GUATEMALA

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs and Taxes

Tariffs

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

In addition, nearly all U.S. agricultural exports enter Guatemala duty free under the CAFTA–DR. Guatemala eliminated its remaining tariffs on rice on January 1, 2023 and is scheduled to eliminate tariffs on dairy products by 2025. In 2017, Guatemala eliminated its out-of-quota tariff for fresh, frozen, and chilled chicken leg quarters five years early. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than the reduction of the out-of-quota tariff. Guatemala is required under the CAFTA–DR to make TRQs available on January 1 of each year. Guatemala monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

Taxes

Guatemalan tax law requires that some companies that purchase goods and services from other companies withhold 15 percent of the value-added tax (VAT) paid, and seek refunds for the VAT credit that they cannot offset after two years. This process is onerous, and timely refunds are not guaranteed.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

U.S. companies have raised concerns that Guatemala’s Tax Authority (SAT) uses an inaccurate reference price database to determine the value of imported goods, erroneously applies database values as minimums rather than as a reference, and compares imports to dissimilar products in the database. Further, when SAT performs investigations of declared values, the review process often results in the detention of the imported product for 20 or more days. Appeals involve a lengthy, opaque process that has lasted up to four years.

In 2022, the U.S. Government engaged with the Guatemalan Government to help introduce an automated system to provide more transparency and help clear shipments more quickly on bond.

Guatemala ratified the WTO Trade Facilitation Agreement (TFA) on March 8, 2017. Guatemala is overdue submitting one transparency notification related to providing contact information regarding enquiry points. This notification was due to the World Trade Organization on February 1, 2020, according to Guatemala's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Guatemala requires product registration for food products (*e.g.*, dairy products) from every importer, as well as for animal feed and pet food. Importers are required to submit necessary documents to the Ministry of Public Health and Social Assistance (MSPAS) and receive approval before products are sold into the market, even if another importer has already registered that product. Industry has raised concerns that the process is burdensome and can delay the importation process by months. In addition, processed meat products require import permits from both MSPAS and the Ministry of Agriculture, Livestock, and Feed (MAGA).

Sanitary and Phytosanitary Barriers

In response to a U.S. Government request for more transparent quarantine protocols at ports, in 2021 MAGA published Ministerial Decree 57-2021, which establishes official quarantine protocols for plant and animal health. In addition, in response to industry complaints that quarantine inspections break the cold chain, the Intraregional Organization for Plant and Animal Health (OIRSA), to which MAGA delegates quarantine inspection and fumigation services, now conducts inspections within refrigerated spaces at Quetzal Port. OIRSA also authorized construction of a cold room within Santo Tomas Port, which is expected to become operational in 2023. OIRSA's continued inspection of all imported fresh produce causes delays and the U.S. Department of Agriculture has asked MAGA to establish a risk-based inspection system.

GOVERNMENT PROCUREMENT

Government institutions are required to use the online government procurement system, GUATECOMPRAS, to track Government of Guatemala procurement processes since March 2004. While GUATECOMPRAS initially improved the efficiency and transparency of government tendering processes, U.S. and Guatemalan company representatives have expressed reluctance to bid on Guatemalan public procurement tenders (goods, services, or infrastructure) published on GUATECOMPRAS because they view Guatemala's public procurement processes as designed to favor select, local companies with ties to government officials, municipal authorities, or congressional players. The Guatemalan congress is currently considering a new government procurement law that would create 24 different procurement modalities, of which only five modalities would appear to be competitive. The proposed reforms would also change GUATECOMPRAS to a system that could be used only as a record of historic information on government procurement. Experts have warned that the proposed reforms would weaken the use of GUATECOMPRAS as a transparency tool because each institution could arbitrarily decide what information to publish in the system for the non-competitive procurement modalities. The United States has engaged with Guatemala on these issues.

Foreign suppliers must appoint a national representative to represent the interest of the company in Guatemala.

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

INTELLECTUAL PROPERTY PROTECTION

Guatemala remained on the Watch List in the 2022 Special 301 Report. Although the country generally has a strong legal framework, and intellectual property (IP) protection appears to have improved slightly in 2022, concerns remain. IP enforcement activities remain limited and appear inadequate in relation to the scope of the problem due to resource constraints and poor coordination among law enforcement agencies. The production of counterfeit apparel with little interference or deterrence from law enforcement continues to be a significant concern. Other concerns include the sale of counterfeit pharmaceuticals and government use of unlicensed software. Major cable television providers and content distributors agreed in 2018 to not renew contracts to rebroadcast U.S. network signals due to signal piracy of U.S. broadcasted networks. However, cable signal piracy remains a problem and online piracy through Internet Protocol Television services is also a concern. The United States continues to urge Guatemala to ensure that its IP enforcement agencies receive sufficient resources and to strengthen enforcement, including with respect to criminal prosecution, administrative and border actions, and intergovernmental coordination to address widespread copyright piracy and commercial-scale sales of counterfeit goods. The United States will continue to engage Guatemala on these and other concerns, including through the Special 301 process, and will continue to monitor Guatemala's implementation of its IP obligations under the CAFTA–DR.

SERVICES BARRIERS

Professional Services

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Additionally, public notaries must be Guatemalan nationals.

INVESTMENT BARRIERS

A number of U.S. companies operating in Guatemala complain that complex and unclear laws and regulations and inconsistent judicial decisions effectively operate as barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is extremely time consuming, and civil cases can take many years to resolve. In Guatemala, government executive and judicial branch representatives have taken arbitrary actions and well-connected parties have used judicial authorities against U.S. investors. For example, a U.S. investor reports it was subject to repeated intimidation and harassment by law enforcement. In another case, a U.S. company undergoing seven years of criminalized tax litigation has withheld $200 million in planned investments to expand its presence in Guatemala as a result, citing the lack of transparency and consistency in the legal system.

SUBSIDIES

Export Subsidies

The Law for the Promotion and Development of Export Activities and Drawback, as amended in 2016 to replace an earlier tax incentive program, provides tax exemptions with a narrower scope, applying only to apparel and textile companies, as well as to information and communication technology service providers, such as call centers and business process outsourcing operations.

LABOR

The U.S. labor enforcement case brought against Guatemala under Article 16.2.1(a) of the CAFTADR was formally concluded in 2017 with the issuance of the panel's final report. Nevertheless, labor concerns—including with respect to the right of association, the right to organize and bargain collectively, and acceptable conditions of work—persist in the port, agriculture, apparel, and agricultural processing sectors.

OTHER BARRIERS

Bribery and Corruption

The CAFTA–DR contains public sector anti-bribery commitments and anticorruption measures in government contracting, designed to ensure that U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

U.S. stakeholders have expressed concerns that corruption in Guatemala constrains successful investment. The Ministry of Governance in Guatemala, which is responsible for security at ports, airports, and land borders in Guatemala operates through three police task force units known as DIPAFRONT (Ports, Airports, and Land Border Division), SGAIA (Anti-narcotics Analysis General Sub direction), and UCC (Container Control Unit). These units started operations in the middle of the pandemic, independently from the other operating authorities at ports, such as the MAGA and Guatemala's Customs authority, which have memoranda of understanding to carry out joint inspection. In response to a U.S. Coast Guard requirement, 100 percent of Guatemalan exports to the United States need to pass inspection by at least one of the three units. The Government of Guatemala is also subjecting imports to inspections by these authorities, and importers complain that inspectors are afforded unchecked discretion about which shipments to inspect and that inspections are not integrated into existing inspection processes, resulting in additional delays at already busy ports. As DIPAFRONT, SGAIA, and UCC have their own independent inspection ramps, importers report corruption at multiple steps to avoid shipments being sent through the secondary ramp.

HONDURAS

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs

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

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

Non-Tariff Barriers

Discriminatory Tax

Honduran Customs imposes a 15 percent sales tax on pork rib imports when the product description is in English. However, if the product description is in Spanish, based on Decree 05-2014, the pork ribs are considered basic necessities and are exempt from sales tax. The U.S. Government has asked the Ministry of Finance to revise Decree 05-2014 to treat pork cuts labelled in English the same as those labelled in Spanish.

Local Content Requirements

In June 2018 and June 2019, pork importers were required to purchase a quantity of Honduran live hogs from local producers at a price established by the Hog Producers Association. The established price per pound for live hogs was higher than the price of imported pork meat. Importers forced to purchase Honduran live hogs also faced costs for slaughtering and processing—costs they did not face in connection with imported pork meat. The quantity of live hogs that each importer had to purchase was based on the volume of pork that the importer brought into Honduras.

In 2020, approximately 80 percent of the hog farms in Honduras were lost due to hurricanes Eta and Iota, and domestic pork production could not meet domestic demand in 2020 or 2021. In 2022, after agreement between the Honduran producers and pork importers, the mandatory bilateral purchase agreement between producers and importers was lifted**.**

SANITARY AND PHYTOSANITARY BARRIERS

Sanitary Authorization for the Import of Raw Materials and Additives for Food and Beverage Production

On November 3, 2020, the Sanitary Regulation Agency (ARSA) implemented a new import requirement called the Sanitary Authorization for the Import of Raw Materials and Additives for Food and Beverage Production. This import requirement is redundant with the existing import permit mandated by the National Plant, Animal Health and Food Safety Service (SENASA) for cuts of meat that match ARSA's definition of raw materials for food consumption. Honduras notified this regulatory requirement to the World Trade Organization in April 2019. The U.S. Government continues to engage with ARSA to facilitate trade.

INTELLECTUAL PROPERTY PROTECTION

The United States continues to have significant concerns regarding intellectual property (IP) protection and enforcement in Honduras, including with respect to online and software piracy, cable signal piracy, and the distribution and sale of counterfeit and pirated goods. The United States will continue to urge Honduras to fully enforce its IP laws. Additionally, the United States continues to urge Honduras to provide greater clarity regarding the scope of protection for geographical indications (GIs), particularly ensuring that all producers are able to use common food names, including any that are elements of a compound GI. The United States continues to monitor Honduras's implementation of its IP obligations under the CAFTA–DR.

SERVICES BARRIERS

Distribution Services

U.S. firms have reported challenges working with local distributors of products from the United States. Citing the 1977 Honduran Law on Agents, Distributors and Representatives of Domestic and Foreign Companies (Decree Law No. 549), Honduras has required foreign firms to enter into agreements with local distributors to supply local markets, and allowed distributors to register as the sole distributor of certain products or brands, which has at times resulted in U.S. exports being barred from import. The application of certain requirements under Decree Law No. 549 that restricted the ability of U.S. producers to distribute U.S. products in Honduras had been eliminated with the entry into force of the CAFTADR. However, U.S. firms raised concerns during 2022, under the CAFTADR, with certain restrictions being applied to U.S. exports.

INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the country's coastlines and national boundaries. However, the law allows foreigners to purchase properties, with some acreage restrictions, in designated zones established by the Ministry of Tourism in order to construct permanent or vacation homes. Inadequate land title procedures have led to investment disputes, including complaints of fraud and official malfeasance, harming U.S. nationals who are landowners in Honduras.

SUBSIDIES

Honduras currently provides tax exemptions to firms in free trade zones, and employs the following export incentive programs: Free Trade Zone of Puerto Cortes, Export Processing Zones, and Temporary Import Regime, providing a competitive advantage to qualifying companies.

LABOR

The United States and Honduras continue to meet through their contact points, under Article 16.4.3 of the CAFTA–DR. This engagement includes reviewing Honduras' progress toward implementing specific recommendations from the United States that resulted from a U.S. Department of Labor (DOL) report and the United States–Honduras Labor Rights Monitoring and Action Plan. The DOL's report, published in 2015 in response to a submission from the public under the CAFTA–DR, raised significant concerns regarding labor law enforcement in Honduras, especially with respect to the right to freedom of association, the right to organize and bargain collectively, the minimum age for work and the worst forms of child labor, and acceptable conditions of work in various economic sectors, including apparel, automotive parts, and agriculture.

HONG KONG

Hong Kong, China (Hong Kong) is a separate customs territory from mainland China, and the Hong Kong Basic Law states that Hong Kong can enter into international agreements in commercial, economic, and certain other matters. Hong Kong is a separate and founding Member of both the World Trade Organization and the Asia-Pacific Economic Cooperation forum.

On June 30, 2020, the Chinese Government in Beijing imposed a National Security Law (NSL) on Hong Kong. Among other provisions, Article 31 of the NSL stipulates that an incorporated or unincorporated body, which may include domestic corporations, international businesses, international non-governmental organizations, and media outlets, can be prosecuted for violating the NSL.

On July 14, 2020, following imposition of the NSL, as well as other actions taken by Beijing to undermine Hong Kong's autonomy, the U.S. President issued Executive Order 13936, reflecting a presidential determination that Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to China under the particular laws set out in the Executive Order, and that the situation with respect to Hong Kong constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Accordingly, Executive Order 13936 directed U.S. Government agencies to suspend or eliminate certain policy exemptions under U.S. law that had given Hong Kong differential treatment in relation to China.

INTELLECTUAL PROPERTY PROTECTION

Hong Kong generally provides strong intellectual property (IP) protection and enforcement, and for the most part, has strong IP laws in place. In June 2020, Hong Kong passed a Trade Marks Ordinance that will enable application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in Hong Kong. Implementation of an international trademark registration system is expected in 2023, at the earliest. Hong Kong also has a dedicated and effective enforcement capacity, a judicial system that supports enforcement efforts with deterrent fines and criminal sentences, and youth education programs that discourage IP-infringing activities.

Hong Kong's failure to modernize its copyright system has allowed it to become vulnerable to digital copyright piracy, particularly from streaming websites and illicit streaming devices, with negative ramifications for businesses and innovators. In 2011 and 2014, Hong Kong's Commerce and Economic Development Bureau (CEDB), the government entity in charge of IP policy, tried but failed to pass updated copyright legislation. In November 2021, CEDB reintroduced the 2014 Copyright Bill for a three-month public consultation period. Subsequently, Hong Kong published the draft bill in the government gazette in May 2022 and adopted the final Copyright (Amendment) Ordinance 2022 through publication in the gazette in December 2022, to come into operation on May 1, 2023. However, right holders are concerned that the new legislation does not introduce specific provisions to combat illicit streaming devices.

The Customs and Excise Department of Hong Kong investigates IP crimes and routinely seizes IP-infringing products arriving from mainland China and elsewhere. However, U.S. Government officials and private sector stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong. These products are typically destined for both the Hong Kong market and markets outside of Hong Kong.

INDIA

TRADE AGREEMENTS

The United States–India Trade Policy Forum

The United States and India launched the Trade Policy Forum (TPF) in July 2005 and signed an agreement in March 2010 that formally established the TPF as the primary mechanism for discussions of trade and investment issues between the United States and India. The U.S. Trade Representative and the Indian Minister of Commerce and Industry met in Washington, DC for the thirteenth TPF Ministerial in January 2023.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

India's average Most-Favored-Nation (MFN) applied tariff rate was 18.3 percent in 2021 (latest data available), which was the highest of any major world economy, with an average applied tariff rate of 14.9 percent for non-agricultural goods and 39.2 percent for agricultural goods.

India maintains high applied tariffs on a wide range of goods, including vegetable oils (as high as 45 percent); apples, corn, and motorcycles (50 percent); automobiles and flowers (60 percent); natural rubber (70 percent); coffee, raisins, and walnuts (100 percent); and, alcoholic beverages (150 percent). In addition, India maintains very high basic customs duties, in some cases exceeding 20 percent, on drug formulations, including life-saving drugs and finished medicines listed on the World Health Organization's list of essential medicines. High tariff rates also present a significant barrier to trade in other agricultural goods and processed foods (*e.g.*, poultry, potatoes, citrus, almonds, pecans, apples, grapes, canned peaches, chocolate, cookies, frozen french fries, and other prepared foods used in fast-food restaurants).

India's bound tariff rates on agricultural products are among the highest in the world, averaging 113.1 percent and ranging as high as 300.0 percent. Given the large disparity between World Trade Organization (WTO) bound and applied rates, India has considerable flexibility to change tariff rates at any time, creating tremendous uncertainty for U.S. exporters. The Government of India took advantage of this tariff flexibility in the 2019/2020 budget by increasing tariffs without any notice or public consultation process on approximately 70 product categories, including those covering key U.S. exports in the agricultural, information and communication technology, medical devices, paper products, chemicals, and automotive parts sectors. In its 2020/2021 budget, India further raised tariffs for 31 product categories, including cotton, palm oil, and denatured ethanol for select end-use, and raised duties on solar inverters and solar lanterns. In its 2021/2022 budget, India further raised tariff rates on imported headphones, loudspeakers, and smart meters used by power distribution companies.

In June 2019, following the U.S. withdrawal of India's preferential tariff benefits under the Generalized System of Preferences (GSP) program, India implemented retaliatory tariffs ranging from 1.7 percent to 20 percent on 28 different products imported from the United States, including almonds, apples, walnuts, chickpeas, lentils, phosphoric acid, boric acid, diagnostic regents, binders for foundry molds, select steel and aluminum products, and threaded nuts. While the decision to implement these tariffs followed the U.S. withdrawal of India's GSP benefits, India had originally announced the intention to adopt the tariffs in June 2018 in retaliation against the U.S. decision to implement tariffs on U.S. imports of steel and aluminum products under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862). The United States continues to urge India to address the common problem of excess capacity in the global steel and aluminum sectors, rather than maintaining the retaliatory tariffs. In July 2019, the United States launched a WTO dispute settlement proceeding against India challenging the retaliatory tariffs. A WTO panel was established in October 2019; the panel proceedings are ongoing.

Taxes

Since 2018, India has applied a 10 percent social welfare surcharge on imports, which is assessed on the value of other duties rather than the customs value of the imported product. Certain products are exempted from the surcharge pursuant to official customs notifications. India routinely changes the surcharge on a range of agricultural products. A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

Non-Tariff Barriers

India maintains various forms of non-tariff barriers on three categories of products: banned or prohibited items which are denied entry into India (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, certain livestock products and certain chemicals); and, items such as pharmaceuticals and corn under a tariff-rate quota that are importable only by government trading monopolies and that are subject to cabinet approval regarding import timing and quantity of imports.

While the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industry (MOCI) maintains a list of restricted items on its website, India often fails to observe other transparency requirements, such as publication in the Gazette of India of the timing and quantity of restrictions, and notification to relevant WTO committees.

Import Restrictions

To manage domestic oversupply, the Indian Government began imposing restrictions on imports of various pulses in 2017, based on local supply and demand conditions. On February 11, 2022, India issued a notification to restrict the import of mung beans. With the issuance of MOCI notification no. 63/2015-2020 on March 29, 2022, imports of pigeon peas and black gram lentils are on India's unrestricted list until March 31, 2023, and imports are allowed without any quantitative restrictions.

India applies restrictions on boric acid imports, including arbitrary import quantity approval restrictions and other requirements that only apply to imports. Long periods of time can pass without the issuance of any import licenses. In addition, the import application specifies that non-insecticidal boric acid can only be imported directly by a domestic manufacturer, which prevents independent traders from importing boric acid for resale purposes. Meanwhile, domestic producers continue to be able to sell boric acid for non-insecticidal use, subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. India has cited state-level court cases in Kerala and Gujarat endorsing the legal rationale for applying the restriction on boric acid imports.

Import Licensing

India distinguishes between goods that are new and those that are secondhand, remanufactured, refurbished, or reconditioned when assessing whether import licenses are required. India allows imports of secondhand capital goods by end users without an import license provided the goods have a residual life of at least five years. India requires import licenses for all remanufactured goods because India does not recognize that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from new materials. Refurbished items must be no more than seven years old and have a remaining life span of at least five years. In addition, U.S. stakeholders have reported that obtaining an import license for remanufactured goods is onerous. Stakeholders noted excessive details are required in the license application, quantity limitations are set for specific parts, and long delays occur between application submission and the grant of a license. A Chartered Engineer's Certificate is also required to import both refurbished goods and used manufactured goods.

Customs Barriers and Trade Facilitation

India's tariff rates, in addition to being announced with the annual budget, are modified on an *ad hoc* basis through notifications in the Gazette of India and are subject to numerous exemptions that vary according to the product, user, intended use, or specific export promotion program. This renders India's customs system complex and open to administrative discretion.

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. Indian customs officials sometimes reject the declared transaction value of an import, especially if it is a product for which India maintains benchmark prices, potentially raising the cost of exports beyond what is expected given India's applied tariff rates. U.S. walnut exporters have raised concerns that Indian importers are under-invoicing certain imported products, disadvantaging U.S. trade. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have reported being subject to excessive searches and seizures of imports.

India's customs authority generally requires extensive clearance documentation, which leads to frequent and lengthy processing delays. India's complex tariff structure—including the provision of multiple exemptions that vary according to product, user, or intended use—also creates uncertainty and contributes to delays in customs approvals.

Medical Device Price Controls

In February 2017, India's National Pharmaceutical Pricing Authority (NPPA) issued an order to cap prices of coronary stents. Subsequently, knee implants were brought under price control under paragraph 19 of the Drugs (Prices Control) Order 2013 (DPCO) in August 2017. In 2019, NPPA moved knee implants to price monitoring under paragraph 20 of the DPCO, allowing for a 10 percent price increase, but subsequently reinstated the price ceiling in 2020. U.S. companies have raised concerns noting that price controls for cardiac stents and knee implants do not differentiate on the basis of the cost of production or technological innovation, which dissuades U.S. companies from serving the market.

Ethanol Import Restrictions

Despite ambitious targets for blending ethanol with gasoline, India prohibits the importation of ethanol for fuel use. In addition, in 2018, the DGFT amended Schedule I (Import Policy) of the Indian Trade Classification (Harmonized System, HS) of Import Items, 2017 through Notification 27/2015-2020, and restricted biofuel imports (HS 2207.20, HS 2710.20, and HS 3826) for non-fuel use to actual users. As of May 2019, MOCI Notification 6/2015-2020 requires an import license for importing biofuels (HS 2207.20, HS 2710.20, and HS 3826). The 2019 regulation also required that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

Agriculture Subsidies

India provides a broad range of assistance to its large agricultural sector, including credit subsidies, debt waivers, crop insurance, and subsidies for inputs (such as fertilizer, fuel, electricity, and seeds) at both the central government and state government levels. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government's Minimum Support Price (MSP) program, which helps ensure that farmers receive minimum prices that are announced before the planting season. Rice and wheat account for the largest share of products procured by the MSP and are distributed through India's public distribution system. For example, in crop year 2020/2021, the Indian Government purchased 1.6 million metric tons (9.19 million 170 kg bales) of cotton through announced MSP operations at a cost of nearly $3.6 billion. India's announcement of MSPs can have the effect of providing a subsidy to the entire crop by distorting market prices and bolstering planting decisions, resulting in overproduction and limited demand for imports. In addition, in certain years and for specific products, states have provided additional incentives in the form of "bonuses" above the MSPs announced by the Government of India.

India also maintains a large and complex series of programs that form the basis of its public food stockholding program. India maintains stocks of food grains not only for distribution to poor and needy consumers, but also to stabilize prices through open market sales. In the past, India has used export subsidies to reduce government-held stocks, and it has permitted exports of certain agricultural commodities (*e.g.*, wheat) from government public-stockholding reserves at below the government's costs.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In addition to discussing technical barriers to trade matters with Indian officials through the TPF, the United States has discussed such matters at, and on the margins of, meetings of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

Polyethylene – Quality Control Order

In January 2020, India notified the WTO about the Polyethylene Material for Moulding and Extrusion Quality Control Order (QCO). On April 15, 2021, the Ministry of Chemicals and Fertilizers published an order establishing an initial implementation date of October 15, 2021. The polyethylene QCO introduced and mandated labeling requirements based on the Indian Standard IS 7328:2020 for polyethylene material for molding and extrusion. The QCO requires manufacturers to label the smallest bag or individual unit package delivered to the customer with a "designation code" identifying a range of information about the packaged polyethylene product, such as grades, properties, and applications. This type of package labeling for polyethylene products, if implemented, would be unique to India. In March 2021, the U.S. Government and U.S. industry raised concerns over the polyethylene QCO at the WTO, highlighting specific concerns regarding the complexity of the labeling requirements and offered an alternative solution to meet the requirements. While the date of implementation has been postponed until April 3, 2023, as of December 31, 2022 the Ministry of Chemicals and Fertilizers had not modified the QCO. U.S. industry has expressed potential difficulties complying with the QCO in its current form.

Food Safety Standards – Alcoholic Beverages

In July 2019, the Food Safety and Standards Authority of India (FSSAI) published its Food Safety Standards (Alcoholic Beverages) Amendment Regulations, and notified the amendments to the WTO. The amendments revised FSSAI's 2018 mandatory alcoholic beverage standards, which took effect in April 2019. In June 2020, the FSSAI issued a directive to operationalize certain provisions of the standards, including adding non-alcoholic beer as a separate product category and permitting the use of new colors and additives in distilled spirits. The FSSAI has not clarified the timeline for enforcement of its amended regulations. Although the FSSAI addressed several of the issues that the United States raised with India, some concerns remain, including: (1) the establishment of analytical parameters for a range of naturally-occurring components in distilled spirits; (2) minimum and maximum requirements for ethyl alcohol; (3) the lack of explicit protection for Bourbon, American Rye Whiskey, and Tennessee Whiskey as distinctive products of the United States; and, (4) a lack of clarity on definitions related to brand owners, date markings, non-retail containers, and multi-unit packs. The United States raised this issue through the TPF and submitted comments through the WTO TBT Committee.

Foreign Facilities Registration

On October 10, 2022, the FSSAI issued Order F. No. TIC-B02/2/2022-IMPORTS-FSSAI. The order requires the competent authorities of exporting countries to provide a list of exporters of milk and milk products; meat and meat products, including poultry and fish; egg powder; infant food; and, nutraceuticals to India in the mandated FSSAI format. India has not provided a complete list of HS codes for the affected products. The published FSSAI order appears to include onerous requirements for registration. The effective implementation date of the published FSSAI order was February 1, 2023. It appears that India did not take comments into account between WTO notice and the finalization of the measure.

Dairy Products

India imposes onerous requirements on dairy imports. India requires dairy products intended for food be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin, and that exporting countries certify to these conditions. India has explained that its requirement is based on religious and cultural grounds. This requirement, along with the 2022 dairy health certificate requirements, new facility registration requirements, and high tariff rates continue to hamper market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. The United States continues to press the Indian Government, including through the TPF, to provide greater access to the Indian dairy market.

Mandatory Domestic Testing and Certification Requirements for Equipment

In September 2017, India's Ministry of Communications, Department of Telecommunications, published the Indian Telegraph (Amendment) Rules, which require all telegraph equipment to undergo mandatory testing and certification. Under these rules, in 2019 India implemented the Mandatory Testing and Certification for Telecom Equipment (MTCTE) procedures, which require local security testing for telecommunication products. In May 2021, India's Telecommunication Engineering Center proposed new implementing procedures for the MTCTE program and then further expanded the scope in September 2021 to require mandatory testing for 175 products. U.S. industry remains concerned with the in-country testing and certification requirements. The United States, bilaterally through the TPF and multilaterally in the WTO TBT Committee, has urged India to reconsider its domestic testing and certification requirements; to accept test results from International Laboratory Accreditation Cooperation accredited labs; and, to adopt the use of the Common Criteria Recognition Arrangement.

The United States continues to raise concerns that U.S. electronics and information and communication technology manufacturers have expressed regarding the Ministry of Electronics and Information Technology's (MEITY) Compulsory Registration Order (CRO). The policy, which took effect in January 2014, mandates that manufacturers register their products and have them certified by laboratories accredited by the Bureau of Indian Standards, even if the products have already been certified by accredited international laboratories. In October 2021, India increased the coverage of the CRO to 63 product categories and U.S. industry reports MEITY plans to continue to expand the CRO coverage. U.S. industry has cited the following as continued issues: lack of government testing capacity; a cumbersome registration process; canceled registrations due to administrative reasons that are unrelated to safety; and, additional compliance costs that can exceed tens of millions of dollars, including costs associated with factory-level and component-level testing.

The United States has recommended that the Indian Government recognize internationally accredited labs, harmonize labeling requirements with global practices, harmonize the validity period of test reports and certification, and eliminate retesting requirements. The United States raised this issue bilaterally, including during technical exchanges through the TPF, and multilaterally in the WTO TBT Committee.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about India's sanitary and phytosanitary (SPS) related trade restrictions in bilateral and multilateral fora, including the TPF, the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee), and the Codex Alimentarius Commission. The United States will continue to make use of all available fora with a view to securing the entry of U.S. agricultural products, including dairy products, alfalfa hay, dried distillers' grains, fish feed, and pet food, among others, into the Indian market.

Foods Derived from Biotechnology Crops

Products derived from modern biotechnology must be approved by the Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. The Food Safety and Standards Act of 2006 includes specific provisions for regulating food products derived from genetically engineered (GE) products. India's biotechnology approval processes are also slow, opaque, and subject to political influences. The uncertain approval process continues to hamper GE product registrations needed to facilitate trade in food and feed products.

FSSAI Order on Non-Genetically Modified and Genetically Modified-Free Certificates

In March 2021, the FSSAI implemented an order requiring a non-Genetically Modified (non-GM) origin and "Genetically Modified free" (GM-free) certificate for 24 listed products. Each consignment of these products entering India must be accompanied by (1) a non-GM origin and GM-free attestation on the phytosanitary or health certificate that contains the information specified in FSSAI's order of August 21, 2020, or (2) a non-GM origin and GM-free certificate issued by a regional (*i.e.*, state level) government authority of the exporting country. The 24 products include grains, oilseeds, fruits, and vegetable products, regardless of whether GE varieties of those crops are in commercial production or are being exported to India. India has not provided any scientific or risk-based justification for the requirement. The United States and several other countries have pressed India to rescind the requirement in comments submitted to the WTO TBT and SPS Committees, and continue to engage the Indian Government, including the FSSAI, on the order.

Health Certificates

On September 26, 2022, the FSSAI issued a clarification notice to its earlier notification F. No. 1829/Health Certificate/FSSAI/Imports (2021). The notice states that the FSSAI will require a health certificate for the import of milk and milk products, pork and pork products, and fish and fish products. This certificate must incorporate all FSSAI-mandated food safety related requirements/attestations necessary for import clearance in India. While the original entry into force date was January 1, 2023, it was delayed until further notice following comments from trading partners, including the United States. The proposed certificate duplicates a number of attestations already required by the Department of Animal Husbandry, Dairying, and Fisheries, but also requires new attestations that are not relevant to food safety or based on science. India has continued to add additional commodities to the list of products that require the new certificate. If implemented as written, the measure is likely to cause unnecessary duplication, disrupt supply chains, increase costs for producers, and impede market access for these U.S. commodities.

Distiller's Dried Grains with Solubles

India's regulatory requirements on distiller's dried grains with solubles (DDGS) remain unclear. Since 2015, the GEAC has received at least 11 applications from Indian importers to import U.S. DDGS. Local feed companies, along with the U.S. Government, continue to advocate that DDGS be exempted from further regulatory requirements, noting that DDGS are a processed product, and pose no risk to the environment. In July 2018, the GEAC formed the Sub-Committee on Guidelines for Imports of Animal Feed to establish procedures for applications related to the imports of animal feeds, including DDGS. The Sub-Committee submitted recommendations for approval to the GEAC in November 2019. As of February 2023, the GEAC has not officially confirmed that it will not regulate DDGS as living modified organisms.

In addition, unclear jurisdiction for the approval process for animal feed continues to complicate the process. For example, in December 2019, the FSSAI published Direction 1-95, announcing new requirements for commercial animal feeds and feed materials that are manufactured, imported, or distributed in India. Prior to the publication of Direction 1-95, however, the FSSAI had not regulated the manufacture, import, or distribution of either commercial animal feeds or feed ingredients in India.

Alfalfa Hay

The United States continues to pursue market access for alfalfa hay. The U.S. Department of Agriculture Animal and Plant Health Inspection Service and India's Ministry of Agriculture and Farmer's Welfare held several rounds of technical discussions to address India's requirements. In 2021, India and the United States agreed to a framework for bilateral market access for several agricultural products, including conventional and GE alfalfa hay from the United States. In August 2022, the GEAC issued a "no objection" to imports of GE alfalfa hay from the United States, and referred the matter to the FSSAI. In October 2022, India's FSSAI raised concerns regarding the approval of GE animal feed imports, impeding additional progress on this issue.

Poultry

In 2012, the United States commenced WTO dispute settlement proceedings against India's import prohibitions on various agricultural products from the United States, including poultry and poultry products, ostensibly due to concerns regarding avian influenza. The WTO panel and Appellate Body issued reports in favor of the United States. In 2016, the United States requested authorization from the WTO Dispute Settlement Body (DSB) to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" to which the parties agreed. The U.S. request was referred to arbitration. In April 2017, India requested the establishment of a compliance panel, asserting that it had enacted a revised avian influenza measure that complied with India's WTO obligations. The proceedings have been ongoing since 2018. The United States and India have requested postponement of the issuance of the arbitrator's and compliance panel's decisions while the parties discuss potential resolution of the dispute. The United States continues to monitor market access issues related to poultry, such as overly burdensome testing requirements.

Plant Health Issues

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that do not appear to be based on risk assessments and that constrain U.S. grain and pulse exports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success.

India requires methyl bromide (MB) fumigation at the port of origin as a condition for the importation of pulses. This type of fumigation is not permitted in the United States, so the United States requested that India permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival, to which India agreed. India has granted a series of extensions allowing MB fumigation on arrival but has offered no permanent solution. In April 2018, the Indian Government confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas, indefinitely until both parties come to an agreement on the U.S. systems-based approach. The U.S. walnut industry requested a change to India's fumigation protocol to allow sulfuryl fluoride and phosphine in place of MB. However, the United States is still awaiting official approval of such change through notification in the Indian Gazette. Similarly, the United States is seeking approval for an alternative treatment to MB fumigation for U.S.-origin in-shell pecans, recommending either a cold treatment or a hot water bath treatment for in-shell pecans. The United States is awaiting a response from the Indian Ministry of Agriculture & Farmers Welfare's Directorate of Plant Protection, Quarantine and Storage as well as approval through notification in the Indian Gazette.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy and, as a result, its government procurement practices and procedures vary among the states, between the states and the central government, and among different ministries within the central government. India also provides preferences to Indian micro, small and medium-sized enterprises and to state-owned enterprises. In defense procurements, India's offset program requires companies to invest 30 percent or more of the acquisition cost of contracts above the threshold value in Indian-produced parts, equipment, or services; a requirement that continues to prove challenging for manufacturers of high-technology equipment to meet given changing rules and limited opportunities.

In June 2020, the Department of Promotion of Industry and Internal Trade issued the Public Procurement (Preference to Make in India) Order 2020, a revision to the 2017 procurement order mandating preferences for domestically manufactured goods. The rule was updated again in September 2020 and took immediate effect, instructing each ministry or department to draft a follow-on procurement order that favors domestic suppliers whose products contain 50 percent or more local content, and permitting ministries and departments to mandate higher local content percentages that could be used to benefit Indian suppliers. Products that contain less than 20 percent local content are categorized as "non-local suppliers."

The August 2020 changes to General Financial Rules section 161 state that global tender enquiries may not be accepted under $31 million and further reductions of the minimum local content requirement cannot be implemented without permission of an appropriate authority. Furthermore, companies must use a third-party or internal auditor to certify the amount of local content that will be used if the value is equal to or greater than 10 crore or 100 million rupees (approximately $1.22 million).

On September 23, 2020, the Ministry of New and Renewable Energy released an order reserving a list of 80 products, including solar cells, modules, wind turbines, and electrical equipment for hydro and biogas for bidding only by suppliers with 50 percent or more local content, irrespective of the purchase value. The Ministry of Power also reserved 78 products for local procurement through a similar order published on June 17, 2021.

In April 2020, MEITY issued a notification that entities must procure cellular mobile phones only from local suppliers meeting the local content requirement of 50 percent, irrespective of purchase value. A September 2020 MEITY notification specified the mechanism for calculation of local content for: (1) desktop PCs; (2) thin clients; (3) computer monitors; (4) laptop PCs; (5) tablets; (6) dot matrix printers; (7) contact and contactless smart cards; (8) LED products; (9) biometric access control/authentication devices; (10) biometric fingerprint sensors; (11) biometric iris sensors; (12) servers; and, (13) cellular mobile phones.

India is not a party to the WTO Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since February 2010.

INTELLECTUAL PROPERTY PROTECTION

India remained on the Priority Watch List in the 2022 Special 301 Report due to lack of progress on long-standing intellectual property (IP) concerns raised in prior Special 301 Reports. The 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) includes physical and online marketplaces located in or connected to India. The United States and India continue to engage on a range of IP challenges facing U.S. companies in India with the intention of creating stronger IP protection and enforcement in India.

In the field of copyright, policy uncertainty and ineffective enforcement remain concerns. Copyright holders continue to report high levels of piracy, particularly online. Court cases and government memoranda raise concerns that a broad range of published works will not be afforded meaningful copyright protection. Amending Section 31D of the Indian Copyright Act to permit statutory licensing of interactive transmissions, as recommended by a Parliamentary committee, would have severe implications for right holders who make their content available online. A law that criminalizes the illicit camcording of films is also absent. The granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses have raised concerns regarding the strength of copyright protection in India. Amendments to the Indian Copyright Act needed to bring India’s domestic legislation into alignment with international best practices are absent. India’s decision in 2021 to abolish the Intellectual Property Appellate Board (IPAB) and redirect matters previously handled by the IPAB to courts has created uncertainty around adjudication of IP cases and copyright royalty rate setting.

In the field of patents, several factors negatively affect stakeholders’ perception of India’s overall IP regime, investment climate, and innovation goals. Patent applicants continue to face expensive and time consuming pre- and post-grant oppositions, long waiting periods to receive patent grants, and excessive reporting requirements. Concerns remain with respect to whether Indian authorities will treat as confidential sensitive business information that parties are still required to disclose on a revised “Statement of Working of Patents” (Form 27). The potential threat of patent revocations, lack of presumption of patent validity, and the narrow patentability criteria under the Indian Patents Act impact companies across different sectors. In the pharmaceutical sector, the United States continues to monitor the restriction on patent-eligible subject matter in Section 3(d) of the Indian Patents Act and its impacts. Pharmaceutical stakeholders continue to raise concerns as to whether India has an effective system for protecting against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. Stakeholders also express concerns as to whether India has an effective mechanism for the early resolution of potential pharmaceutical patent disputes.

India’s overall IP enforcement remains inadequate. U.S. brand owners also continue to report excessive delays in trademark opposition proceedings and a lack of quality in examination. Finally, U.S. and Indian companies have identified trade secret protection as a growing concern and expressed interest in eliminating gaps in India's trade secrets regime, such as through the adoption of trade secret legislation that comprehensively addresses these concerns.

SERVICES BARRIERS

The Indian Government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity, and foreign participation in professional services is significantly restricted. In addition, barriers to digital trade and electronic commerce, such as those imposed on electronic payment providers, have knock-on effects on a wide variety of services.

Audiovisual Services

The Telecommunications Regulatory Authority's regulations on content aggregation and distribution do not allow bundling of channels or certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled and sold by domestic partners without a large local presence or sales force. These regulations cause difficulties for small and international content providers because these companies must interact with each of the 60,000 local cable operators, radio broadcasters, and television broadcasters they seek to target.

There are also several limits on foreign ownership in the audiovisual and media sectors, namely cable networks (49 percent); FM radio (26 percent); head end in the sky (74 percent); direct-to-home (DTH) broadcasting (74 percent); teleports (74 percent); news broadcasting (26 percent); and, newspapers (26 percent). In August 2019, the Indian Government allowed foreign direct investment (FDI) of up to 26 percent for digital media firms that upload and stream news and current affairs.

Distribution Services

India imposes certain restrictions on FDI in the retail industry. With respect to single-brand retail, foreign investments exceeding 51 percent are contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian sources, preferably from small and medium-sized enterprises. India has modified the requirements in recent years, including by allowing firms to offset the local sourcing requirement by sourcing products from India for global supply chains.

India caps foreign ownership in the multi-brand retail sector at 51 percent and leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is subject to conditions, including: (1) a minimum investment of approximately $100 million, at least 50 percent of which must be in "back-end infrastructure" (*e.g.*, processing, distribution, quality control, packaging, logistics, storage, and warehousing); (2) a requirement to operate only in cities that have been identified by the relevant state government; and, (3) a requirement to source at least 30 percent of the value of products sold from "small" Indian enterprises whose total investments in plant and machinery are under $2 million each. The local sourcing requirements and other conditions on foreign investment diminish the commercial incentive for multi-brand retailers seeking to invest in India's retail sector.

India permits 100 percent FDI in business-to-business (or "marketplace-based") electronic commerce but prohibits foreign investment in business-to-consumer (or "inventory-based") electronic commerce. In February 2019, India implemented regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based electronic commerce sites from selling products on their parent companies' sites. The rules also prohibit exclusivity arrangements by which electronic commerce retailers can offer a product on an exclusive basis. The only exceptions for FDI in inventory-based electronic commerce are for food-product retailing and single-brand retailers that meet certain conditions, including the operation of physical stores in India. This narrow exception limits the ability of many electronic commerce service suppliers to serve the Indian market.

In 2016, after extensive advocacy by the U.S. Government and private industry, the Indian Government approved the Model Direct Selling Guidelines, which establish clear legal definitions for legitimate direct selling activities. However, in 2021, the Indian Government issued the Customer Protection (Direct Selling) Rules, which omit the Guidelines' definition of a "direct selling network." Industry has raised concerns that this exclusion creates uncertainty and may open stakeholders up to legal challenges.

Financial Services

Banking Services

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. Most privately owned banks are Indian owned, with foreign banks constituting less than 0.5 percent of the total bank branches in India. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis and their ability to expand is hindered by non-transparent limitations established by the Indian Government on branch office expansion.

Insurance Services

In March 2021, India passed the Insurance (Amendment) Bill, 2021, which removed restrictions on foreign ownership and control of Indian insurance companies and increased the maximum foreign investment allowed from 49 percent to 74 percent. While this represented progress, the law instituted new "safeguard" requirements, such as calling for a majority of board members to be Indian residents, and, if an insurer is incorporated or domiciled outside of India, requiring that assets be held in an Indian trust with trustees resident in India, as well as maintaining a higher solvency requirement for foreign-invested insurers. This also applies to any insurer incorporated in India, in which at least 33 percent of its capital is owned by investors domiciled outside India or in which 33 percent of the members of the governing body are domiciled outside India.

In 2015, the Insurance Regulatory and Development Authority of India issued a revision to its regulations governing the provision of reinsurance services in India. The regulations afford Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. Such a requirement severely restricts the ability of foreign reinsurers to compete in the Indian market and decreases the interest of foreign reinsurers in establishing branches in India.

Electronic Payment Services

The United States has continued to raise concerns relating to informal and formal policies with respect to electronic payments services that appear to favor Indian domestic suppliers over foreign suppliers. In November 2020, the National Payments Corporation of India (NPCI), a state-owned company, announced a market share limitation of 30 percent (measured by transactions) for foreign electronic payment service suppliers processing online payments made through India's United Payment Interface (UPI), which is owned and operated by NPCI. NPCI stated that the policy would insulate the UPI system against systemic collapse should one of the market leaders experience a failure. Foreign digital payment companies were given until January 2023 to ensure their market share met the 30 percent limit. The United States also has expressed concern over plans to create a National Common Mobility Card (NCMC) that would use a domestic proprietary QR code standard, which could disadvantage foreign suppliers. India has also not yet shared the domestic qSPARC standard, effectively prohibiting firms from participating in the roll-out of the NCMC.

Professional Services

Legal Services

Membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory to practice law in India and is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Advocates Act, which is administered by BCI, provides for foreign lawyers or law firms to visit India on a reciprocal basis for temporary periods to advise their clients on foreign and international legal issues.

Accounting Services

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Only accounting firms structured as partnerships under Indian law may supply financial auditing services and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

Telecommunications Services

Satellite Services

India's Ministry of Information and Broadcasting maintains a preference for Indian satellites to provide capacity for DTH subscription television services. In practice, DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural delays when they have sought to do so. Rather, DTH licensees must procure satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which in turn only permits foreign procurements if it does not have available capacity on Indian satellites. When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which in turn resells the capacity to the end-user with a surcharge. As a result, even when limited capacity is available, foreign satellite operators are prevented from developing direct relationships with DTH licensees, putting U.S. satellite operators at a competitive disadvantage. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization

India has proposed and promulgated several data localization requirements that may restrict trusted cross-border data flows between the United States and India. These requirements, if implemented, would force the construction or use of local data centers in India. The requirements could be particularly challenging for smaller firms.

Electronic Payment Services

In 2018, the Reserve Bank of India (RBI) implemented a requirement that all payment service suppliers store all information related to electronic payments by Indian citizens on servers located in India. RBI announced this rule without advance notice or input from stakeholders. In 2019, RBI stated the requirement to store payments data locally also applied to banks operating in India. Foreign firms assert that requiring local storage of all payment information is a disadvantage for them, as they are more likely to be dependent on globally distributed data storage and information security systems. They assert further that a domestic data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their global networks.

Digital Personal Data Protection Bill 2022

On August 3, 2022, the MEITY requested the Indian Parliament withdraw the Personal Data Protection Bill, 2019, and announced the government would develop a new bill. On November 18, 2022, India released a new draft Digital Personal Data Protection Bill, 2022 for public comment. A number of U.S. concerns with previous versions of the bill have been addressed, but, if the bill is passed in its current form, there are a number of concerning provisions, such as an unspecified process to approve countries as lawful destinations for the transfer of data outside of India and unduly limited grounds for the processing of personal data outside of India.

Internet Services

In February 2021, the Indian Government published new regulations, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules), to govern a wide range of Internet-based service providers, particularly those that operate social media, messaging, and news and entertainment content in India. The IT Rules require compliance by "significant" social media intermediaries and platforms with five million registered users or more, which includes several U.S. firms. The IT Rules impose a number of requirements that U.S. firms have identified as concerning. For example, the IT Rules impose personal criminal liability on individual employees in cases where a firm is not in compliance with the rules. The IT Rules also include an obligation to identify the first originator of information, a requirement to appoint a local compliance officer, and imposition of impractical compliance deadlines and take-down protocols. In recent years, U.S. firms have been subject to an increasing number of takedown requests for content and user accounts related to issues, often political, of domestic concern.

Digital Services Taxation

In 2017, India began assessing a six percent "equalization levy," a withholding tax on foreign online advertising platforms, with the ostensible goal of "equalizing the playing field" between resident service suppliers and non-resident service suppliers. However, its provisions do not provide credit for tax paid in other countries for the service supplied in India. The current structure of the equalization levy represents a shift from internationally accepted tax principles, which generally hold that mechanisms should be developed to prevent double taxation. The Fiscal Year 2020-2021 budget included an expansion of the equalization levy, adding a two percent digital services tax on foreign electronic commerce and digital services providers. These changes were enacted without prior notification or an opportunity for public comment. Technology firms raised concerns that the definitions of "electronic-commerce operator" and "electronic-commerce supply or services" are broad in scope and are likely to cover many digital transactions, including the sale of data.

In June 2020, the Office of the U.S. Trade Representative (USTR) initiated a Section 301 investigation of India's two percent equalization levy or digital services tax (DST). In January 2021, USTR issued findings that India's DST, as well as taxes adopted by other countries, discriminated against U.S. companies, were inconsistent with prevailing principles of international taxation, and burdened or restricted U.S. commerce. The United States and India, along with 135 other jurisdictions, have joined the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, which called for all Parties to commit not to introduce DSTs in the future. On November 24, 2021, the United States and India issued statements reflecting a political agreement on a transitional approach to India's DST during the implementation period of Pillar 1 of the Two-Pillar solution. Under this agreement and in defined circumstances, the liability from India's DST that American companies accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD agreement. The period during which the credit accrues will be from April 1, 2022, until either the implementation of Pillar 1 or March 31, 2024, whichever is earlier. In return, the United States committed to terminate the Section 301 trade action on goods of India and not to impose further trade actions against India with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or March 31, 2024. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on the OECD/G20 Two-Pillar Solution as pertaining to DSTs.

OTHER BARRIERS

Transparency

Traders continue to be negatively affected by a lack of transparency with respect to new and proposed laws and regulations and the lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements. U.S. stakeholders continue to report that new requirements are issued with inadequate public notice and comment periods and/or inadequate consultation or notification at the WTO. This lack of transparency imparts a lack of predictability to the Indian market, diminishing the ability of U.S. companies to enter or operate in India. The U.S. Government continues to raise concerns regarding uniform notice and comment procedures with the Indian Government bilaterally through the TPF and multilaterally in the WTO and other fora.

INDONESIA

TRADE AGREEMENTS

The United States–Indonesia Trade and Investment Framework Agreement

The United States and Indonesia signed a Trade and Investment Framework Agreement (TIFA) on July 16, 1996. The TIFA is the primary mechanism for discussions of trade and investment issues between the United States and Indonesia.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Indonesia's average Most-Favored-Nation (MFN) applied tariff rate was 8.1 percent in 2021 (latest data available). Indonesia's average MFN applied tariff rate was 8.7 percent for agricultural products and 8.0 percent for non-agricultural products in 2021 (latest data available). Indonesia has bound 96.1 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 37.3 percent.

Over the last decade, Indonesia has increased its applied tariff rates for a range of goods that compete with locally manufactured products, including electronic products, milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products. Most Indonesian tariffs on non-agricultural goods are bound at 35.5 percent, although tariff rates exceed 35.5 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 35.5 percent.

In 2020, Indonesia issued Minister of Finance (MOF) Regulation 199/2019 to lower the price threshold for import duty exemptions on imported consumer goods (known as "consignment goods") from $75 to $3. Certain types of books, bags, garments, and footwear are exempted from the regulation.

U.S. stakeholders have asserted that Indonesia continues to apply tariffs in excess of its WTO bound rates for certain categories of information and communication technology (ICT) products. Since at least 2020, Indonesia appears to be applying a 10 percent duty for certain categories of the Harmonized Tariff System subheading 8517.62, which includes switching and routing equipment.

Taxes

U.S. companies continue to express concerns that the MOF's Directorate General of Taxes' tax assessment process is arbitrary. Such concerns include a discretionary and cumbersome auditing process, heavy fines for administrative mistakes, lengthy dispute mechanisms, and a lack of legal precedent within the Tax Court.

In 2018, Indonesia issued MOF Regulation 110/2018, increasing "withholding tax" rates for 1,147 imported products, including consumer and luxury goods. The stated objective for this policy was to decrease Indonesia's current account deficit by reducing imports of these goods.

Luxury goods, imported or locally produced, may be subject to a luxury tax of up to 200 percent. As of January 2023, there are no luxury goods subject to the 200 percent rate, and the applied luxury tax rates generally range from 10 percent to 95 percent. Motorcycles with an engine displacement over 500 cc (a size which is not produced in Indonesia) are subject to a 95 percent luxury tax. Under MOF Regulation 141/2021, the MOF reformulated the sales tax for luxury motor vehicles based on fuel efficiency and emissions levels, with the aim of reducing emissions and encouraging the use of energy-efficient and less polluting motor vehicles. The luxury motor vehicle sales tax varies based on the cylinder capacity of the motor vehicle (up to three liters; three to four liters), type of motor vehicle (electric and non-electric), fuel efficiency rate, and emissions level. This luxury tax applies to both locally-produced and imported vehicles.

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise tax rates on imported spirits than on domestic spirits. The excise tax rates for imported products are 150 percent on spirits and 90 percent on wine.

MOF Regulation No. 41/2022, effective April 1, 2022, increased the number of imported items that are subject to a prepayment of income tax at the time of import under Income Tax Article 22. The regulation adds Harmonized System (HS) codes for 716 categories of imported goods subject to income tax at a rate of 10 percent of the transaction value. The regulation lists 1,188 HS codes subject to income tax of 7.5 percent and seven HS codes with a tax rate of 0.5 percent. Stakeholders have previously raised concerns that the process of claiming a return of excess pre-paid income tax at the time of import can take multiple years and considerable effort.

MOF Regulation No. 114/2022, issued on July 11, 2022, extended Article 22 income tax exemptions for 72 business sectors until December 31, 2022.

Non-Tariff Barriers

Import Licensing

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede market access. The Ministry of Trade (MOT) requires all importers to obtain an import license as either an importer of goods for further distribution (API-U) or as an importer for their own manufacturing (API-P), but importers are not permitted to obtain both types of licenses. An API-P import license allows companies to import finished products for market testing, after sales service purposes, or for "completing a product line", as long as the goods are new, consistent with the company's business license, and meet import requirements. Under Government Regulation (GR) 29/2021, importers must also obtain a business identification number (NIB) through the Online Single Submission, a new online processing system intended to streamline business license issuance. A NIB can also serve as a valid import license.

On April 1, 2021, MOT issued Regulation 20/2021 (amended by MOT Regulation 25/2022), which aims to synthesize all import-related regulations and serve as an "umbrella" regulation for the management of Indonesia's import policies. The regulation also sets forth a requirement that import licenses for certain commodities be issued based on their "commodity balance".

On February 21, 2022, Indonesia enacted Presidential Regulation No. 32/2022, which further provides for a "commodity balance" policy. The commodity balance policy appears to make the issuance of import licenses subject to an Indonesian Government assessment of supply and demand for a commodity. It was initially implemented for 2022 import licenses for five commodities (sugar, rice, fish, meat, and salt) at the end of 2021. The policy was expanded to cover nineteen additional commodities in 2023. Stakeholders have expressed concern regarding the Coordinating Ministry of Economic Affairs' (CMEA) lack of consultation with market participants on this policy and reported that import license requirements for printers were subjugated to this policy, such that printer import licenses now require Ministry of Industry (MOI) approval, in addition to the existing MOT approval.

MOT Regulation 20/2021 on import policy, which was amended by Regulation 25/2022, imposes additional burdensome import licensing requirements for cell phones, handheld computers, and tablets. (*For further information, see the Services Barriers section.*)

Under MOT Regulation 68/2020 and its amendment, Regulation 78/2020, Indonesia requires import approvals and stringent reporting requirements for footwear, electronic devices, and bicycles (except such products imported for market testing or after sales service purposes) with the stated goal of reducing the volume of consumer goods entering Indonesia in favor of local production.

Import Licensing for Agricultural Products

Indonesia continues to maintain unjustified and trade-restrictive licensing regimes for the importation of horticultural products, animals, and animal products, despite amending its import licensing regimes several times. In 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures because Indonesia repeatedly failed to address U.S. concerns. On December 22, 2016, the WTO issued the panel report, finding for the United States and co-complainant New Zealand on all 18 claims and finding that Indonesia is applying import restrictions and prohibitions that are inconsistent with WTO rules. On November 9, 2017, the WTO Appellate Body rejected Indonesia's appeal and upheld the panel's findings. On August 2, 2018, the United States requested authorization from the WTO to take countermeasures. On August 14, 2018, Indonesia objected to the U.S. request, referring the matter to arbitration. Since 2018, the United States has paused the arbitration to give the parties the opportunity to work towards a solution to the dispute and to increase market access for U.S. agricultural products.

Indonesia has amended its import licensing requirements several times since the Appellate Body ruling. Through the issuance of Minister of Agriculture (MOA) Regulation 2/2020, imports of horticultural products from countries with a food safety system recognized by MOA are exempt from the requirement to provide certain quality and safety certificates. Nevertheless, Indonesia continues to subject imports, including all horticultural products, to its import licensing regime. This regulation also extends the validity of horticultural product import licenses for 60 days into the following calendar year.

In 2020, Indonesia enacted the "Job Creation Omnibus" (Law 11/2020), which amends import licensing provisions contained in the Food Law, Animal Husbandry and Animal Health Law, Farmer Protection and Empowerment Law, and the Horticulture Law and served as the basis for the commodity balance policy. Law 11/2020 requires a general business license for imports of horticultural, feed, meat, and dairy products, and appears to remove the legal basis for requiring MOA import recommendations and MOT import licenses for horticultural products. A Constitutional Court ruling on November 25, 2021, found that the passage of the Omnibus Law was unconstitutional due to the opaqueness of the process by which the law was created, including that proposed revisions were not fully shared with the public. The court ordered lawmakers and the Jokowi administration to revise the law within two years, specifying that if no revisions are made by that deadline, the law will become defunct. The ruling stipulates that the Indonesian Government should not issue new regulations of a strategic nature related to the law until improvements are made to the current law.

Nonetheless, on May 18, 2022, MOA issued Regulation 5/2022 affirming the requirement for imported horticultural products to have an import recommendation (RIPH). However, MOT Regulation 25/2022, provides that the issuance of import licenses does not require RIPH and will instead be issued on the basis of available supply and demand data if the commodity balance has not been determined.

In 2023 agricultural products subject to licensing by government-determined commodity balances include sugar, rice, fish, meat, salt, and corn. Indonesia has not provided a comprehensive list of agricultural products that will be subject to this policy. Businesses report that they need to adapt constantly to changing, and often conflicting, implementing regulations from numerous Ministries.

Pharmaceutical Market Access

The pharmaceutical industry has raised concerns regarding the opportunity for meaningful stakeholder engagement in the Indonesian pricing and reimbursement system. Stakeholders report a lack of clarity regarding how pharmaceutical products are selected for listing on the Indonesian online public procurement catalog system, how price caps are determined, and whether and for how long such products will remain listed. The United States will continue to engage Indonesia on this issue and has requested that the Ministry of Health (MOH) and the National Public Procurement Agency discuss these issues with U.S. stakeholders.

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products and medical devices. MOH Regulation 17/2017 mandates that the pharmaceutical and medical devices industries prioritize the use of domestic raw materials. MOI Regulation 16/2020, which went into force in June 2020, defines local content values for pharmaceutical products as including manufacturing, raw ingredients, research and development, and packaging. It also sets out a process for the issuance of local content certificates and requires priority be given in the national health insurance system to products with certified local content value when available. Companies are required to self-assess the local content of their products, further verified by independent assessors appointed by the MOI. Businesses are concerned that the regulation will prioritize drugs with higher local content over imported versions of equivalent efficacy and safety.

Additionally, MOH Regulation 1010/2008 requires a foreign pharmaceutical company either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals and import permits on its behalf. This regulation also mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration and contains a technology transfer requirement. A subsequent pair of regulations, MOH Regulation 26/2018 and National Agency of Drug and Food Control (BPOM) Regulation 16/2015, provide additional information about the application of these local manufacturing requirements.

Presidential Regulation 10/2021 reserves retail pharmaceutical business and class A health equipment for micro, small, and medium-sized enterprises (MSMEs), while traditional medicine is limited to domestic ownership only. MOH Regulations 1010/2008 and 1120/2008 state that all foreign pharmaceutical companies operating in the country must manufacture medicines locally or form a partnership with a local manufacturer in order to register or trade their own products. MOH Regulations 1010/2008 and 1120/2008 remain significant barriers to market access.

Import Bans and Other Restrictions

Indonesia tightly controls and regulates imports of sugar and other food commodities, including through annual quantitative import limits based on domestic production and consumption forecasts. Sugar refineries are permitted to import raw sugar based on annual allocations intended to offset idle refining capacity. Some food and beverage companies are permitted to import limited volumes directly, but there remains an expectation to first utilize refined domestic sugar. These import restrictions increase the price of sugar (and other commodities) across the domestic economy.

Indonesia limits the quantity of imported wines and distilled spirits. Companies must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota set by MOT; that quota has not changed since its enactment in 2009. Currently there are approximately 14 registered importers of alcoholic beverages in Indonesia.

State Trading

Presidential Regulation 66/2021 established Indonesia's National Food Agency (BAPANAS). BAPANAS is a minister-level institution that directly reports to the President and has the authority to coordinate all food and agriculture related ministries and agencies, such as the Ministry of Agriculture, Ministry of Trade, Ministry of Industry, and the state-owned procurement body, the Bureau of Logistics (BULOG). The main role of BAPANAS is to coordinate, formulate, and determine food availability policies. BAPANAS is also tasked with ensuring food price stabilization, food diversification, and overall food security. BAPANAS bears the responsibility of developing a food information system. On September 27, 2022, BAPANAS authorized BULOG to procure soybeans in order to stabilize the soybean market by selling them with a 1,000 IDR per kg subsidy. BAPANAS also regulates the minimum buying and selling reference prices for several commodities. There are currently nine staple commodities under the authority of BAPANAS: rice, corn, soybean, sugar, onion, eggs, beef, poultry meat, and chilies.

Indonesia imposes restrictions on feed corn imports, limiting the right to import to BULOG. However, some corn imports intended for starch manufacturing are allowed. As Indonesia's sole importer of feed corn, BULOG prioritizes corn distribution to small-holder poultry farmers. The import volume is set based on the level of domestic feed production. Feed millers other than the small-holders who receive corn from BULOG are obligated to use locally-produced feed corn. They have expressed concern that they are unable to obtain feed corn in quantities sufficient to maintain the poultry industry's growth.

BULOG also maintains exclusive authority to import standard unbroken rice. Indonesia has cited food security and price management considerations as the principal objectives of this policy. BULOG is not allowed to import rice before, during, or immediately after the main harvest period. Private firms are only allowed to import broken rice for processing or specialty rice varieties, such as basmati and jasmine rice, for retail and food service. Importers of broken and specialty rice must obtain a special MOA importer identification number. Since 2014, Indonesia has refused to issue import recommendations for japonica rice to private traders, although permitted under MOT regulations.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar, and buffalo meat (carabeef). Additionally, through MOT Regulations 57/2017, 7/2020, and 6/2022, the Indonesian Government sets farmer-level and consumer-level reference prices for corn, soybeans, sugar, shallots, beef, chicken, eggs, and cooking oil, respectively. According to these regulations, BULOG and other state-owned enterprises (SOEs) can intervene in the market when prices are above or below threshold targets.

Customs Barriers and Trade Facilitation

Indonesia notified its customs valuation legislation to the WTO in 2001 but has not responded to the Checklist of Issues describing how the WTO Customs Valuation Agreement (CVA) is being implemented. U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports rather than using transaction values as the primary basis of valuation as required by the CVA. Indonesia's Directorate General of Customs and Excise reportedly makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

MOT Regulation 20/2021, which was amended by MOT Regulation 25/2022, requires pre-shipment verification by designated companies (known in Indonesia as "surveyors") for a broad range of products (including electronics, textiles and footwear, toys, food and beverage products, and cosmetics). The verifications are conducted at the importer's expense and impede the entry of imports to designated ports and airports. As of December 31, 2022, Indonesia had yet to notify these measures to the WTO pursuant to the WTO Agreement on Pre-shipment Inspection.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Standards and Testing Requirements

MOI Regulation 24/2013 (as amended by MOI Regulations 55/2013 and 29/2018) requires that imported toys be tested by a laboratory with a mutual recognition agreement with one of Indonesia's product certification bodies. The United States is not aware of any existing mutual recognition agreements, leaving imported toys subject to mandatory testing in Indonesia to obtain certification. U.S. stakeholders have expressed concern about the discriminatory frequency of testing under these regulations, which is required on a per-shipment basis for imports, but only every six months for domestically produced products. In 2018, MOI issued Regulation 29/2018, introducing an alternative procedure that allows importers to obtain a certification through product testing and an audit of production processes. Indonesia notified this measure to the WTO in November 2018. U.S. manufacturers remain concerned by the lack of clarity on how products can enter the market under the alternative procedure.

In February 2021, Indonesia issued GR 28/2021. The measure includes requirements governing conformity assessment to Indonesian national standards (SNI) for a wide variety of consumer goods including toys, electronics, and home appliances. U.S. stakeholders report that testing laboratories and conformity assessment bodies have been told to halt certification until MOI issues implementing guidance for GR 28/2021. This standstill has resulted in the halting of imports that use the SNI scheme that requires testing per shipment. Additionally, GR 28/2021 requires that all steps of product testing be conducted by an Indonesian national residing in Indonesia, further complicating product sample collection for products that use a per-shipment testing scheme. Indonesia has not yet notified this measure to the WTO. The United States will continue to raise its concerns regarding GR 28/2021 with Indonesia.

Halal Certification

Under Law 33/2014 on Halal Product Assurance, halal certification is mandatory for food, beverages, pharmaceuticals, cosmetics, medical devices, biological products, genetically engineered products, consumer goods, and chemical products sold in Indonesia. All business processes, including production, storage, packaging, distribution, and marketing, are required to comply with this law, which also requires non-halal information to be placed on packaging for non-halal products. In 2017, the Indonesian Government officially established the Halal Product Assurance Agency (BPJPH) under the Ministry of Religious Affairs (MORA) to lead the implementation of halal certification.

MORA continues to develop regulations to implement Law 33/2014. U.S. stakeholders are concerned that Indonesia has finalized many of these regulations without sufficient notice and adequate time to submit comments as required under the WTO Agreement on Technical Barriers to Trade and as more specifically recommended by the WTO Committee on Technical Barriers to Trade (WTO TBT Committee). MORA Regulation 26/2019 initially set out the transition period for halal requirements to go into force. MORA Decree 748/2021 outlines a broad range of products requiring halal certification. Indonesia notified these measures to the WTO in October 2019 and July 2021, respectively. In December 2021, MORA issued Decree 1360/2021, which was notified to the WTO in January 2022. This decree provides an extensive list of ingredients or materials that are not required to obtain halal certification. This list is also known as the halal positive list.

GR 39/2021, a revision of the Implementing Regulations (first published in 2019), maintains the original timeline for phasing in mandatory halal certification: for food and beverage products by October 2024; for traditional medicines and food supplements, cosmetics, chemical products, and genetically modified organisms, wearable clothing items, household appliances, office products, and class A medical devices by October 2026; for over-the-counter medicines and class B medical devices by October 2029; and, for prescription medicines and Class C medical devices by October 2034. Vaccines, biological engineering products, and class D medical devices will be regulated under a future presidential decree.

In accordance with MORA Regulation No. 2/2022 on International Cooperation on Halal Product Assurance, U.S.-based halal certifying bodies (HCBs) are eligible to apply directly to BPJPH for permanent recognition, which is required for HCBs to continue issuing halal certificates for U.S. exports. So far, only one U.S. HCB has been assessed in person by BPJPH, and the other four are waiting for their assessments to be scheduled. The final step to obtaining recognition is for each HCB to conclude a Mutual Recognition Agreement with BPJPH.

The United States continues to raise concerns with the implementing regulations for Law 33/2014 at the WTO TBT Committee and bilaterally.

Product Testing

BPOM sets out requirements for testing of heavy metals in cosmetics in its Regulation 12/2019. This Regulation revokes previous Regulation 17/2014. A 2016 BPOM Circular Letter provides further guidance on these requirements, which is fulfilled through a certificate of analysis that is valid for one year. In practice, Indonesian customs requires each shipment to provide a separate test in addition to the certificate. This measure appears intended to limit imports. U.S. stakeholders have expressed concern that the pre-market testing requirement goes against the intent of the Association of Southeast Asian Nations (ASEAN) Cosmetics Directive, which stipulates that monitoring of heavy metals should be undertaken via post-market surveillance.

Sanitary and Phytosanitary Barriers

Facility Registration for Animal-Derived Products

Indonesia's animal health and husbandry law (Law 18/2009, as amended by Law 41/2014) requires companies that export animal-derived products, such as meat, dairy and eggs, to Indonesia to complete a pre-registration process with MOA. The law allows imports of these products only from facilities that Indonesian authorities have individually approved. MOA Regulation 15/2021 maintains this requirement and adds a new provision requiring raw materials used for the manufacturing of animal-derived products to originate from facilities that have already been approved by Indonesia.

Under GR 35/2016, MOA requires that all animal product establishments seeking to export to Indonesia undergo inspections to obtain eligibility certificates. As part of this process, MOA charges fees for a desk audit of application materials, an on-site facility inspection, and a post-audit desk review. Dairy production facilities are only required to pass desk audits, while other facilities (*i.e.*, meat and rendering) are required to undergo on-site facility inspections and post-audit desk reviews. Indonesia charges for transportation and lodging costs for MOA officials that conduct inspections in the United States. In total, companies seeking to export to Indonesia could pay up to $10,000 for each inspection.

Fisheries

The Ministry of Marine Affairs and Fisheries (MMAF) Regulation 11/2019 requires the completion of a health certificate for all fishery products imported into Indonesia after February 1, 2021. The health certificate must follow MMAF's guidelines, and a failure to follow them will result in the product's detainment. However, the U.S. competent authorities issuing export certification for fisheries products, the U.S. Department of Commerce National Oceanic and Atmospheric Administration and the U.S. Department of Agriculture Animal and Plant Health Inspection Service, have reached an agreement with MMAF to resolve potential issues stemming from this requirement.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulations 54/2010 (as amended by Regulation 16/2018) and 38/2015 both require procuring entities to maximize local content in procurement, use foreign components only when necessary, and to designate foreign contractors as subcontractors to local companies. Both regulations provide general minimum requirements for local content and service provision. Depending on the sector or nature of the project, ministries with authority over the project may impose additional restrictions or requirements. In addition, the 2020 Job Creation Omnibus requires the central and local governments to allocate at least 40 percent of government procurement to local MSMEs, in addition to cooperatives.

Indonesia's 2012 Defense Law and Presidential Regulation 76/2014 mandate priority for local materials and components and require defense agencies to use locally produced goods and services whenever available. In addition, when an Indonesian Government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for "trade balancing" offsets, including by incorporation of local content, production offsets, technology transfer, or a combination thereof.

In June 2021, the Indonesian Government had suspended imports of 79 medical device product categories from the government's electronic-catalog (e-Katalog) with minimal notice and without prior stakeholder consultation. Since that time, U.S. medical device manufacturers frequently raised concerns about their products being withheld from public hospital purchase under the e-Katalog and requested the Indonesian Government to allow a sufficient grace period for the transition to local production to assure patient access to safe and high-quality medical devices. In response, Indonesia offered limited exceptions to mitigate possible disruptions, but has not issued guidelines companies can use to request exception.

Presidential decree No. 2/2022, published on March 30, 2022, mandated that the Indonesian Government use local products to improve the national economy. Subsequently, in August 2022, the National Public Procurement Agency (LKPP) reported that approximately 13,600 imported products had been suspended in the "e-Katalog" to encourage purchase of local products.

In August 2022, the LKPP announced plans to draft a bill related to government procurement of goods and services, as requested by the President. In preparation for the new procurement laws, the President has asked the Ministry of State-Owned Enterprises (BUMN) to prepare SOEs to produce goods and services that are currently imported.

Indonesia is not a Party to the WTO Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since October 2012.

INTELLECTUAL PROPERTY PROTECTION

Indonesia remains on the Priority Watch List in the 2022 Special 301 Report. Although Indonesia has recently taken steps to improve intellectual property (IP) protection and enforcement, including establishing an IP enforcement task force and increasing efforts to address online piracy, significant concerns remain.

Widespread copyright piracy and trademark counterfeiting (including online and in physical markets) are key concerns. The Mangga Dua Market in Jakarta continues to be listed in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List), along with multiple online Indonesian marketplaces. Lack of enforcement remains a problem, and the United States urges Indonesia to utilize the new enforcement task force to increase proactive interagency coordination and to provide deterrent-level penalties for IP infringement in physical markets and online. The United States also continues to encourage Indonesia to provide an effective system for protection against the unfair commercial use, in addition to unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States remains concerned with Indonesia's law regarding geographical indications.

Indonesia addressed certain issues related to local manufacturing and use requirements through the 2020 amendments to the 2016 Patent Law. Indonesia is in the process of further amending the Patent Law, and the United States continues to urge Indonesia to address remaining concerns, including with respect to the patentability criteria for incremental innovations and disclosure requirements for inventions related to traditional knowledge and genetic resources.

The United States and Indonesia finalized a bilateral IP work plan in 2018 to improve IP protection and enforcement in Indonesia, and the United States will continue to work with the Indonesian Government to address deficiencies in IP protection and enforcement and to promote public education and outreach.

SERVICES BARRIERS

Audiovisual Services

Indonesia's 2009 Film Law, as amended by the 2020 Omnibus Law, imposes a 60 percent local content requirement for local exhibitors (movie theaters and TV stations), prohibits local exhibitors from dedicating more than 50 percent of their total screen time to content from a single film production business, film distribution business, or film import business over a period of six consecutive months, prohibits the dubbing of foreign films, and prohibits foreign companies from distributing or exhibiting films. In 2019, the Minister of Education and Culture issued Regulation 34/2019, which if enforced, would implement these provisions of the Film Law. However, the regulation is reportedly not being enforced.

Distribution Services

Logistics services generally are subject to a maximum 49 percent foreign ownership, except for freight forwarding, warehousing and storage services, and distribution, which are capped at 67 percent foreign ownership.

Express Delivery Services

Indonesia maintains restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. Indonesian law requires that postal service suppliers be majority-owned by Indonesians and that foreign suppliers limit their activities to provincial capitals with international airports and seaports. Under Customs Regulation 11/2020, logistic services companies are required to include a Tax ID Number (NPWP) or designated identification numbers of Indonesian consignees or consignors in the manifest of all inwards and outwards shipments to and from Indonesia. Indonesian customs have since relaxed the requirement by allowing a phone number to be used in lieu of a NPWP on the manifest. However, as of December 31, 2022, the Customs Directorate had not yet issued a written regulation for this relaxation of the policy and industry fears the lack of legal certainty will cause future obstacles for shipping.

Financial Services

Generally, no single investor, foreign or domestic, may own more than 40 percent of an Indonesian bank. In certain cases, the Indonesian Financial Services Authority (OJK) may grant exceptions to this general rule. Based on OJK regulation No. 12/POJK.03/2021 issued in August 2021, OJK increased the foreign equity cap for commercial banks to 99 percent with prior assessment from the banking supervisor unit at OJK. OJK also raised local and foreign banks' minimum core capital requirements to IDR 3 trillion (approximately $0.2 billion), and raised the minimum capital requirement for the establishment of a new bank to IDR 10 trillion (approximately $0.68 billion), effective on December 31, 2022. Separately, Indonesia's central bank, Bank Indonesia (BI), restricts foreign ownership in private credit reporting firms to 49 percent under BI Circular Letter No. 15/49/DPKL.

OJK Regulation 77/2016 on peer-to-peer (P2P) lending introduces various guidelines, obligations, and restrictions for P2P lending services, and the organization of P2P lending service providers. This regulation caps foreign ownership of P2P services at 85 percent and imposes overly broad restrictions on cross-border data transfers. Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partially owned by foreign investors but cannot operate in Indonesia as a branch or subsidiary of a foreign entity. Indonesia issued a moratorium in October 2021 on P2P lending licenses, to combat illegal platforms. Under OJK Regulation 13/2018, financial technology companies must register with OJK and implement a regulatory sandbox to test new services and business models.

Under BI Regulation 18/40/PBI/2016 on payment transaction processing operations, BI limits foreign ownership of payment companies to 20 percent (but exempts existing investments that exceed this foreign equity limitation) and imposes overly broad restrictions on cross-border data transfers.

BI Regulation 19/08/2017 on the National Payment Gateway (NPG) requires all domestic retail debit and credit transactions to eventually be processed through NPG switching institutions located in Indonesia and licensed by BI. The regulation imposes a 20 percent foreign equity limitation on firms that wish to obtain a switching license to participate in the NPG, preventing wholly foreign-owned companies from supplying switching services, and prohibiting the cross-border supply of electronic payment services for domestic retail debit and credit transactions. As of December 31, 2022, BI had not applied this requirement to credit transactions. BI Regulation 19/10/PADG/2017 mandates that foreign firms form partnership agreements with licensed Indonesian NPG switches in order to process domestic retail transactions through the NPG. BI must approve such agreements, and the regulation makes approval contingent on the foreign partner firm supporting development of the domestic industry, including by technology transfer. The United States continues to raise concerns with respect to these policies.

Under BI Regulation 21/2019, Indonesia established national standards (termed QRIS, or Quick Response Code Indonesian Standard) for all payments using QR codes in Indonesia. U.S. companies, including payment providers and banks, noted concern that during BI's QR code policymaking process, foreign companies were neither informed of the nature of the potential changes, nor given an opportunity to explain their views on such a system, including how it might be designed to interact most seamlessly with existing payment systems.

Indonesia issued regulation No. 22/23/PBI/2020, effective July 1, 2021, to implement BI's 2025 Payment System Blueprint. The "umbrella" regulation establishes a new risk-based categorization of payment system activities and a licensing system. The regulation implemented an 85 percent foreign ownership cap for "non-bank payment service operators", also known as "front-end" payment companies. However, foreign investors may only hold 49 percent of voting shares. The foreign ownership cap for "payment system infrastructure operators", or "back-end" companies, remains at 20 percent. Existing investors are grandfathered into the old requirements so they may continue to have higher amounts of foreign equity. BI Regulations No. 23/6/PBI/2021 for front-end payment companies and No. 23/7/PBI/2021 for back-end payment companies went into effect July 1, 2021, and continue to apply foreign ownership rules in accordance with BI regulation No. 22/23/PBI/2020. Stakeholders have expressed concern regarding BI's lack of consultation with market participants prior to issuance of regulations.

U.S. payment systems companies have stated that the new regulations could further limit access to Indonesia's financial services market. Prior regulations required authorization, clearing, and settlement to be processed onshore. The new regulations add initiation of a payment as an onshore processing requirement. The regulations do not specify requirements by product. While the regulations provide for offshore processing if certain requirements are met, offshore processing is subject to BI approval. The regulations also give BI greater authority to regulate pricing, including for fees between payment companies and their client banks and banks' fees to consumers. U.S. payment companies have expressed concern about the expanded authority of BI to set prices that could disrupt business decisions and future investment, particularly for credit card transactions. Concerns persist about BI creating its own set of local standards, which make it difficult to bring in global products to Indonesia.

Health Services

Presidential Regulation 10/2021 (as amended by Presidential Regulation 49/2021) eliminated caps on foreign ownership in and location restrictions for general hospitals, private specialist clinics, dental clinics, and specialized nursing services. Nevertheless, problematic sectoral regulations remain in place, including regulations that require foreign hospitals to have a minimum number of inpatient beds that is higher than the minimum number of inpatient beds required for domestic hospitals, and impose restrictions for foreign doctors who can work in Indonesia. Foreign ownership is prohibited for private maternity hospitals, general medical clinics, residential healthcare, and basic health services facilities as these sectors are reserved for domestic micro, small, and medium-sized businesses.

Insurance Services

The 2014 Insurance Law limits foreign investment in domestic insurance companies to the acquisition of publicly traded shares. Under GR 14/2018 (GR 14), as amended by GR 3/2020, Indonesia limits foreign equity in insurance companies to 80 percent. GR 14 exempts companies with foreign ownership higher than 80 percent at the time of the GR 14's issuance, but limits these companies' foreign ownership to their 2018 levels. GR 3/2020 strengthened the grandfathering provisions of GR 14 by specifically allowing foreign investors to inject new capital in growing investments in order to maintain their existing (2018) capital share, and also by repealing the obligation under GR 14 for a local shareholder to make a corresponding 20 percent capital injection in the event of such a capital increase.

Previously, OJK Regulation 14/2015 and OJK Circular Letter 31/2015 required insurance companies operating in Indonesia to cede to domestic reinsurance companies 100 percent of the reinsurance for many common types of policies, such as life, accident, auto, and health insurance policies, and up to 50 percent of reinsurance for other lines, such as certain property and casualty policies. However, OJK regulation No. 39/2020 phased out the requirement for domestic reinsurance for simple risks in 2020, and for non-simple risks in 2022.

Professional Services

Legal Services

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may work in Indonesia as legal consultants with the approval of the Ministry of Law and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Audit and Accounting Services

A foreign public accounting firm must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentations and disclosures. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

Transportation Services

Under Indonesia's public service obligation (PSO) initiative, SOEs are responsible for transporting essential goods to less populated areas of Indonesia, limiting transportation investment opportunities to foreigners. Indonesia Regulation 10/2021 replaced the 2016 Negative Investment List and does not include freight transportation, warehouse, or port services. Law 17/2008 on shipping requires all vessels operating in Indonesian waters to be Indonesian-flagged and limits foreign ownership of Indonesian-flagged vessel to 49 percent. However, the Indonesian shipbuilding industry does not have the capacity to build the variety of specialty ships its economy requires and is unlikely to have such capacity in the near to medium term. Full implementation of the law would be particularly problematic for foreign investors in Indonesia's energy and telecommunications sector, which would no longer be permitted to bring in the sophisticated rigs and specialized vessels needed to develop large upstream projects or service undersea cables. The 2020 Job Creation Omnibus appeared to address this problem by permitting foreign ships to operate in Indonesia for special activities (excluding passenger and goods transport) if there is no Indonesian vessel available; however, the implementing regulations introduce inconsistencies and legal uncertainty. Minister of Transportation Regulation 2/2021 details activities that foreign ships are permitted to perform: oil and gas survey; drilling; offshore construction; offshore operational support; dredging; salvage and underwater works; electricity activities done by power plant vessels; terminal construction; and, pier development and construction activities. Foreign ship usage must obtain approval from the Ministry of Transportation, which is valid for six months. A foreign ship with more than a two-year contract will be required to be nationalized. However, recently enacted GR 31/2021, which allows foreign entities to establish a ship crew agency in Indonesia by forming a joint venture with a local shipping company, does not appear to address utilization of foreign vessels for the above-mentioned activities.

Construction, Architecture, and Engineering Services

Under Construction Services Law 2/2017, as amended by Law 11/2020, foreign construction service companies must partner with a locally-owned company and their participation is limited to high-risk, high-tech, and high-value projects. Separately, the National Construction Services Development Board certifies foreign entities as construction companies, consulting companies, or integrated (engineering, procurement, and consulting) companies. A foreign entity may have only one of these designations.

Franchising and Retail Distribution Services

Under MOT Regulation 71/2019 retail companies are required to "prioritize" the use of domestic goods and services unless domestic products do not meet a franchisor's "quality standards." MOT Regulation 23/2021 requires modern shops to set aside "promotion" areas for products produced by MSMEs and requires business owners with more than 150 stores to franchise their business.

Telecommunication Services

Indonesia has issued a number of measures that make it difficult to import cellular and Wi-Fi equipped products. To support the Commodity Balance policy, MOT issued Regulation 20/2021 (as amended by MOT Regulation 25/2022). MOT also revoked several import-related regulations, including MOT Regulation 82/2012, and incorporated one import policy for all sectors and commodities. Under these two regulations, all import license requests must be submitted through the national single window system. These regulations maintain burdensome requirements for imports. Additionally, importers are required to become a "registered importer" to sell directly to retailers or consumers. To qualify for a MOT import license, Indonesia requires confirmation that importers are working with at least three distributors, and requires importers to provide evidence of contributions to the development of the domestic device industry, or evidence of cooperation with domestic manufacturing, design, or research firms. Companies seeking to import 4G and beyond technology-enabled devices may only do so under a "producers license" (API-P), which is generally held by importers of unfinished goods intended for use in the manufacturing process, limiting the ability of foreign producers to sell these devices in Indonesia. Importers are also required to submit product identification numbers and a corresponding certificate from the Ministry of Communications and Information Technology (MCIT). Industry stakeholders claimed that the new policies have created uncertainty as it takes months to get a decision on license requests.

U.S. companies have reported that, in some cases, MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation 108/2012) to protect locally-manufactured cell phones, handheld computers, and tablets. Importers of any type of cell phone, handheld computer, or tablet are also subject to MOI Regulation 68/2016, which requires importers to obtain a MOI recommendation to establish themselves as registered importers of such devices. A recommendation is only available for local manufacturers, importers in a joint venture with a local manufacturer, or importers of "specialized items." Altogether, Indonesia's licensing practices impose significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

Under GR 71/2019 (GR 71), private sector electronic system operators (defined as persons, business entities, or communities that operate an electronic system) are permitted to transfer, process, and store data outside of Indonesia. GR 71, however, requires data localization for public sector electronic system operators (defined as state institutions or other institutions appointed by a state institution that operate an electronic system), requiring such operators to process and store data in Indonesia.

Under GR 71, financial service regulators are permitted to "further regulate" the treatment of financial sector data in a manner consistent with GR 71. In 2020, OJK issued Regulations 13/2020 and 38/2020, amended by Regulation 4/2021, which appear to allow some but not all data to be transferred and stored outside of Indonesia for commercial banks and insurance companies. OJK requires that core banking and insurance systems must be maintained onshore. The United States continues to expect that all existing regulations affecting transfer and storage of financial services data will be amended to comply with GR 71, such that all financial services data can be transferred and stored outside of Indonesia. OJK Regulation No. 11/2022 requires data center and/or disaster recovery center electronic systems for banks to be located in Indonesia unless OJK approves their placement outside of Indonesia.

GR 71 also requires private sector electronic system operators (ESOs) to facilitate supervision by government agencies, including by granting access to electronic systems and data for monitoring and law enforcement purposes. MCIT issued implementing regulations for GR 71, Regulation 5/2020 and Regulation 10/2021, which require private sector ESOs, including those providing services on a cross-border basis, to register with MCIT by July 20, 2022 or be subject to blocking. Failure to comply with government takedown orders for a potentially broad category of "prohibited electronic information" can also result in blocking. The industry voiced concerns over the lack of clarity of content classifications that fall within the scope of prohibited content, lack of an appeal and adjudication mechanism, and limited turnaround time for ESOs to respond to MCITs takedown request. MCIT intends to impose administrative sanctions under GR 71, which will be further regulated under the Draft GR on Non-Tax State Revenue (RPP PNBP).

Indonesia enacted Personal Data Protection Law No. 27 on October 19, 2022, providing for a two-year transition time. This law imposes requirements for data collection, processing, and transfer, as well as criminal and administrative penalties for violations, and may restrict cross-border data flows.

A Data Protection Authority (DPA) is estimated to be operational by the end of April 2023. The DPA will report to the President and will be responsible for drafting the implementing regulations. Recently alleged data breaches in several ministries and agencies have raised concerns over personal data protection and may have prompted the acceleration of the enactment of the law.

Digital Products

In 2018, the MOF issued Regulation 17/2018, which established five HS lines at the eight-digit level for digital products transmitted electronically, including applications, software, and video and audio content. The regulation sets import duty rates at zero percent. On January 14, 2023, the MOF issued Regulation No. 190/PMK.04/2022 which requires entities importing digital products covered by the five HS lines to file a customs declaration within 30 days of receiving payment for the digital products. The customs declaration requires information including country of origin, sender information, and importer information.

Despite the zero percent duty rate, companies have expressed concern over these new reporting requirements. Stakeholders have raised concerns that this regulation will apply to a wide range of entities, including small and medium-sized enterprises (SMEs), that transmit files through the Internet to entities within Indonesia. Since no other country has taken similar steps to attempt to apply to digital products on electronic networks the rules and processes for the collection of customs duties on physical goods at the physical border, there are significant unanswered questions concerning how Indonesia will define the "border" on electronic networks and what steps Indonesia would take to "inspect" digital products. The potential answers to these questions raise cybersecurity, privacy, and data protection concerns.

As Indonesia has stated its intention to impose customs duties on digital products in the future, this regulation also raises concerns that as a next step Indonesia will impose a non-zero tariff on digital products. In particular, this action would raise serious concerns regarding Indonesia's longstanding WTO commitment not to impose duties on electronic transmission, renewed on a multilateral basis in June 2022, until the next WTO Ministerial Conference.

Digital Services Taxation

Under Law 2/2020, Indonesia introduced a series of changes to its tax code, including an expansion of the definition of permanent establishment for purposes of Indonesia's corporate income tax, and a new electronic transaction tax (ETT) that targets cross-border transactions where tax treaties prohibit Indonesia from taxing corporate income from the transaction. The MOF would need to issue additional legal measures for these new taxes to go into effect.

The United States opposes proposals by any country to single out digital companies. Indonesia has refrained from implementing an ETT and is among the 137 member jurisdictions, including the United States, to have joined the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, which called for all Parties to commit not to introduce DSTs in the future. As the G20 president in 2022, Indonesia has supported the ongoing work on Pillar 1 of the OECD consensus on reallocation of taxation rights. The Indonesian Government has called on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting to finalize Pillar 1 and sign a multilateral convention in the first half of 2023.

Internet Services

Indonesia has issued measures intended to regulate the electronic commerce sector. In 2019, Indonesia issued GR 80/2019, which applies to a diverse range of domestic and foreign online merchants, electronic commerce companies, and intermediaries that facilitate electronic transactions between independent merchants and customers. Companies have expressed concern that GR 80/2019 overlaps with other regulations in the areas of data privacy and requires companies to utilize a ".id" web address. In 2020, Indonesia issued MOT Regulation 50/2020 to implement GR 80/2019, which establishes requirements for electronic commerce business activities. Foreign electronic commerce operators that have 1,000 transactions or 1,000 packages delivered to Indonesia per year are required to appoint a representative in Indonesia and/or to register for a foreign business license for electronic commerce. Both foreign and local electronic commerce actors have voiced concerns over the opaque drafting and stakeholder input process for these regulations.

INVESTMENT BARRIERS

In contrast to previous regulations, Presidential Regulation 10/2021 (as amended by Presidential Regulation 49/2021) establishes that all business sectors are open for investment unless stipulated otherwise. The regulation establishes conditions or restrictions on foreign investment for two categories of sectors: (1) sectors reserved for MSMEs and cooperatives or foreign investors that partner with them; and, (2) sectors that are open with certain requirements (*i.e.*, with caps on foreign ownership or special permit requirements). Defense-related investment remains under the sole purview of the central government.

SUBSIDIES

In 2019, for the first time in over twenty years, Indonesia filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures. Indonesia's notification only covered subsidy programs in the fisheries sector.

According to the WTO Secretariat Report on the 2020 Trade Policy Review, Indonesia continues to provide fiscal and non-fiscal incentives for manufacturing and exports in connection with its export processing zones and special economic zones programs. These include incentives related to corporate income tax, property tax, import duty, value-added tax, excise and luxury taxes, and local taxes, in addition to assistance on land acquisition, licensing, investment, and labor. Non-tax incentives in the form of loans and interest rate subsidies continue to be available mainly to MSMEs. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Exim bank and Asuransi Ekspor Indonesia. The United States will continue to urge Indonesia to submit a WTO notification for all of its subsidy programs.

OTHER BARRIERS

Although the Indonesian Government and the Corruption Eradication Commission investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include: poor coordination within the Indonesian Government; limited access to financing; the slow pace of land acquisition for infrastructure development projects; poor enforcement of contracts; an uncertain regulatory and legal framework; arbitrary tax assessments; and, lack of transparency in the development of laws and regulations. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and have raised growing concern about the criminalization of contractual disputes.

Export Restrictions

Indonesia’s 2009 Mining Law requires companies to process ore locally before shipping it abroad. Implementing regulations of this law ban the export of over 200 types of mineral ore, including nickel and bauxite. Under GR 1/2017, companies with existing work contracts are required to convert to special mining business licenses, divest 51 percent of their shares to Indonesian parties over a period of 10 years, and build a domestic smelter by January 2022, in order to obtain a license to export mineral concentrates (the 2020 Mining Law updates this requirement to build a smelter by 2023). U.S. stakeholders have expressed serious concern about these measures.

As part of the implementation of the 2009 Mining Law, Indonesia prohibits the export of nickel ore, one of several recent measures restricting the export of key steelmaking raw materials. The United States has expressed concern about the impact this measure will have on global nickel supply and prices, in addition the impact on the production and exportation of stainless steel, which Indonesia is producing in rapidly increasing volumes well in excess of its domestic consumption. On December 11, 2019, the United States requested to join consultations initiated by the European Union concerning the consistency of Indonesia’s export ban with Indonesia’s WTO obligations and participated in the subsequent panel proceedings as a third party. The panel report in this dispute was circulated on November 30, 2022, in which the panel found Indonesia’s export ban on nickel ore to be inconsistent with its WTO obligations. Indonesia filed a notice of appeal on December 12, 2022.

In the oil and gas sector, Ministry of Energy and Mineral Resources Regulation 42/2018 requires all oil and gas contractors to sell their production to state-owned Pertamina in an attempt to reduce Pertamina’s crude oil imports. In addition, production-sharing contracts and gross split contracts in Indonesia contain a standard clause specifying that 25 percent of all production must be sold to domestic refineries for domestic consumption. The policy, known as the Domestic Market Obligation, also requires companies to sell the crude oil to domestic refineries at a heavily discounted rate. BI Regulation 13/2011 (as amended by BI Regulation 14/2012) subjects export earnings to Indonesian banking law and regulations, despite production-sharing contracts that allow companies to remit such earnings abroad.

Local Content

Indonesia imposes local content requirements across a broad range of sectors, including telecommunications, mobile technology, energy, agriculture, retail, and franchising. These requirements are mandatory, and goods failing to meet those requirements cannot be imported into or sold in Indonesia. Indonesia has stated its intentions to create new local content requirements and to increase existing mandated local content levels. The United States continues to press Indonesia to remove these prohibitions.

In the mobile technology sector, MCIT Regulation 13/2021 requires all 4G-LTE and 5G enabled devices to contain 35 percent local content and all 4G-LTE and 5G base stations to contain 40 percent local content. MOI Regulation 29/2017 provides a formula for calculating "local content."

In the telecommunications sector, MCIT Regulations 7/2009 requires that equipment used in certain wireless broadband services contain local content of at least 30 percent for subscriber stations and 40 percent for base stations, and that all wireless equipment contains 50 percent local content. MCIT Regulation 4/2019 requires all TV and set-top boxes based on digital video broadcasting-terrestrial second generation and internet protocol set-top boxes to contain at least 20 percent local content. MCIT Regulations 9/2019 and 10/2019 require wavelength division multiplexing and internet protocol network devices to comply with local content requirements. Industry continues to voice concerns over MOI's refusal to discuss LCR policies with stakeholders.

In the textile sector, Indonesia enacted local content requirements in 2019, which effectively banned imports of finished textile products classified in 430 Harmonized System Codes. U.S. carpet tile manufacturers reported that the sudden implementation of the measures resulted in disrupted contracts with customers in Indonesia and has hindered their ability to bid on relevant new tenders. In November 2021, the U.S. textile industry reported that the 2019 local content requirements had been revoked and replaced with MOT Regulation 20/2021(amended with MOT Regulation 25/2022). According to industry, the new regulation allows finished textile products to be re-exported to Indonesia, but requires that importers apply for an import license that is valid for one calendar year. Industry continues to seek further details on MOT Regulation 20/2021.

Energy and Mining

Over the past decade, the Indonesian Government has introduced regulatory changes, including local content in the energy and mining sectors. The regulatory changes have raised questions about the sanctity of contracts already in force between private companies and the Indonesian Government.

In the oil and gas sector, GR 79/2010 (as amended by GR 27/2017) allows the Indonesian Government to change the terms of certain existing production-sharing contracts, eliminate the tax deductibility of certain expenses, change the terms and criteria for cost recovery, and place limits on allowable costs for goods, services, and salaries. Contractors in the upstream oil and gas sector are required to prioritize the use of domestic services, including energy-related services, in addition to domestic technologies, and engineering and design capabilities. U.S. companies have noted that these local preference policies severely undermine their ability to operate in the Indonesian market.

Indonesia's oil and gas regulator also maintains stringent rules relating to how local content is measured with respect to oil and gas projects, which are intended to achieve an average of 91 percent local content by 2025. Goods and services supplied by companies without majority Indonesian shareholding cannot qualify as local content, which places foreign energy service companies at a disadvantage.

ISRAEL

TRADE AGREEMENTS

The United States–Israel Free Trade Agreement

The United States–Israel Free Trade Agreement (FTA) entered into force on August 19, 1985. Israel implemented phased tariff reductions culminating in the complete elimination of duties on all non-agricultural products by January 1, 1995. While Israel has eliminated tariffs on non-agricultural goods as agreed, tariff and non-tariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996, the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. The United States and Israel completed negotiation and implementation of a successor ATAP in 2004, which granted improved access for select U.S. agricultural products. Originally scheduled to last through December 31, 2008, the 2004 ATAP has been extended 15 times, most recently through December 31, 2023, to allow time for the negotiation of a successor agreement. The current ATAP provides U.S. food and agricultural products access to the Israeli market under one of three categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel's Most-Favored-Nation (MFN) rates.

The United States and Israel meet regularly to review the implementation and functioning of the FTA and to address outstanding issues. The United States–Israel Joint Committee is the central oversight body for the FTA, and last met on December 2, 2020.

IMPORT POLICIES

Tariffs

Agriculture

U.S. agricultural exports that do not enter duty free under World Trade Organization (WTO), FTA, or ATAP provisions face barriers, such as high tariffs and a complicated TRQ system. These products include higher-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, juice, and some processed foods. Stakeholders estimate that full market access in agriculture could result in significant increases in U.S. exports to Israel of a variety of products, including cheese, processed foods, apples, pears, cherries, frozen vegetables, and stone fruits.

GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies that have been awarded government contracts are required to offset foreign goods or services provided under the contracts by agreeing to localization commitments that require one of the following: (1) investment in local industry; (2) co-development or co-production with local companies; (3) subcontracting to local companies; or, (4) purchasing from Israeli industry.

Israel is a Party to the WTO Agreement on Government Procurement (GPA).

Since January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations has been 20 percent of the value of the contract; for procurements excluded from GPA coverage, the offset is 35 percent; and, for military procurements, the offset is 50 percent. Under the revised GPA, which entered into force in 2014, Israel began phasing out offsets in 2020 and will eliminate offsets by 2029.

U.S. suppliers have indicated that they believe that the size and nature of their offset proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the consideration of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters often are reluctant to commit to make purchases in Israel in compliance with the IC agreements, and, as a result, their participation in Israeli tenders is limited.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms choose to insure against the risk, which raises their overall bid price and reduces their competitiveness, as compared to bids from Israeli firms.

The United States–Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU) is intended to facilitate defense cooperation, in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the Israeli market for U.S. suppliers interested in competing for Ministry of Defense procurements. Tenders open to U.S. suppliers require the company to have a local agent or bank account to be able to transact in New Israeli Shekels (NIS).

INTELLECTUAL PROPERTY PROTECTION

The United States remains concerned with certain issues involving Israel's protection and enforcement of intellectual property (IP) rights. On copyright protection, although Israel is a signatory to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, it has not ratified either. U.S. industry has raised concerns regarding the adequacy of the protection Israel provides against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

BARRIERS TO DIGITAL TRADE

Data protection in Israel is governed primarily by the Protection of Privacy Law (5741-1981) and the guidelines of the Israeli regulator, the Privacy Protection Authority. Similar to the European Union General Data Protection Regulation, Israeli law restricts the cross-border transfer of personal data of Israelis unless certain specific criteria are met, such as the use of standard contract clauses. The United States remains committed to working with Israel to ensure continuity in trusted cross-border data flows and privacy protection.

JAPAN

TRADE AGREEMENTS

The United States–Japan Trade Agreement (USJTA) and the United States–Japan Digital Trade Agreement (USJDTA) entered into force on January 1, 2020. Under the USJTA, more than 90 percent of U.S. agricultural exports to Japan are duty free or receive preferential tariff access. The USJDTA includes high-standard provisions, including provisions that: prohibit the application of customs duties or other discriminatory measures to digital products; ensure trusted cross-border transfer of information; and, address the mandatory use of local computing facilities.

The United States continues to urge Japan to remove a broad range of barriers to U.S. exports, including barriers at the border as well as other barriers to entering and expanding the presence of U.S. products and services in the Japanese market.

IMPORT POLICIES

Tariffs

Japan's average Most-Favored-Nation (MFN) applied tariff rate was 4.2 percent in 2021 (latest data available). Japan's average MFN applied tariff rate was 14.9 percent for agricultural products and 2.5 percent for non-agricultural products in 2021 (latest data available). Japan has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 4.6 percent.

While Japan's average MFN applied tariffs are relatively low for non-agricultural products, certain high tariffs have a negative impact on a range of U.S industrial goods exports to Japan, such as chemicals, fish, wood products, and jewelry.

Japan is the fourth largest single-country market for U.S. agricultural products, with U.S. exports valued at approximately $14.6 billion in 2022, despite the existence of tariff and substantial non-tariff market access barriers. While the USJTA removed or reduced tariffs on approximately 90 percent of U.S. food and agricultural exports, there are several important products for which tariffs remain high and limit U.S. market access, including rice and rice products, certain dairy products, beverages including mineral waters and fruit juices, processed foods and pet food, table grapes, frozen blueberries, sugar, chocolate, and sweetened cocoa powder.

Fish and Seafood

U.S. fish and seafood exports to Japan in 2021 totaled $708 million in 2022. However, tariffs of 3.5 percent to 10.0 percent on several fish and seafood products, such as pollock, herring, salmon, whiting, cod, and fish oil, hamper U.S. exports and reduce margins of Japanese importers who rely on U.S. raw product for their processing operations. Other market access issues include Japan's import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, Pacific herring, pollock roe, cod roe, and surimi. While Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the remaining import quotas and tariffs continue to present barriers to U.S. exports, and U.S. companies report that the process of obtaining quota allocation is expensive and subject to frequent delays. The United States has urged Japan to take further action to reduce and eliminate obstacles to U.S. exports of fish and seafood.

Leather and Footwear

Japan maintains high tariffs on leather, footwear, and travel goods, ranging from 3.5 percent to an *ad valorem* equivalent of approximately 130.0 percent on certain footwear imported from the United States. For example, Japan continues to apply tariff-rate quotas (TRQs) to a limited and tightly controlled volume of leather footwear imports. The tariffs on out-of-quota imports are either 30 percent or ¥ (yen) 4,300 (approximately $31) per pair, whichever is higher. These tariffs can more than double the cost of imports and negatively affect market access for U.S.-made footwear. Japan also applies TRQs on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

Non-Tariff Barriers

Rice Import System

Japan's highly regulated and nontransparent system of importation and distribution for rice limits the ability of U.S. exporters to have meaningful access to Japan's consumers. Japan has established a global TRQ of 682,200 metric tons (on a milled basis) for imported rice. The Grain Trade and Operations Division of the Ministry of Agriculture, Forestry, and Fisheries (MAFF) Crop Production Bureau manages the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous-buy-sell (SBS) tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice uses, such as industrial food processing, animal feed, and re-export as food aid. Under SBS tenders, only a small amount of U.S. rice imported into Japan actually reaches Japanese consumers while still identifiable as U.S. rice. In recent years, SBS tenders have not been filled due partly to the non-market-based markup MAFF imposes on TRQ imports.

Although Japan asserts that the markup is set using supply and demand figures and world pricing, it has not changed the markup since 2018. U.S. rice exports currently make up only about four percent of all rice consumed in Japan. The United States will continue to monitor Japan's rice import system in light of Japan's WTO import commitments and engage with Japan on its SBS markup for rice.

Wheat Import System

Japan requires food wheat to be imported through the Grain Trade and Operations Division of MAFF's Crop Production Bureau to secure the lowest tariff rate. The Crop Production Bureau resells the wheat to Japanese flour millers at prices substantially above import prices by imposing a markup. The United States continues to carefully monitor Japan's operation of its state-trading entity for wheat and its potential to distort trade.

Pork Import Regime

U.S. pork exports to Japan are subject to a trade-distorting "gate price mechanism" that functions as a variable levy. To prevent lower-priced imports from competing with Japanese pork, the mechanism levies progressively higher duties on lower-priced imports. For instance, chilled and frozen pork are subject to a specific duty of up to ¥125 per kg (approximately $0.89 per kg) based on the difference between the actual import value and a government-established reference price. This duty is in addition to an *ad valorem* duty that is charged on all chilled and frozen pork regardless of import value. With the implementation of the USJTA, the variable levy under the pork gate price mechanism will be reduced over time for U.S. pork, but not eliminated.

Ethanol

On May 23, 2022, Japan pledged to take all available measures to double demand for bioethanol, including for sustainable aviation fuel and on-road fuel, by 2030. Yet Japan's annual transport biofuels target of 500 million liters of crude oil equivalent has not changed since 2017 despite Japan's commitment to reduce greenhouse gas emissions in the transportation sector. In addition to the static biofuel target, Japan limits its use of U.S. corn-based ethanol through restrictions on feedstock type. The United States urges Japan to increase its annual biofuels target and eliminate any cap on corn-derived ethanol.

Customs Barriers and Trade Facilitation

Japan's *de minimis* threshold is ¥10,000 (approximately $71). U.S. stakeholders have contended that the level is too low. Expanding Japan's advance rulings system to address more customs issues would also improve transparency and predictability for U.S. exporters. The United States also has certain concerns about unequal customs treatment between Japan Post Express Mail Service (EMS) and private express delivery companies. The United States continues to urge Japan to improve the speed of customs processing and to reduce the complexity of customs and border procedures. (*For further information, see the Services Barriers section.*)

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Radio Device Technical Standards Compliance Certification

Imported radio devices must receive "*giteki*" certification from the Ministry of Internal Affairs and Communications (MIC), verifying compliance with design and technical standards, in order to be sold legally in Japan. U.S. companies report that the process to obtain the "technical conformity mark" is lengthy. U.S. Federal Communications Commission certification is not recognized for *giteki* purposes, and some certified testing labs have refused to analyze U.S. applicant products. U.S. companies say information about the certification process is difficult to obtain and often incomplete, and test methods are not updated.

Sanitary and Phytosanitary Barriers

Food Safety

Proposed Shift in Regulatory Oversight

As part of an overall effort to streamline management of issues relating to health and infectious disease, the Government of Japan is considering shifting oversight of food safety matters (under the Food Sanitation Act) from the Ministry of Health, Labour and Welfare (MHLW) to the Consumer Affairs Agency (CAA). Implementation of any legislation for that purpose that might be passed by the Diet in 2023 is expected as early as 2024. Currently, three divisions within the MHLW Pharmaceutical Safety and Environmental Health Bureau, which are staffed with experts experienced in regulating foodstuff imports to meet Japan's food security needs, oversee food safety standards, approvals, and enforcement of technical issues such as food additives, chemical residues, and food products derived from biotechnology. The United States will monitor deliberation regarding any legislation and implementing regulations to ensure continued science-based regulatory decision-making and a level playing field for export of food products to Japan.

Pre- and Post-Harvest Fungicides

Japan classifies fungicides applied pre-harvest as pesticides and classifies fungicides applied post-harvest as food additives. These different classifications based on the time of application lack a discernable science-based rationale. Because post-harvest fungicides are classified as food additives, Japan requires products treated with them to be labeled at the point of sale with a list of fungicides used. This requirement does not have a significant impact on domestic producers because Japanese farmers generally apply fungicides prior to harvest. The requirement may disadvantage U.S. products, however, because it wrongly suggests that competing Japanese products have not been treated with fungicides.

Maximum Residue Limits

Japan's procedures for enforcement of maximum residue limits (MRLs) result in uncertainty for shippers, including those who have never violated Japan's standards. Japan imposes enhanced surveillance on all imports from an exporting country following one MRL violation by one producer. If a second violation is detected during the enhanced surveillance period, Japan will detain and test all shipments of that product from the exporting country, holding shipments until residue testing proves compliance. A violation by a single producer from one country is not indicative of violations by other producers from that same country. The United States continues to urge Japan to adopt a risk-based, violator-specific approach to addressing MRL violations.

Beef and Beef Products

On May 17, 2019, Japan eliminated age-related restrictions on the cattle from which U.S. beef and beef product exports to Japan are derived, thereby allowing use of cattle that are 30 months of age and older. However, Japan maintained the requirement that U.S. exporters must hygienically remove those tissues Japan defines to be specified risk materials (SRMs). Japan's definition of SRMs is more restrictive than the World Organisation for Animal Health (WOAH) guidelines provide for countries with a negligible risk for bovine spongiform encephalopathy (BSE), as well as the U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) regulations. Specifically, Japan requires that all parts of the head, other than tongues, cheek meat (Masseter muscle), and skins, be removed. Notably, this excludes head meat, which is allowed under WOAH guidelines and FSIS regulations. This restriction has necessitated the retention of an extra-regulatory third-party verification program, as FSIS does not verify the removal of the additional tissues. At the time Japan eliminated its age-related restrictions, the United States pressed Japan to align its SRM definition with WOAH guidelines for countries with a negligible risk for BSE. The United States continues to seek Japan's alignment with international guidelines.

Plant Health

Potatoes

U.S. potato exports to Japan are currently limited to chipping potatoes. In March 2020, the United States submitted an official request to Japan for market access for table-stock potatoes. In September 2020, Japan provided its preliminary pest lists for table-stock potatoes, which the United States commented on in February 2021. The United States continues to engage with Japan on this market access request.

Apples

In 2017, the United States submitted an official request to export apples to Japan under a systems approach, which would provide Japan with the same level of phytosanitary protection and eliminate costly pestmitigation requirements for U.S. exporters. The United States will continue to engage with Japan and provide capacity building on the requested systems approach.

Stone Fruit

In August 2021, Japan granted market access for U.S.-grown Japanese plum varieties, but Japan continues to impose costly fumigation requirements even though without them an appropriate level of phytosanitary protection can be provided to Japan. The United States will continue to engage with Japan on phytosanitary topics related to U.S. stone fruit, including co-fumigation of U.S. plums and nectarines, and the U.S. market access request for peaches.

GOVERNMENT PROCUREMENT

Japan is a Party to the WTO Agreement on Government Procurement (GPA).

Japan is obligated to open its government procurement covered under the GPA to goods, services, and suppliers from the United States and other GPA Parties. U.S. companies in several sectors have expressed concern that the Japanese Government sometimes uses technical specifications that could exclude U.S. products and services, and in some cases may exert pressure on various entities to select domestic companies for procurement opportunities. The United States has expressed these concerns to Japan as they have arisen and will continue to engage with Japan to address these concerns.

INTELLECTUAL PROPERTY PROTECTION

Japan generally provides strong intellectual property (IP) protection and enforcement, although a number of concerns remain.

Copyright

In January 2022, an amendment to Japan's Copyright Act created a presumption that when a right holder enters into a license agreement authorizing a broadcast or cablecast (linear broadcast rights) of a copyrighted work, the agreement will be presumed to also grant so-called "simulcast" rights to the broadcaster (allowing transmissions of the broadcasted content for one week on other platforms, such as Internet streaming) unless a contrary intention is clearly indicated at the time the rights are originally granted to the broadcaster. This presumption is a departure from the typical operation of copyright law, where express permission for the additional transmission is required from the copyright owner.

Japan's Agency for Cultural Affairs has drafted a bill on an extended collective licensing (ECL) system under which a user of a copyrighted product would pay a fee to legally acquire copyrighted material from a central point. While this system would make it easier for users of copyrighted products, critics contend it would infringe on IP rights and are advocating for an opt-out option to the ECL system. The Japanese Government stated it plans to limit the scope of the ECL system to orphan works and non-commercial works. The Diet is expected to consider the draft ECL bill during the January to June 2023 ordinary Diet session.

Enforcement

On October 1, 2022, an amendment to Japan's Trademark Act came into force that addresses concerns over Japan's personal use exemption for imported goods, which had been used increasingly to send counterfeit items to individuals in Japan via postal and courier services. Pursuant to the amendment, items imported from "overseas vendors" for personal use fall within the scope of the Trademark Act, such that counterfeits imported in this manner are subject to seizure. The United States will monitor implementation and enforcement of the amendment to determine whether it reduces the import of counterfeit goods into Japan.

Geographical Indications

Japanese and foreign products are eligible for geographical indications (GI) protection in Japan. Japan also has recognized numerous GIs pursuant to international agreements. Exchanges of lists of terms pursuant to international agreements have resulted in Japan granting certain terms automatic protection as GIs without sufficient transparency or due process. The United States continues to monitor implementation of Japan's GI system, as well as implementation of its recent agreements with the European Union and other trading partners with respect to GIs.

SERVICES BARRIERS

Japan Post Holdings and Related Companies

Japan Post Holdings (JP Holdings) is a parent company created to replace the former state-owned enterprise Japan Post. Its subsidiary companies include the new Japan Post Company (Japan Post Co.), which runs post offices, postal services, and express delivery; Japan Post Insurance (JP Insurance); and, Japan Post Bank (JP Bank). The Japanese Government still owns a little over one third of JP Holdings, which is the minimum amount stipulated in Japan's Postal Privatization Law. As of December 31, 2022, JP Holdings owned approximately 89.0 percent of JP Bank and approximately 49.9 percent of JP Insurance.

Express Delivery

The United States remains concerned by unequal conditions of competition between Japan Post Co. and international express delivery suppliers. Private U.S. express carriers are required to declare all shipments for customs clearance and calculate duties and consumption taxes based on cost. Different procedures apply to Japan Post Co., as duty assessment is based on EMS shipment rules. Further, companies report that Japan customs officials may not consistently apply Japan's *de minimis* standards to Japan Post Co. EMS shipments, thereby allowing some EMS packages to avoid inspections and duty tax calculations that would otherwise be due.

Japan Post Co. is regulated by a single agency, the MIC, whereas private express delivery companies are subject to rules imposed by various ministries, including the Ministry of Finance; the Ministry of Health, Labour, and Welfare; the MAFF; and, the Ministry of Land, Infrastructure, Transport, and Tourism. The United States continues to urge Japan to equalize customs procedures and requirements.

Insurance Services

Japan's insurance market is the third largest in the world, after those of the United States and China, with a premium volume of $403.6 billion in 2021 (latest data available). In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyōsai*) and JP Insurance also provide substantial amounts of insurance to consumers.

Postal Insurance and Banking

The United States has longstanding concerns about JP Insurance's negative impact on competition in Japan's insurance market and continues to closely monitor the implementation of reforms. The United States has long urged Japan to take steps to address a range of level-playing-field concerns.

The United States continues to urge Japan not to allow JP Bank and JP Insurance to expand the scope of their operations before a level playing field is established. Restraints on the scope of JP Insurance operations, including a cap on the amount of insurance coverage and limits on the types of financial activities and products JP entities can offer, have helped to limit harm to private insurance companies. In April 2019, Japan raised the per-customer deposit cap to ¥26 million (approximately $185,700). The United States continues to monitor these increases, which do not require legislative changes to be enacted.

Insurance Cooperatives

Kyōsai hold a substantial share of the insurance business in Japan. Some *kyōsai* are regulated by their respective agencies of jurisdiction (*e.g.*, MAFF or MHLW) instead of by Japan's Financial Services Agency (FSA), which regulates all private sector insurance and financial services companies. These separate regulatory schemes create a nontransparent regulatory environment and afford *kyōsai* critical business, regulatory, and other advantages over their private sector competitors. The United States remains concerned about limited FSA supervisory authority over *kyōsai*.

Professional Services

Legal Services

Japan imposes cumbersome and time-consuming procedures for the registration of foreign lawyers to provide international legal services in Japan and prohibits lawyers from establishing branch offices in Japan without first incorporating in Japan.

Educational Services

Japan does not treat foreign universities' Japan campuses as equivalent to Japanese higher education institutions for tax, scholarship, and research grant purposes. This has harmed the ability of degree-granting campuses to compete for students and faculty and deterred other U.S. universities from launching full four-year degree programs. Despite extensive consultations with authorities, no U.S. university has been able to satisfy all the legal requirements to be granted "educational corporation" (*gakkō hōjin*) status, which would confer the same tax benefits enjoyed by Japanese universities. The requirement that such corporations be "independently administered" (*i.e.*, not subject to direct administration by the parent university in the home country) is a particularly difficult legal hurdle to overcome. Lack of *gakkō hōjin* status also means foreign satellite universities are excluded from participation in Japanese Government grant programs that promote international exchange and provide financial support for study abroad, and their faculty are excluded from applying for government-funded and other research grants on the same basis as faculty at other Japanese universities.

Telecommunications Services

Telecommunications Business Act

U.S. and foreign services operators in Japan, including those offering only streaming and cloud-based services, became subject to regulation under Japan's Telecommunications Business Act (TBA) in April 2021. Businesses that intermediate communications with users in Japan, including providers of cross-border services, must register as telecommunications providers with MIC, appoint a representative or agent physically domiciled in Japan, and comply with regulations imposed on domestic operators under the TBA, including disclosure and reporting obligations. U.S. stakeholders have noted such requirements could be particularly burdensome for foreign small and medium-sized enterprises (SMEs).

Of particular concern is compliance with the TBA's "secrecy of communications" provision, which, when extended to digital services, requires user consent to access or transmit communication content and metadata in any electronic commerce, streaming, search, e-mail, messenger, cloud, or payment service deemed by the MIC to intermediate two-party communications. The MIC has flagged user consent policies that require users to relinquish their right to secrecy of communications in order to access the service as "inappropriate," even when services are provided free of charge or do not require the actual identity of the user. The MIC, in the process of drafting implementing ordinances, has signaled that blanket consent and the exceptions for automated communication are unlikely. Additionally, mandatory reporting of service outages may be overly burdensome if they are triggered by very low levels of service disruption.

Spectrum Auctions

Unlike most advanced economies, Japan does not use auctions to allocate spectrum for commercial mobile services. Allocation decisions are at the discretion of the MIC, based on consultation with the Radio Regulatory Council and consideration of plans submitted by the operators. The factors that the MIC uses to evaluate applications have raised questions about the fairness of the allocation process. On March 31, 2022, the MIC released an interim report on the use of auctions to allocate spectrum for a limited number of frequency bands. On November 25, 2022, MIC released a summary of discussions held with an advisory council, laying out a policy direction introducing a "conditional auction" for allocation of millimeter wave bands or frequency bands that need to be shared with other wireless systems, in addition to the current allocation system. The conditional auction would still allow the MIC discretion to account for certain conditions such as area coverage when allocating spectrums.

Remote Keyless Entry Systems

Japan is the only country that does not use 433.92MHz for remote keyless entry systems for automobiles. U.S. automakers continue to express concern about Japan's use of 315 MHz for these systems, which requires foreign automakers to modify their systems in order to sell automobiles in Japan, posing a significant non-tariff barrier.

Handset Pricing

In 2019, the Diet passed an amendment to the TBA that: (1) prohibits the bundling of handset purchase and carrier service contracts; (2) sets a cap on allowable discounts for handset prices; and, (3) specifies criteria allowing exemptions for retailers to discount "non-performing" inventory. The revisions were part of a government effort to improve contract transparency and lower prices for consumers by removing operators' justifications for high subscription charges based on a need to recover handset subsidies.

One exemption related to inventory raises questions about discriminatory treatment of devices. If 24 months have passed since the last procurement of a device, a carrier or reseller may discount any unsold devices by 50 percent. However, for devices no longer in production, the 50 percent discount is permitted after only 12 months since the last procurement, and the allowable discount increases to as much as 80 percent after 24 months. These exceptions to the discount restriction reward Japanese companies, who tend to produce an abundance of cheaper, limited-life devices, and harm foreign companies, including U.S. companies, who create higher-quality devices that retain their functionality and value over time. The United States continues to push for rules that will enable a level playing field.

Renewable Energy Services

Renewable energy growth in some regions of Japan has been constrained by lack of grid capacity. Laws implemented in 2020 require the legal unbundling of the transmission and distribution business from the power generation and retail business, but incumbent transmission utility companies still own and operate most of the transmission and distribution grids in Japan through wholly owned subsidiaries. These utility companies reportedly overstate actual grid usage and understate available capacity to prevent competition from new entrants. Many of the utility companies are also holding unused space on the grid for long-idled nuclear power reactors. Incumbent transmission utilities are required to allow power producers to connect to their power facilities unless they have a justifiable reason to deny the request. Given real grid capacity constraints in some regions, utilities have begun offering renewable generation "non-firm" transmission contracts, which allow generators to connect to the grid and use available grid capacity in exchange for a higher risk of curtailment during times of congestion. In order to ensure that renewable energy is used to the fullest extent possible, the Ministry of Economy, Trade, and Industry (METI) is considering changes to the curtailment order that would favor renewable energy generation.

BARRIERS TO DIGITAL TRADE

In September 2019, a new advisory board, the Digital Market Competition Headquarters (DMCH), was created under the Cabinet Secretariat to lead the coordination of competition policy in the digital market. U.S. unions and companies have expressed concern with regard to the enforcement of Japan's existing competition laws in digital market and technology sectors in which Japanese companies are significant participants.

Interactive Computer Services

Specified Digital Platform Providers

In February 2021, the Act on Improving Transparency and Fairness of Digital Platforms (the Transparency Act) went into effect, which provides the DMCH and METI with the authority to designate certain providers of digital services with obligations to provide increased transparency, including with regard to the terms and conditions of use of their service. The Transparency Act's provisions apply only to digital companies "larger than a certain size in areas that are particularly important parts of society" and "for which the state of transactions has been clearly ascertained through surveys."

In April 2021, METI designated several large providers of online electronic commerce services, including the Japanese companies Rakuten and Yahoo! Japan, as well as the Japanese subsidiaries of Amazon, Google, and Apple) as "specified digital platform providers" under the Transparency Act. U.S. companies have raised concerns about the handling of company information in the monitoring review process. The U.S. Government has noted with concern a November 11, 2022 public disclosure by a leading Japanese newspaper of METI administrative actions under the law directed toward specific companies while in the draft stage (prior to final decision by the ministry).

On April 26, 2022, the DMCH released two interim reports evaluating competition for mobile operating systems and for voice assistants and wearables, with the eventual goal of possible regulation under the Transparency Act. U.S. industry flagged several concerns related to the drafting process for these reports, including a short public comment period that coincided with a major national holiday, and a lack of opportunities to provide information to the DMCH during the drafting process despite repeated requests. The United States will continue to monitor the situation to ensure transparency as the DMCH prepares final reports and potential regulation.

On October 3, 2022, METI designated several digital advertising service providers (including Google, Meta, and Yahoo! Japan) as "specified digital platform providers" in the digital advertising sector under the Transparency Act, following an earlier Japan Fair Trade Commission (JFTC) market study report citing Google's market position in digital advertising. U.S. industry expressed concern over the same above-mentioned issues related to the drafting of the market study. The United States engaged with Japan in 2022 to address these concerns and will continue to monitor the situation to ensure a fair process as the DMCH prepares final reports and potential regulation.

Digital Platform Guidelines

In December 2019, the JFTC released guidelines on applying the Antimonopoly Act (AMA) to transactions between digital platform operators and consumers. In these guidelines, the JFTC asserts that platform companies are in "a superior bargaining position" when customers have no choice but to provide their data to use the services and platform companies may commit an abuse of that position when use of personal data is not fully and accurately disclosed or protected. After receiving input from stakeholders concerned about insufficient guidance, the JFTC provided several examples of practices that would or would not constitute abuse of superior bargaining position.

The United States will continue to monitor these developments and encourage transparency in the process.

SUBSIDIES

Japan maintains numerous support programs at the national, prefectural, and municipal levels that may favor domestic logs and wood products over imports. To increase the supply of domestic wood products from 31 million cubic meters in 2019 to 42 million cubic meters in 2030, Japan allocated ¥49.5 billion (approximately $350 million) for the Emergency Measures to Strengthen International Competitiveness and Product Supply Capability of the Wood Industry from the 2021 MAFF supplemental budget. Furthermore, in 2022 Japan allocated ¥171 billion (approximately $1.2 billion) under the Forest Management Project to support domestic thinning and selective logging operations. In addition, Japan has provided funding for local governments to manage unprofitable forestlands. Starting in 2024, Japan will begin to collect the Forest Environment Tax from each Japanese household to cover the cost of this program (approximately ¥60 billion, or $425 million, per year). The United States is monitoring the disbursement of these funds and other support programs.

ANTICOMPETITIVE PRACTICES

Improving Anti-Monopoly Act Compliance and Deterrence

Japan's AMA provides for both administrative and criminal sanctions against cartels and administrative sanctions for non-cartel anticompetitive conduct. Criminal prosecutions, which have the strongest deterrent effect against anticompetitive behavior, have been limited, and penalties against convicted company officials have been weak, although the JFTC has routinely imposed sizable civil "surcharges" against cartelists. The United States has continued to urge Japan to take steps to maximize the effectiveness of enforcement against cartel and bid rigging violations of the AMA to ensure open and competitive markets.

Abuse of Superior Bargaining Position

U.S. stakeholders in Japan continue to express concern regarding JFTC investigations under the "unfair trade practices" clause of the AMA because ambiguous standards for liability in this area may make good faith efforts to comply with the AMA difficult. Stakeholders have called for further clarification of each of the forms of abuse listed in the Abuse of Superior Bargaining Position Platform Guidelines to minimize the uncertainty for companies and users.

Limited Attorney-Client Privilege

In 2020, the JFTC introduced protections for certain attorney-client communications, a departure from Japan's general absence of such protections. However, the scope of protected confidential attorney-client communications is extremely limited, protecting only legal advice under the AMA regarding alleged antitrust cartels, which involve price-fixing, market allocation, and bid rigging. In principle, only an external lawyer's advice is protected. An in-house lawyer's advice might be protected only if the in-house lawyer is working independently from the enterprise itself. In addition, only legal advice by lawyers qualified in Japan is protected. Legal advice from foreign lawyers (even if they are registered in Japan as a Registered Foreign Lawyer) is not protected, as a result of Japanese limitations on the practice of law in Japan. The rules further protect communications only for documents that are carefully segregated from other unprotected documents. The United States will continue to monitor developments and advocate for fuller recognition of attorney-client privilege by the JFTC.

OTHER BARRIERS

Transparency

Advisory Groups

Advisory councils and other government-commissioned study groups enjoy significant power in Japan's regulatory process that sometimes goes beyond providing advice and recommendations. The United States continues to urge Japan to follow good regulatory practice to ensure transparency with respect to the formation and operation of advisory councils and other groups convened by Japan by adopting new requirements to ensure ample and meaningful opportunities for those not on advisory councils and study groups to participate in, and directly provide input to the regulatory process.

Public Comment Procedure

The United States remains concerned about inadequate implementation of public comment procedures by Japanese ministries and agencies. In 2022, stakeholders flagged several instances where comment periods for regulations or guidelines were non-existent, unnecessarily short, or occurred at the same time as major national holidays. In other cases, comments did not appear to have been adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The United States has stressed the need for Japan to improve the system, such as by lengthening the standard public comment period for rulemaking.

Automotive

The United States has expressed strong concerns with the overall lack of access to Japan's automotive market for U.S. automotive companies. A variety of non-tariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low. Non-tariff barriers include the non-acceptance of U.S. Federal Motor Vehicle Safety Standards certification as providing an equivalent level of protection as the Japanese vehicle safety standards; unique standards and testing protocols; unique spectrum allocation for short-range vehicle communications systems; a lack of opportunities for input by interested persons throughout the process of developing regulations; and, hindrances to the development of distribution and service networks.

Japan aims to transition to 100 percent clean energy vehicles, including electric vehicles, hybrid vehicles, and fuel cell electric vehicles (FCVs), sold in Japan by 2035. Japan provides a purchase subsidy of up to ¥850,000 (approximately $6,071) for traditional battery electric vehicles (BEVs). However, FCVs, which are primarily produced by Japanese companies, receive a much higher subsidy than BEVs, of up to ¥2.55 million (approximately $18,214), depending on the size of the vehicle. Until May 2022, Toyota had a 100 percent market share in Japan for FCVs, making this subsidy almost entirely directed toward one Japanese company.

Japan provides another incentive of up to ¥250,000 (approximately $1,786) for vehicles equipped with power feeding technology that allows vehicles to send stored power back into a home in the event of power outages. This subsidy was implemented on March 31, 2022 with little lead time, but few non-Japanese companies produce vehicles equipped with this specific technology, giving a competitive advantage to Japanese automotive manufacturers.

Medical Devices and Pharmaceuticals

Over a decade ago, the Japanese Government started streamlining regulatory approval timelines and improving the predictability of the reimbursement pricing system. However, in recent years, Japan has frequently introduced reimbursement adjustments in ways that stakeholders argue is non-transparent, increasing the unpredictability of the system's operation.

Japan's Price Maintenance Premium (PMP) system, introduced in 2010, adds price premiums to innovative new drugs and protects this price throughout the patent life of a medicine. In the 2018 pricing cycle, Japan made several changes to its PMP rules that have significantly reduced the number of innovative products and companies that receive the full benefit of the PMP. Several criteria introduced in 2018 for use in PMP calculations appear to make it easier for Japanese companies to qualify for top premiums and are unrelated to the degree of innovation of the individual product under consideration. Reimbursement outcomes suggest that U.S. companies, especially SMEs, are at a disadvantage compared to Japanese companies. Although Japan made minor changes during the 2020 and 2022 pricing cycles, U.S. industry asserts that the eligibility criteria were not adequately revised.

U.S. industry has also raised serious concerns regarding the lack of transparency and predictability in government decision-making. For example, the scope of the pharmaceutical annual price cut policy implemented in 2021 went far beyond any options put forward by the MHLW, and there was no opportunity for public comment prior to its formal announcement. In addition, in recent years, the MHLW has been consolidating medical device product functional categories for price determination with little explanation and little time for key stakeholders to respond. U.S. industry is concerned about the lack of more frequent and meaningful opportunities to provide input regarding Japan's reimbursement rules, as well as other policies of critical importance to the biopharmaceutical and medical device industries.

The United States continues to urge Japan to solicit and consider the input of all stakeholders, including U.S. stakeholders, when developing any measures related to reimbursement policies, and to follow transparent processes in the present and future development of any new policies and measures. The United States also continues to urge Japan to take into account international standards in the development of its regulations in clinical development, multiregional clinical trials, and risk management.

Nutritional Supplements

Japan regulates nutritional supplements as a part of a loosely defined "health food" subcategory of foodstuffs, unlike in the United States, where "dietary supplements" are regulated by the U.S. Department of Health and Human Services Food and Drug Administration (FDA) under different regulations than "conventional" foods. Japan has taken steps to streamline import procedures and to improve access in this market. However, significant market access barriers related to Japan's health claim system remain.

Japan's CAA establishes three categories for both domestic and imported products under the Food with Health Claims system: Food with Function Claims (FFC); Foods for Specified Health Uses (FOSHU); and, Foods with Nutrient Function Claims (FNFC). Most U.S. nutritional supplement products are unable to obtain either FOSHU approval or FNFC designation due to FNFC's standards and specifications, which limit the range of nutritional ingredients such as vitamins and minerals that can qualify as FNFC. Vitamin and mineral products designated under the FNFC system are excluded from the FFC system.

Quasi-Drugs

Japan has not adopted a monograph system, intended to expedite the registration of products known as quasi-drugs under Japan's Pharmaceutical and Medical Devices Act. As a result, products that contain active ingredients that are already approved for specific uses in Japan, such as in anti-dandruff shampoos and skin care, may still require six months to receive approval for market placement. The MHLW has committed to work with industry stakeholders and local prefectural governments to develop a monograph system, known as "Quasi-Drug Additives Spec Codex", which lists the approved uses for previously reviewed ingredients and claims. Such a Codex would speed up approval times and bring consistency to the reviews of products by the MHLW and local governments.

JORDAN

TRADE AGREEMENTS

The United States–Jordan Free Trade Agreement

The United States–Jordan Free Trade Agreement (FTA) entered into force on December 17, 2001. Under the FTA, as of January 1, 2010, Jordan provides duty-free access to nearly all U.S. exports, with exceptions for a few product lines, such as alcoholic beverages. The United States and Jordan meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Taxes

Jordan's General Sales Tax law allows the government to impose a special tax at the time of importation in addition to the general sales tax. For example, Jordan currently imposes a 15 percent special tax on carbonated drinks. Jordan also imposes a special tax on imported vehicles that varies according to the type of engine. Cars with conventional fuel engines are taxed within a range of 67 percent to 94 percent, electric-powered cars are taxed within a range of 10 percent to 15 percent, and hybrid vehicles are taxed at 50 percent. The United States continues to work with Jordan to promote transparency and predictability.

Non-Tariff Barriers

Import Licensing

Import licenses are required for specific food products by the Ministry of Health and for raw agricultural goods by the Ministry of Agriculture. The approval process can be time-consuming and, at times, lacks transparency. U.S. exporters have raised concerns about the difficulty of obtaining import licenses from the Ministry of Agriculture for U.S.-origin chicken leg quarters and live dairy cattle. The United States has worked with Jordan's Ministry of Agriculture and Ministry of Industry, Trade and Supply (MOITS) and has an agreement in principle with the Minister of MOITS to eliminate import licensing. The United States continues to engage with Jordanian authorities to address this issue.

Jordan requires that importers of commercial goods be registered traders or commercial entities. The MOITS occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. Jordan requires a special import license prior to the importation of telecommunications and security equipment.

Customs Barriers and Trade Facilitation

Jordan ratified the WTO Trade Facilitation Agreement (TFA) in February 2017. Jordan is overdue in submitting four transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; (3) customs contact points for the exchange of information; and, (4) details on the operation of the single window. Three notifications were due on February 22, 2017 and notification for details on the operation of the single window was due on December 31, 2022, according to Jordan's self-designated implementation schedule.

TECHNICAL BARRIERS TO TRADE

Corn Import Sampling Procedures

Jordan's Ministry of Agriculture does not comply with the sampling technique guidance for grain issued by the Jordan Standards and Metrology Organization, and Jordan's poor sampling techniques have resulted in the rejection of shipments of U.S.-origin corn, according to U.S. stakeholders. The United States has worked with Jordan to improve sampling and inspection procedures, but problems persist. U.S. exports of corn to Jordan have essentially stopped as a result. U.S. corn exports to Jordan were valued at approximately $59 thousand in 2022. The United States has worked with Jordan's Ministry of Agriculture and the MOITS and concluded an agreement in principle with those Ministries to accept certificates of inspection from the U.S. Department of Agriculture Grain Inspection Service as to the quality of corn shipped from the United States. The United States continues to work with Jordan to resolve this issue.

GOVERNMENT PROCUREMENT

Jordan is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since March 2000. In 2002, Jordan commenced the process of acceding to the GPA with the submission of its initial offer. Jordan subsequently submitted several revised offers in response to requests by the United States and other GPA Parties for improvements to market access. Negotiations on Jordan's accession have been inactive since 2014.

On September 8, 2022, the Jordanian Cabinet adopted Government Procurement Bylaw No. 8, which grants priority to a domestic bid over a foreign bid if the bids are equivalent in terms of requirements, specifications, and price. Additionally, Jordan offers domestic companies a preferential rate of 15 percent in all government tenders based on a 2013 cabinet decision, which has been renewed annually.

INTELLECTUAL PROPERTY PROTECTION

Jordan continues to take steps to provide more comprehensive protection of intellectual property (IP) rights. However, challenges regarding IP protection and enforcement persist. As seen throughout the region, online and physical copyright infringement is widespread. For example, the Spider company is listed in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) for supplying Spider-branded piracy devices through online and physical stores across Europe, the Middle East, and North Africa. The National Library, the primary IP authority in Jordan, has noted that challenges to combatting this type of piracy include a lack of adequate resources and a lack of initiative from IP rights holders. Despite past efforts by law enforcement officials to crack down on pirated and counterfeit products, enforcement efforts need to be strengthened, particularly with respect to utilizing *ex officio* authority to pursue criminal investigations. The U.S. Government continues to engage with the Government of Jordan on these issues.

BARRIERS TO DIGITAL TRADE

Information and communication technology firms operating in Jordan are, in many cases, required to maintain a local presence and to contract with local service suppliers. Local presence requirements can hamper the ability of firms to supply services on a cross-border basis.

SUBSIDIES

On January 4, 2022, Jordan launched the National Industries Support and Development Fund, which provides financial support in the form of grants to industrial companies that meet requirements related to performance, outputs, and operation. The MOITS estimates that 230 small, medium, and large companies will benefit from the support and that the program will provide needed job opportunities. Jordan intends the Fund to be a WTO-compliant alternative to its non-compliant subsidy and incentive scheme abolished in December 2021.