirement of 8.5 percent, and non-performing loans must be kept under 3.5 percent. In addition, the converted subsidiary must have a minimum of approximately $333 million in paid-up-capital. Since March 2010, existing foreign bank branches have been permitted to open up to two additional branches in Thailand without having to meet additional capital requirements.

In 2012, the Thai Securities and Exchange Commission (SEC) began to grant licenses to new domestic and foreign securities companies that meet SEC requirements. Securities firms with foreign equity participation greater than 49 percent are required to obtain permission from the Ministry of Commerce under Annex 3 (21) of the Foreign Business Act in order to supply non-brokerage services, such as securities underwriting, securities dealing, investment advisory services, mutual fund management, and private fund management. Various ownership structures are allowed, including 100 percent Thai or foreign ownership, strategic foreign partnerships, joint ventures between Thai and foreign companies, or bank affiliate status.

Restrictions on foreign investment and ownership in the insurance sector have been relaxed but barriers remain. Under the 2008 amended Life and Non-Life Insurance Acts, foreign investors are permitted to own up to 25 percent equity in existing insurance firms and may hold up to 25 percent of board director seats. The Insurance Commission may, as empowered by its board of directors, approve an increase of foreign shareholding above 25 percent, but not exceeding 49 percent on a case-by-case basis if the company is financially sound with a good reputation, has a good track record of business performance, can demonstrate its business strength and contributions to the insurance industry, and has a solid business plan. In cases where insurance companies face financial problems that place insured members or the general public at risk, the Minister of Finance may further relax ownership restrictions upon recommendation by the Insurance Commission within certain limits. Issuance of new business licenses for either life or non-life insurance requires approval from the Cabinet and the Minister of Finance.

Accounting Services

Foreigners are permitted to own up to 49 percent of most professional services companies, including accounting, through a limited liability company registered in Thailand. Foreigners cannot be licensed, however, as Certified Public Accountants unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and legally reside in Thailand. Foreign accountants may serve as business consultants.

Postal and Express Delivery Services

Private express delivery companies must pay postal "fines" and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than $1) for shipments that weigh up to two kilograms.

Thailand also imposes a 49 percent limit on foreign ownership in land transport (trucking), which discourages investment in the express delivery sector.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment in Thailand. Under the FBA, a foreigner, defined as a person or company of non-Thai nationality or a company for which foreign ownership accounts for 50 percent or more of total shares or registered shares, needs to obtain an alien business license from the relevant ministry before commencement of its business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER Treaty). Under the AER, Thailand may limit U.S. investment only in the following areas: "communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products." Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for Thai nationals."

In July 2012, the Department of Special Investigations announced plans to add new guidelines for inspecting firms with foreign shareholders under the Foreign Business Act. These will include percentage of shareholdings, voting rights, administrative power, source of funds and investment capital, dividend payments, and financial transactions.

OTHER BARRIERS

U.S. stakeholders have expressed concern that processes for revising laws and regulations affecting trade and investment lack consistency, transparency, and broad stakeholder engagement.

In the pharmaceutical sector, the Government Pharmaceutical Organization, a state-owned entity, is not subject to Thai Food and Drug Administration licensing requirements on the production, sale, and importation of pharmaceutical products and is exempt from rules against anticompetitive practices. The Thai government has established a National List of Essential Drugs (NLED) for procurement and dispensing at government hospitals that continues to exclude innovative medicines from those available for reimbursement under government health plans. U.S. stakeholders have expressed concerns about the lack of transparency and due process for decisions on what drugs to include in the NLED; for instance, when a product is not accepted for the NLED, the applicant is provided no explanation and left without recourse. U.S. stakeholders have expressed serious concerns regarding the uncertain climate for their business in Thailand, following Cabinet-level resolutions that cite compulsory licensing as an acceptable cost reduction method for health care. The United States will continue to encourage Thailand to engage in a meaningful and transparent manner with all relevant stakeholders as it considers ways to address Thailand's public health challenges.

The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Anti-Corruption Commission, which is independent from other branches of government and is thus unique among Thai bodies aimed at countering corruption. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts defines actionable corruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern. Several different agencies have jurisdiction over corruption issues; a lack of clear jurisdictional responsibilities and differing bureaucratic structures mean their actions are not always complementary. Investigative and prosecutorial capacity is limited and Thai laws focus predominantly on the abuse of office versus the financial or asset-related malfeasance. Thailand's anti-money laundering laws provide inadequate controls over the illegal flow of money through Thai financial institutions. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption.

TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was $6.2 billion in 2012, a decrease of $3.2 billion from 2011. U.S. goods exports in 2012 were $12.5 billion, down 14.5 percent from the previous year. Corresponding U.S. imports from Turkey were $6.3 billion, up 20.4 percent. Turkey is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was $5.2 billion in 2011 (latest data available), up from $4.0 billion in 2010. U.S. FDI in Turkey is led by the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Due to its customs union with the European Union, Turkey applies the EU's common external tariffs to nonagricultural imports from countries (including from the United States) with which it has not concluded free trade agreements.

Turkey continues to maintain high tariff rates on many food and agricultural products not covered by the EU-Turkey customs union agreement. Tariffs on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 percent. The government of Turkey also levies high tariffs, excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

U.S. exporters of rice, dried beans, pulses, sunflower seeds, and wheat have reported concerns with valuation of their products by Turkish customs authorities.

Import Licenses and Other Restrictions

Import licenses are required for products that need after sales service (*e.g.*, photocopiers, advanced data processing equipment, and diesel generators), distilled spirits, and agricultural products. U.S. firms complain that lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade. U.S. producers have reported difficulties in obtaining import licenses during the domestic harvest season for products that compete with domestically produced food (such as pulses, nuts, dried fruits, cotton, grain, and oilseeds), though this situation reportedly has improved in recent years.

U.S. companies also frequently find Turkish documentation requirements affecting food imports to be onerous, inconsistent, nontransparent, and not administered in accordance with standard international practices; the companies state that these problems have resulted in shipments on numerous occasions being held up at ports.

Turkey's efforts to harmonize its national laws on food safety with European Union rules have led in a number of instances to the imposition of regulatory requirements and methods of enforcement that are not transparent. Turkey has frequently implemented changes to its regulations and procedures, without notifying or consulting with its trading partners, which result in additional costs to exporters. Moreover, as Turkey is not a member of the European Union, U.S. firms have sometimes experienced difficulties certifying their products to Turkish standards that are modeled after, but not entirely consistent with, EU standards.

The government of Turkey has taken a number of steps to liberalize the spirits and tobacco markets – including completing the privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as some opening to private firms to import wine and alcoholic beverages. However, sales of imported products in these sectors have been inhibited in some cases by inordinately high tariffs and special tax treatment (compared to domestic products). Turkey assesses higher excise taxes on some types of distilled spirits, and U.S. industry maintains that the higher rates are applied to alcoholic beverages that are primarily imported.

GOVERNMENT PROCUREMENT

Foreign companies can participate in public tenders valued above an established threshold. In addition, the definition of domestic bidder includes foreign-owned corporate entities established under Turkish law. However, Turkish government contracting authorities have on occasion inserted provisions into tender documents that restrict foreign companies' participation. In addition, local bidders are allowed a price advantage of up to 15 percent compared with foreign bidders.

Although Turkish law requires competitive bidding procedures, U.S. companies have complained that Turkey's procurement process can be lengthy and overly complicated. One of the problems identified is the requirement that procuring entities use model contracts, which some Turkish government procuring agencies interpret as not being subject to any modification. This makes it difficult for companies to formulate proposals if the model contracts contain financial requirements or technical specifications not germane to the product or service being procured.

Additionally, U.S. firms have reported that, to be eligible to participate in procurements in Turkey, they have been required to submit documentation certifying that business officials are authorized to bid on behalf of their company or certifying that key personnel are in fact employees of that company. This documentation requirement, which does not exist in the United States, has made it difficult for firms to compete in procurement contracts. The U.S. Government is engaging the government of Turkey on this and other procurement issues.

Turkish military procurement specifications generally contain offset requirements. Since the offset guidelines were modified in 2005 to encourage foreign direct investment and technology transfers, U.S. companies have won few new commercial defense sales.

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement.

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Published export subsidies ranging from 5 percent to 20 percent of export values are granted to 16 agricultural or processed agricultural product categories in the form of tax credits and debt forgiveness programs, and are paid for by taxes on exports of primary products such as hazelnuts and leather. The Turkish Grain Board generally sells domestic wheat at world prices (which are well below domestic prices) to Turkish flour and pasta manufacturers in quantities based upon their exports of flour and pasta.

The U.S. steel industry has raised serious concerns about the growth of Turkish steel production and exports. Turkey's steel production grew 117 percent in the last decade, making Turkey the 8th largest producer in the world in 2012. Turkey exported 18.4 million metric tons of steel products in 2012, approximately half of its steel production, making it the 7th largest steel exporting country. The U.S. Department of Commerce has previously found several Turkish subsidy programs to be contingent upon export performance, and countervailed these programs in U.S. countervailing duty cases. These programs include pre-shipment and short-term export credits, and income tax deductions for export revenue. U.S. industry has raised concerns that Turkey continues to provide benefits to Turkish exporters under these programs

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Turkey remained on the Watch List in the 2012 Special 301 Report. Efforts by Turkish authorities to protect intellectual property rights (IPR) have been characterized by the same pattern in recent years: incremental but encouraging progress on public awareness and training, and efforts at improving law enforcement (led by the Ministry of Culture and Tourism, the Ministry of Customs and Trade, and the Turkish National Police). However, serious problems remain with copyright piracy, a growing trend toward online piracy, and the manufacture and trans-shipment of counterfeit hard goods. The Turkish Patent Institute has drafted amendments to the patent law. These are currently being reviewed by the Prime Ministry and reportedly will be voted on by the Turkish Parliament in 2013. The Ministry of Culture and Tourism has also drafted amendments to the copyright law. After stakeholder opinions have been considered and the draft amendments are finalized, they will be submitted to the Prime Ministry for review before being presented to the Parliament.

SERVICES BARRIERS

Turkish citizenship is required to practice as an accountant or certified public accountant or to represent clients in Turkish courts. Foreign doctors are allowed to work only in private hospitals in Turkey.

INVESTMENT BARRIERS

Energy Sector

Liberalization/privatization in the natural gas sector has faced delays. The state pipeline company, BOTAS, remains dominant in gas importation, despite legislation requiring a phased transfer of 80 percent of its gas purchase contracts to the private sector by the end of 2009. Some contracts have been transferred, but BOTAS still controls over 75 percent of gas purchase contracts. The Turkish government has plans to introduce an amendment to the Natural Gas Market law, but the timetable remains unclear. Under the amendment, BOTAS would be broken up into three different companies charged with transportation, trading and storage; in addition, the timing for transferring the contracts to the private sector would be extended.

As the result of a 1997 court decision, the Turkish government blocked full repatriation of profits by foreign oil companies under Article 116 of the 1954 Petroleum Law. Affected companies have challenged this decision in Turkish courts, but the judgments in almost all lawsuits have gone against claimant companies.

A new petroleum law that would provide greater investment incentives and protections has been under consideration by a Turkish Parliament subcommittee since 2007, but is yet to come up for legislative consideration.

Real Estate

In May 2012, the Turkish Parliament passed Law 6302 amending the existing Title Deed Law. This amendment increased the amount of land that foreign individuals can own from 2.5 acres to 12 acres. No foreign individual may own more than 10 percent of the land in any district. There are no limits on the amount of land that can be owned by foreign companies with a legal presence in Turkey, so long as the land is being used in accordance with their business activities.

OTHER BARRIERS

Corruption

Turkey has ratified the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal and no longer tax deductible. Despite this, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a problem.

The judicial system is also perceived by many observers to be susceptible to external influence and to be somewhat biased against foreigners.

Taxes

Turkey assesses a special consumption tax ranging from 37 percent to 130 percent on all motor vehicles based on engine size, which has a disproportionate adverse effect on larger automobiles imported from the United States.

Pharmaceuticals

The U.S. pharmaceutical industry has expressed concerns about the Turkish government's reimbursement policies for pharmaceutical products, citing a lack of transparency, timeliness, and predictability. Since introducing significant revisions to its reimbursement system in 2009, the Turkish government has requested additional discounts from pharmaceutical suppliers, which U.S. companies contend may dissuade them from introducing new products in Turkey. Currently, Turkey's discount requirements are among the highest in the world.

U.S. companies have also complained that an exchange rate issue is negatively affecting their ability to participate successfully in the Turkish market. In 2009, the industry negotiated with the Ministry of Health (MOH) to sell pharmaceutical products using a 1.95 TL = 1 Euro exchange rate. Since 2009, the Turkish Lira has depreciated significantly. The MOH agreed in 2009 to adjust the exchange rate if it went up or down in excess of 15 percent of the 2009 baseline. The exchange rate did swing in excess of 15 percent of the baseline in 2011, but the Turkish government thus far has not adjusted the exchange rate as promised. Companies complain that the failure to adjust the exchange rate has cut significantly into their profits, causing them to incur losses of over $1 billion during 2010 and 2011.

UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was $584 million in 2012, a decrease of $97 million from 2011. U.S. goods exports in 2012 were $1.9 billion, down 9.4 percent from the previous year. Corresponding U.S. imports from Ukraine were $1.4 billion, down 7.2 percent. Ukraine is currently the 61st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine was $737 million in 2011 (latest data available), up from $651 million in 2010.

The United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008, establishing a forum for discussion of bilateral trade and investment relations. The TICA established a joint United States-Ukraine Trade and Investment Council (TIC), which addresses a wide range of trade and investment issues, including market access, intellectual property rights protection, tax policy, and specific business disputes. The Council seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The Council last met in July 2012. At that meeting, the chairs established the Trade Experts Group, a working-level government-to-government mechanism to discuss impediments to increased trade and investment between Council meetings.

IMPORT POLICIES

Tariffs/Customs

U.S. exports are subject to Ukraine's most favored nation (MFN) applied tariff rate. For agricultural goods, the average applied tariff rate is 8.8 percent. For industrial goods, the average applied rate is currently 3.6 percent. Ukraine applies preferential tariff rates to imports from its 12 FTA partners and certain Commonwealth of Independent States (CIS) countries. Most MFN customs tariffs are levied at *ad valorem* rates, and only 0.9 percent of tariff lines (down from 5.97 percent prior to Ukraine's WTO accession) are subject to specific rates of duty. These specific rates apply primarily to agricultural goods that compete with agricultural goods produced in Ukraine, such as grains, sugar, and vegetables, including carrots and potatoes.

On September 12, 2012, Ukraine notified the WTO that it intends to renegotiate more than 350 tariff bindings on key agricultural and industrial products under Article XXVIII of the GATT 1994. If Ukraine carries through with its proposed action, it is likely to have negative systemic implications for the multilateral trading system. More than 125 WTO Members, including the United States, have raised serious concerns about Ukraine's proposed action, and the U.S. Government has repeatedly urged Ukraine not to pursue it.

Although Ukraine's MFN applied tariff rates are relatively low, U.S. businesses in the past often raised concerns that the State Customs Service of Ukraine (SCSU) assigns higher customs values to imports, including food, agricultural products and pharmaceuticals, than are provided in the import documentation. However, it appears that changes to the Customs Code made in 2012 have had a positive effect. According to the State Custom Service and a recent survey of U.S. businesses, customs valuation now appears to be determined by transaction value provided on the customs declaration in nearly 90 percent of cases. The amended Customs Code also streamlined customs clearance procedures. The average time for customs clearance of imported goods is now less than two hours. In addition, the new procedures provide for a review of denials of customs clearance within 24 hours, and reduce the number of documents required for customs clearance.

Import Licenses

Import licenses are required for some goods. The list of goods covered by the licensing regime and the license terms are reviewed and amended annually by the Cabinet of Ministers. In 2012, the list included printers' ink, paper with watermarks, optical media production inputs (*e.g.*, polycarbonate), equipment for the production of CDs, pharmaceuticals, paints and lacquers, dyes, hygiene products, cosmetic products, pedicure and manicure products, shaving aerosols and deodorants, lubricants, waxes, shoe polishes, insecticides, solvents, silicone, fire extinguishers and the chemicals that fill extinguishers, refrigerators and freezers, air conditioners, humidifiers, poultry meat and related products, pig and poultry fat, fungicides, insecticides, herbicides, plant growth enhancers and regulators, and other selected industrial chemical products. Applicants must obtain permits for these and other products from the relevant administrative agency before receiving the necessary import license from the Ministry of Economic Development and Trade.

The Ukrainian State Veterinary and Phytosanitary Service established a procedure of import licensing approvals – prescribed in the 1992 Law on Veterinary Medicine and 2009 Decree 652 of the Cabinet of Ministers – that covers all commodities subject to veterinary control. Approval is needed even for cases in which a bilateral veterinary certificate is issued by the country of origin. In 2010, the Chief State Inspector of the Veterinary and Phytosanitary Service of Ukraine canceled the authority of regional veterinary offices to issue permits for imports. Since this decision, U.S. exporters have faced substantial delays and difficulties in obtaining permits to import meat products.

In December 2010, the Ministry of Environment renewed and clarified strict procedures for obtaining its approval to import goods that it considers potentially ozone depleting. The stricter procedures continue to delay shipments and increase costs for importers of a wide range of goods, including aerosols, refrigerators, mascara, lipstick, toothpaste, and coffee makers.

For some goods, product certification is a prerequisite for an import license. Importers can request that a foreign facility be certified as in compliance with Ukraine's technical regulations that apply to imports. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials. If approved, the supplier receives a certificate of conformity valid for two to three years and avoids the burdens of certifying each shipment and undergoing mandatory laboratory testing upon arrival in Ukraine.

GOVERNMENT PROCUREMENT

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but it commenced negotiations to accede to the GPA in February 2011, in accordance with its commitment when it became a WTO Member.

In 2010, Ukraine adopted a new law on government procurement, outlining major requirements for governmental procurement and tender procedures largely in line with international standards. This law requires that all government procurement of goods and services valued at more than Ukrainian Hryvna (UAH) 100,000 (approximately $12,500) and public works valued at more than UAH 300,000 (approximately $38,000) be procured through competitive tenders. However, a large percentage of government procurement is exempted from the procurement rules and can be conducted using sole-source contracts. Open international tenders are used where procurement is financed by an entity outside of Ukraine. The Anti-Monopoly Committee of Ukraine has the authority to review disputes arising from public procurements. Courts may also hear government procurement-related cases. Cases must be filed on tight timelines, often within 14 days of the alleged violation. Implementation of the law since its adoption in 2010 has been uneven, and Ukraine's efforts to reform procurement in the health care sector resulted in the suspension of government purchases of medicines for much of 2011, triggering shortages of important medications.

On August 1, 2012, the Ukrainian president signed into law controversial amendments to the 2010 law, expanding the range of government procurements that can be excluded from public tender requirements. The amendments limited the requirement to use open tender procedures by state-owned companies only to procurement using state budgetary funds; however, there is no mechanism to limit funds to specific procurements within such companies, making the open tender requirement meaningless.

Ukraine's procurement rules generally do not restrict foreign enterprises from participating in government procurement, but in practice, foreign companies claim that they are rarely able to compete on an equal footing with domestic companies. Foreign companies generally win only a tiny fraction of total procurements. Among the problems faced by foreign firms are: (1) the lack of public notice of tender rules and requirements; (2) nontransparent preferences in tender awards; (3) the imposition of conditions that were not part of the original tender requirements; and (4) ineffective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded.

EXPORT BARRIERS

Exports of some categories of products are subject to registration by the Ministry of Economic Development and Trade. Products that must receive a license prior to export from Ukraine include precious metals and stones, cast iron, ferronickel, ferrotitanium, ferroalloys, steel, copper, aluminum alloys, lead, some metallurgy equipment, unrefined oil and gas, scrap metal, printers' ink, optical polycarbonates for laser reading systems, optical disc manufacturing equipment, and paper with watermarks. The government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, some oil seeds, and scrap metal.

Export Restrictions on Grains

Ukraine ranks among the top exporters of grain in the world, but has periodically resorted to grain export restrictions. The supply of products deemed "socially important" (*e.g.*, vegetable oil, bread, and sugar) is controlled by the government through price controls and restrictions on exports.

Ukraine's major grain exporters, which include a number of U.S. companies, experienced severe difficulty exporting grain in the 2010/2011 marketing year. In July 2012, Ukraine signed a Memorandum of Understanding (MOU) with grain traders regarding the introduction of informal grain export restrictions. This MOU also specified that the total grain export volume for the season would be limited to approximately 20 million tons, of which wheat exports could comprise four million tons (later increased to 5.5 million tons). The export restrictions have remained informal, and no official administrative measures have been taken to enforce the export restrictions.

Live Cattle, Sheep, Hides, and Skins

Export duties remain in place on live cattle, sheep, hides, and skins. However, trade in these products has been negligible. Pursuant to its WTO accession commitments, Ukraine continues a staged reduction of these export duties. Export duties on live calves, cows, and sheep, currently at 30 percent, will fall to 10 percent in 2016. The export duty on raw hides, currently at 26 percent, will fall to 20 percent in 2018.

Scrap Metal

Upon WTO accession, Ukraine lowered export duties on ferrous scrap exports to €25 per metric ton for ferrous metals and to 30 percent *ad valorem* (with minimum specific rates for some products) for nonferrous metals. Laws passed in 2006 and 2007 as part of the accession process provide for staged duty reductions to €10 per metric ton over a period of 6 years (2008 to 2014) for ferrous metals and reductions to 15 percent *ad valorem* but not less than €0.2 to €0.8 per metric ton over a period of 5 years (2008 to 2013) for nonferrous metals. According to Ukrainian law, the export duty in 2012 for ferrous metals was €13.2 per metric ton and 18 percent *ad valorem* for nonferrous metals (with minimum, specific rates for some products), matching the level committed to at the time of accession.

Sunflower Seed, Flaxseed, and Linseed

Sunflower seed, flaxseed, and linseed have been subject to an export duty since June 2001. As required by its WTO accession agreement, the export duty on sunflower seed was 10 percent as of January 1, 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In April 2012, Ukraine was elevated to the Priority Watch List in the 2012 Special 301 Report. Key concerns cited in the report include weak enforcement, continuing use of pirated software within the Ukrainian government, widespread retail piracy, the trans-shipment of pirated and counterfeit goods, high levels of piracy over the Internet, the lack of an authorized music royalty collecting society representing rights holders, and inefficiencies in the judicial system. The need to improve its protection of intellectual property rights (IPR) was a major theme of the bilateral 2010 and 2012 Trade and Investment Council (TIC) meetings. During the 2010 TIC meeting, the two countries agreed to an IPR Action Plan. That plan identified steps to be taken by Ukraine with respect to various matters, including public awareness, enforcement, passage of pending legislation, violations of data protection, pharmaceutical patents, and government use of illegal software. At the July 2012 TIC meeting, the U.S. Trade Representative and the Deputy Prime Minister of Ukraine reviewed the Action Plan and its implementation. There has been little to no measurable progress on the Action Plan, despite intensive U.S. engagement. Statistics from the Ministry of Interior show that IPR-enforcement related arrests and prosecutions declined considerably in 2012 compared to 2011. Online and physical markets in Ukraine were identified on USTR's 2012 Notorious Market List, and other concerns remain unaddressed.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints and digital encryption keys to be produced in Ukraine, each of which is a significant impediment for distributors of foreign films. Ukrainian law also imposes a language content requirement for radio and television broadcasting.

Financial Services

On September 18, 2012, Ukraine's parliament adopted legislative amendments increasing the authority of the National Bank of Ukraine (NBU) over electronic payments. The amendments allow the NBU to impose limits on cash payments and are intended to expand the market for electronic payments. The amendments also authorized the NBU to operate a central processing center for electronic financial transactions. These latter amendments raise concerns regarding possible uncompetitive behavior by the NBU with respect to other international payment systems operating in this market.

Distribution Services

A Ukrainian by-law restricts the sale of biologically active food supplements (BAFS) products to pharmacies or specialized retail stores. This distribution restriction limits the ability to sell products in this market through direct selling.

INVESTMENT BARRIERS

Taxation

Companies report that Ukraine's taxation system is a major obstacle for U.S. investors doing business in Ukraine. In recent years, delays in the payment of VAT (value-added tax) refunds to exporters have been a problem. While the government of Ukraine finally refunded a large proportion of VAT refund arrears through a VAT bond scheme in August 2010 (some of these claims had been pending for over two years), the manner in which refunds were distributed was not transparent, and the firms involved complained that they should have received cash rather than bonds. In 2011, the State Tax Administration (STA) instituted an automated system for VAT refunds, but nontransparent criteria have prevented most firms from participating in the system and receiving their refunds, although recent data from STA suggests some improvement in use of the system. Ukraine's inability to refund VAT in a timely manner remains a problem, and delays in reimbursement have become an important cost factor for many foreign companies. Since the issuance of bonds in 2010, the government of Ukraine has continued to accumulate substantial new arrears in VAT refunds to U.S. and other companies, demand prepayment of the corporate profits tax in exchange for the same amount of refunds, aggressively inspect companies in an attempt to write-off claimed VAT payments for reasons that appear spurious, and distribute VAT refunds in an arbitrary fashion that appears to favor companies connected to the government or those that pay bribes.

Privatization

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that the terms of a privatization contest are arbitrarily adjusted to fit the characteristics of a pre-selected bidder. Few major new privatizations have been conducted since the privatization rush of 2004, with the most notable being the privatization of telecommunications company Ukrtelecom in 2011. In this case, a 97 percent stake was sold to a small Austrian investment firm for $1.3 billion in a nontransparent one-bid auction. Strict tender conditions restricted potential buyers.

In 2012, most regional gas distribution companies were privatized and the State Property Fund launched the privatization of heating plants with the sale of the heating plant in Kharkiv, in eastern Ukraine, in November. Both privatizations were conducted at what analysts considered below market prices.

The Ukrainian government has announced its intention to privatize all 112 state-owned coal mines by 2014. In a September 2012 resolution, Ukraine's Cabinet of Ministers began the process of transforming the mines into joint stock companies to prepare them for privatization. The Cabinet of Ministers also permitted the majority of state-owned mines to transfer their assets into concessions. There are concerns that well-connected Ukrainian firms are trying to acquire these mines without going through a fair and transparent privatization process.

Ukraine maintains a moratorium on the sale of agricultural farmland, which was recently extended to January 1, 2016. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and constitutes an obstacle to the development of the agricultural sector. However, the government of Ukraine's draft "Law on the Land Market," which would end the moratorium, includes problematic provisions such as prohibitive taxes on re-selling land and the creation of a State Land Bank with the exclusive right to issue land mortgages. While essential in the long term, concerns exist that land privatization under current circumstances could lead to widespread corruption, nontransparent privatizations, and disruptions in the productive utilization of agricultural land.

Corporate Raiding

Ukraine continues to have problems with corporate raiding activities. Some researchers claim that thousands of Ukrainian enterprises have suffered from such activities in the last several years. These raiders frequently purchase a small stake in a company, and then take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of the company to the detriment of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The Ukrainian government has taken little action to stop this phenomenon, and some foreign investors complain that the government protects raiders who are politically well connected.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was $20.3 billion in 2012, an increase of $6.9 billion from 2011. U.S. goods exports in 2012 were $22.6 billion, up 41.9 percent from the previous year. Corresponding U.S. imports from United Arab Emirates were $2.2 billion, down 8.2 percent. United Arab Emirates is currently the 17th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in United Arab Emirates was $5.8 billion in 2011 (latest data available), up from $4.7 billion in 2010. U.S. FDI in the United Arab Emirates is led by the mining, wholesale trade, and manufacturing sectors.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external tariff of 5 percent, with a limited number of GCC-approved country-specific exceptions. The UAE's exceptions include alcohol (50 percent) and tobacco (100 percent). A total of 811 items are exempt from customs duties, including imports of the diplomatic corps, military goods, personal goods, used household items, gifts, returned goods, and imports by philanthropic societies.

Import Licenses

Only firms with an appropriate license are permitted to engage in importation, and only UAE-registered companies, which must have at least 51 percent UAE ownership, may obtain such a license. This licensing provision does not apply to goods imported into free zones. Some goods for personal consumption do not require import licenses.

Documentation Requirements

Since 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the exporting country. There is an established fee schedule for this authentication. For U.S. exports, if validation is not obtained in the United States, customs authorities will apply the fee when the goods arrive in the UAE.

GOVERNMENT PROCUREMENT

The UAE grants a 10 percent price preference for local firms in government procurement. The UAE requires companies to register with the government before they can participate in government procurement, but to be eligible for registration, a company must have at least 51 percent UAE ownership. This requirement does not apply to major projects or defense contracts where there is no local company able to provide the goods or services required. Both the federal government and the Abu Dhabi Emirate government are incorporating electronic procurement and tendering systems to ease the process and cost for suppliers and contractors.

The UAE's Industrial Development Program, previously known as the UAE Offset Program, requires defense contractors that are awarded contracts valued at more than $10 million to establish commercially viable joint ventures with local business partners that would be projected to yield profits equivalent to 60 percent of the contract value within a specified period (usually 7 years). To date, more than 40 such joint venture projects have been launched. There are also reports indicating that defense contractors can sometimes satisfy their offset obligations through an up-front, lump-sum payment directly to the UAE Industrial Development Program.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The UAE has made the protection of intellectual property a priority in recent years. In 2011, the UAE established an independent office for intellectual property rights (IPR) at the Ministry of Economy and appointed an assistant undersecretary position for IPR for the first time. According to 2012 industry estimates, the rate of software piracy in the UAE remained the lowest in the Middle East and, after South Africa, the second lowest in the Middle East and Africa. While the UAE is recognized as a regional leader in fighting software piracy, some industry stakeholders believe the UAE could do more. For example, the recording industry has raised concerns regarding the UAE's failure to establish a royalty collecting mechanism for the use of recorded music. In addition, U.S. rights holders have raised concerns regarding the lack of transparency and information exchange when UAE customs officials conduct raids and seizures. The UAE government continues to work to improve protection of IPR by launching public awareness campaigns and seizing huge quantities of counterfeit goods, including CDs, DVDs, perfume, car parts, watches, garments, medicine, television and stereo sets, and printers. In May 2012, the Ministry of Economy announced preparations for a new law against commercial fraud and concealment, which UAE officials assert would boost IPR protection.

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

SERVICES BARRIERS

Agent and Distributor Rules

In order to distribute products in the UAE, foreign firms must employ a local agent. The Agency Law (Federal Law Number 18 of 1981 on the Organization of Commercial Agencies as amended by Federal Law Number 14 of 1988) established requirements for registered commercial agents. Only UAE nationals or companies wholly owned by UAE nationals can register with the Ministry of Economy as commercial agents.

The UAE government allows some food products to be sold by foreign companies without a local agent in order to stabilize the prices of these products. In January 2012, the UAE Cabinet approved the addition of 12 commodities to the previous list of 15 goods that can be sold without a local agent, including livestock, dairy products, fats and oils, honey, eggs, fruit juices, salt, yeast, animal feed, detergents, and hygiene products.

In March 2010, the UAE amended certain provisions of the Agency Law in Federal Law Number 2 of 2010 to prevent the termination or non-renewal of a commercial agency unless the foreign principal has material reason to justify the termination or non-renewal. In addition, the foreign principal may not re-register a commercial agency in the name of another agent even if the previous agency was for a fixed term unless: (1) it is amicably terminated by the principal and the agent; (2) termination or non-renewal is for justifiable reasons that are satisfactory to the Commercial Agencies Committee; or (3) a final judicial judgment is issued ordering the cancellation of the agency.

The 2010 amendments also reinstated (after being eliminated in 2006) the specialized Commercial Agencies Committee, which has original jurisdiction over disputes involving registered commercial agents. The UAE Cabinet further outlined the responsibilities of the Committee in April 2011 in Resolution Number 3 of 2011 (Concerning the Commercial Agency Committee). These responsibilities include receiving applications for settling agency disputes and managing the process of cancelling registered agencies. The Committee is permitted to abstain from settling a dispute referred to it and can advise the parties to refer the matter to litigation. A party may challenge the determination of the Committee by bringing a matter to the UAE courts within 30 days of receiving notice of the Committee's resolution. The Committee is permitted to seek the assistance of any expert or "appropriate person" for performing its duties. It also has the right to demand the submission of further information and documentation involved in the dispute.

Telecommunications

The UAE currently has two telecommunications companies that are largely government owned: Emirates Telecommunications Corporation (Etisalat), the former telecommunications monopoly; and Emirates Integrated Technology Company (which operates under the trade name Du). The UAE has committed that after December 31, 2015 it will issue more licenses, thereby eliminating the duopoly. While the Telecommunications Regulation Authority (TRA) reiterated in 2012 that it has no plans to grant licenses to any new operator before the end of 2015, local media reported in July 2012 that Etisalat is in talks with the UAE government about lifting the prohibition on foreign ownership of its stock.

The UAE restricts the provision of Voice over Internet Protocol (VoIP) services to licensed telecommunications companies. U.S. providers of VoIP services have raised concerns that the UAE limits their ability to provide these services by licensing only the two current telecommunications companies; other companies using this technology are subject to having their services blocked.

Transportation

Federal Law Number 9 of 2011 on Land Transport and Public Roads authorizes the National Transport Authority (NTA) to oversee licensing of all commercial transport vehicles, including those used by couriers. The NTA asserts that the law is intended to improve security and safety for land transportation across the UAE. However, Article Number 3 of the law restricts licenses of transportation activity to UAE citizens only.

Insurance

Foreign insurance companies may operate only as branches in the UAE. An insurance company established in the UAE must be a public joint stock company, with foreign equity limited to 25 percent. Since 2008, new insurance licenses have been issued only to UAE and GCC firms.

The Emirate of Abu Dhabi limits insurance coverage for construction projects and companies under the Abu Dhabi National Oil Company to Abu Dhabi-based insurance companies.

INVESTMENT BARRIERS

Except for those located in one of the UAE's free zones, companies must have at least 51 percent UAE ownership. A company engaged in importation and distribution must be either a 100 percent UAE-owned agency or a 51 percent UAE-owned limited liability company. The UAE government is reportedly considering liberalizing specific sectors where there is a need for foreign expertise or where local investments are insufficient to sustain 100 percent local ownership, but has yet to enact measures to achieve this end.

Foreign investors continue to raise concerns about resolution of investment disputes in the UAE. Among other issues, they are concerned that pursuing arbitration in disputes with a local company may jeopardize business activities in the UAE, and are concerned about a lack of impartiality within domestic courts and the long dispute resolution process in the domestic court system. Both the federal government and the Dubai Emirate government have taken steps to address these concerns. Such steps include a new commercial arbitration law, and the expansion of the jurisdiction of the Dubai International Financial Center courts to include commercial parties not located within the Center.

U.S. companies continue to raise concerns about lengthy delays and burdensome procedures in receiving payment for projects undertaken in the UAE, particularly for work done on behalf of certain government entities.

VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $21.1 billion in 2012, down $9.8 billion from 2011. U.S. goods exports in 2012 were $17.6 billion, up 42.8 percent from the previous year. Corresponding U.S. imports from Venezuela were $38.7 billion, down 10.5 percent. Venezuela is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were $5.6 billion in 2011 (latest data available), and U.S. imports were $814 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.0 billion in 2010 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $714 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was $12.1 billion in 2011 (latest data available), up from $9.7 billion in 2010. U.S. FDI in Venezuela is primarily concentrated in the manufacturing and nonbank holding companies sectors.

IMPORT POLICIES

An executive resolution published in Venezuela's Official Gazette on March 13, 2012 provides favorable treatment to public sector entities and state-owned enterprises with respect to various import policies. Specifically, unlike private enterprises, these public entities are exempt from presenting or maintaining import licenses, paying tariffs, or presenting documents or certificates related to the regulation of customs and duties. The Venezuelan government asserts that the purpose of the resolution was to simplify administrative procedures for import and exports.

Tariffs

According to the WTO, in 2012 Venezuela applied a simple average tariff of 15 percent on agricultural goods and 12.1 percent on non-agricultural goods.

At a July 2012 MERCOSUR summit in Rio de Janeiro, Venezuela became the fifth full member of MERCOSUR, an economic and political agreement established in 1991 among Argentina, Brazil, Paraguay and Uruguay. Under the terms of its accession, Venezuela has four years from its date of accession to adopt the MERCOSUR Common External Tariff (CET) and to provide duty-free treatment to its four MERCOSUR partners on all goods, with sensitive products allowed a two-year extension. Venezuela is permitted by MERCOSUR to maintain 260 exceptions to the CET until December 31, 2016, and 160 exceptions to the CET until December 31, 2017.

Nontariff Measures

The Law of Fair Costs and Prices was enacted on July 14, 2011, and entered into effect on November 22, 2011. The law gives a newly created Venezuelan government entity, the Superintendent of Fair Costs and Prices (SUNDECOP), broad authority to regulate the prices of almost all goods and services sold to the public, including imported products and services. Pursuant to its authority, SUNDECOP is empowered to decide at its own discretion whether prices are "fair" and to identify businesses that make "excessive profits through speculation."

Businesses have provided the cost and price data requested by the government, despite the fact that implementing regulations have never been issued. As of April 1, 2012, prices were reviewed and fair prices confirmed by SUNDECOP for foodstuffs, personal care and household cleaning products, and construction materials – ranging from soap and shampoo to cement comprising a total of 19 product lines. To date, SUNECOP has not reviewed prices for products in other sectors beyond the 19 product lines, but has met with different industry sectors and warned that prices could be raised or lowered after a thorough review.

Currency Controls

Currency controls introduced in 2003 continue to pose as a significant trade barrier in Venezuela. Importers must have prior authorization to obtain foreign currency before purchasing imports. The Venezuelan government (GBRV) revised its foreign currency regime on February 8, 2013. The GBRV eliminated the Central Bank-operated System for Transactions in Foreign Currency Denominated Securities (SITME), which since June 2010 had sold dollar-denominated GBRV and PDVSA bonds, for bolivars, at an implicit exchange rate of 5.3 bolivars per dollar. Importers may now seek foreign exchange through only one entity, the Foreign Exchange Commission, or *Comision de Administracion de Divisas* (CADIVI). In addition to eliminating SITME, the GBRV devalued the official exchange rate, at which CADIVI sells U.S. dollars, from 4.3 to 6.3 bolivars/dollar.

Importers who wish to use the CADIVI system must first enroll in its Registry of Users of the System of Administration of Foreign Exchange (RUSAD). Importers who receive pre-approval from RUSAD for foreign currency purchases may import goods and then apply for CADIVI approval to purchase dollars at the official rate to pay for the imports. The CADIVI system is available for importers in sectors classified as strategic, including food, health products, machinery and equipment, chemicals, and metals. Certain products that the government deems strategic require a certificate of "non-national production or certificate of insufficient production" from the Ministry of Health or from other government entities depending on the product category in order to qualify for participation in the CADIVI system. If the GBRV considers the products to be non-strategic or non-essential, they are not eligible to be imported using the official CADIVI foreign exchange rate.

The process for obtaining authorizations for foreign currency (mainly U.S. dollars) through CADIVI is burdensome and time consuming and many companies report that they are not receiving sufficient foreign exchange to satisfy their business needs. The process takes on average nine months, and can require the importer to submit numerous supporting documents, with the support of the exporter. For example, the government requires exporters to provide a Venezuelan Consulate in the United States a sworn declaration (which must be either notarized or apostilled) stating that the commercial invoices are authentic. Additionally, since 2006, CADIVI approvals for dividend repatriation have been minimal.

Automotive Measures

Since January 1, 2008, the Ministry of People's Power for Commerce requires all automobile importers to obtain a license for authorization to receive foreign exchange for the importation of assembled vehicles. Approval of these licenses is contingent on "national need, the capacity of national production, plans to expand local production, model cost, historic sales, and the efficient use of fuel." The law also prohibits the importation of passenger cars with engines larger than three liters, thus impeding companies that sell predominantly larger cars.

Since 2008, the government has used an import quota mechanism to promote and increase the number of automobiles assembled in Venezuela. However, due to currency controls, carmakers are subject to limited allocations of dollars to pay for the imported components they need to carry out production in

Venezuela. On an annual basis, assemblers may present their requests for import licenses regarding the models and quantity of imported vehicles. The government has generally awarded import licenses to assemblers that have a related assembler in countries that have agreements with Venezuela, such as Argentina and Ecuador.

The 2008 aforementioned automotive regime contained requirements regarding dual fuel (gasoline and natural gas) vehicles. 30 percent of vehicles sold must be dual fuel, and each Venezuelan assembler must produce at least two dual fuel models. This dual fuel requirement also applies to vehicles imported by assemblers. Of the total number of vehicles brought into the country by an importer, 30 percent of the imported vehicles must be dual models, and the remaining 70 percent must be converted once imported. Since 2010, engines in domestically assembled vehicles must be assembled in Venezuela, and beginning in 2013, domestically assembled vehicles are subject to a 50 percent local content requirement. Assemblers have stated that these two requirements are extremely problematic. In particular, they have noted that Venezuela's domestic industry is unable to produce sufficient components to allow 50 percent local content and that the variety of motors and the requisite large production runs make local motor assembly prohibitively expensive.

Commodities and Agricultural Products

The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar cane, milk, and beef. These prices generally lag behind increases in input costs. The government of Venezuela bans the non-food use of corn and controls product movement through "mobilization guides," which results in a *de facto* export ban. Basic food items, such as coffee and sugar, cannot be exported until domestic demand is satisfied.

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) for up to 62 Harmonized Tariff System code 8-digit headings. Currently, the government applies TRQs to oilseeds, corn, wheat, milk and dairy, and sugar. The issuance of import licenses for such TRQs has negatively affected trade in basic agricultural commodities as well as processed products. Import licenses and sanitary permits are restrictive for products for which the government is trying to increase domestic output, such as raw materials for processing. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff for additional quantities of some products. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for other products, such as pork.

Importers of many basic commodities, horticultural products, and agricultural inputs must request a "certificate of non-domestic production" or a "certificate of insufficient production" before trade can take place. If the certificate is issued, the importer can request foreign exchange and obtain import licenses, import permits, and possibly tax exoneration from other government offices. Some goods may require a certificate from multiple ministries, increasing processing time. The number of ministries and agencies involved and the changes in responsibilities among them impedes the issuance of import permits, licenses, and the registration of local and imported food products. The government of Venezuela may waive the "certificate of nonproduction" requirement to mitigate food shortages. Whenever there is a shortage, imports are readily authorized. This has been the case for the last several years as demand has exceeded domestic supply.

The Venezuelan government is the main importer of basic foodstuffs and has created a large food distribution network targeted at the low and middle income classes. Venezuela's food program focuses on providing a basic basket of products, including dry milk, precooked corn flour, black beans, rice, vegetable oils, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces.

Government entities have an advantage in purchasing abroad because they have guaranteed access to official dollars, import licenses and permits, and import products without tariffs and custom duties.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has a controlling interest. The law requires a procuring entity to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Light Industry and Trade. Although the law forbids discrimination between domestic and foreign suppliers, it provides that the Venezuelan President can mandate temporary changes in the bidding process "under exceptional circumstances," in accordance with "economic development plans" that promote national development or provide preferences to domestic goods and suppliers. These measures can include price preferences for domestic goods and suppliers, reservation of procurements for nationals, requirements for domestic content, technology transfer, or the use of local labor and other incentives to purchase from companies domiciled in Venezuela. In addition, the Venezuelan government is increasingly awarding contracts directly, thus avoiding the bidding processes required by the government procurement law. There are also allegations that the procurement law is inconsistently applied or ignored, frequently to the benefit of local companies, and that companies from certain countries are favored while those from other countries, including the United States, receive less favorable treatment. Venezuela is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela was listed on the Priority Watch List in the 2012 Special 301 Report. Key concerns cited in the report relate to the deteriorating environment for the protection and enforcement of intellectual property rights (IPR) in Venezuela. The reinstatement of the 1955 Industrial Property Law created uncertainty with respect to patent and trademark protections. Copyright piracy and trademark counterfeiting remain widespread, including piracy over the Internet. Other concerns include the lack of effective protection against unfair commercial use of undisclosed test data and other data generated to obtain marketing approval for pharmaceutical products. Venezuela has taken steps to enforce the 2010 Law on Crimes and Contraband, including the penalty provisions of that law. However, Venezuela must still make significant improvements to its regime for IPR protection and enforcement, as resource constraints and lengthy legal processes hamper IPR enforcement. In 2012, the Venezuelan Supreme Court accepted a request that was presented in 2009 by the Venezuelan Pharmaceutical Chamber of Commerce to determine if 10 articles from the 1955 Industrial Property Law conflict with Venezuela's existing international obligations, including its obligations under the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The case remains under consideration.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of services sectors, including professional services, audiovisual, and telecommunications services. In any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Professional Services

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and related institutions, such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. A foreign lawyer cannot provide legal advice on domestic, foreign or international law without being fully licensed as a lawyer in Venezuela. Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers.

Financial Services

Venezuelan law requires that for all insurance companies, at least half of the members of the board must be of Venezuelan nationality. In addition, all members of the board must be living in and have resident status in the country.

Audiovisual Services

Venezuela limits foreign equity participation to less than 20 percent for enterprises engaged in Spanish language television and radio broadcasting. At least half of television programming must be dedicated to domestic programming. Additionally, half of both FM and AM radio broadcasting must be dedicated to Venezuelan-produced material. In the case of music, 50 percent of the Venezuelan-produced material must be traditional Venezuelan songs. There is also an annual quota regarding the distribution and exhibition of Venezuelan films required of cinema owners and film distributors. Finally, there is a requirement that a percentage of film reproduction be done in Venezuelan facilities.

INVESTMENT BARRIERS

The government controls key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration (1994 to 1999), but privatization halted under the Chavez Administration (2000 to March 5, 2013), who also re-nationalized companies in key sectors of the economy, including the telecommunications and oil sectors. According to data maintained by Conindustria (*Confederación Venezolana de Industriales*), there have been 1,171 state interventions (expropriations, private property seizures and nationalizations) since 2002. Of these, 40.9 percent were companies involved in the construction sector, 30.8 percent in the industrial sector (manufacturing, agro-industrial, agriculture or related industries), 19 percent in the oil sector, and 7.9 percent in the service and trade-related sectors. Other affected sectors include food, mining, chemicals, and transport services.

On January 24, 2012, the Venezuelan government announced its withdrawal from the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Venezuela's exit from ICSID became effective on July 25, 2012. At least 29 ICSID cases against Venezuela are currently pending, making Venezuela the country with the largest number of pending ICSID claims. Prior to announcing Venezuela's ICSID withdrawal, President Chavez announced that the Venezuelan government would not recognize any ICSID decision related to the pending claim of a U.S. company. The United States does not have a Bilateral Investment Treaty with Venezuela.

Foreign investment in the petroleum sector is restricted. The exploration (except for offshore natural gas), production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. Private companies can engage in hydrocarbons-related activities only through mixed companies and equity joint ventures with the state-owned oil company, PDVSA. The government has in recent years forced international oil companies to convert investment interests in oil projects into minority stakes in joint ventures, without the right to operate the projects themselves. Combined with a windfall tax on profits, these and other government measures have substantially increased uncertainty in the hydrocarbons sector.

Venezuelan law requires a competitive process for awarding stakes in exploration and production acreage to private partners for projects developed by PDVSA. However, the government can directly award contracts when the project is developed under "special circumstances" or is of "national interest." Oil companies from politically strategic partner countries appear to be the preferred partners for the development of many new projects. Assets and services involved in the injection of water, steam, or gas into petroleum reservoirs; gas compression; and hydrocarbons activity on Lake Maracaibo in western Venezuela are all reserved to the state. Activities, facilities, and projects in the petrochemicals sector are also reserved to the state, and the state is required to have at least a 50 percent ownership stake in petrochemical companies.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $15.6 billion in 2012, up $2.5 billion from 2011. U.S. goods exports in 2012 were $4.6 billion, up 7.3 percent from the previous year. Corresponding U.S. imports from Vietnam were $20.3 billion, up 15.9 percent. Vietnam is currently the 46th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $747 million in 2011 (latest data available), up from $623 million in 2010.

Trade Agreements

The United States and Vietnam have held a number of discussions under the Trade and Investment Framework Agreement (TIFA), including at the Ministerial level. The TIFA provides a forum to help monitor and implement Vietnam's WTO commitments, address bilateral trade issues, and promote increased trade and investment.

Vietnam is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Vietnam, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, and Singapore.

IMPORT POLICIES

Tariffs

Vietnam significantly reduced its tariff rates on many products of interest to the United States when it joined the WTO in January 2007. As a result, the majority of U.S. exports now face tariffs of 15 percent or less. However, in recent years, Vietnam has increased applied tariff rates on a number of products, and although the rates remain below its WTO bound levels, foreign businesses have been affected by the increases. Products affected by such tariff adjustments include shelled walnuts, ketchup and other tomato sauces, inkjet printers, and stainless steel bars and rods.

U.S. industry has also identified high tariffs imposed on certain agricultural and manufactured products including fresh food, fresh and frozen meats, and materials and machinery, on which tariff elimination would create significant new opportunities. The United States and Vietnam are currently negotiating preferential tariff concessions in the context of the TPP negotiations.

Nontariff Barriers

Vietnam eliminated many nontariff barriers under the 2001 United States-Vietnam Bilateral Trade Agreement (BTA) and through its accession to the WTO, including quantitative restrictions on imports, quotas, bans, permit requirements, prior authorization requirements, licensing requirements, and other restrictions having the same effect, that appeared to be inconsistent with its WTO commitments. Nonetheless, many other nontariff barriers remain.

Import prohibitions: Vietnam currently prohibits the commercial importation of some products, including cultural products deemed "depraved and reactionary," certain children's toys, second-hand consumer goods, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, and encryption devices and encryption software.

Quantitative restrictions and import licenses: Vietnam has tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

On September 26, 2012, Vietnam's Ministry of Industry and Trade (MOIT) issued Circular 27, suspending the import licensing requirement for a range of covered by Circular 24 (issued in 2010). Imports of iron and steel, however, are still subject to a licensing requirement pursuant to Circular 23, issued on August 7, 2012.

On September 7, 2012, the Prime Minister issued Directive 23, increasing restrictions on certain Imports for Re-Export and the Trans-shipment Trade. The Directive, effective September 30, 2012, banned imports for re-export and trans-shipment of a variety of hazardous waste items, and temporarily banned imports for re-export and transshipment of a variety of products including used consumer goods, frozen animal by-products, and offal. The directive made a third category of items, including yet-to-be specified meat and seafood products subject to MOIT permit requirements. Directive 23 also imposed new conditions on the import for re-export of wine, beer, and tobacco products.

In August 2012, Vietnam notified Draft Decree 40 on "Liquor Production and Trading" to the WTO. The decree would impose a three-tiered system of import licenses and quotas for the distribution, wholesale, and retail sale of liquor.

The United States continues to raise concerns regarding Vietnam's import licensing regime in the WTO Import Licensing Committee.

Price Registration and Stabilization: Circular 122 on price management and registration entered into force in 2010. Circular 122 states that the Ministry of Finance may apply price controls when prices increase or decrease without a "legitimate excuse," and subjects an extensive list of goods to pricing registration, including steel, liquefied petroleum gas, chemical fertilizers, plant protection products, animal drugs and vaccines, salt, milk and nutritional powders for children under six years old, sugar, rice, animal feed, coal, paper, and textbooks. On June 20, 2012, the National Assembly promulgated the Price Law, which became effective on January 1, 2013. While this law supersedes Circular 122, Vietnamese government policy with regard to price stabilization of certain items will not change. The U.S. Government and other foreign governments have repeatedly raised concerns about Circular 122 and the Price Law, and their impact, with the Vietnamese government and will continue to press this issue.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related regulations, significantly improving its customs valuation process. Despite this positive step, U.S. exporters continue to have concerns about other aspects of the customs clearance process, citing inefficiency, red tape, and corruption as issues. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement.

Trading rights: Import rights are granted for all goods except for a limited number of products reserved for importation through state trading enterprises, as well as certain products subject to a phase-in period for trading rights under Vietnam's WTO accession agreement. Vietnam has reserved the right of importation to state trading entities in the following product categories: cigars and cigarettes, crude oil, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions).

Other Nontariff Barriers: U.S. stakeholders have expressed concern about the impact on foreign firms of product registration requirements for imported pharmaceuticals. The United States will continue to work with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the pharmaceutical regulatory process.

In the area of cloud computing services, stakeholders have raised concerns over a draft decree issued by the Ministry of Information and Communication that would impose licensing and registration requirements on providers of information technology services, including restrictions on the cross-border supply of cloud computing and data center services.

U.S. stakeholders also have identified Vietnam's restrictions on advertising of distilled spirits in print, electronic, and broadcast media as an impediment to increased exports of distilled spirits.

In March 2011, MOIT promulgated Decision 1380, which revises an April 2010 list of "discouraged imports," and now covers 3,724 tariff lines of consumer goods. The State Bank of Vietnam, under its Official Dispatch 3215 of April 2010, requires additional procedures and monitoring of foreign currency loans and lines of credit to businesses that purchase imports on the MOIT list. In addition, since Decision 1380 was issued, several new measures have been implemented explicitly referring to Decision 1380, including MOIT's Circular 7 list of consumer goods subject to an import duty payment timeframe, and Ministry of Finance's Circular 91, which increases import tariffs on certain products (see tariff section). The U.S. Government will continue to raise concerns on this issue with Vietnam.

GOVERNMENT PROCUREMENT

Vietnam's 2006 Law on Procurement provides for enhanced transparency in procurement procedures; decentralization of procurement decision making to the ministries, agencies, and local authorities; appeals processes; and enforcement provisions.

Vietnam is not a signatory to the WTO Agreement on Government Procurement. However, Vietnam became an observer to the WTO Committee on Government Procurement on December 5, 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam remained on the Watch List in the 2012 Special 301 report. While recognizing the strides Vietnam has made in improving its intellectual property rights (IPR) regulatory framework and enforcement efforts over the past few years, the United States noted that widespread counterfeiting and piracy, including over the Internet, remain serious concerns. In addition, while Vietnam took action to address signal theft by its state-owned television provider, stakeholders note that unauthorized reception and distribution of satellite channels via illegal decoders and domestic pay TV platforms continue.

In the area of enforcement, administrative actions and penalties - which are the most common method of addressing IPR infringement in Vietnam - have not had a significant deterrent effect. In recent years, Vietnamese agencies have taken some initial steps to enforce IPR protections on the Internet, including by issuing warning letters and by meeting with Internet service providers in response to rights holders' requests to address infringing content. The United States continues to urge Vietnam to undertake more aggressive actions to combat the rising problem of intellectual property infringement, including digital piracy. The United States will continue to work with Vietnamese authorities to address these IPR issues.

Vietnam has stated it will clarify IPR-related provisions in the Criminal Code through an implementing decree. These guidelines will be an important step towards improving law enforcement related to IPR in Vietnam.

SERVICES BARRIERS

Audiovisual Services

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. Films are subject to censorship before public viewing, a process that is nontransparent and for which the right to appeal a censor's decision is not well established.

Broadcasting

In March 2011, the Prime Minister issued Decision 20 (Regulation on Pay TV Operation Management). Decision 20 requires that foreign pay television providers use a local agent to translate in advance all movies and programming on science, education, sports, entertainment and music, and that all foreign news programs provide a summary of the content in Vietnamese in advance of airing. The measure also requires foreign content providers to secure the services of a local editing company for post-production work (including translation, content review, and payment of a placement fee) in order for advertisements to be approved for placement in a Vietnamese broadcast. U.S. content providers have expressed concern about the effect of these requirements on their business models in Vietnam. The decision allowed for a one-year grace period for compliance, followed by a six-month extension. The Ministry of Information and Communication (MOIC) announced an additional six-month extension on November 20, 2012. The United States continues to discuss Decision 20 with the MOIC and will continue to monitor the implementation of these regulations.

Express Delivery Services

As of January 2012, Vietnam has permitted 100-percent foreign ownership in this sector, opening up greater opportunities for U.S. providers. Foreign firms can convert an existing joint-venture to a wholly foreign-owned enterprise; however, to do so, the foreign firm first must show proof that it has bought out its joint-venture partner before the government gives final approval for a new 100-percent foreign-owned investment license.

Legal Services

Vietnam permits foreign firms to operate in the legal sector, subject to specific guidelines and restrictions outlined in its "Law on Lawyers." In 2012, Vietnam passed an amendment to this law which could potentially restrict the ability of foreign firms to operate in Vietnam. Article 70 of the amendment states that foreign law firms practicing law in Vietnam may not provide notarization and legal document services relating to Vietnamese law. The government has not yet clarified whether this will be interpreted to include commercial contracts.

Telecommunications

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector (Vietnam has identified five basic and eight value-added sub-sectors). For instance, foreign ownership in services supplying closed-user networks (*e.g.*, corporate data networks) is permitted up to 70 percent, while foreign ownership in facility-based basic services (*e.g.*, public voice service where the supplier owns its transmission facilities) is generally capped at 49 percent. Vietnam also allows foreign equity of up to 65 percent for non-facilities-based public telecommunications services (*i.e.*, services provided by a supplier that does not own its own transmission capacity, but contracts for such capacity, including submarine cable capacity, from a facilities-based supplier).

Opportunities for foreign firms to form joint-ventures in the facilities-based sector are further restricted by a policy requiring facilities-based operators to be majority state-owned firms, limiting the pool of such partners, and reinforcing government control over market entry. The share of the market accounted for by the top three telecommunications companies has grown to nearly 95 percent. The Vietnam Post and Telecommunications Group, which is owned by MOIC, has a majority stake in both Vinaphone and Mobiphone, the second and third largest mobile networks in Vietnam. In addition, the three largest telecommunications firms, which Vietnam had pledged to equitize, remain non-incorporated governmental assets, and subject to nontransparent governmental influence.

In the last several years, users frequently reported incidents of having no access to certain websites, including foreign-based social networking sites. Nevertheless, the inability to access legitimate websites appears, for most Internet service providers, to be occurring less frequently. The United States has raised concerns about these Internet restrictions with the Vietnamese government and will continue to monitor this issue closely.

Distribution Services

Vietnam maintains an ill-defined economic needs test for retailers who wish to open more than one outlet. The United States continues to seek greater clarity and transparency with respect to the distribution licensing regime.

Banking and Securities Services

Vietnamese banking regulations make a distinction between domestic "joint stock" banks (commercial banks with any amount of private share ownership) and “joint venture” banks (new banks set up expressly based on a joint venture agreement). Total cumulative foreign ownership in any domestic “joint stock” bank is limited to 30 percent of equity. In contrast, foreign equity is permitted up to 49 percent for “joint venture” banks.

New regulations aimed at improving the capital position of the banking industry have also introduced new requirements and restrictions, such as those for calculation of capital adequacy ratios, which can cause compliance-related difficulties. Foreign bank branches face restrictions, such as being limited to one office per province. Wholly-owned foreign subsidiary banks face fewer restrictions, but a three-year moratorium on new subsidiary licenses was announced in 2010, and only about 10 licenses are scheduled to be awarded when the moratorium is lifted.

As of September 15, 2012, foreign investors who have been operating profitably for at least two years in the banking, securities, or insurance sectors are now permitted to operate 100 percent foreign-owned securities firms in Vietnam (prior to that date, foreign ownership of securities firms operating in Vietnam was limited to 49 percent). Foreign investors may now own up to 50 percent or 100 percent (ownership shares of 50 percent to 99 percent are prohibited).

INVESTMENT BARRIERS

Vietnam’s Investment Law sets criteria designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions (“conditional sectors”).

Vietnam also has specific laws that apply to investment in conditional sectors, including banking, securities, insurance, mining, telecommunications, real estate, ports, and aviation. Investments in conditional sectors and other projects deemed sensitive are subject to extensive and additional review, sometimes requiring the Prime Minister's approval, which can often delay the approval of investment licenses.

All land in Vietnam is owned and managed by the government and, as such, neither foreigners nor Vietnamese nationals can own land. The 2006 Investment Law permits foreign invested enterprises to lease land for a period of 50 years and up to 70 years in special cases. Investors can obtain land use rights and mortgage both the structures erected on that land and the value of land use rights.

ELECTRONIC COMMERCE

Electronic commerce is growing rapidly in Vietnam. The 2006 Law on Electronic Transactions gave legal standing to electronic contracts and electronic signatures and allocated the responsibilities of parties with respect to the transmission and receipt of electronic data. Vietnam is currently drafting new regulations covering electronic commerce.

OTHER BARRIERS

The lack of transparency and accountability, along with widespread official corruption and inefficient bureaucracy continue to be problems. Competition among government agencies for control over business and investment has created confusing and overlapping jurisdictions and overly bureaucratic procedures that, in turn, create opportunities for corruption. Inadequate accountability systems contribute to these problems. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance overall transparency. The United States will continue to work with Vietnam to support these reform efforts and to promote greater transparency.

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,[4] USTR prepared a report that identified trade barriers that face U.S. exporters of GHGIRTs in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade.[5] The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at www.ustr.gov. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report, barriers to the exports of GHGIRTs are generally those identified in the NTE with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, which are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; local content requirements; investment restrictions, including requirements to partner with domestic firms; and high applied tariff rates for some countries. Progress in removing such barriers is noted below in the appropriate country chapter of the report. The reader is also referred to USTR's "Special 301" report pursuant to section 182 of the Trade Act of 1974. The "Special 301" report describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners; the 2013 report will be released later this year.

Concerning relevant multilateral activities, the United States continues to exercise leadership within the Asia Pacific Economic Cooperation (APEC) forum and the World Trade Organization (WTO) in pushing for increased liberalization of global trade in environmental goods and services, including GHGIRTs.

The Obama Administration has made green growth one of its top priorities. In 2011 in Honolulu, under the leadership of President Obama, APEC Leaders committed, as part of their efforts to promote green growth, to reduce tariffs on environmental goods to 5 percent or less by 2015 based on a list that would be developed in 2012. In 2012, in Vladivostok, APEC Leaders delivered on that commitment and reached

[4] Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. The Secretary of State has submitted its report to Congress identifying these 25 countries. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

[5] These 25 countries were identified in the Department of State's 2006 **"**Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment." They are: China; India; South Africa; Mexico; Brazil; Indonesia; Thailand; Kazakhstan; Malaysia; Egypt; Argentina; Venezuela; Uzbekistan; Pakistan; Nigeria; Algeria; Philippines; Iraq; Vietnam; Colombia; Chile; Libya; Turkmenistan; Bangladesh; and Azerbaijan. In 2008, Morocco replaced Azerbaijan on the list. The United States-Morocco Free Trade Agreement contains commitments, *inter alia*, to promote intellectual property rights, effectively enforce environmental laws, improve transparency, eliminate tariffs on GHGIRTs and open Morocco's market to U.S. environmental services firms.

consensus on a list of 54 credible environmental goods, including such core products as renewable and clean energy technologies, wastewater treatment technologies, air pollution control technologies, solid and hazardous waste treatment technologies, and environmental monitoring and assessment equipment. Currently, tariffs on these products can run as high as 35 percent in the region. The United States exported $27 billion of these environmental goods to the region in 2011, of which $1.2 billion faced tariffs above 5 percent. APEC regional trade in the products on the APEC List of Environmental Goods in 2010 totaled $185 billion, and APEC makes up 60 percent of world exports of these products. Reducing tariffs on these environmental goods will help APEC businesses and citizens access important environmental technologies at lower cost, which in turn will produce environmental benefits and improve the quality of life and living standards of people across the Asia-Pacific region due to a cleaner environment. It will also contribute significantly to APEC's core mission to promote free and open trade and investment.

In 2013, the United States will continue to play an active leadership role in APEC in close cooperation with Indonesia during its host year. The United States looks forward to working with other APEC economies in 2013 on a range of trade and investment initiatives, including the further facilitation of trade in environmental goods and services. We will also work towards implementation of our APEC commitments, and ensure that others do the same. In addition, we will continue to work with other like-minded and ambitious WTO Members to explore fresh approaches to removing trade and investment barriers to environmental goods directly relevant to addressing climate change, such as solar panels and wind and hydraulic turbines. We believe that such action could make an important contribution to both the WTO and the global climate negotiations.

In addition, we will build on the momentum created by APEC Leaders and continue to press for model TPP commitments on EGS, including immediate duty-free treatment for GHGIRTs, and substantial new market access for environmental and related clean energy services, as well as elimination of problematic LCRs.

APPENDIX II

APPENDIX

US Data for Given Trade Partners in Rank Order of US Goods Exports

(Values in Millions of Dollars)

	Trade Balance		Change	Exports*	Exports*	Change 2010/11		Imports**	Imports**	Change 2010/11		FDI***	FDI***	% Change	
Country	2011	2012	2011-12	2011	2012	Value	Percent	2011	2012	Value	Percent	2010	2011	2010-11	FDI Area
World	-727,392	-728,937	-1,545	1,480,432	1,546,455	66,023	4.5	2,207,824	2,275,392	67,569	3.1	3,790,918	4,155,551	9.6	Nonbank Holding Co, Finance/Ins, Manuf
Canada	-34,457	-32,489	1,968	280,890	291,758	10,868	3.9	315,347	324,246	8,900	2.8	289,535	318,964	10.2	Nonbank Holding Co, Manuf, Finance/Ins
Mexico	-64,487	-61,322	3,165	198,378	216,331	17,953	9.1	262,864	277,653	14,788	5.6	84,288	91,402	8.4	Manuf, Nonbank Holding Co, Finance/Ins
China	-295,422	-315,053	-19,631	103,939	110,590	6,651	6.4	399,362	425,644	26,282	6.6	58,509	54,234	-7.3	Manufacturing
Japan	-63,219	-76,341	-13,123	65,706	70,046	4,340	6.6	128,925	146,388	17,463	13.5	102,597	116,533	13.6	Finance/Insurance, Manufacturing
United Kingdom	4,645	-118	-4,762	55,881	54,817	-1,064	-1.9	51,236	54,935	3,699	7.2	514,887	549,399	6.7	Finance/Ins, Nonbank Holding Co, Manuf
Germany	-49,507	-59,739	-10,232	49,156	48,786	-370	-0.8	98,663	108,524	9,862	10.0	100,185	106,887	6.7	Nonbank Holding Co, Manuf, Finance/Ins
Brazil	11,208	11,621	413	42,944	43,717	773	1.8	31,736	32,097	361	1.1	64,165	71,101	10.8	Manuf, Finance/Insurance
Korea, Republic of	-13,247	-16,562	-3,315	43,415	42,318	-1,097	-2.5	56,661	58,880	2,219	3.9	26,954	31,751	17.8	Manufacturing, Finance/Insurance
Netherlands	18,899	18,387	-512	42,351	40,680	-1,671	-3.9	23,451	22,293	-1,158	-4.9	542,656	595,139	9.7	Nonbank Holding Co, Finance/Ins, Manuf
Hong Kong	32,048	32,039	-8	36,449	37,480	1,031	2.8	4,401	5,441	1,040	23.6	48,219	52,542	9.0	Nonbank Holding Co, Wholesale, Fin/Ins
Australia	17,301	21,672	4,371	27,542	31,208	3,666	13.3	10,241	9,536	-705	-6.9	123,492	136,249	10.3	Finance/Ins, Nonbank Holding Co, Mining
France	-12,237	-10,765	1,472	27,803	30,836	3,033	10.9	40,040	41,601	1,561	3.9	91,487	89,293	-2.4	Manuf, Fin/Ins, Nonbank Holding Co
Singapore	12,110	10,337	-1,773	31,223	30,561	-663	-2.1	19,113	20,224	1,111	5.8	104,309	116,616	11.8	Nonbank Holding Co, Manufacturing
Belgium	12,468	12,066	-402	29,899	29,398	-501	-1.7	17,431	17,332	-99	-0.6	48,496	52,888	9.1	Manuf, Fin/Ins, Wholesale trade
Switzerland	68	475	407	24,425	26,165	1,740	7.1	24,357	25,690	1,333	5.5	127,817	124,964	-2.2	Nonbank Holding Co, Manuf, Wholesale trade
Taiwan	-15,516	-14,490	1,026	25,889	24,370	-1,519	-5.9	41,405	38,860	-2,545	-6.1	21,783	15,803	-27.5	Manuf, Wholesale trade, Finance/Ins
United Arab Emirates	13,461	20,329	6,869	15,900	22,570	6,669	41.9	2,440	2,240	-199	-8.2	4,663	5,785	24.1	Mining, Wholesale trade, Manufacturing
India	-14,652	-18,183	-3,531	21,501	22,336	834	3.9	36,153	40,518	4,365	12.1	24,822	24,663	-0.6	Prof, scient, and tech services, Fin/Ins, Info
Chile	6,912	9,505	2,593	15,986	18,886	2,900	18.1	9,074	9,381	307	3.4	30,507	34,187	12.1	Finance/Insurance, Manufacturing
Saudi Arabia	-33,647	-37,549	-3,902	13,830	18,118	4,289	31.0	47,476	55,667	8,191	17.3	7,861	8,659	10.2	Nonbank Holding Co
Venezuela	-30,913	-21,095	9,819	12,343	17,631	5,288	42.8	43,256	38,726	-4,531	-10.5	9,716	12,110	24.6	Manufacturing, Nonbank Holding Co
Colombia	-8,793	-8,238	555	14,320	16,395	2,074	14.5	23,113	24,632	1,519	6.6	6,424	6,874	7.0	Mining, Manufacturing
Italy	-17,944	-20,958	-3,014	16,007	15,972	-34	-0.2	33,950	36,931	2,980	8.8	25,465	25,338	-0.5	Manuf, Information, Fin/Insurance
Israel	-9,103	-7,864	1,239	13,936	14,270	334	2.4	23,039	22,134	-905	-3.9	9,337	9,562	2.4	Manufacturing
Malaysia	-11,530	-13,079	-1,549	14,246	12,854	-1,392	-9.8	25,777	25,934	157	0.6	12,030	13,903	15.6	Manufacturing, Mining
Turkey	9,438	6,243	-3,195	14,657	12,527	-2,130	-14.5	5,220	6,285	1,065	20.4	4,041	5,203	28.8	Manufacturing, Wholesale Trade
Thailand	-13,931	-15,174	-1,243	10,899	10,953	53	0.5	24,830	26,127	1,297	5.2	10,505	11,308	7.6	Manufacturing, Banking
Russia	-26,333	-18,605	7,728	8,286	10,668	2,382	28.7	34,619	29,274	-5,345	-15.4	8,347	9,733	16.6	Manufacturing, Banking, Mining
Argentina	5,415	5,984	568	9,917	10,336	419	4.2	4,502	4,352	-149	-3.3	11,241	13,309	18.4	Manufacturing, Nonbank Holding Co
Panama	7,859	9,382	1,523	8,248	9,924	1,676	20.3	389	542	153	39.2	5,562	5,692	2.3	Finance/Ins, Mining, Wholesale trade
Spain	-168	-2,292	-2,124	10,849	9,497	-1,352	-12.5	11,017	11,789	771	7.0	54,839	58,619	6.9	Nonbank Holding Co, Manuf
Peru	1,731	2,931	1,200	8,336	9,357	1,022	12.3	6,605	6,426	-178	-2.7	6,364	7,753	21.8	Mining
Philippines	-1,440	-1,521	-81	7,705	8,060	355	4.6	9,145	9,580	436	4.8	5,382	5,321	-1.1	Manufacturing
Indonesia	-11,697	-9,983	1,714	7,414	8,014	600	8.1	19,111	17,997	-1,114	-5.8	10,604	11,591	9.3	Mining
South Africa	-2,229	-1,104	1,126	7,257	7,553	296	4.1	9,487	8,657	-830	-8.7	6,465	6,546	1.3	Manuf, Pro/Sci/Tech services,Wholesale trade
Ireland	-31,725	-25,919	5,807	7,644	7,390	-254	-3.3	39,370	33,309	-6,061	-15.4	157,565	188,274	19.5	Nonbank Holding Co, Manuf, Information
Costa Rica	-4,057	-4,844	-788	6,062	7,198	1,136	18.7	10,119	12,042	1,924	19.0	1,456	1,542	5.9	Manufacturing
Dominican Republic	3,127	2,732	-395	7,317	7,097	-220	-3.0	4,191	4,366	175	4.2	1,289	1,710	32.7	Manufacturing
Ecuador	-3,557	-2,918	639	6,065	6,567	502	8.3	9,622	9,485	-137	-1.4	1,199	1,201	0.2	Mining, Manufacturing
Guatemala	1,431	1,361	-71	6,145	5,913	-232	-3.8	4,714	4,553	-161	-3.4	1,064	1,100	3.4	

*US Total Goods Exports (f.a.s.); **US General Goods Imports (customs value); ***Stock of US Foreign Direct Investment Abroad

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

	Trade Balance		Change	Exports*	Exports*	Change 2010/11		Imports**	Imports**	Change 2010/11		FDI***	FDI***	% Change	
Country	**2011**	**2012**	**2011-12**	**2011**	**2012**	**Value**	**Percent**	**2011**	**2012**	**Value**	**Percent**	**2010**	**2011**	**2010-11**	**FDI Area**
Honduras	1,643	1,084	-559	6,144	5,733	-411	-6.7	4,501	4,649	148	3.3	999	930	-6.9	Manufacturing
Egypt	4,163	2,489	-1,675	6,222	5,485	-737	-11.8	2,059	2,996	938	45.6	12,224	14,581	19.3	
Sweden	-6,229	-4,966	1,263	5,258	5,238	-20	-0.4	11,488	10,204	-1,283	-11.2	24,865	26,953	8.4	Manufacturing, Nonbank Holding Co
Nigeria	-28,942	-14,016	14,926	4,912	5,114	202	4.1	33,854	19,130	-14,724	-43.5	4,974	4,994	0.4	Mining
Vietnam	-13,178	-15,643	-2,464	4,309	4,623	314	7.3	17,487	20,266	2,779	15.9	623	747	19.9	
Qatar	1,565	2,549	984	2,799	3,577	778	27.8	1,234	1,028	-205	-16.7	9,957	8,160	-18.0	
Norway	-4,671	-3,032	1,639	3,634	3,508	-126	-3.5	8,305	6,540	-1,765	-21.2	28,773	28,462	-1.1	Mining, Manufacturing
Austria	-6,593	-6,038	555	2,888	3,415	527	18.2	9,482	9,453	-29	-0.3	18,951	20,852	10.0	Nonbank Holding Co, Manufacturing
Poland	-1,241	-1,265	-24	3,137	3,361	224	7.2	4,378	4,626	248	5.7	13,502	12,327	-8.7	Manufacturing, Wholesale trade
New Zealand	408	-216	-624	3,571	3,223	-348	-9.7	3,163	3,439	277	8.7	6,203	6,741	8.7	Manuf, Finance/Ins, Nonbank Holding Co
El Salvador	886	502	-384	3,370	3,090	-280	-8.3	2,484	2,589	104	4.2	2,612	2,726	4.4	
Kuwait	-5,082	-10,338	-5,256	2,726	2,683	-43	-1.6	7,809	13,021	5,212	66.7	83	117	41.0	
Finland	-1,262	-2,578	-1,317	3,156	2,555	-601	-19.1	4,417	5,133	715	16.2	1,379	1,504	9.1	Manufacturing
Morocco	1,827	1,325	-502	2,822	2,258	-565	-20.0	996	933	-63	-6.3	445	350	-21.3	
Denmark	-4,517	-4,547	-30	2,243	2,218	-25	-1.1	6,760	6,764	5	0.1	10,381	14,034	35.2	Manuf, Information, Wholesale trade
Ukraine	680	584	-97	2,137	1,936	-201	-9.4	1,457	1,352	-105	-7.2	651	737	13.2	
Luxembourg	1,090	1,357	267	1,585	1,902	317	20.0	495	545	50	10.2	271,518	335,279	23.5	Nonbank Holding co., Finance/Insurance
Czech Republic	-1,664	-2,097	-433	1,680	1,829	149	8.9	3,344	3,926	582	17.4	4,886	5,261	7.7	Manufacturing
Oman	-774	393	1,167	1,434	1,747	313	21.8	2,208	1,354	-854	-38.7				
Paraguay	1,865	1,546	-319	1,975	1,743	-233	-11.8	110	197	87	79.1	85			
Jordan	393	556	163	1,454	1,712	258	17.7	1,061	1,156	95	9.0	99	145	46.5	
Hungary	-1,475	-1,650	-175	1,474	1,564	91	6.2	2,949	3,214	266	9.0	4,540	3,263	-28.1	Wholesale trade, Manuf
Pakistan	-1,843	-2,101	-258	1,987	1,529	-458	-23.1	3,830	3,630	-200	-5.2		762		
Angola	-12,095	-8,334	3,761	1,502	1,489	-13	-0.9	13,597	9,824	-3,774	-27.8	4,675	5,696	21.8	
Ghana	418	1,018	600	1,197	1,309	112	9.4	779	291	-488	-62.6	2,118	2,334	10.2	
Ethiopia	546	1,104	558	691	1,287	597	86.4	144	183	39	26.7	6	8	33.3	
Bahrain	695	508	-186	1,213	1,209	-4	-0.3	518	701	183	35.2	27,932	31,373	12.3	
Nicaragua	-1,545	-1,621	-76	1,058	1,128	70	6.6	2,603	2,749	146	5.6	268	320	19.4	
Portugal	-1,266	-1,510	-244	1,316	1,099	-218	-16.5	2,582	2,609	27	1.0	2,909	2,879	-1.0	Manuf, Finance/Ins, Wholesale trade
Kazakhstan	-854	-681	172	826	881	55	6.7	1,679	1,562	-117	-7.0	9,383	9,200	-2.0	
Romania	-523	-786	-263	912	833	-79	-8.7	1,435	1,619	184	12.8	1,490	1,434	-3.8	
Greece	256	-188	-444	1,121	801	-320	-28.6	865	989	123	14.3	1,798	1,252	-30.4	Manufacturing
Bolivia	-235	-916	-681	667	732	65	9.7	902	1,647	746	82.7		406		
Kenya	81	191	110	463	581	118	25.5	382	390	8	2.1	251	292	16.3	
Cambodia	-2,527	-2,465	61	186	226	41	21.9	2,712	2,692	-21	-0.8	4	10	150.0	
Sri Lanka	-1,783	-2,034	-251	303	224	-79	-26.0	2,086	2,257	172	8.2	150	156	4.0	
Congo, Dem Rep of	-440	158	598	166	199	33	19.9	606	41	-565	-93.2				
Brunei	161	71	-90	184	157	-27	-14.7	23	86	63	268.4	57	55	-3.5	
Laos	-33	8	41	26	33	7	27.5	59	25	-34	-57.5				
European Union - 27	-99,881	-115,716	-15,835	268,474	265,132	-3,341	-1.2	368,355	380,848	12,493	3.4	1,895,227	2,094,413	10.5	Nonbank Holding Co, Finance/Ins, Manuf

*US Total Goods Exports (f.a.s.); **US General Goods Imports (customs value); ***Stock of US Foreign Direct Investment Abroad

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