



## TUBO CONDUIT TIPO SEMIPESADO MARCA JUPITER™ PARED GRUESA NMX-J-535-ANCE-2008

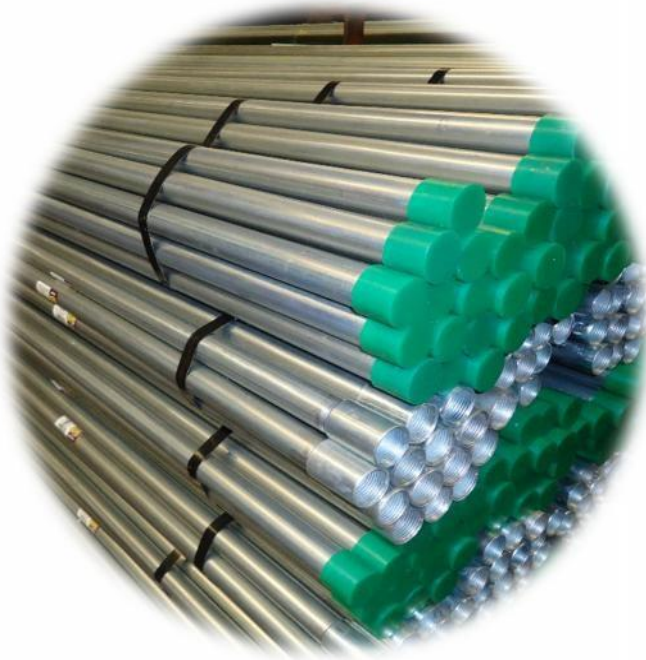
TUBOS METÁLICOS RÍGIDOS DE ACERO TIPO SEMIPESADO Y SUS ACCESORIOS PARA LA PROTECCIÓN DE CONDUCTORES



ELÉCTRICOS.

### CARACTERÍSTICAS Y ESPECIFICACIONES

- FABRICADOS CONFORME A LA NORMA **NMX-J-535-ANCE-2008**
- TUBO DE ACERO AL CARBÓN FORMADO CON LÁMINA ROLADA EN FRÍO **ASTM-A-366** / LÁMINA ROLADA EN CALIENTE **ASTM-A-569**.
- GALVANIZADO POR INMERSIÓN EN CALIENTE EN EL EXTERIOR Y CON UN RECUBRIMIENTO INTERNO DE PINTURA TIPO ESMALTE PARA UNA MAYOR RESISTENCIA A LA CORROSIÓN.
- ZINC EN GRADO DE ALTA PUREZA (99.9%) **ASTM-B6**
- APLICAMOS UN RECUBRIIMIENTO COMPLEMENTARIO DE REFUERZO PARA UNA MEJOR PROTECCIÓN CONTRA LA CORROSIÓN.
- DISPONIBLE EN DIÁMETROS DE ½" (16) A 4" (103)
- LONGITUD NORMALIZADA DE 3.00 m +/- 6mm
- EXTREMOS CON ROSCA NPSM "ROSCA RECTA"
- PRESENTACIÓN CON COPLE Y TAPÓN EN LOS EXTREMOS (TAPÓN Y COPLE SOLO EN DIÁMETROS DE ½" (16) A 2" (53), DE 2 ½" (63) A 4" (103) TAPÓN EN AMBOS EXTREMOS)
- IDENTIFICACIÓN CON ETIQUETA COLOR AMARILLO.
- TODAS LA PRUEBAS MECÁNICAS EFECTUADAS EXCEDEN LAS NORMAS OFICIALES.

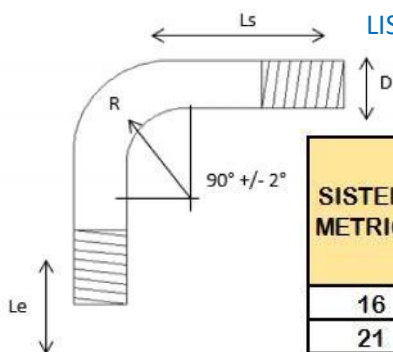


**USO SUGERIDO:** TUBO CONDUIT PARED GRUESA "JUPITER™" ES USADO TANTO EN INSTALACIONES OCULTAS, YA SEA EMPOTRADOS EN CONCRETO O PAREDES COMO EN INSTALACIONES VISIBLES O EN LA INDUSTRIA. EN LUGARES SECOS NO EXPUESTOS A HUMEDAD O AGENTES CORROSIVOS.

**LISTADO DE MEDIDAS FABRICADAS DE TUBO CONDUIT PARED GRUESA DE ACUERDO A LA NORMA  
NMX-J-535-ANCE-2008**

| SISTEMA<br>MÉTRICO | TAMAÑO<br>COMERCIAL | DIÁMETRO<br>EXTERIOR |        | ESPESOR<br>NOMINAL |      | NO. DE<br>HILOS<br>POR<br>PULGADA | LONGITUD<br>EFFECTIVA<br>DE ROSCA | PESO<br>MÍNIMO<br>POR 10<br>PIEZAS | COLOR DE<br>TAPÓN |
|--------------------|---------------------|----------------------|--------|--------------------|------|-----------------------------------|-----------------------------------|------------------------------------|-------------------|
|                    |                     | in                   | mm     | in                 | mm   |                                   | mm                                | kg                                 |                   |
| 16                 | 1/2"                | 0.807                | 20.50  | 0.060              | 1.52 | 14                                | 18.19                             | 22.10                              | AMARILLO          |
| 21                 | 3/4"                | 1.000                | 25.40  | 0.060              | 1.52 | 14                                | 18.19                             | 27.80                              | VERDE             |
| 27                 | 1"                  | 1.250                | 31.75  | 0.075              | 1.90 | 11.5                              | 22.79                             | 43.60                              | NARANJA           |
| 35                 | 1 1/4"              | 1.594                | 40.50  | 0.075              | 1.90 | 11.5                              | 22.79                             | 56.30                              | VERDE             |
| 41                 | 1 1/2"              | 1.827                | 46.40  | 0.075              | 1.90 | 11.5                              | 22.79                             | 64.90                              | AMARILLO          |
| 53                 | 2"                  | 2.318                | 58.87  | 0.090              | 2.28 | 11.5                              | 22.79                             | 99.40                              | NARANJA           |
| 63                 | 2 1/2"              | 2.896                | 73.57  | 0.135              | 3.42 | 8                                 | 31.83                             | 184.30                             | AMARILLO          |
| 78                 | 3"                  | 3.476                | 88.28  | 0.135              | 3.42 | 8                                 | 31.83                             | 226.00                             | NARANJA           |
| 103                | 4"                  | 4.466                | 113.44 | 0.135              | 3.42 | 8                                 | 41.83                             | 293.10                             | VERDE             |

TOLERANCIAS PARA EL DIÁMETRO EXTERIOR:  
 +/- 0.015" (0.39mm) PARA DIÁMETROS DE 1/2" (16) A 1 1/2" (41)  
 +/- 1% PARA DIÁMETROS DE 2" (53) A 4" (103)



**LISTADO DE MEDIDAS FABRICADAS DE CODOS 90° DE ACUERDO A LA NORMA  
NMX-J-535-ANCE-2008**

| SISTEMA<br>METRICO | DESIGNACIÓN<br>DEL TUBO | DIÁMETRO<br>EXTERIOR<br>D | LONGITUD<br>NIPLE | LONGITUD<br>RECTA<br>Ls | NO. HILOS<br>POR<br>PULGADA | LONGITUD<br>EFFECTIVA DE<br>LA ROSCA<br>Le | RADIO DE<br>CURVATURA<br>R |
|--------------------|-------------------------|---------------------------|-------------------|-------------------------|-----------------------------|--------------------------------------------|----------------------------|
|                    |                         | in                        | mm                | mm                      |                             | mm                                         | mm                         |
| 16                 | 1/2"                    | 0.807                     | 280               | 38                      | 10                          | 18.19                                      | 102                        |
| 21                 | 3/4"                    | 1.000                     | 318               | 38                      | 10                          | 18.19                                      | 114                        |
| 27                 | 1"                      | 1.25                      | 370               | 48                      | 10.5                        | 22.79                                      | 146                        |
| 35                 | 1 1/4"                  | 1.594                     | 429               | 51                      | 10.5                        | 22.79                                      | 184                        |
| 41                 | 1 1/2"                  | 1.826                     | 560               | 51                      | 10.5                        | 22.79                                      | 210                        |
| 53                 | 2"                      | 2.317                     | 598               | 51                      | 10.5                        | 22.79                                      | 241                        |
| 63                 | 2 1/2"                  | 2.896                     | 900               | 76                      | 10                          | 31.83                                      | 267                        |
| 78                 | 3"                      | 3.475                     | 925               | 79                      | 10                          | 31.83                                      | 330                        |
| 103                | 4"                      | 4.488                     | 1300              | 86                      | 13                          | 41.83                                      | 406                        |

EL ÁNGULO DE FLEXIÓN DEL CODO DEBE TENER UN GRADO DE 90° +/- 2°  
 LA TOLERANCIA ES DE +/- UN HILO DE LA ROSCA  
 IDENTIFICACIÓN CON ETIQUETA AMARILLA

LISTADO DE MEDIDAS FABRICADAS DE ACOPLADORES  
(COPLES) DE ACUERDO A LA NORMA NMX-J-535-ANCE-2008

| SISTEMA<br>MÉTRICO | TAMAÑO<br>COMERCIAL | DIÁMETRO<br>EXTERIOR |        | LONGITUD<br>MÍNIMA |
|--------------------|---------------------|----------------------|--------|--------------------|
|                    |                     | in                   | mm     |                    |
| 16                 | 1/2"                | 0.934                | 23.73  | 32                 |
| 21                 | 3/4"                | 1.125                | 28.57  | 36                 |
| 27                 | 1"                  | 1.392                | 35.35  | 40                 |
| 35                 | 1 1/4"              | 1.677                | 42.60  | 40                 |
| 41                 | 1 1/2"              | 2.012                | 51.12  | 48                 |
| 53                 | 2"                  | 2.229                | 56.60  | 48                 |
| 63                 | 2 1/2"              | 3.142                | 79.80  | 65                 |
| 78                 | 3"                  | 3.758                | 95.45  | 70                 |
| 103                | 4"                  | 4.764                | 121.00 | 80                 |



TOLERANCIAS PARA EL DIÁMETRO EXTERIOR:  
 +/- 0.015" (0.38 mm) DE 1/2" (16) A 2" (53)  
 +/- 0.025" (0.64 mm) DE 2 1/2" (63) A 4" (103)



# Tubería Insulada Conduit Marca RYMCO® Bajo la Norma UL



**RYMCO®**  
C A L I D A D 3 6 0

## Tubería EMT\* UL 797 / Electrical Metallic Tubing EMT\* Steel

| Diámetro Nominal<br>Nominal Size |     | Peso 10 tramos<br>Weight 10 Unit Lengths |       | Diámetro Externo(1)<br>Outside Diameter(1) |        | Espesor Nominal (2)<br>Nominal Thickness(2) |      | Color de cinta<br>Tape Color | Piezas x atado<br>Pieces x bundle | Piezas x paquete<br>Pieces x lift |
|----------------------------------|-----|------------------------------------------|-------|--------------------------------------------|--------|---------------------------------------------|------|------------------------------|-----------------------------------|-----------------------------------|
| in.                              | mm. | lb.                                      | kg.   | in.                                        | mm.    | in.                                         | mm.  |                              |                                   |                                   |
| 1/2"                             | 16  | 30                                       | 13.6  | 0.706                                      | 17.93  | 0.042                                       | 1.07 | Black                        | 10                                | 700                               |
| 3/4"                             | 21  | 46                                       | 20.9  | 0.922                                      | 23.42  | 0.049                                       | 1.25 | Red                          | 10                                | 500                               |
| 1"                               | 27  | 67                                       | 30.4  | 1.163                                      | 29.54  | 0.057                                       | 1.45 | Blue                         | 10                                | 300                               |
| 1 1/4"                           | 35  | 101                                      | 45.8  | 1.510                                      | 38.35  | 0.065                                       | 1.65 | Red                          | 5                                 | 200                               |
| 1 1/2"                           | 41  | 116                                      | 52.6  | 1.740                                      | 44.20  | 0.065                                       | 1.65 | Black                        | 5                                 | 150                               |
| 2"                               | 53  | 148                                      | 67.1  | 2.197                                      | 55.80  | 0.065                                       | 1.65 | ---                          | ---                               | 120                               |
| 2 1/2"                           | 63  | 216                                      | 98.0  | 2.875                                      | 73.03  | 0.072                                       | 1.83 | ---                          | ---                               | 61                                |
| 3"                               | 78  | 263                                      | 119.3 | 3.500                                      | 88.90  | 0.072                                       | 1.83 | ---                          | ---                               | 51                                |
| 3 1/2"                           | 91  | 349                                      | 158.3 | 4.000                                      | 101.60 | 0.083                                       | 2.11 | ---                          | ---                               | 37                                |
| 4"                               | 103 | 393                                      | 178.3 | 4.500                                      | 114.30 | 0.083                                       | 2.11 | ---                          | ---                               | 30                                |

Nota: Tolerancias Aplicables  
Note: Applicable Tolerances

\* Recubrimiento Híbrido Interior Aislante y Anticorrosivo  
\* Interior Insulated Coating

Largo/Length: 10 Ft. (3.05m) +/- 1/4 in. (+/- 6.35mm)  
(1) 1/2" - 2" +/- 0.005 in. (16 - 53 +/- 0.13mm), 2 1/2" +/- 0.010 in. (63 +/- 0.25mm),  
3" +/- 0.015 in. (78 +/- 0.38mm), 3 1/2" - 4" +/- 0.020 in. (91 - 103 +/-  
0.51mm) (2) Solo informativo no requerimiento UL. For info. Only not a UL  
requirement.

Fabricado bajo la Norma **UL-797**.



**Galvanizado en línea por Inmersión en Caliente en el Exterior**  
**Recubrimiento de zinc, resistente a la corrosión**  
**Recubrimiento interior aislante**



**TUBOS METÁLICOS RÍGIDOS DE ACERO TIPO LIGERO Y SUS  
ACCESORIOS PARA LA PROTECCIÓN DE CONDUCTORES  
ELÉCTRICOS – ESPECIFICACIONES Y MÉTODOS DE PRUEBA.**

**Producto de  
Exportación**



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## TUBERÍA CONDUIT



### DESCRIPCIÓN :

Tubería de acero al carbón con Especificación bajo normas UL-6/NMX-J-534 con costura longitudinal re de alta frecuencia (ERW), bajo el proceso de galvanizado por inmersión en caliente con un espesor de c

Tubería Galvanizado Liso y Galvanizado Roscado para la conducción de cableado electrico en diametro

## VENTAJAS

Alta Calidad, gran resistencia mecánica.

Precisión geométrica y dimensional superior.

Seguridad, confiabilidad , soporte técnico y certificación de producto.

## USOS

Conduccion de cableado electrico.

### TUBERÍA

## CONDUIT RÍGIDA

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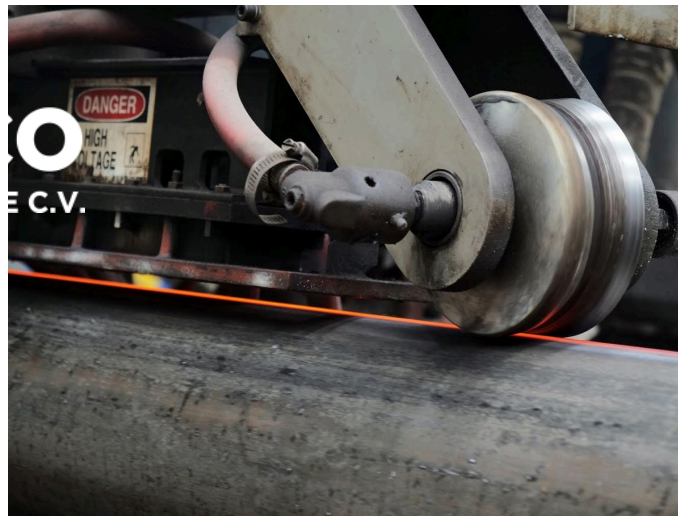
- UL6 / NMX-J-534





| Designación<br>del tubo |     | Diámetro |         | Espesor de<br>pared nominal |     | Peso  |       | Longitud |      |
|-------------------------|-----|----------|---------|-----------------------------|-----|-------|-------|----------|------|
|                         |     | exterior | nominal |                             |     |       |       |          |      |
| in                      | mm  | in       | mm      | in                          | mm  | Lb/Ft | Kg/m  | Ft       | m    |
| 1/2                     | 16  | 0.840    | 21.3    | 0.104                       | 2.6 | 0.82  | 1.22  | 10       | 3.05 |
| 3/4                     | 21  | 1.050    | 26.7    | 0.107                       | 2.7 | 1.08  | 1.61  | 10       | 3.05 |
| 1                       | 27  | 1.315    | 33.4    | 0.126                       | 3.2 | 1.60  | 2.38  | 10       | 3.05 |
| 1 1/4                   | 35  | 1.660    | 42.2    | 0.133                       | 3.4 | 2.17  | 3.23  | 10       | 3.05 |
| 1 1/2                   | 41  | 1.900    | 48.3    | 0.138                       | 3.5 | 2.60  | 3.87  | 10       | 3.05 |
| 2                       | 53  | 2.375    | 60.3    | 0.146                       | 3.7 | 3.48  | 5.18  | 10       | 3.05 |
| 2 1/2                   | 63  | 2.875    | 73.0    | 0.193                       | 4.9 | 5.53  | 8.24  | 10       | 3.05 |
| 3                       | 78  | 3.500    | 88.9    | 0.205                       | 5.2 | 7.21  | 10.75 | 10       | 3.05 |
| 3 1/2                   | 91  | 4.000    | 101.6   | 0.215                       | 5.5 | 8.69  | 12.95 | 10       | 3.05 |
| 4                       | 103 | 4.500    | 114.3   | 0.225                       | 5.7 | 10.27 | 15.30 | 10       | 3.05 |
| 5                       | 129 | 5.563    | 141.3   | 0.245                       | 6.2 | 13.92 | 20.73 | 10       | 3.05 |
| 6                       | 155 | 6.625    | 168.3   | 0.266                       | 6.8 | 18.07 | 26.91 | 10       | 3.05 |

- Protección garantizada para sus sistemas de conducción eléctrica.
- Galvanizada 100 % interior y exteriormente con zinc por el proceso de inmersión en caliente.
- Protección contra oxidación ambiental y contra oxido blanco mediante una capa de cromato de sodio como pasivador alcalino.
- Libre de aristas e imperfecciones filosas evitando daños a los cables eléctricos y facilita su deslizamiento durante la instalación.
- Evita incendios por arco eléctrico por condiciones de corto circuito.
- Fabricada con acero de alta resistencia y excelente ductilidad lo cual lo hace resistente a daños por maniobras y flexible cumpliendo sus necesidades de doblez.
- Extremos roscados NPT protegidos con pintura anticorrosiva y tapón de plástico.
- Entregados con cople en un extremos y protector de rosca en el otro.
- Cumplimiento a estándares nacionales e internacionales.
- Para las longitudes de la norma NMX-J-534 deberán ser de 3.20 mts. Sin cople.
- la longitud para la tubería UL-6 es de 10 ft la cual se mide ya con el cople incluido.
- Marcaje , cada pieza se encuentra estencilada con toda la información del fabricante es decir diámetro del tubo, espesor,nombre del fabricante etiqueta de liberación y una leyenda que dice: "Consulte a al fabricante para su instalación adecuada".





**PYTCO S. DE R. L. DE C. V.**  
**No. Lic. 5L-0449**

**PYTCO S. DE R. L. DE C. V.**  
**No. Reg. ISO-0445**

**PYTCO S. DE R. L. DE C. V.**  
**No. Reg. Q1-0159**



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# Tubería Conduit Marca RYMCO®



**RYMCO®**  
C A L I D A D 3 6 0

## Tubería IMC / Intermediate Metal Conduit Steel

| Diámetro Nominal |     | Peso 10 tramos         |        | Diámetro Externo (1) |        | Espesor Nominal (1)   |      | Color de tapón<br>Thread Prot. Color | Piezas x atado<br>Pieces x bundle | Piezas x paquete<br>Pieces x lift |
|------------------|-----|------------------------|--------|----------------------|--------|-----------------------|------|--------------------------------------|-----------------------------------|-----------------------------------|
| Nominal Size     |     | Weight 10 Unit Lengths |        | Outside Diameter (1) |        | Nominal Thickness (1) |      |                                      |                                   |                                   |
| in.              | mm. | lb.                    | kg.    | in.                  | mm.    | in.                   | mm.  |                                      |                                   |                                   |
| 1/2"             | 16  | 62                     | 28.12  | 0.815                | 20.70  | 0.078                 | 1.97 | Yellow                               | 10                                | 350                               |
| 3/4"             | 21  | 84                     | 38.10  | 1.029                | 26.26  | 0.083                 | 2.1  | Green                                | 5                                 | 250                               |
| 1"               | 27  | 119                    | 53.98  | 1.290                | 32.77  | 0.093                 | 2.35 | Orange                               | 5                                 | 170                               |
| 1 1/4"           | 35  | 158                    | 71.67  | 1.638                | 41.59  | 0.095                 | 2.41 | Green                                | ---                               | 135                               |
| 1 1/2"           | 41  | 194                    | 88.00  | 1.883                | 47.82  | 0.100                 | 2.54 | Yellow                               | ---                               | 110                               |
| 2"               | 53  | 256                    | 116.12 | 2.360                | 59.93  | 0.105                 | 2.67 | Orange                               | ---                               | 80                                |
| 2 1/2"           | 63  | 441                    | 200.04 | 2.857                | 72.57  | 0.150                 | 3.81 | Yellow                               | ---                               | 37                                |
| 3"               | 78  | 543                    | 246.30 | 3.476                | 88.29  | 0.150                 | 3.81 | Orange                               | ---                               | 30                                |
| 3 1/2"           | 91  | 629                    | 285.31 | 3.971                | 100.86 | 0.150                 | 3.81 | Yellow                               | ---                               | 24                                |
| 4"               | 103 | 700                    | 317.52 | 4.466                | 113.44 | 0.150                 | 3.81 | Orange                               | ---                               | 24                                |

Nota: Tolerancias Aplicables  
Note: Applicable Tolerances

Largo/Length: 10 Ft. (3.05m) w/coupling +/- 1/4 in. (+/-6mm)  
(1) Promedio de máx. y mín. de UL 1242. / Average from max. and min. from UL 1242

Fabricado bajo las Normas de **UL**

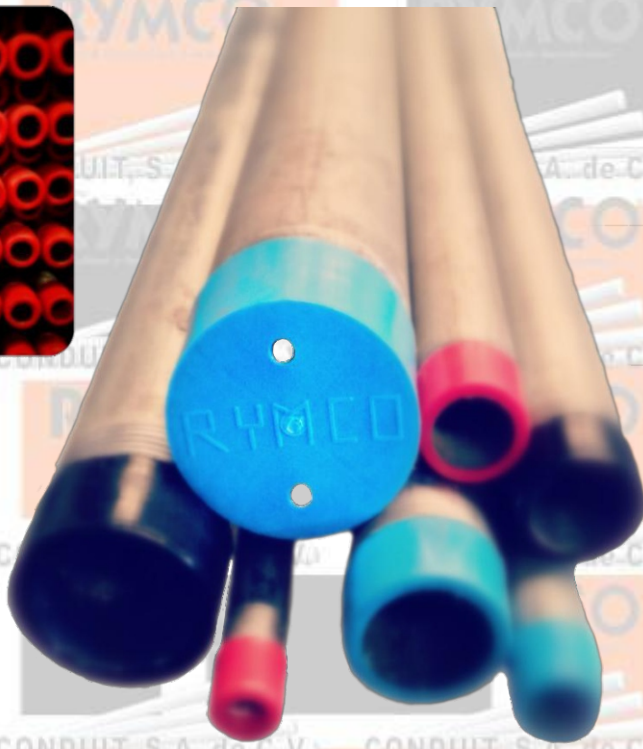


Galvanizado en línea por Inmersión en Caliente en el Exterior  
Recubrimiento de zinc, resistente a la corrosión  
Pintura interior deslizante anticorrosiva



**Producto de  
Exportación**

**TUBOS RÍGIDOS DE ACERO TIPO SEMIPESADO Y SUS ACCESORIOS  
PARA LA PROTECCIÓN DE CONDUCTORES – ESPECIFICACIONES Y  
MÉTODOS DE PRUEBA.**



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# Tubería Conduit Marca Rymco®

## Bajo la Norma UL



### Tubería RMC / Rigid Metal Conduit Steel

| Diámetro Nominal<br>Nominal Size |     | Peso 10 tramos<br>Weight 10 Unit Lengths |        | Diámetro Externo (1)<br>Outside Diameter (1) |        | Espesor Nominal (1)<br>Nominal Thickness (1) |      | Color de tapón<br>Thread Prot. Color | Piezas x atado<br>Pieces x bundle | Piezas x paquete<br>Pieces x lift |
|----------------------------------|-----|------------------------------------------|--------|----------------------------------------------|--------|----------------------------------------------|------|--------------------------------------|-----------------------------------|-----------------------------------|
| in.                              | mm. | lb.                                      | kg.    | in.                                          | mm.    | in.                                          | mm.  |                                      |                                   |                                   |
| 1/2"                             | 16  | 82                                       | 37.20  | 0.840                                        | 21.34  | 0.104                                        | 2.64 | Black                                | 10                                | 250                               |
| 3/4"                             | 21  | 109                                      | 49.44  | 1.050                                        | 26.67  | 0.107                                        | 2.72 | Red                                  | 5                                 | 200                               |
| 1"                               | 27  | 161                                      | 73.03  | 1.315                                        | 33.40  | 0.126                                        | 3.2  | Blue                                 | 5                                 | 125                               |
| 1 1/4"                           | 35  | 218                                      | 98.88  | 1.660                                        | 42.16  | 0.133                                        | 3.38 | Red                                  | ---                               | 90                                |
| 1 1/2"                           | 41  | 263                                      | 119.30 | 1.900                                        | 48.26  | 0.138                                        | 3.51 | Black                                | ---                               | 80                                |
| 2"                               | 53  | 350                                      | 158.76 | 2.375                                        | 60.33  | 0.146                                        | 3.71 | Blue                                 | ---                               | 60                                |
| 2 1/2"                           | 63  | 559                                      | 253.56 | 2.875                                        | 73.03  | 0.193                                        | 4.9  | Black                                | ---                               | 37                                |
| 3"                               | 78  | 727                                      | 329.77 | 3.500                                        | 88.90  | 0.205                                        | 5.21 | Blue                                 | ---                               | 30                                |
| 3 1/2"                           | 91  | 880                                      | 399.17 | 4.000                                        | 101.60 | 0.215                                        | 5.46 | Black                                | ---                               | 25                                |
| 4"                               | 103 | 1030                                     | 467.21 | 4.500                                        | 114.30 | 0.225                                        | 5.72 | Blue                                 | ---                               | 20                                |
| 6"                               | 155 | 1840                                     | 834.62 | 6.625                                        | 168.28 | 0.266                                        | 6.76 | Blue                                 | ---                               | 10                                |

Nota: Tolerancias Aplicables  
Note: Applicable Tolerances

Largo/Length: 10 Ft. (3.05m) w/coupling +/- 1/4 in. (+/- 6mm)  
(1) Sólo informativo no requerimiento UL. For info. Only not a UL requirement.

Fabricado bajo la Norma **UL-6**

Galvanizado por Inmersión en Caliente en el Interior y Exterior  
Recubrimiento de zinc, resistente a la corrosión



TUBOS METÁLICOS RÍGIDOS DE ACERO TIPO PESADO Y  
SUS ACCESORIOS PARA LA PROTECCIÓN DE  
CONDUCTORES - ESPECIFICACIONES Y MÉTODOS DE  
PRUEBA.



Producto de  
Exportación



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# TUBERÍA CONDUIT RÍGIDA



**VILLACERO**

TODO EN ACERO



# TUBERÍA CONDUIT RÍGIDA

Tubería de acero con soldadura longitudinal para conducción de cables eléctricos, fabricada en acero de alta calidad de la cual se obtiene una maleabilidad que facilita el doblado y roscado del producto. Proceso de fabricación en frío o caliente que cumple con los estándares nacionales NMX-J-534-ANCE-2008 e internacionales UL-6, galvanizado por el proceso de inmersión en caliente, el cual garantiza un galvanizado uniforme tanto interior como exterior dándole una resistencia a la corrosión excepcional. Los procesos de fabricación están vigilados por estrictos controles de calidad como Corrientes Eddy, Prueba Prece y el Doble a 90°. Certificado por Underwriters Laboratories Inc. (UL), ANCE y LA-PEM-CFE.

## CARACTERÍSTICAS

- En diámetros que van desde 16 a 103 mm (1/2" a 4").
- En largos estándar de 3.20 y 3.05 m con rosca y tapa/cople.
- Maleabilidad ideal para doblado y roscado.
- Máxima seguridad en protección de cableado eléctrico.
- Fácil de instalar y seguridad por su rigidez.

## USOS Y APLICACIONES

- Subestaciones eléctricas.
- Tiendas departamentales.
- Edificios.
- Bodegas.
- Aeropuertos.
- Estacionamientos.



# INFORMACION TECNICA

Dimensiones y características NMX-J534 longitud 3.20 m (10.4 ft) // ANCE D00036A/20130829 // ced.40 CFE-LAPEM- K311D-K1537-12

| DESIGNACIÓN |       | DIÁMETRO EXTERNO NOMINAL |       | ESPESOR |       | PESO  |        |          |          |            |          | EMPAQUE       |
|-------------|-------|--------------------------|-------|---------|-------|-------|--------|----------|----------|------------|----------|---------------|
| mm          | in    | mm                       | in    | mm      | in    | Kg/m  | Lb/Pie | Kgx3.20m | KgxAtado | Lbx10.4 ft | LbxAtado | Tubos x atado |
| 16          | 1/2   | 21.3                     | 0.840 | 2.8     | 0.109 | 1.27  | 0.85   | 4.06     | 515      | 8.86       | 1125     | 127           |
| 21          | 3/4   | 26.7                     | 1.050 | 2.9     | 0.113 | 1.68  | 1.13   | 5.39     | 685      | 11.77      | 1495     | 127           |
| 27          | 1     | 33.4                     | 1.315 | 3.4     | 0.133 | 2.50  | 1.68   | 8.00     | 728      | 17.48      | 1590     | 91            |
| 35          | 1 1/4 | 42.2                     | 1.660 | 3.6     | 0.140 | 3.39  | 2.27   | 10.83    | 986      | 23.66      | 2153     | 91            |
| 41          | 1 1/2 | 48.3                     | 1.900 | 3.7     | 0.145 | 4.05  | 2.72   | 12.96    | 1179     | 28.29      | 2575     | 91            |
| 53          | 2     | 60.3                     | 2.375 | 3.9     | 0.154 | 5.44  | 3.66   | 17.41    | 1062     | 38.03      | 2320     | 61            |
| 63          | 2 1/2 | 73.0                     | 2.875 | 5.2     | 0.203 | 8.63  | 5.80   | 27.61    | 1022     | 60.30      | 2231     | 37            |
| 78          | 3     | 88.9                     | 3.500 | 5.5     | 0.216 | 11.29 | 7.58   | 36.11    | 686      | 78.86      | 1498     | 19            |
| 103         | 4     | 114.3                    | 4.500 | 6.0     | 0.237 | 16.07 | 10.80  | 51.44    | 977      | 112.32     | 2134     | 19            |

Nota: Tolerancias en diámetro exterior y espesor basadas en la norma correspondiente.



Dimensiones y características UL-6 longitud 3.05 m (10 ft) ced.40 // UL E156557/LAPEM K311D-12

| DESIGNACIÓN |       | DIÁMETRO EXTERNO NOMINAL |       | ESPESOR |       | PESO  |        | PESO POR TUBO |            | MERCADO NACIONAL |            |               | MERCADO EXPORTACIÓN |            |               |
|-------------|-------|--------------------------|-------|---------|-------|-------|--------|---------------|------------|------------------|------------|---------------|---------------------|------------|---------------|
| mm          | in    | mm                       | in    | mm      | in    | kg/m  | lb/pie | kg x 3.05m    | lb x 10 ft | kg x atado       | lb x atado | tubos x atado | kg x atado          | lb x atado | tubos x atado |
| 16          | 1/2   | 21.3                     | 0.840 | 2.6     | 0.104 | 1.22  | 0.82   | 3.71          | 8.18       | 472              | 1039       | 127           | 929                 | 2046       | 250           |
| 21          | 3/4   | 26.7                     | 1.050 | 2.7     | 0.107 | 1.61  | 1.08   | 4.90          | 10.79      | 622              | 1370       | 127           | 979                 | 2157       | 200           |
| 27          | 1     | 33.4                     | 1.315 | 3.2     | 0.126 | 2.38  | 1.60   | 7.27          | 16.02      | 662              | 1457       | 91            | 872                 | 1922       | 120           |
| 35          | 1 1/4 | 42.2                     | 1.660 | 3.4     | 0.133 | 3.23  | 2.17   | 9.85          | 21.71      | 897              | 1976       | 91            | 887                 | 1954       | 90            |
| 41          | 1 1/2 | 48.3                     | 1.900 | 3.5     | 0.138 | 3.87  | 2.60   | 11.80         | 25.99      | 1074             | 2365       | 91            | 944                 | 2079       | 80            |
| 53          | 2     | 60.3                     | 2.375 | 3.7     | 0.146 | 5.18  | 3.48   | 15.79         | 34.79      | 963              | 2122       | 61            | 947                 | 2087       | 60            |
| 63          | 2 1/2 | 73.0                     | 2.875 | 4.9     | 0.193 | 8.24  | 5.53   | 25.12         | 55.33      | 929              | 2047       | 37            | 929                 | 2047       | 37            |
| 78          | 3     | 88.9                     | 3.500 | 5.2     | 0.205 | 10.75 | 7.22   | 32.78         | 72.21      | 623              | 1372       | 19            | 983                 | 2166       | 30            |
| 103         | 4     | 114.3                    | 4.500 | 5.7     | 0.225 | 15.30 | 10.28  | 46.67         | 102.82     | 887              | 1954       | 19            | 933                 | 2056       | 20            |

Nota: Tolerancias en diámetro exterior y espesor basadas en la norma correspondiente.

*Número máximo de conductores eléctricos que deben usarse en la tubería Conduit*

| CAL/<br>ALAMBRE | in | 1/2 | 3/4 | 1  | 1 1/4 | 1 1/2 | 2  | 2 1/2 | 3   | 4   |
|-----------------|----|-----|-----|----|-------|-------|----|-------|-----|-----|
| MCM AWG         |    |     |     |    |       |       |    |       |     |     |
| 16              |    | 6   | 10  | 17 | 30    | 41    | 68 | 98    | 150 | -   |
| 14              |    | 4   | 6   | 10 | 18    | 25    | 41 | 58    | 90  | 155 |
| 12              |    | 3   | 5   | 8  | 15    | 21    | 34 | 50    | 76  | 132 |
| 10              |    | 1   | 4   | 7  | 13    | 17    | 29 | 41    | 64  | 110 |
| 8               |    | 1   | 3   | 4  | 7     | 10    | 17 | 25    | 38  | 67  |
| 6               |    | 1   | 1   | 3  | 4     | 6     | 10 | 15    | 23  | 41  |
| 4               |    | 1   | 1   | 1  | 3     | 5     | 8  | 12    | 18  | 31  |
| 3               |    | -   | 1   | 1  | 3     | 4     | 7  | 10    | 16  | 28  |
| 2               |    | -   | 1   | 1  | 3     | 3     | 6  | 9     | 14  | 24  |
| 1               |    | -   | 1   | 1  | 1     | 3     | 4  | 7     | 10  | 18  |
| 0               |    | -   | -   | 1  | 1     | 2     | 4  | 6     | 9   | 16  |
| 00              |    | -   | -   | 1  | 1     | 1     | 3  | 5     | 8   | 14  |
| 000             |    | -   | -   | 1  | 1     | 1     | 3  | 4     | 7   | 12  |
| 0000            |    | -   | -   | -  | 1     | 1     | 2  | 3     | 6   | 10  |
| 250             |    | -   | -   | -  | 1     | 1     | 1  | 3     | 5   | 8   |
| 300             |    | -   | -   | -  | 1     | 1     | 1  | 3     | 4   | 7   |
| 350             |    | -   | -   | -  | 1     | 1     | 1  | 1     | 3   | 6   |
| 400             |    | -   | -   | -  | -     | 1     | 1  | 1     | 3   | 6   |
| 500             |    | -   | -   | -  | -     | 1     | 1  | 1     | 3   | 5   |
| 699             |    | -   | -   | -  | -     | -     | 1  | 1     | 1   | 4   |
| 700             |    | -   | -   | -  | -     | -     | 1  | 1     | 1   | 3   |
| 750             |    | -   | -   | -  | -     | -     | 1  | 1     | 1   | 3   |
| 800             |    | -   | -   | -  | -     | -     | 1  | 1     | 1   | 3   |
| 900             |    | -   | -   | -  | -     | -     | 1  | 1     | 1   | 3   |
| 1000            |    | -   | -   | -  | -     | -     | 1  | 1     | 1   | 3   |
| 1250            |    | -   | -   | -  | -     | -     | -  | 1     | 1   | 1   |
| 1500            |    | -   | -   | -  | -     | -     | -  | -     | 1   | 1   |
| 1750            |    | -   | -   | -  | -     | -     | -  | -     | 1   | 1   |



PROCESOS CERTIFICADOS  
BAJO LA NORMA ISO 9001: 2015  
ISO 2754 - Planta TUNA



PROCESOS CERTIFICADOS  
BAJO LA NORMA API Q1 ed. 9  
Q1-2621 - Planta TUNA



E156557



ANCE  
D00036A/20130829



LAPEM K311D-12



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Organización para la Cooperación y el Desarrollo Económico

DSTI/SC(2024)3/FINAL

Sin Clasificar

Inglés – Or. Inglés

12 de junio de 2024

**DIRECTORIO PARA CIENCIA, TECNOLOGÍA, E INNOVACIÓN  
COMITÉ DE ACERO**

**Últimos desarrollos en la capacidad y perspectiva de la fabricación de acero hasta 2026**

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**JT035455950**

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Traducción Oficial No: 263/24 del inglés al español fechada el 20 de septiembre de 2024

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## Resumen Ejecutivo

- **La capacidad de exceso de acero está destinada a convertirse en cada vez más problemática en los años venideros.** Se continúan haciendo inversiones en nueva capacidad de fabricación de acero a un ritmo rápido, mientras que la demanda global de acero permanece lenta, y la rentabilidad del sector ha disminuido hasta niveles bajos insostenibles registrados en 2014/15, cuando empezó la última crisis del acero. Se estima actualmente que la capacidad mundial de fabricación de acero en 2023 es de 2.432 millones de toneladas (mmt), excediendo la producción global de acero en 543 mmt. A pesar de la revisión a la baja derivada del aplazamiento de proyectos de inversión, previamente programados para empezar hacia finales de 2023, y de las noticias positivas sobre cierres que se han anunciado recientemente, la capacidad excesiva de acero se volverá cada vez más problemática.
- A lo largo de los últimos cinco años, la capacidad global de acero aumentó en casi 62 mmt. Los desarrollos regionales muestran un **significativo crecimiento de la capacidad en la Asociación de Naciones del Sudeste Asiático (SEAN, por sus siglas en inglés) y en el Medio Este**, mientras que las dos más grandes economías productoras de acero, la República Popular China (en adelante “China”) e India, que actualmente son responsables del 47% y del 6% de la capacidad mundial, respectivamente, también contribuyeron a la expansión. La capacidad a través del área de la OECD como un todo, declinó, mientras que las expansiones en algunas regiones como Norte América y Turquía más que se compensaron por los declives en algunos Estados Miembros de la Unión Europea (UE) y Japón.
- **Se espera que el problema de capacidad excesiva se vuelva aún más agudo en el futuro.** Se proyecta que la capacidad global de fabricación de acero aumente significativamente a lo largo de los próximos tres años (2024-2026), con 68 mmt de adiciones de capacidad en curso y una adición de 89 mmt en etapa de planeación. Al ritmo actual lento del crecimiento de la demanda, a un clip anual de 1.9%, la demanda de acero está aumentando únicamente en alrededor de 36 mmt al año. En la última crisis del acero, la baja rentabilidad y los bajos precios de los productos de acero condujeron a un número récord de medidas comerciales correctivas. La planeación estratégica para el futuro de la demanda de acero, la alineación con los objetivos del cambio climático y el impacto del comercio son esenciales para garantizar la estabilidad del mercado.
- **Las compañías de acero chinas continúan invirtiendo fuertemente en el exterior, particularmente en ASEAN y en otras partes de Asia, lo mismo que en África, mientras que la perspectiva para la demanda china permanece débil.** ASEAN atrae el 82% de la inversión total de firmas chinas en el exterior, a medida que las compañías chinas cambian sus actividades de inversión del mercado local a regiones con mejores

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prospectos de crecimiento de la demanda. Las firmas chinas desempeñan un gran papel en la inversión extranjera de la industria del acero en plantas de acero. Las expansiones de capacidad de las compañías chinas en el exterior, a través de inversión transfronteriza, responde por el 62% de la inversión total mundial transfronteriza en la nueva capacidad de fabricación de acero alrededor del mundo.

- **Los datos de inversión muestran claros signos de cambio hacia la transición verde, pero existen diferencias significativas entre las regiones.** De las nuevas inversiones anunciadas para los próximos tres años, más de la mitad son ahora en las plantas de hornos de arco eléctrico (EAF, por sus siglas en inglés) de relativamente bajas emisiones, mientras que el 42% son en plantas de hornos básicos de oxígeno (BF-BOF, por sus siglas en inglés). La mayoría de las nuevas inversiones en Asia incluyen plantas tradicionales BF/BOF. Otras regiones están viendo aumentos en la capacidad basados casi enteramente en hornos de arco eléctrico. Dada la larga vida de las plantas de fabricación de acero y para garantizar la rentabilidad del desarrollo sostenible de la industria del acero, es importante tener planes concretos para que las nuevas inversiones sean consistentes con las políticas del cambio climático y medio y largo plazo de la economía que alberga la inversión. Siguiendo hacia adelante, el Comité de Acero debe monitorear de cerca las nuevas capacidades, con vista a estimular el reemplazo de capacidades más viejas, de más altas emisiones para evitar los aumentos netos de capacidad y emisiones de CO<sub>2</sub>.

## 1. Introducción

Este reporte ofrece un análisis a fondo de los desarrollos recientes en la capacidad de fabricación de acero que están ocurriendo alrededor del mundo, al mismo tiempo que ofrece una perspectiva regional y global para el período de 2024 a 2026. El reporte incluye actualizaciones de datos e información proveniente de noticias, reportes y comunicaciones de prensa provenientes de compañías individuales de acero, extendiéndose hasta fines de diciembre de 2023. Las percepciones resultantes de este reporte pueden ayudar a quienes preparan las políticas y a las partes interesadas a evaluar mejor los riesgos potenciales que pueden impactar las condiciones globales del mercado del acero en el mediano y largo plazo.

De hecho, en el contexto de la significativa capacidad excesiva de la industria global del acero, es importante monitorear de cerca los cambios de la capacidad *neto*, incluyendo las nuevas inversiones y los cierres de plantas de acero, con el objeto de entender la situación actual y los riesgos emergentes que pueden impactar la industria en el futuro. Esto incluye las tendencias generales de capacidad, pero también las tecnologías en las que se está invirtiendo y la medida en la cual las inversiones son reemplazos de tecnologías más viejas, dada la necesidad de descarbonizar la producción de acero en los años por venir.

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Los datos presentados en este reporte indican que las inversiones en nueva capacidad continúan avanzando a paso seguro en varias regiones, particularmente en Asia, donde la mayoría de las inversiones nuevas involucran plantas tradicionales BF/BOF. Otras regiones también están viendo aumentos de capacidad, aunque a un paso más moderado y con un enfoque casi enteramente en EAF. En el futuro, la Secretaría tiene como objetivo mejorar su trabajo de vigilancia de la capacidad para tener en cuenta descubrimientos y otras nuevas tecnologías usadas en la fabricación del acero.

Este reporte también proporciona datos y explicaciones importantes para el lector en sus anexos. Los Anexos A y B presentan tablas detalladas con datos sobre cada expansión y cierre de capacidad por proyecto. El Anexo C incluye una tabla que muestra el nivel de capacidad de fabricación de acero (en mmt) por país / economía y región, mientras que el Anexo D contiene una tabla con datos sobre la brecha entre la capacidad y la producción globales de fabricación de acero desde 2010. El Anexo E describe las definiciones de trabajo usadas a lo largo de este reporte.

**Tabla 1. Desarrollo de la capacidad de fabricación de acero por región (mmt)**

|                             | 2018    | 2019    | 2020    | 2021   | 2022   | 2023   | 2018vs<br>2023(%) | 2018vs<br>2023(volume) |
|-----------------------------|---------|---------|---------|--------|--------|--------|-------------------|------------------------|
| Africa                      | 43.3    | 44.6    | 44.7    | 43.5   | 45.8   | 46.9   | 8.3%              | 3.6                    |
| Asia                        | 1,584.6 | 1,616.5 | 1,622.5 | 1622.6 | 1626.1 | 1618.7 | 2.1%              | 34.0                   |
| China                       | 1,122.9 | 1,148.3 | 1,147.9 | 1146.5 | 1149.9 | 1141.5 | 1.7%              | 18.6                   |
| India                       | 127.0   | 128.7   | 128.7   | 133.9  | 133.9  | 136.9  | 7.8%              | 9.9                    |
| ASEAN                       | 69.8    | 74.6    | 78.7    | 80.4   | 80.4   | 82.9   | 18.8%             | 13.1                   |
| CIS                         | 141.9   | 143.4   | 142.6   | 143.9  | 145.0  | 145.0  | 2.2%              | 3.1                    |
| Europe                      | 295.3   | 279.6   | 279.7   | 280.3  | 281.5  | 283.7  | -3.9%             | -11.5                  |
| EU                          | 218.7   | 208.2   | 205.6   | 205.6  | 205.6  | 205.7  | -6.0%             | -13.0                  |
| Other Europe                | 76.6    | 71.4    | 74.1    | 74.7   | 75.9   | 78.1   | 1.9%              | 1.5                    |
| Latin America               | 78.2    | 73.9    | 73.4    | 73.9   | 73.9   | 74.2   | -5.1%             | -4.0                   |
| Middle East                 | 74.8    | 80.7    | 84.1    | 89.0   | 92.3   | 93.9   | 25.6%             | 19.1                   |
| North America               | 157.9   | 154.2   | 157.5   | 157.7  | 162.8  | 163.3  | 3.4%              | 5.4                    |
| Oceania                     | 6.4     | 6.4     | 6.4     | 6.4    | 6.4    | 6.4    | 0.0%              | 0.0                    |
| OECD/EU economies Total     | 661.3   | 641.9   | 645.3   | 640.0  | 646.3  | 644.4  | -2.5%             | -16.8                  |
| non-OECD/EU economies Total | 1,716.7 | 1,757.3 | 1,765.5 | 1777.3 | 1787.4 | 1787.5 | 4.1%              | 70.9                   |
| World Total                 | 2,377.9 | 2,399.2 | 2,410.8 | 2417.4 | 2433.7 | 2432.0 | 2.3%              | 54.0                   |

Nota: Los datos de capacidad reflejan la información hasta diciembre de 2023. La tabla “Europa” incluye economías tanto OECD/UE como no OECD/UE en Europa, lo mismo que Turquía. Favor ver el Anexo C donde encontrará datos detallados de capacidad por economías individuales. Las figuras para la Unión Europea (UE) incluyen a todos los Estados Miembros de la UE.

Fuente: OECD.

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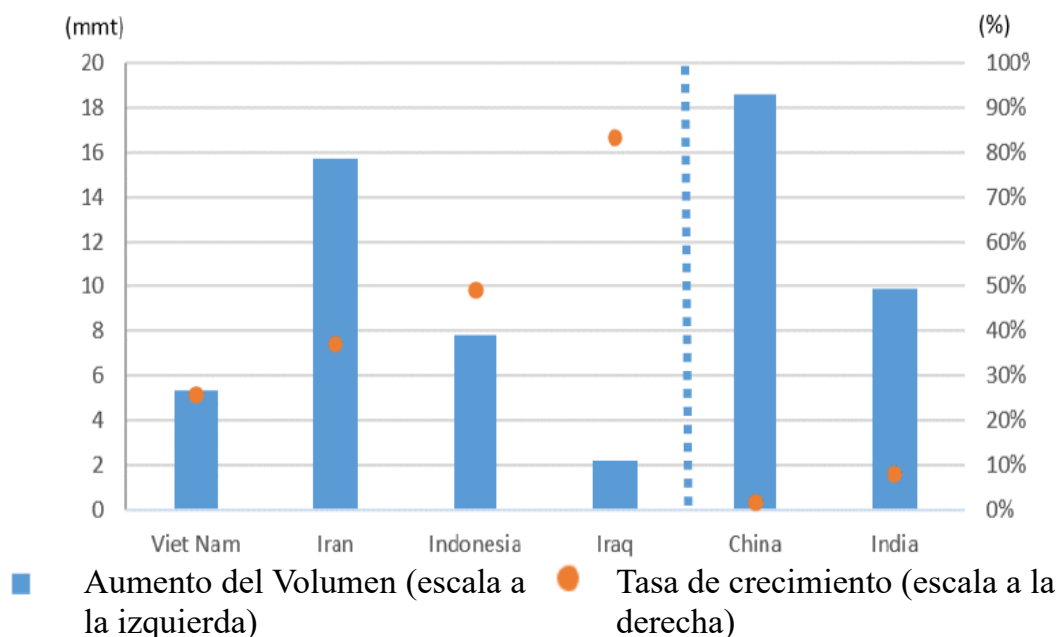
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Aunque gran parte del enfoque sobre capacidad es sobre los principales participantes, también es importante monitorear los desarrollos en economías más pequeñas productoras de acero que están creciendo rápidamente. La Figura 5 muestra una selección de economías tomadas de cada región con las más altas tasas de crecimiento entre 2018 y 2023 (entre productores con capacidad de más de 3 mmt), y los compara con los mayores participantes (China e India).

En ASEAN, Indonesia (+49.% + 7.8 mmt) y Vietnam (+25.6%, +5.3 mmt) son las únicas economías de la región para aumentar la capacidad. El aumento de la capacidad en Indonesia en 2023 y más allá se espera que esté impulsada por inversión transfronteriza. Mirando los datos del comercio para los volúmenes de exportación de acero, ninguna economía está clasificada entre los principales 20 exportadores en 2018. Sin embargo, Indonesia y Vietnam clasificaron en los puestos 15 y 18 respectivamente en 2022 y podrían convertirse en importantes exportadores si el crecimiento de la capacidad está por debajo del crecimiento de la demanda a lo largo de los próximos años.

En el Medio Este, Irán (+37.1%, +15.7%) ha agregado casi tanta capacidad durante los últimos cinco años como Egipto, que tiene la mayor capacidad de África. La expansión de la capacidad en Irán se espera que continúe con 83 proyectos nuevos planeados para 2023 y más allá, el mayor número del mundo. Irak (+83.4%, +2.2 mmt) es todavía pequeño en términos de crecimiento del volumen. Sin embargo, debido a su tasa de crecimiento más alta que la de otras economías de la región, Irak tiene ahora la misma capacidad que los Emiratos Árabes Unidos, la tercera mayor economía de la región.

**Figura 5. Economías con el mayor crecimiento de capacidad de acero entre 2018 y 2023.**



Fuente: OECD

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Muchas de estas expansiones de capacidad reflejan el desarrollo económico que está teniendo lugar en las economías relevantes. De hecho, la rápida expansión de capacidad es una característica frecuente del desarrollo económico y de la industrialización, particularmente en economías que tradicionalmente han sido importadores netos de acero. Históricamente, los países importadores netos tienden a embarcarse en rutas de políticas dirigidas a convertirse en más autosuficientes en la producción de acero crudo.

Sin embargo, hay preocupación de que algunas de las economías que se muestran en la Figura 5, la demanda de acero en las regiones respectivas no haya necesariamente aumentado en proporción al aumento de capacidad en el período de los últimos 10 años.

Con el objeto de asegurar unas condiciones saludables en el mercado del acero, cada vez se está haciendo más importante destacar el crecimiento de la capacidad para satisfacer las necesidades de desarrollo económico, incluyendo el reemplazo de las importaciones y la demanda local de otros tipos de expansión de capacidad, particularmente, la capacidad orientada a la exportación. El crecimiento de la capacidad por encima de las condiciones de la demanda tiene un impacto negativo sobre la industria del acero, a través de precios en caída y débil rentabilidad. De hecho, los inversionistas en nuevas plantas de acero deben considerar cuidadosamente la viabilidad a largo plazo de las plantas.

### **2.3 La brecha entre la capacidad y la producción globales**

Las tendencias de los años recientes indican que algún desacoplamiento puede estar teniendo lugar entre capacidad y producción.

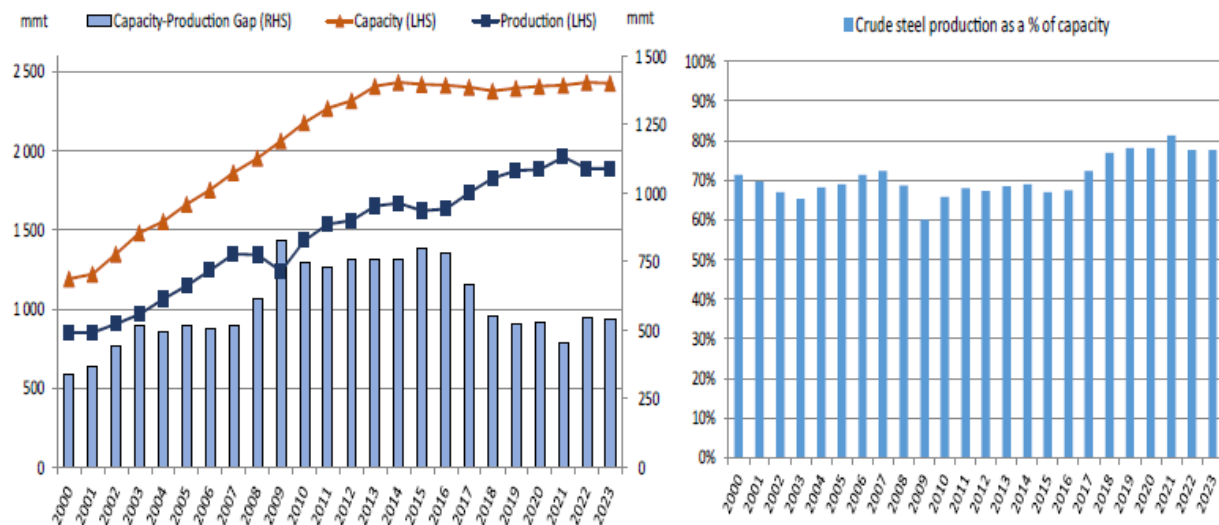
Comparada con la última crisis del acero en 2015, la brecha entre capacidad y producción se ha estrechado ligeramente, pero las utilidades operativas están en el mismo nivel que durante la crisis del acero, según se muestra en el Recuadro 1. Como industria intensiva en energía y en materias primas, lo mismo que en costos adicionales asociados con la descarbonización, tales como CAPEX, OPEX y R&D. Sin embargo, el hecho de que la rentabilidad sea tan baja, sugiere que la capacidad excesiva todavía se significativa, a pesar de ser ligeramente inferior a la de 2015.

Para el desarrollo sostenible de la industria del acero, es importante que los planes de nueva capacidad estén en línea con prospectos realistas de la demanda para los productos de acero, y que la capacidad adicional no tome recursos de la industria del acero que se necesitan para la descarbonización.

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**Figura 6. Capacidad global de producción de acero crudo, producción de acero crudo y tasa de utilización de la capacidad.**



Nota: Los datos de capacidad reflejan información hasta diciembre de 2023.

Fuente: OECD para la capacidad de fabricación de acero crudo y la Asociación Mundial de Acero para la producción de acero crudo.

## 2.4 Desarrollos futuros de capacidad

La Tabla 2 y la Figura 7 muestran el desarrollo futuro esperado de la capacidad por región hasta 2026. Cuando se miran las adiciones a la capacidad futura, la OECD clasifica los proyectos de inversión como “en curso” (y por lo tanto con probabilidad de completarse durante el período de la proyección) o “planeados” (que son menos ciertos pero que todavía podrían volverse a emitir). Los proyectos en curso son aquellos que ya están en construcción o para los que los contratos de equipos se han otorgado y se ha llegado a un compromiso importante financiero o estatal. Los proyectos planeados, de otra parte, son más inciertos porque están bien en la etapa de factibilidad o de planeación temprana, todavía no han recibido soporte financiero o gubernamental, o no están programados para terminarse en una fecha específica.

La información sobre proyectos anunciados de inversión indica que 68.3 mmt de adiciones de capacidad bruta están actualmente en curso en todo el mundo y por lo tanto se espera que empiecen durante el próximo período de tres años de 2024 a 2026. Unas adiciones posteriores de capacidad de 88.7 mmt están actualmente en etapa de planeación para posible puesta en servicio durante el mismo período.

Los recientes desarrollos de capacidad reflejan los objetivos de descarbonización y no todos se han enfocado en aumento de la capacidad. Por ejemplo, algunos productores

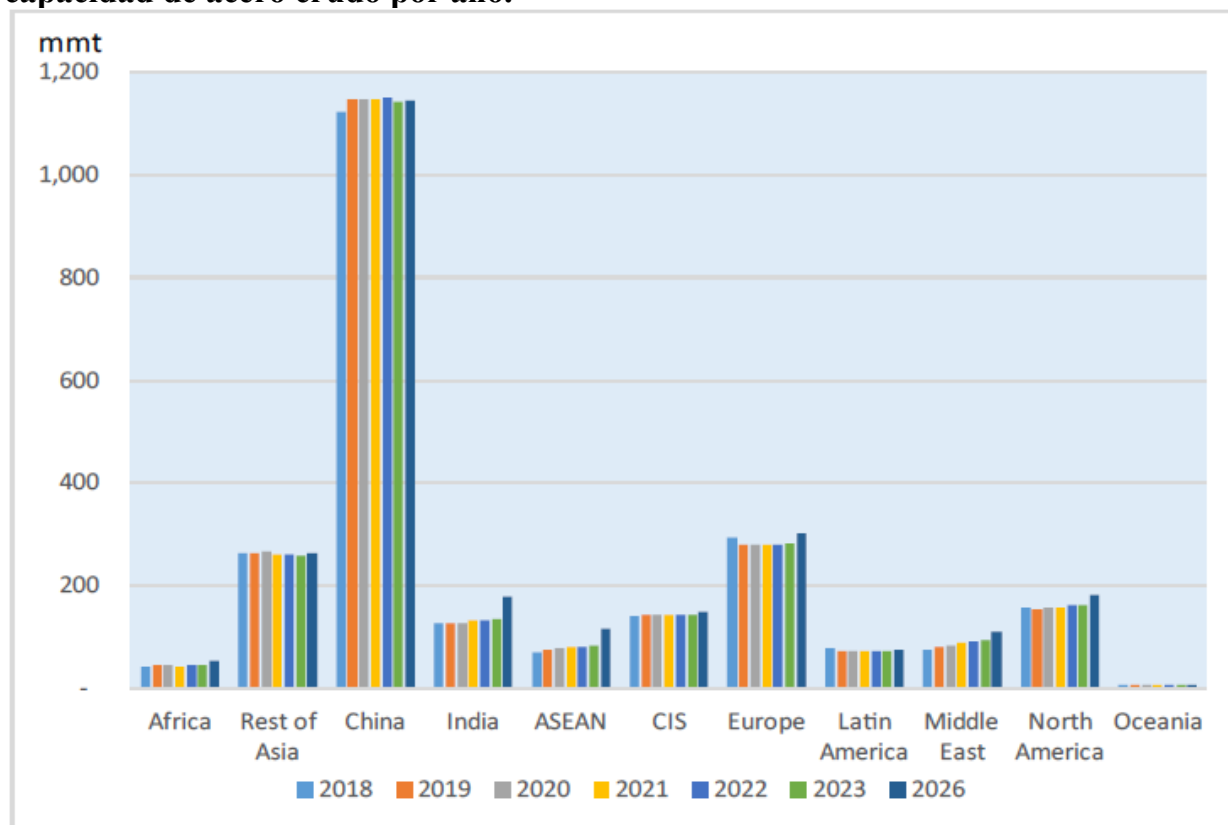
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de acero han estado cerrando BF-BOFs y reemplazándolas por EAFs con capacidad inferior. Se espera que una mayor conciencia sobre el problema de exceso de capacidad, a través del trabajo tanto del Comité de Acero como del Foro Global sobre Capacidad Excesiva de Acero, pueda estimular a los fabricantes de acero para alinear sus inversiones con las metas de descarbonización y también con prospectos realistas de la demanda, ayudando así a tratar tanto las emisiones de CO<sub>2</sub> como la capacidad excesiva de fabricación de acero (ver los Anexos A y B para los datos de soporte).

**Figura 7. Perspectiva de la capacidad de fabricación de acero por región: nivel de la capacidad de acero crudo por año.**



Nota: Los datos de capacidad reflejan información hasta diciembre de 2023. “Europa” incluye tanto economías OECD/UE como economías no OECD/UE en Europa, lo mismo que Turquía. Los estimativos con respecto a la capacidad de fabricación de acero en 2026 se basan en las adiciones brutas únicamente; como tales, los niveles actuales de capacidad se verán afectados por los cierres que pueden ocurrir durante el período.

Fuente: OECD

Es importante tener en cuenta las consideraciones de la demanda regional de acero cuando se evalúan los desarrollos de capacidad alrededor del mundo, debido al impacto sobre el comercio entre regiones, según se anotó arriba. El rápido crecimiento de la capacidad y de

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la producción de acero puede conducir a perturbaciones comerciales si las condiciones de la demanda local son menos robustas de lo esperado.

La Tabla 3 muestra las potenciales adiciones de capacidad bruta por región y por tipo de equipo desde 2024 hasta 2026. Del total mundial de 157.0 mmt de capacidad actualmente existente o en etapas de planeación para terminación a lo largo de los próximos tres años, los proyectos BOF son responsables del 41.5% del total, mientras que los proyectos EAF son responsables del 54.5% del total. Los proyectos restantes, en los que se desconoce la tecnología, son responsables del 4.0% del total.

**Tabla 3. Potenciales adiciones de capacidad bruta por región y tipo de equipo desde 2024 hasta 2026 (mmt)**

|               | 2024 |      |                    | 2025 |      |                    | 2026 |      |                    | Total in 2024-2026 |      |                    | % Share in 2024-2026 |       |                    |
|---------------|------|------|--------------------|------|------|--------------------|------|------|--------------------|--------------------|------|--------------------|----------------------|-------|--------------------|
|               | BOF  | EAF  | Others/<br>Unknown | BOF  | EAF  | Others/<br>Unknown | BOF  | EAF  | Others/<br>Unknown | BOF                | EAF  | Others/<br>Unknown | BOF                  | EAF   | Others/<br>Unknown |
| Africa        |      | 4.9  |                    |      | 2.2  |                    |      |      |                    | 0.0                | 7.1  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Asia          | 39.6 | 4.6  | 0.4                | 22.9 | 14.1 |                    | 1.8  |      | 3.5                | 64.3               | 18.7 | 3.9                | 74.0                 | 21.5  | 4.5                |
| CIS           |      | 2.2  |                    |      | 1.9  |                    | 0.8  |      |                    | 0.8                | 4.1  | 0.0                | 16.3                 | 83.7  | 0.0                |
| Europe        |      | 4.3  | 0.2                |      | 8.6  |                    |      | 6.5  |                    | 0.0                | 19.4 | 0.2                | 0.0                  | 99.0  | 1.0                |
| EU            |      | 0.7  |                    |      |      |                    |      | 2.5  |                    | 0.0                | 3.2  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Other Europe  |      | 3.6  | 0.2                |      |      |                    |      | 4.0  |                    | 0.0                | 7.6  | 0.2                | 0.0                  | 97.4  | 2.6                |
| Latin America |      | 1.0  |                    |      |      |                    |      |      |                    | 0.0                | 1.0  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Middle East   |      | 9.7  | 0.4                |      | 1.5  | 1.4                |      | 5.0  |                    | 0.0                | 16.2 | 1.8                | 0.0                  | 90.0  | 10.0               |
| North America |      | 8.6  |                    |      | 2.3  | 0.3                |      | 6.5  |                    | 0.0                | 17.4 | 0.3                | 0.0                  | 98.3  | 1.7                |
| Oceania       |      |      |                    |      | 1.5  |                    |      |      |                    | 0.0                | 1.5  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Total         | 39.6 | 35.3 | 1.0                | 22.9 | 32.1 | 1.7                | 2.6  | 18.0 | 3.5                | 65.1               | 65.4 | 6.2                | 41.5                 | 54.5  | 4.0                |

Nota: Los datos de capacidad están en mmt y contienen tanto los proyectos en curso como los planeados, y no consideran los cierres posibles que pueden ocurrir durante el período.  
 Fuente: OECD

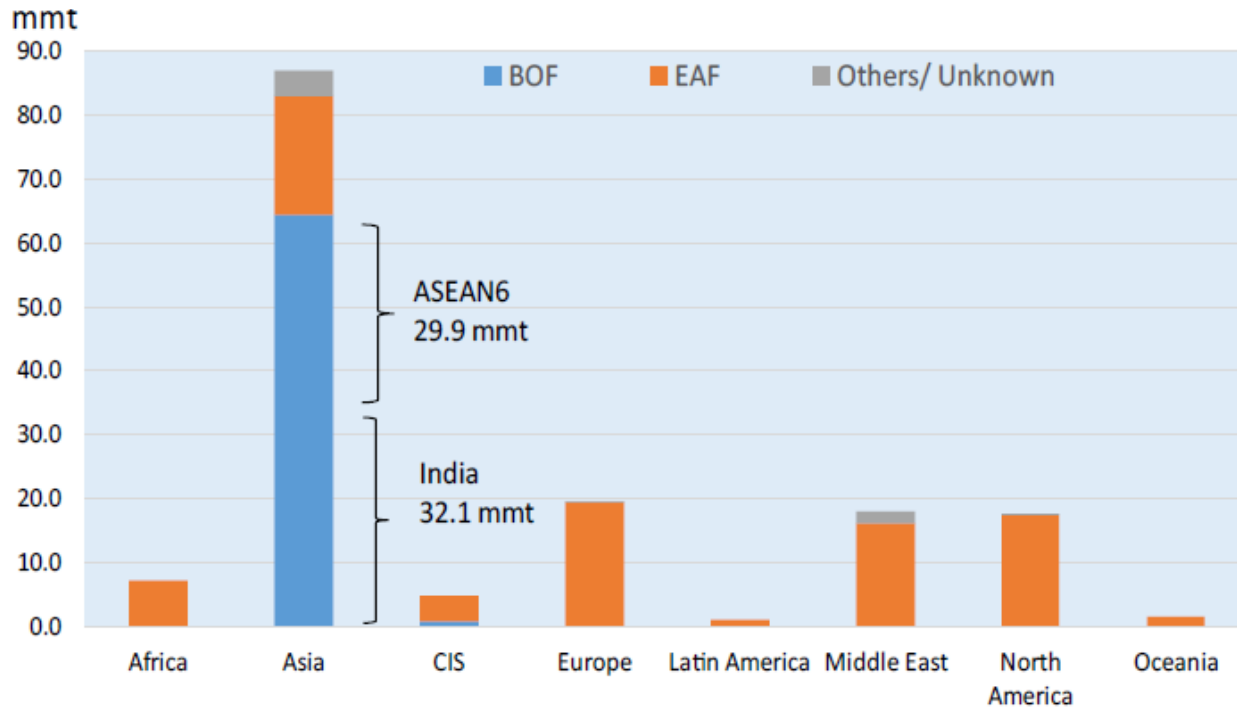
Como se puede ver en la Figura 8, las tendencias de la inversión regional difieren considerablemente en términos de tecnología. En Asia, las plantas BOF son responsables de más del 74.0% del volumen de tonelaje de las adiciones de capacidad. La mayoría de las instalaciones BOF tendrán lugar en India o en ASEAN.

En contraste, las inversiones en cualquier otra parte involucran principalmente la ruta de producción de EAF, sin que se espere que nuevas plantas BOF empiecen operaciones en África, Europa, América Latina, el Medio Oriente, América del Norte y Oceanía durante 2024-26. El lector debe referirse al Anexo A para detalles sobre proyectos individuales.

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**Figura 8. Potenciales adiciones de capacidad bruta por región y tipo de equipo, desde 2024 hasta 2026 (mmt).**



Nota: Los datos de capacidad contienen tanto proyectos en curso como planeados, y no consideran los posibles cierres que pueden ocurrir durante el períodos.

Fuente: Sitio en la red de Metal Expert, Platts, Kallanish, y compañías de acero.

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**Tabla 4. Inversiones locales y transfronterizas en nuevos proyectos de capacidad de fabricación de acero, empezando en 2023 o más tarde.**

| Región donde se están haciendo inversiones | Inversiones Locales |                 | Inversiones Transfronterizas |                 | Inversiones de Riesgo Compartido |                 |
|--------------------------------------------|---------------------|-----------------|------------------------------|-----------------|----------------------------------|-----------------|
|                                            | Cantidad            | Capacidad (mmt) | Cantidad                     | Capacidad (mmt) | Cantidad                         | Capacidad (mmt) |
| Africa                                     | 11                  | 7.2             | 4                            | 5.2             | 4                                | 5.2             |
| Asia                                       | 143                 | 290.1           | 14                           | 71.3            | 11                               | 22.0            |
| CIS                                        | 17                  | 17.7            | 0                            | 0.0             | 0                                | 0.0             |
| Europe                                     | 27                  | 29.9            | 0                            | 0.0             | 0                                | 0.0             |
| Latin America                              | 6                   | 3.0             | 0                            | 0.0             | 0                                | 0.0             |
| Middle East                                | 97                  | 89.4            | 2                            | 6.5             | 0                                | 0.0             |
| North America                              | 15                  | 16.6            | 6                            | 5.2             | 0                                | 0.0             |
| Oceania                                    | 2                   | 1.5             | 0                            | 0.0             | 0                                | 0.0             |
| World Total                                | 318                 | 455.4           | 26                           | 88.2            | 15                               | 27.2            |

World Total = Total en el Mundo

Nota: Esta tabla incluye todos los proyectos nuevos de inversión que están en curso o planeados, y que están programados para convertirse en operacionales en 2023 o más tarde – incluyendo proyectos que han comenzado operación en 2023, lo mismo que proyectos para los cuales la fecha de inicio no está disponible. No incluye proyectos cancelados. Una inversión transfronteriza representa una inversión basada completamente en uno o varios inversionistas extranjeros. Una operación de riesgo compartido, de otra parte, involucra tanto a un inversionista extranjero como a una contraparte local. Favor ver el Anexo A donde encontrará detalles de las inversiones a nivel de las plantas y sus respectivos inversores / propietarios.

De las inversiones transfronterizas o de las inversiones de riesgo compartido, el 61.8% de las nuevas inversiones en 2023 o posteriores, las harán compañías chinas de acero en economías terceras. Cuando todas las plantas en las que las compañías chinas invierten estén en operación desde 2023 en adelante, esto ascenderá a 71 mmt, lo que es comparable en tamaño con la capacidad de América Latina.

La Figura 11 muestra un desglose del monto de nuevas inversiones transfronterizas en economías terceras que involucran economías chinas y otras. Las compañías chinas tienen plantas de inversión concentradas en Asia y África. En particular ASEAN recibe la mayor participación de la inversión china, alcanzando un monto del 82.1% del total de la inversión china en acero en economías terceras.

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12 June 2024

**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INNOVATION  
STEEL COMMITTEE**

**Latest developments in steelmaking capacity and outlook until 2026**

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**JT03545950**

This paper was authored by Masanobu Nakamizu from the OECD Directorate for Science, Technology and Innovation (STI). It was approved and declassified by written procedure by the OECD Steel Committee on 25/03/2024 and prepared for publication by the OECD Secretariat.

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### Executive Summary

- **Steel excess capacity is set to become increasingly problematic in the coming years.** Investments in new steelmaking capacity are continuing to be made at a rapid pace while global steel demand remains sluggish, and the sector's profitability has slipped to the unsustainably low levels recorded in 2014/15, when the last steel crisis began. World crude steelmaking capacity in 2023 is now estimated at 2 432 million tonnes (mmt), exceeding global steel production by 543 mmt. Despite a downward revision stemming from the postponement of investment projects, previously scheduled to start towards the end of 2023, and positive news on closures that has been announced recently, steel excess capacity is set to grow increasingly problematic.
- Over the last five years, global steel capacity increased by almost 62 mmt. Regional developments show **significant capacity growth in the Association of Southeast Asian Nations (ASEAN) and the Middle East**, while the two largest steel producing economies, the People's Republic of China (hereafter "China") and India, which currently account for 47% and 6% of world capacity respectively, also contributed to the expansion. Capacity across the OECD area as a whole declined, as expansions in some regions such as North America and Türkiye were more than offset by declines in some European Union (EU) Members States and Japan.
- **The problem of excess capacity is expected to become even more acute in the future.** Global steelmaking capacity is projected to increase significantly over the next three years (2024-2026), with 68 mmt of capacity additions underway and an additional 89 mmt in the planning stage. At the current sluggish pace of global steel demand growth, at an annual clip of 1.9%, steel demand is increasing by only around 36 mmt per year. In the last steel crisis, low profitability and low prices for steel products led to a record number of trade remedy measures. Strategic planning for the future of steel demand, alignment with climate change objectives and the impact of trade are essential to ensure market stability.
- **Chinese steel companies continue to invest heavily overseas, particularly in ASEAN and other parts of Asia, as well as in Africa, while the outlook for Chinese demand remains weak.** ASEAN attracts 82% of total investment by Chinese firms abroad, as Chinese steel companies shift their investment activities from the home market to regions with better demand growth prospects. Chinese firms play a large role in the global steel industry's foreign investment in steel plants. Capacity expansions by Chinese companies abroad, through cross-border investment, account for 62% of world total cross-border investment in new steelmaking capacity taking place around the world.
- **The investment data show clear signs of a shift towards the green transition, but significant differences exist between regions.** Of the new investments announced over the next three years, more than half are now in the relatively lower emitting electric-arc furnace (EAF) plants, while 42% are in blast furnace/basic oxygen furnace (BF/BOF) plants. Most of the new investments in Asia involve traditional BF/BOF plants. Other regions are seeing capacity increases based almost entirely on electric-arc furnaces. Given the long life of steelmaking plants and to ensure profitability for the sustainable development of the steel industry, it is important to have concrete plans for new investments that are consistent with the

mid- and long-term climate change policies of the economy hosting the investment. Going forward, the Steel Committee should monitor new capacities closely, with a view to encouraging replacements of older, higher-emitting capacities to avoid net increases in capacity and CO<sub>2</sub> emissions.

## 1. Introduction

This report provides an in-depth analysis of recent steelmaking capacity developments taking place around the world, while offering a regional and global capacity outlook for the period 2024 to 2026. The report includes data updates and information from news reports and press releases of individual steel companies, extending until end-December 2023. The insights drawn from this report can help policymakers and stakeholders better assess potential risks that can impact global steel market conditions in the medium to longer term.

Indeed, in the context of significant excess capacity in the global steel industry, it is important to closely monitor *net* capacity changes, including new investments and steel plant closures, in order to understand the current situation and emerging risks that may impact the industry in the future. This includes general capacity trends, but also the technologies being invested in and the extent to which the investments are replacements of older technologies, given the need to decarbonise steel production in the years ahead.

The data presented in this report indicate that investments in new capacity continue to advance at a robust pace in several regions, particularly in Asia where most of the new investments involve traditional BF/BOF plants. Other regions are also seeing increases in capacity, though at a more moderate pace and with a focus almost entirely on EAF. In the future, the Secretariat aims to enhance its capacity monitoring work to take into account breakthrough and other new technologies used for making steel.

This report also provides important data and explanations for the reader in the annexes. Annex A and B present detailed tables with data on each capacity expansion and closure by project. Annex C provides a table that shows the level of steelmaking capacity (in mmt) by country/economy and region, while Annex D contains a table with data on the gap between global steelmaking capacity and production since 2010. Annex E describes the working definitions used throughout this report.



## 2. Latest updates on steelmaking capacity

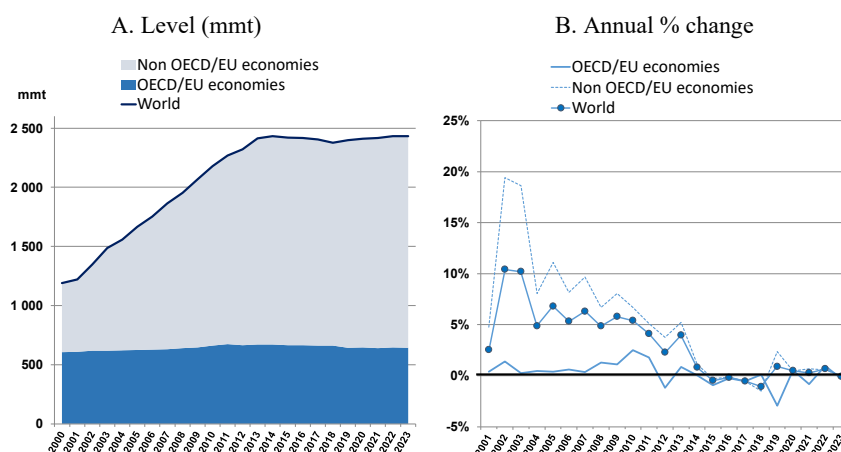
### 2.1 Global summary

Global steel market conditions remain challenging, with the latest forecasts suggesting sustained sluggish demand growth (worldsteel, 2023<sup>[1]</sup>). According to the Secretariat's latest available information on capacity (as of end-December 2023), global steelmaking capacity remained high at 2,432.0 mmt in 2023, a level that exceeded global demand by almost 500 mmt. At this level, global excess capacity exceeded the level of global steel exports (282 mmt) by almost 80% in 2023.

When monitoring capacity developments, it is important to regularly assess two broad trends. First, net capacity should be declining to alleviate the global excess capacity problem, or, in the very least, any increases in net capacity should not exceed the growth of steel demand. At the same time, signals should emerge over time indicating that the technology break-down of capacity is clearly moving towards technologies with a relatively lower carbon footprint, that is, away from plants with the highest emitting profiles.

Considering these trends, the data show some progress regarding the composition of future capacity, with most of the new capacity investments taking place in relatively lower-emitting technologies. On the other hand, overall capacity is increasing in net terms, with the pace of this growth exceeding global steel demand growth, thus heightening the risks of oversupply in the medium term. In this context, it is becoming increasingly urgent to consider ways to limit net capacity growth globally to secure the future viability of the steel industry.

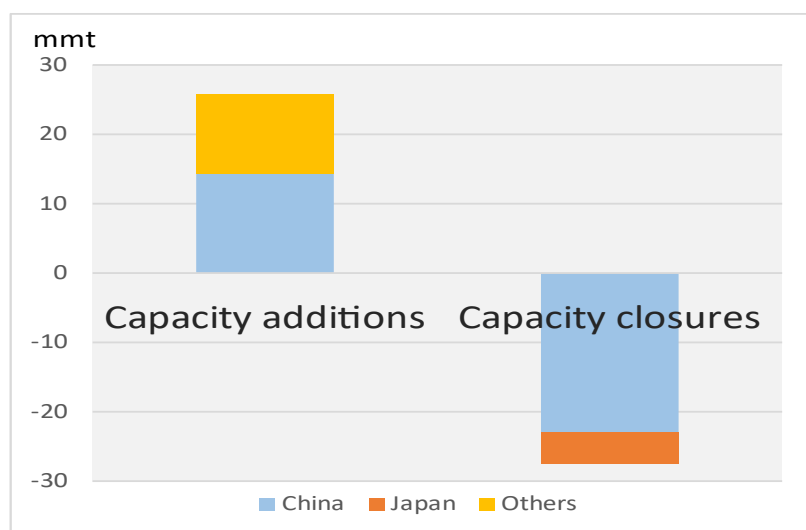
To summarize recent developments, after several years of gradual decline following the previous capacity peak of 2014, global crude steelmaking capacity started to increase in 2019, with growth continuing until 2022, and then stabilizing at 2,432.0 mmt in 2023 (Figure 1). These data represent net increases, as noted above, rather than gross increases, and thus take into account the latest information on new capacity additions and closures.

**Figure 1. Evolution of crude steelmaking capacity in OECD and non-OECD economies**

Note: Capacity data are in net terms (taking into account capacity additions and closures) and reflect information available up to December 2023.

Source: OECD

Figure 2 shows the capacity additions and closures in 2023. As shown in the figure, there was a marginal global capacity decline in net terms that year, as China and Japan implemented a significant amount of closures that exceeded gross additions in China and elsewhere. However, the global net reduction is only marginal, as China added new capacity that amounted to around 60% of its reductions.

**Figure 2. Steelmaking capacity additions and closures in 2023**

Source: OECD

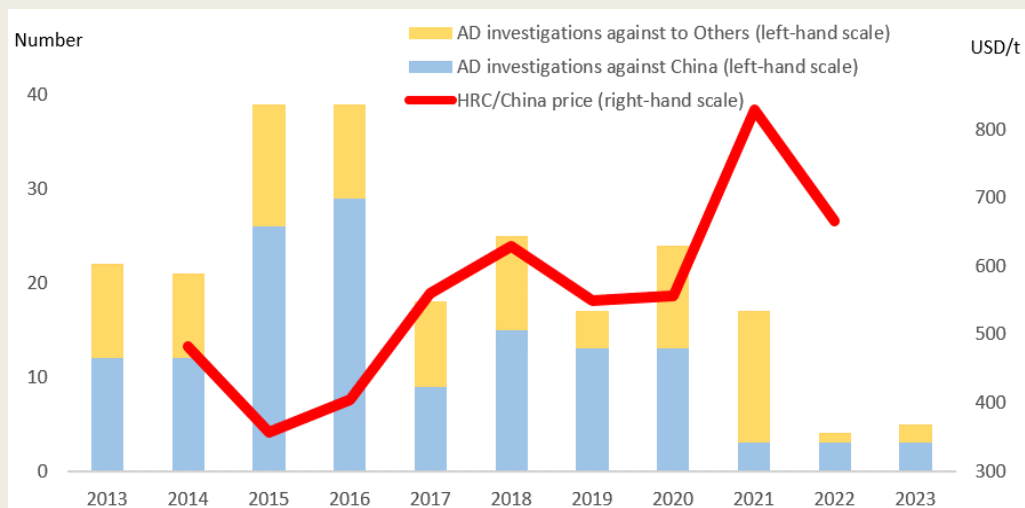
**Box 1. Low profitability suggests excess capacity problems remain high in the steel industry**

Profitability indicators suggest that the excess capacity problem remains very significant.

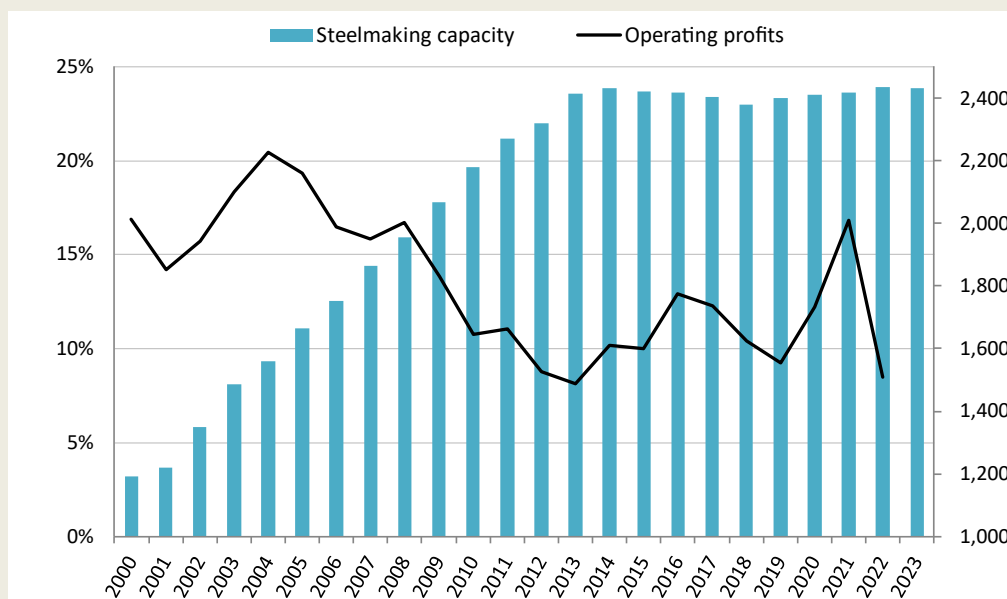
Figure 3 and Figure 4 show that around the time of 2014/15 steel crisis, hot-rolled coil prices reached historically low levels, a record number of anti-dumping investigations were initiated, and operating profitability reached its lowest level in a decade. Today, new trade cases are lower than during the previous crisis, but profitability has plummeted to levels similar to that time. This may reflect higher energy costs and the fact that trade policies are developing in different ways, including to address carbon issue in addition to unfair trade.

Past trends suggest some decoupling between capacity and operating profitability. With capacity in 2023 still at the same level as in 2022, the downward trend in profitability is a cause for concern.

**Figure 3. Number of initiations of AD investigations against steel products and Chinese HRC price**



Source: OECD calculations based on data from The Japan Iron and Steel Federation for AD investigations and Kallanish for steel price information (HRC / China FOT Warehouse)

**Figure 4. Evolution of Steelmaking capacity and operating profits (industry average)**

Note: Operating profitability is defined as EBITDA (earnings before interest, taxes, depreciation and amortisation) to sales revenue in per cent.

Source: OECD for the capacity and OECD calculations based on data from LSEG

## 2.2 Regional capacity developments

Regional developments since 2018, when steelmaking capacity temporarily bottomed as the work of the Global Forum on Steel Excess Capacity accelerated, show some important trends.

Table 1 shows that between 2018 and 2023, world steelmaking capacity increased by 54.0 mmt (+2.3%) to 2 432.0 mmt. The OECD region recorded a slight decrease of 16.8 mmt (-2.5%) to 644.4 mmt, while the non-OECD region recorded an increase of 70.9 mmt (+4.1%) to 1 787.5 mmt. As a result, the non-OECD region currently accounts for 73.5% of world capacity, a trend that has been increasing over the last two decades.

Looking at the growth rates by region, ASEAN (+18.8%, +13.1 mmt) and the Middle East (+25.6%, +19.1 mmt) contributed the most to the increase in capacity. China's growth rate maybe low. However, its capacity volume increase is comparable to that of the Middle East region.

**Table 1. Steelmaking capacity development by region (mmt)**

|                             | 2018    | 2019    | 2020    | 2021   | 2022   | 2023   | 2018vs<br>2023(%) | 2018vs<br>2023(volume) |
|-----------------------------|---------|---------|---------|--------|--------|--------|-------------------|------------------------|
| Africa                      | 43.3    | 44.6    | 44.7    | 43.5   | 45.8   | 46.9   | 8.3%              | 3.6                    |
| Asia                        | 1,584.6 | 1,616.5 | 1,622.5 | 1622.6 | 1626.1 | 1618.7 | 2.1%              | 34.0                   |
| China                       | 1,122.9 | 1,148.3 | 1,147.9 | 1146.5 | 1149.9 | 1141.5 | 1.7%              | 18.6                   |
| India                       | 127.0   | 128.7   | 128.7   | 133.9  | 133.9  | 136.9  | 7.8%              | 9.9                    |
| ASEAN                       | 69.8    | 74.6    | 78.7    | 80.4   | 80.4   | 82.9   | 18.8%             | 13.1                   |
| CIS                         | 141.9   | 143.4   | 142.6   | 143.9  | 145.0  | 145.0  | 2.2%              | 3.1                    |
| Europe                      | 295.3   | 279.6   | 279.7   | 280.3  | 281.5  | 283.7  | -3.9%             | -11.5                  |
| EU                          | 218.7   | 208.2   | 205.6   | 205.6  | 205.6  | 205.7  | -6.0%             | -13.0                  |
| Other Europe                | 76.6    | 71.4    | 74.1    | 74.7   | 75.9   | 78.1   | 1.9%              | 1.5                    |
| Latin America               | 78.2    | 73.9    | 73.4    | 73.9   | 73.9   | 74.2   | -5.1%             | -4.0                   |
| Middle East                 | 74.8    | 80.7    | 84.1    | 89.0   | 92.3   | 93.9   | 25.6%             | 19.1                   |
| North America               | 157.9   | 154.2   | 157.5   | 157.7  | 162.8  | 163.3  | 3.4%              | 5.4                    |
| Oceania                     | 6.4     | 6.4     | 6.4     | 6.4    | 6.4    | 6.4    | 0.0%              | 0.0                    |
| OECD/EU economies Total     | 661.3   | 641.9   | 645.3   | 640.0  | 646.3  | 644.4  | -2.5%             | -16.8                  |
| non-OECD/EU economies Total | 1,716.7 | 1,757.3 | 1,765.5 | 1777.3 | 1787.4 | 1787.5 | 4.1%              | 70.9                   |
| World Total                 | 2,377.9 | 2,399.2 | 2,410.8 | 2417.4 | 2433.7 | 2432.0 | 2.3%              | 54.0                   |

Note: The capacity data reflect information up to December 2023. The table "Europe" includes both OECD/EU economies and non OECD/EU economies in Europe, as well as Türkiye. Please see Annex C for detailed capacity data by individual economies. Figures for the European Union (EU) include all EU Member States.

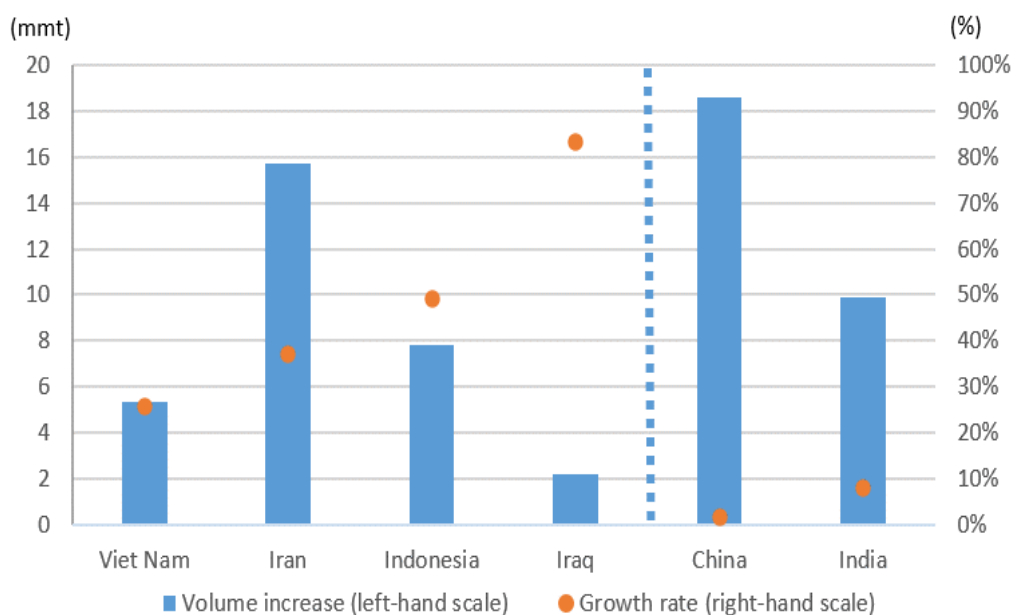
Source: OECD

While much of the focus on capacity is on the major players, it is also important to monitor developments in smaller steel-producing economies that are growing rapidly. Figure 5 shows a selection of economies from each region with the highest growth rates between 2018 and 2023 (among producers with capacity of more than 3 mmt), and compares them with the major players (China and India).

In ASEAN, Indonesia (+49.1%, +7.8 mmt) and Viet Nam (+25.6%, +5.3 mmt) are the only economies in the region to increase capacity. Capacity growth in Indonesia in 2023 and beyond is expected to be driven by cross-border investment. Looking at trade data for steel export volumes, neither economy is ranked among the top 20 exporters in 2018. However, Indonesia and Viet Nam were ranked 15th and 18th respectively in 2022 and could become significant exporters if steel demand growth underperforms capacity growth over the next few years.

In the Middle East, Iran (+37.1%, +15.7 mmt) has added almost as much capacity over the last five years as Egypt, which has the largest capacity in Africa. Capacity expansion in Iran is expected to continue with 83 new projects planned for 2023 and beyond, the largest number in the world. Iraq (+83.4%, +2.2 mmt) is still small in terms of volume growth. However, due to its higher growth rate than other economies in the region, Iraq now has the same capacity as the United Arab Emirates, the third largest economy in the region.



**Figure 5. Economies with highest steel capacity growth between 2018 and 2023**

Source: OECD

Much of these capacity expansions reflect the economic development taking place in the relevant economies. Indeed, the rapid expansion of capacity is a regular feature of economic development and industrialisation, particularly in economies that have traditionally been net importers of steel. Historically, net importing countries tend to embark on policy pathways aimed at becoming more self-sufficient in crude steel production.

However, there is a concern that in some of the economies shown in Figure 5, the demand for steel in the respective regions has not necessarily increased in proportion to the increase in capacity over the last 10-year period.

In order to ensure healthy steel market conditions, it is becoming increasingly important to distinguish capacity growth to meet the needs of economic development including the replacement of imports and domestic demand from other types of capacity expansion, particularly export-oriented capacity. Capacity growth in excess of demand conditions has a negative impact on the steel industry through falling prices and weak profitability. Indeed, investors in new steel plants should carefully consider the long-term viability of the plants.

### 2.3 The gap between global capacity and production

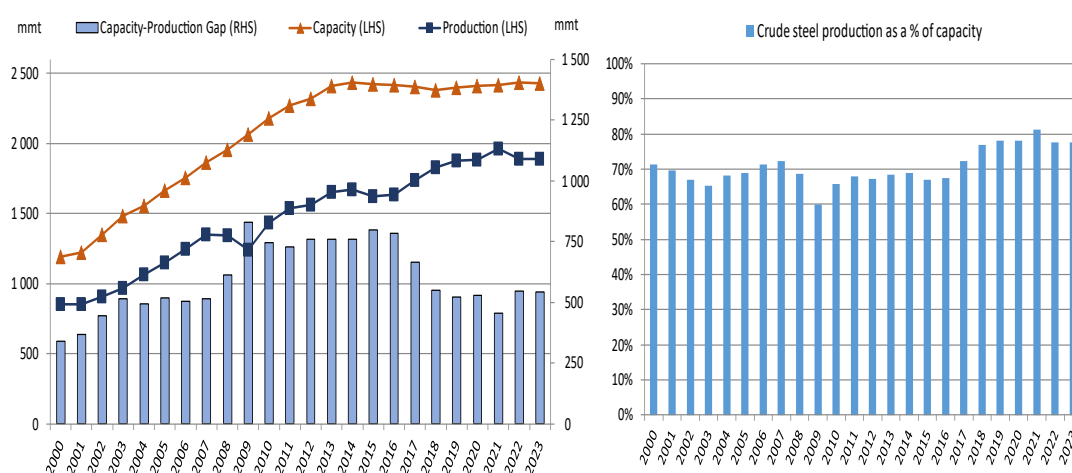
The trends in recent years indicate that some decoupling may be taking place between capacity and production.

Compared to the last steel crisis in 2015, the gap between capacity and production has narrowed slightly, but operating profits are at the same level as during the steel crisis, as shown in Box 1. As an energy-intensive industry, the profitability of the steel industry is naturally affected by the price of energy and raw materials, as well as the additional costs associated with decarbonisation, such as CAPEX, OPEX and R&D. However, the fact that profitability is so low

suggests that excess capacity is still significant, despite being slightly lower than in 2015.

For the sustainable development of the steel industry, it is important that plans for new capacity are in line with realistic demand prospects for steel products, and that additional capacity does not take resources from the steel industry that are needed for decarbonisation.

**Figure 6. Global crude steelmaking capacity, crude steel production and capacity utilisation rate**



Note: Capacity data reflect information up to December 2023.

Source: OECD for crude steelmaking capacity and World Steel Association for crude steel production

## 2.4 Future capacity developments

Table 2 and Figure 7 show the expected future development of capacity by region up to 2026. When looking at future capacity additions, the OECD classifies investment projects as "underway" (and thus likely to be completed during the projection period) or "planned" (which are less certain but could still come on stream). Projects that are underway are those that are already under construction or for which equipment contracts have been awarded and a major financial or state commitment has been made. Planned projects, on the other hand, are more uncertain because they are either at the feasibility or early planning stage, have not yet received financial or government support, or are not scheduled for completion at a specific date.

Information on announced investment projects indicates that 68.3 mmt of gross capacity additions are currently underway worldwide and are therefore expected to come on stream during the next three-year period 2024-26. A further 88.7 mmt of capacity additions are currently in the planning stage for possible commissioning during the same period.

Recent capacity developments reflect decarbonisation objectives and have not all been focussed on increasing capacity. For example, some steel producers have been shutting down BF-BOFs and replacing them with EAFs with lower capacity. It is hoped that greater awareness of the excess capacity problem, through the work of the both the Steel Committee and Global Forum on Steel

Excess Capacity, may encourage steel makers to align their investments with decarbonisation goals but also with realistic demand prospects, thus helping to address both CO<sub>2</sub> emissions and global excess steelmaking capacity (see Annex A and B for the supporting data).

Examining regional capacity developments, Asia will continue to see significant increases in steelmaking capacity in volume terms over the next three years, assuming that all ongoing projects are eventually realised (and not offset by closures). The region currently has a total of 31.4 (+1.9%) mmt of capacity additions underway for commissioning in 2024-26, with a further 55.6 mmt (+5.4%) in the planning stage. ASEAN and India are projected to account for 88.9% of Asia's steelmaking capacity additions.

Of the capacity additions in ASEAN, 74.6% are related to investments by Chinese companies, either cross-border investments or joint venture (JV) investments. Indeed, and as noted earlier, while no major new capacity additions are expected in China over the next three years, Chinese companies are contributing to growth outside the economy.

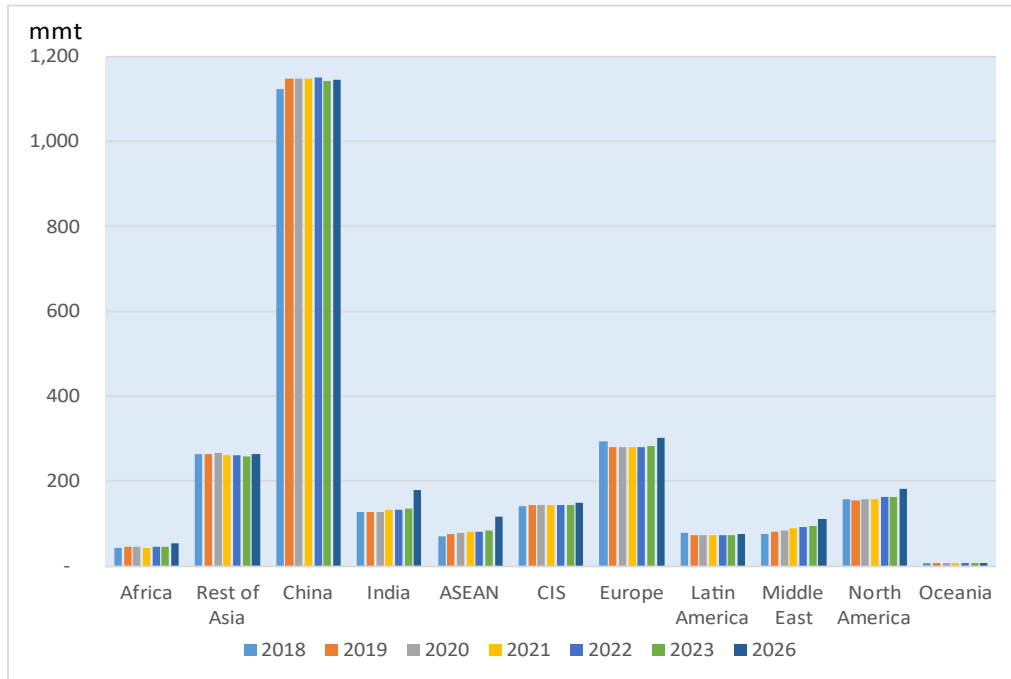
In other regions, steelmaking capacity additions are expected to increase over the next three years as follows: an increase of 7.1 mmt (+15.1%) in Africa, 4.9 mmt (+3.4%) in the Commonwealth of Independent States (CIS), 6.8 mmt (+3.3%) in the European Union, 1.0 mmt (+1.3%) in Latin America, 18.0 mmt (+19.2%) in the Middle East, 17.9 mmt (+11.0%) in North America, and 1.5 mmt (+23.5%) in Oceania.

**Table 2. Current nominal capacity and potential gross capacity additions by region**

|                             | Nominal capacity (mmt) | Nominal capacity (mmt) | % change  | Potential gross capacity additions 2024-26 (mmt) |             |         | Capacity in 2026 (mmt) |                  | % change expected (2023 vs 2026) |      |
|-----------------------------|------------------------|------------------------|-----------|--------------------------------------------------|-------------|---------|------------------------|------------------|----------------------------------|------|
|                             | 2022                   | 2023 (A)               | 2023-2022 | Underway (B)                                     | Planned (C) | (B)+(C) | Low (A)+(B)            | High (A)+(B)+(C) | Low                              | High |
| Africa                      | 45.8                   | 46.9                   | 2.3       | 3.9                                              | 3.2         | 7.1     | 50.8                   | 54.0             | 8.3                              | 15.1 |
| Asia                        | 1626.1                 | 1618.7                 | -0.5      | 31.4                                             | 55.6        | 87.0    | 1650.1                 | 1705.7           | 1.9                              | 5.4  |
| China                       | 1149.9                 | 1141.5                 | -0.7      | 1.5                                              | 2.3         | 3.8     | 1143.0                 | 1145.3           | 0.1                              | 0.3  |
| India                       | 133.9                  | 136.9                  | 2.2       | 5.7                                              | 37.7        | 43.4    | 142.6                  | 180.3            | 4.2                              | 31.7 |
| ASEAN                       | 80.4                   | 82.9                   | 3.1       | 21.8                                             | 12.1        | 33.9    | 104.7                  | 116.8            | 26.3                             | 40.9 |
| CIS                         | 145.0                  | 145.0                  | 0.0       | 2.8                                              | 2.1         | 4.9     | 147.8                  | 149.9            | 1.9                              | 3.4  |
| Europe                      | 281.5                  | 283.7                  | 0.8       | 5.2                                              | 14.4        | 19.6    | 288.9                  | 303.3            | 1.8                              | 6.9  |
| EU                          | 205.6                  | 205.7                  | 0.0       | 3.6                                              | 3.2         | 6.8     | 209.3                  | 212.5            | 1.8                              | 3.3  |
| Other Europe                | 75.9                   | 78.1                   | 2.9       | 1.6                                              | 11.2        | 12.8    | 79.7                   | 90.9             | 2.0                              | 16.4 |
| Latin America               | 73.9                   | 74.2                   | 0.3       | 1.0                                              | 0.0         | 1.0     | 75.2                   | 75.2             | 1.3                              | 1.3  |
| Middle East                 | 92.3                   | 93.9                   | 1.7       | 11.4                                             | 6.6         | 18.0    | 105.3                  | 111.9            | 12.1                             | 19.2 |
| North America               | 162.8                  | 163.3                  | 0.3       | 11.1                                             | 6.8         | 17.9    | 174.4                  | 181.2            | 6.8                              | 11.0 |
| Oceania                     | 6.4                    | 6.4                    | 0.0       | 1.5                                              | 0.0         | 1.5     | 7.9                    | 7.9              | 23.5                             | 23.5 |
| OECD/EU economies Total     | 646.3                  | 644.4                  | -0.3      | 20.5                                             | 24.7        | 45.2    | 664.9                  | 689.6            | 3.2                              | 7.0  |
| non-OECD/EU economies Total | 1787.4                 | 1787.5                 | 0.0       | 47.8                                             | 64.0        | 111.8   | 1835.3                 | 1899.3           | 2.7                              | 6.3  |
| World Total                 | 2433.7                 | 2432.0                 | -0.1      | 68.3                                             | 88.7        | 157.0   | 2500.3                 | 2589.0           | 2.8                              | 6.5  |

Note: The capacity data reflect information up to December 2023. The table “Europe” includes both OECD/EU economies and non OECD/EU economies in Europe, as well as Türkiye. Figures for the EU include all EU Member States. Estimates regarding steelmaking capacity in 2026 and expected percentage changes are based on gross additions only; as such, the actual capacity levels will be affected by closures that may occur during the period.

Source: OECD

**Figure 7. Steelmaking capacity outlook by region: level of crude steel capacity by year**

Note: The capacity data reflect information up to December 2023. “Europe” includes both OECD/EU economies and non OECD/EU economies in Europe, as well as Türkiye. Estimates regarding steelmaking capacity in 2026 are based on gross additions only; as such, the actual capacity levels will be affected by closures that may occur during the period.

Source: OECD

It is important to take into account regional steel demand considerations when assessing capacity developments around the world because of the impact on trade between regions, as noted above. Rapid growth in capacity and steel production can lead to trade disruptions if local demand conditions are less robust than expected.

Table 3 shows the potential gross capacity additions by region and by type of equipment from 2024 to 2026. Of the world total of 157.0 mmt of capacity currently underway or in the planning stages for completion over the next three years, BOF projects account for 41.5% of the total while EAF projects account for 54.5% of the total. The remaining projects, where the technology is unknown, account for 4.0% of the total.

**Table 3. Potential gross capacity additions by region and equipment type from 2024 to 2026 (mmt)**

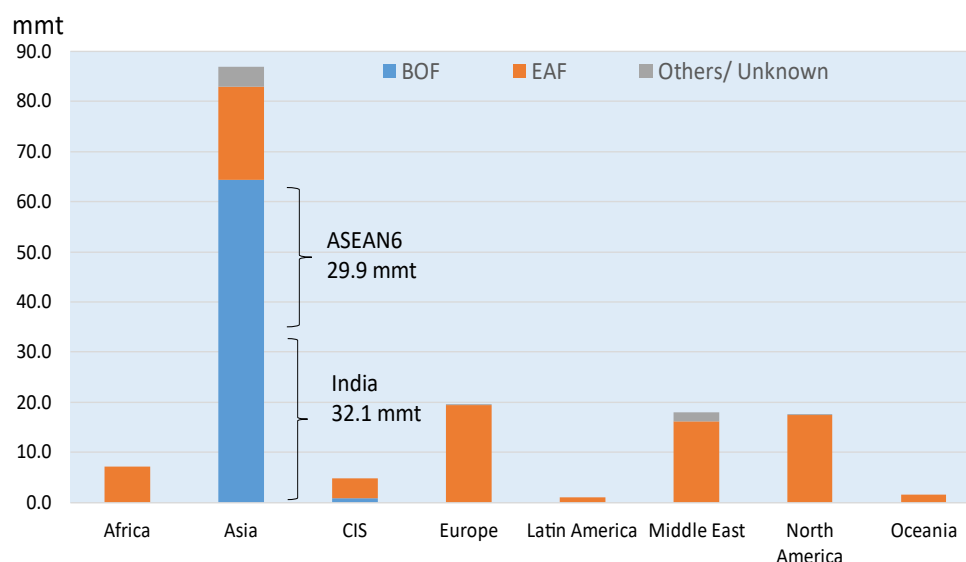
|               | 2024 |      |                    | 2025 |      |                    | 2026 |      |                    | Total in 2024-2026 |      |                    | % Share in 2024-2026 |       |                    |
|---------------|------|------|--------------------|------|------|--------------------|------|------|--------------------|--------------------|------|--------------------|----------------------|-------|--------------------|
|               | BOF  | EAF  | Others/<br>Unknown | BOF  | EAF  | Others/<br>Unknown | BOF  | EAF  | Others/<br>Unknown | BOF                | EAF  | Others/<br>Unknown | BOF                  | EAF   | Others/<br>Unknown |
| Africa        |      | 4.9  |                    |      | 2.2  |                    |      |      |                    | 0.0                | 7.1  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Asia          | 39.6 | 4.6  | 0.4                | 22.9 | 14.1 |                    | 1.8  |      | 3.5                | 64.3               | 18.7 | 3.9                | 74.0                 | 21.5  | 4.5                |
| CIS           |      | 2.2  |                    |      | 1.9  |                    | 0.8  |      |                    | 0.8                | 4.1  | 0.0                | 16.3                 | 83.7  | 0.0                |
| Europe        |      | 4.3  | 0.2                |      | 8.6  |                    |      | 6.5  |                    | 0.0                | 19.4 | 0.2                | 0.0                  | 99.0  | 1.0                |
| EU            |      | 0.7  |                    |      |      |                    |      | 2.5  |                    | 0.0                | 3.2  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Other Europe  |      | 3.6  | 0.2                |      |      |                    |      | 4.0  |                    | 0.0                | 7.6  | 0.2                | 0.0                  | 97.4  | 2.6                |
| Latin America |      | 1.0  |                    |      |      |                    |      |      |                    | 0.0                | 1.0  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Middle East   |      | 9.7  | 0.4                |      | 1.5  | 1.4                |      | 5.0  |                    | 0.0                | 16.2 | 1.8                | 0.0                  | 90.0  | 10.0               |
| North America |      | 8.6  |                    |      | 2.3  | 0.3                |      | 6.5  |                    | 0.0                | 17.4 | 0.3                | 0.0                  | 98.3  | 1.7                |
| Oceania       |      |      |                    |      | 1.5  |                    |      |      |                    | 0.0                | 1.5  | 0.0                | 0.0                  | 100.0 | 0.0                |
| Total         | 39.6 | 35.3 | 1.0                | 22.9 | 32.1 | 1.7                | 2.6  | 18.0 | 3.5                | 65.1               | 85.4 | 6.2                | 41.5                 | 54.5  | 4.0                |

Note: The capacity data are in mmt and contain both underway and planned projects, and do not take into account possible closures that may occur during the period.

Source: OECD

As can be seen in Figure 8, regional investment trends differ considerably in terms of technology. In Asia, BOF plants account for more than 74.0% of the tonnage volume of capacity additions. Most of the BOF installations will take place in India or ASEAN.

In contrast, investments elsewhere mostly involve the EAF production route, with no new BOF plants expected to start operations in Africa, Europe, Latin America, the Middle East, North America and Oceania during 2024-26. The reader is referred to Annex A for details of individual projects.

**Figure 8. Potential gross capacity additions by region and equipment type from 2024 to 2026 (mmt)**

Note: The capacity data contain both underway and planned projects, and do not take into account possible closures that may occur during the period.

Source: Metal Expert, Platts, Kallanish, and steel company website

## Box 2. Transition to low-carbon steelmaking

Given that 40% of new capacity additions are BOF, and that the average age of BOF is 60 years (OECD, 2023<sup>[2]</sup>), new investments need to consider not only the demand and supply side, but also climate change objectives, including the adoption of Best Available Technologies (BAT) to improve energy efficiency and reduce CO<sub>2</sub> emissions in the shorter term. Retrofitting, breakthrough technologies, and substitution/reduction of raw material use will be longer-term solutions for the industry. Innovative solutions to lower emissions from steel production have and will continue to emerge over time, particularly if market forces and profit incentives are allowed to thrive, while problems such as global excess capacity, unfair trade practices, and distortive government interventions are significantly reduced.

As an example of concrete actions for the shorter term, the Indian steel industry has adopted certain BAT to improve energy efficiency and reduce greenhouse gas emissions, resulting in a significant reduction in specific CO<sub>2</sub> emissions from around 3.1 tonnes (t) per tonne of crude steel (tcs) in 2005 to 2.5 t/tcs in 2020 (Ministry of Steel in India, 2021<sup>[3]</sup>). One possible reason why India's average CO<sub>2</sub> emissions intensity is higher than the global average of worldsteel is that, despite a relatively high share of EAF (45%), EAF is produced using coal-based DRI and/or coal-based electricity. As the industry aims for expansion, there is a strong interest in adopting BAT practices. Leveraging technology-sharing platforms could empower Indian companies to enhance energy efficiency and reduce their carbon footprint during expansion efforts. The World Steel Association has highlighted that, on the road to the deployment of breakthrough technologies, short and medium-term process efficiency gains will provide important CO<sub>2</sub> emission reductions as well as the increased use of scrap in EAF and Blast Furnaces to reduce CO<sub>2</sub> intensity. Indeed, scrap plays a key role in reducing industrial emissions and resource consumption (worldsteel, 2021<sup>[4]</sup>). For economies such as India, with historically low steel consumption, the availability of domestic scrap is limited and there is a significant reliance on imports from other economies. Therefore, open market trade in scrap is also necessary in the context of decarbonisation.

In terms of long-term solutions, there are a number of new projects aimed at reducing CO<sub>2</sub> emissions from existing steelmaking processes. In Belgium, ArcelorMittal has started the first use of bio-coal in the blast furnace, which will reduce the plant's CO<sub>2</sub> emissions by 3% by reducing the use of traditional coal in the BF, and Europe's first carbon capture and utilisation. In Japan, Kobe Steel has successfully demonstrated a technology by feeding a large amount of Hot Briquetted Iron (HBI) into the BF and reducing coke input to 230 kilograms/tonne of hot metal output. Kobe Steel highlighted that it can reduce CO<sub>2</sub> emissions in the blast furnace by 25%, which would be one of the highest CO<sub>2</sub> reduction effects in the world (Kallanish, 2023<sup>[5]</sup>).

The current supply of DRI including HBI in the global market is still insufficient, but several projects have been announced, mainly in the Middle East and North Africa region (Kallanish, 2023<sup>[6]</sup>). JFE Steel, the second largest steel producer in Japan, has announced plans to use carbon-neutral direct reduced iron in EAFs, which will enable it to maintain product quality while reducing CO<sub>2</sub> emissions as part of its carbon-neutrality plan (Kallanish, 2023<sup>[7]</sup>).

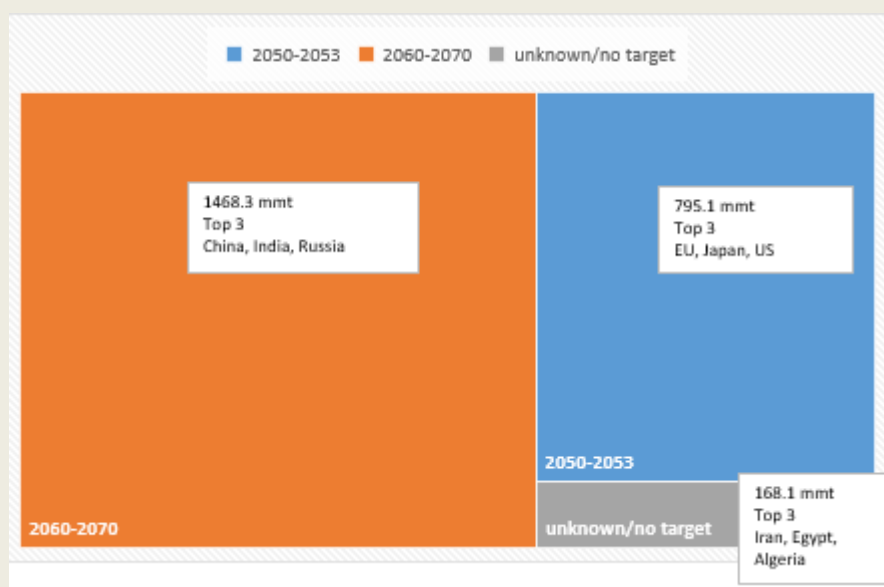


With around 89% of BF-BOF's energy input coming from coal and 7% from electricity (worldsteel, 2021<sup>[8]</sup>), decarbonising the process is a challenge not only in terms of raw materials, but also in terms of switching to low-carbon energy at an affordable price. Given that around 24% (five-year average) of steel products are traded internationally, the steel industry is highly exposed to international markets and therefore needs to remain competitive and agile, and not burdened by the harmful impacts of global excess capacity and unfair trading practices.

Making the transition to low-carbon energy through business initiatives alone is challenging. For example, the share of low-carbon or renewable electricity in an economy varies, and the price also depends on the availability of indigenous resources or reliance on external sources, as the 2022 energy crisis shows (IEA, 2023<sup>[9]</sup>). This could lead some steelmakers to slow down the transformation of the steelmaking process from BOF to EAF, if energy prices remain high and/or renewable energy supplies remain insufficient (Kallanish, 2023<sup>[10]</sup>).

Crude steel production processes vary widely around the world, to meet society's different demands for quantity and quality of steel products, and reflecting the varying availability and cost of energy and raw materials (including scrap) (OECD, 2023<sup>[11]</sup>). However, with most economies having set net-zero targets that vary by economy (Figure 9) and company, and given the long lifespan of steel plants, it is important to have concrete plans that take into account not only steel supply and demand, but also climate change targets. Indeed, the majority of companies that have announced the relining of existing blast furnaces in 2023 have indicated that these activities nevertheless align with their own climate change targets (Kallanish, 2023<sup>[12]</sup>).

**Figure 9. Current total steelmaking capacity by net zero target year**

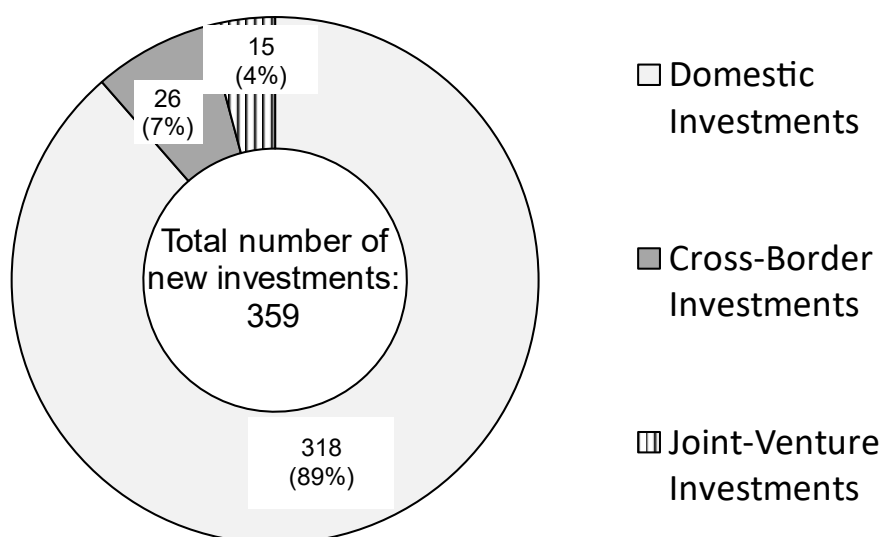


Note: Some EU members have a net zero target before 2050, but these were included in the EU.  
Source: OECD

### 3. Latest updates on cross-border investment

Figure 10 shows the share of domestic and cross-border investment in steelmaking capacity. In total, there are 361 new steelmaking capacity projects worldwide, classified as either underway or planned, which are scheduled to become operational in 2023 or later. This broad figure includes projects that have already started operations in 2023, as well as projects for which the start date is not available. Of these projects, domestic steelmakers are the investors/owners in 318 (89%) of the cases. Of the remaining steelmaking capacity projects, 26 (7%) entail cross-border investments, representing an investment that is based entirely on one or more foreign investors/owners, and 15 (4%) are structured as joint ventures (JV) between domestic and foreign investors/owners.

**Figure 10. The share of domestic and cross-border investments in new steelmaking capacity projects starting in 2023 or later**



Note: This figure includes all new investment projects that are underway or planned, and which are scheduled to become operational in 2023 or later — including projects that have started operation in 2023, as well as projects for which the start date is not available. It does not include cancelled projects. A cross-border investment represents an investment that is based wholly on one or several foreign investors/owners. A joint venture, on the other hand, involves both foreign investors/owners and domestic counterparts. Please see Annex A for details on the plant-level investments and their respective investors/owners.

Source: OECD

Table 4 shows the cross-border investment by region. Asia is the largest investment destination, with 14 cross-border and 11 JV investments between domestic and foreign investors. Africa is attracting four cross-border and four JV investments. The Middle East is the destination of two cross-border investments, with a focus on low-carbon steel production using green energy. North America is the destination of six cross-border investments. There are currently no cross-border or JV investments in the CIS, Europe, Latin America and Oceania regions.

**Table 4. Domestic and cross-border investments in new steelmaking capacity projects starting in 2023 or later**

| Region where the investment is taking place | Domestic Investments |                | Cross-Border Investments |                | Joint-Venture Investments |                |
|---------------------------------------------|----------------------|----------------|--------------------------|----------------|---------------------------|----------------|
|                                             | Number               | Capacity (mmt) | Number                   | Capacity (mmt) | Number                    | Capacity (mmt) |
| Africa                                      | 11                   | 7.2            | 4                        | 5.2            | 4                         | 5.2            |
| Asia                                        | 143                  | 290.1          | 14                       | 71.3           | 11                        | 22.0           |
| CIS                                         | 17                   | 17.7           | 0                        | 0.0            | 0                         | 0.0            |
| Europe                                      | 27                   | 29.9           | 0                        | 0.0            | 0                         | 0.0            |
| Latin America                               | 6                    | 3.0            | 0                        | 0.0            | 0                         | 0.0            |
| Middle East                                 | 97                   | 89.4           | 2                        | 6.5            | 0                         | 0.0            |
| North America                               | 15                   | 16.6           | 6                        | 5.2            | 0                         | 0.0            |
| Oceania                                     | 2                    | 1.5            | 0                        | 0.0            | 0                         | 0.0            |
| World Total                                 | 318                  | 455.4          | 26                       | 88.2           | 15                        | 27.2           |

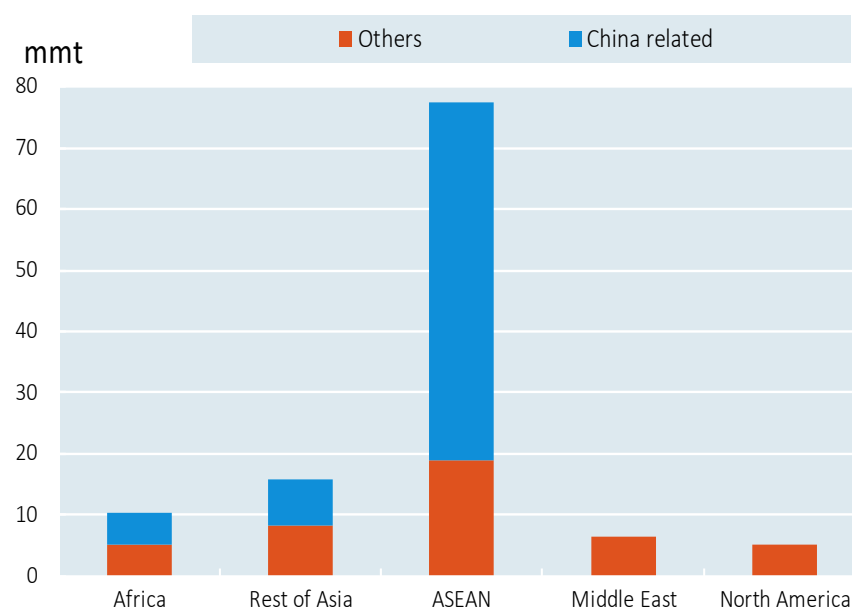
Note: This table includes all new investment projects that are, underway or planned, and which are scheduled to become operational in 2023 or later — including projects that have started operation in 2023, as well as projects for which the start date is not available. It does not include cancelled projects. A cross-border investment represents an investment that is based wholly on one or several foreign investors. A joint venture, on the other hand, involves both a foreign investor and a domestic counterpart. Please see Annex A for details on the plant-level investments and their respective investors/owners.

Source: OECD

Of the cross-border investments or JV investments, 61.8% of the new investments in 2023 or later will be made by Chinese steel companies in third economies. When all the plants that Chinese companies invest in are in operation from 2023 onwards, this will amount to 71 mmt, which is comparable in size to the capacity of Latin America.

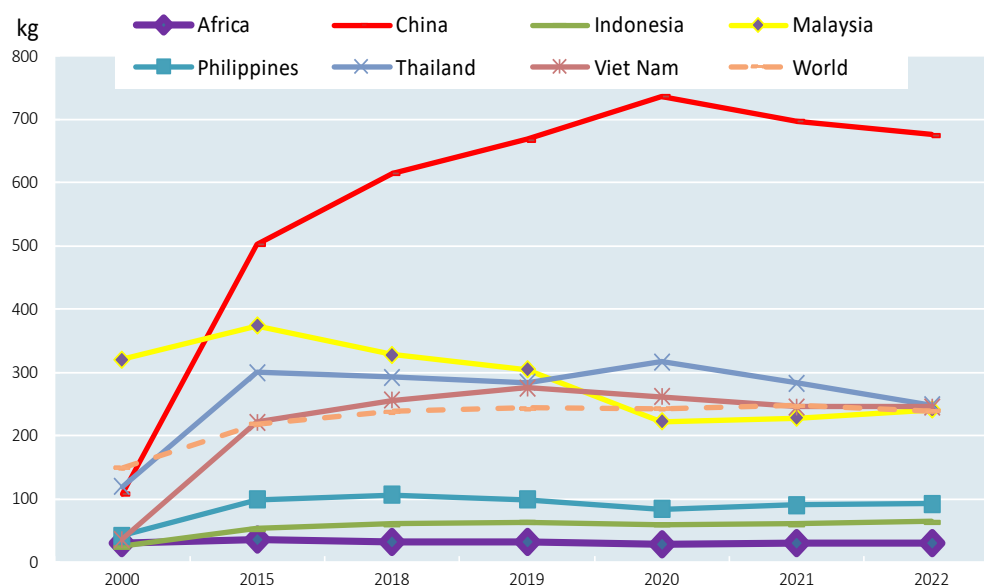
Figure 11 shows a breakdown of the amount of new cross-border investment in third economies involving Chinese and other economies. Chinese companies have investment plans concentrated in Asia and Africa. In particular, ASEAN receives the largest share of Chinese investment, accounting for 82.1% of total Chinese investment in steel in third economies.

**Figure 11. Cross-border investment in new steelmaking capacity by Chinese and other companies starting in 2023 or later (mmt)**



Source: OECD

China's apparent steel consumption (crude steel basis) was 964 mmt in 2022, and the China Iron and Steel Association (CISA) forecasts that it will fall to 910 mmt in 2025, 860 mmt in 2030 and 820 mmt in 2035 (Kallanish, 2023<sup>[13]</sup>). In terms of steel consumption per capita, Figure 12 shows that Chinese demand has grown significantly over the last two decades, peaking in 2020. On the other hand, Chinese companies are investing in Africa and ASEAN, where steel consumption is still below the world per capita average, meaning that there is potential for future growth in steel consumption. The implication is that as steel demand in China peaks, steelmaking capacity in China is expected to decline in line with demand, but this investment will be shifted to the potential economies of Africa and ASEAN.

**Figure 12. Apparent steel use per capita (kg crude steel equivalent)**

Source: worldsteel

Given the length of time it takes for steel companies to recoup their initial investment, foreign investment in an uncertain environment requires careful consideration of other factors in addition to steel demand, including competition with local steel producers, impacts on labour, alignment with the climate change objectives of the investing economy, and impacts on trade.

#### 4. Conclusions

Global steelmaking capacity is expected to continue to grow at a rapid pace over the next few years, in the context of relatively weak steel market conditions. In the three-year period of 2024-26, the global steel industry will see an additional 68.3 mmt of capacity coming on stream, with a further 88.7mmt potentially being added according to announced plans by steel companies. In total, therefore, gross capacity additions could amount to 157.0 mmt worldwide between 2024 and 2026.

Excess capacity is a structural problem that continues to cloud the outlook for the global steel industry. Governments and industry stakeholders should ensure that capacity investments are driven by market considerations and, given the longevity of installed the steel plants, make sure that the investments will be sustainable in the long term, including from a climate change perspective. For example, the installation of very large carbon-intensive plants, as described in this report, or efforts to begin relining outdated furnaces without any climate change plans, raise questions about their economic and environmental viability, especially if demand conditions are less favourable than expected. Participants in the Steel Committee could consider ways to discourage new investments in such unsustainable facilities, domestically and those otherwise occurring via cross-border investments.

As the industry makes the transition to lower-carbon steel production, it will be important to carefully monitor the nature of the investments, notably if they are merely new additions or if they represent adaptation/replacement of existing facilities, as well as their impacts on net capacity changes. Often, there is little information about the capacity levels of new low-carbon investments, indicating the importance of building better information about such investments to enable careful monitoring of excess capacity.

The OECD Steel Committee will continue to address these issues and publish its findings twice a year. The aim is to raise public awareness of capacity trends and the emerging challenges associated with these trends.



## Annex A. AVAILABLE INFORMATION ON PLANT LEVEL INVESTMENTS AND THEIR OWNERS

**Table A A.1. Investment data**

Highlighted blue rows indicate replacement of current capacity and not net capacity increases while highlighted green rows indicate partial replacement of current capacity or unclear to how much of the capacity will be an increase.

| REGION | ECONOMIES | COMPANY                                          | OWNER<br>(ECONOMIES)<br>except themselves | STATUS    | START | EQUIPMENT | CAPACITY | SOURCES                              |
|--------|-----------|--------------------------------------------------|-------------------------------------------|-----------|-------|-----------|----------|--------------------------------------|
| Africa | Algeria   | Emarat Dzayer Steel Company                      | Imetal Group (51%)                        | plan      | ?     | EAF       | ?        | Metal Expert                         |
| Africa | Algeria   | Tosyali Holding                                  |                                           | underway  | 2024  | EAF       | 2000     | Company HP (tenova)                  |
| Africa | Algeria   | ETRHB                                            | The ETRHB HADDAD Group                    | plan      | ?     | EAF       | 1150     | Company HP (Danieli); Metal Expert   |
| Africa | Algeria   | Algerian Qatari Steel Company                    | Qatar Steel International (49%)           | plan      | 2025  | EAF       | 2200     | Company HP, Metal Expert             |
| Africa | Algeria   | SARL SFM                                         |                                           | operating | 2023  | IF        | 200      | Company HP, Metal Expert             |
| Africa | Egypt     | Arabian Steel Industries                         | Arabian Steel Industries                  | plan      | 2024  | EAF       | 1000     | Metal Expert, World Steel Capacities |
| Africa | Egypt     | Xin Feng Resources Recycling Investment Holdings | Xin Feng Resources Recycling              | plan      | ?     | EAF       | 2000     | Metal Expert                         |

**24 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|        |              |                              | Investment Holdings          |           |      |             |      |                                                                     |
|--------|--------------|------------------------------|------------------------------|-----------|------|-------------|------|---------------------------------------------------------------------|
| Africa | Egypt        | Delta Steel Mill             |                              | operating | 2023 | IF          | ?    | Company HP, Metal Expert                                            |
| Africa | Egypt        | EZZ Steel                    |                              | operating | 2023 | EAF         | 850  | Company HP, Metal Expert                                            |
| Africa | Kenya        | Sinosteel                    | Sinosteel                    | plan      | ?    | Steelmaking | 1000 | Metal Expert; Ministry of Industry, Trade and Cooperatives of Kenya |
| Africa | Morocco      | SONASID                      | ONA group                    | underway  | 2024 | EAF         | 1000 | Company HP, Metal Expert                                            |
| Africa | Morocco      | Soma Steel                   |                              | underway  | 2024 | EAF         | 300  | Company HP, Metal Expert                                            |
| Africa | Mozambique   | Baobab Resources             | Baobab Resources             | underway  | ?    | EAF         | 500  | World Steel Capacities, WM, Company HP                              |
| Africa | Namibia      | Groot Group                  | Groot Group                  | underway  | ?    | EAF         | 1000 | Company HP, Metal Expert                                            |
| Africa | Nigeria      | Ajaokuta Steel Company (ASC) | Ajaokuta Steel Company (ASC) | plan      | ?    | BOF         | 1300 | World Steel Capacities; CompanyHP                                   |
| Africa | Nigeria      | Kam Industries               |                              | underway  | ?    | IF          | 260  | Metal Expert                                                        |
| Africa | South Africa | Scaw Metals Group            |                              | underway  | 2024 | EAF         | 650  | World Steel Capacities                                              |

|        |            |                                                    |                                            |           |      |             |       |                                       |
|--------|------------|----------------------------------------------------|--------------------------------------------|-----------|------|-------------|-------|---------------------------------------|
| Africa | Zimbabwe   | Tsingshan Holding Group                            | Tsingshan Holding Group                    | underway  | ?    | EAF         | 1200  | kallanish                             |
| Africa | Zimbabwe   | Tsingshan Holding Group                            | Tsingshan Holding Group                    | plan      | ?    | EAF         | 1000  | kallanish                             |
| Asia   | Bangladesh | Bangladesh Steel Re-Rolling Mills (BSRM)           |                                            | operating | 2023 | IF          | ?     | Company HP, Metal Expert              |
| Asia   | Bangladesh | Bashundhara Multi Steel Industries Limited (BMSIL) |                                            | underway  | 2024 | EAF         | 1250  | Company HP, Metal Expert              |
| Asia   | Bangladesh | SHAHRIAR STEEL MILLS LTD. (SSRM)                   |                                            | underway  | 2024 | IF          | 108   | Company HP, Metal Expert              |
| Asia   | Bangladesh | Star Consortium                                    |                                            | plan      | ?    | BOF         | 2000  | Company HP                            |
| Asia   | Bhutan     | Druk Metallurgy Limited (DML)                      | Druk Holding and Investments Limited (DHI) | underway  | ?    | IF          | 200   | Company HP, Platts                    |
| Asia   | Cambodia   | Cambodia Iron and Steel                            |                                            | plan      | ?    | BOF         | 1000  | WM                                    |
| Asia   | Cambodia   | Xinjiang Bayi Nanjiang Steel Baicheng Co Ltd-Aksu  | Baowu Steel Group Corporation              | plan      | ?    | BOF         | 3100  | Reuters, My steel, SEASI presentation |
| Asia   | China      | Shanxi Jinnan Iron and Steel                       | Shanxi Jinnan Iron and Steel               | plan      | ?    | BOF         | 3400  | worldmetals                           |
| Asia   | China      | Anshan Iron & Steel                                | Ansteel Group                              | plan      | ?    | Steelmaking | 10000 | Platts                                |
| Asia   | China      | Shaanxi Hanzhong Iron and Steel                    | Shaanxi Steel Group                        | plan      | ?    | EAF         | 700   | 陕西发展观察, 汉中时空网                         |

**26 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|      |       |                                                     |                                 |          |      |             |      |                                                              |
|------|-------|-----------------------------------------------------|---------------------------------|----------|------|-------------|------|--------------------------------------------------------------|
| Asia | China | Jinxi Iron and Steel                                | Jinxi Iron and Steel (河北津西钢铁集团) | plan     | ?    | Steelmaking | ?    | 防城港市新闻网                                                      |
| Asia | China | HBIS Laoting Steel Co., Ltd.                        | HBIS                            | plan     | ?    | BOF         | 7470 | Platts, Reuters, Company HP                                  |
| Asia | China | Baowu Iron & Steel Group                            | Baowu Steel Group Corporation   | plan     | ?    | Steelmaking | ?    | MySteel (我的钢铁), Platts, Metal Expert, Government of Jinangsu |
| Asia | China | Baowu Iron & Steel Group                            | Baowu Iron & Steel Group        | plan     | ?    | Steelmaking | 3100 | Platts                                                       |
| Asia | China | Sanbao Iron and Steel                               |                                 | underway | 2024 | EAF         | 1500 | Metal Expert, kallanish                                      |
| Asia | China | Tangyin Iron and Steel                              |                                 | underway | ?    | BOF         | 2000 | Metal Expert, kallanish                                      |
| Asia | China | Zenith Iron and Steel Group                         |                                 | underway | ?    | BOF         | 5850 | Metal Expert, kallanish                                      |
| Asia | China | Rizhao Steel Holding Group Co., Ltd.                |                                 | underway | ?    | BOF         | 2700 | Metal Expert                                                 |
| Asia | China | Sichuan Dazhou Iron and Steel                       |                                 | plan     | 2024 | BOF         | 2300 | ME, kallanish                                                |
| Asia | China | Luoyuan Minguang Steel                              |                                 | plan     | ?    | BOF         | 1250 | Metal Expert                                                 |
| Asia | China | Linyi Iron and Steel Investment Group Special Steel |                                 | underway | ?    | BOF         | 2700 | Metal Expert                                                 |
| Asia | China | Rockcheck Iron and Steel                            |                                 | underway | ?    | EAF         | 500  | Metal Expert                                                 |

|      |       |                                  |  |           |      |     |      |              |
|------|-------|----------------------------------|--|-----------|------|-----|------|--------------|
| Asia | China | Tianzhu Iron and Steel           |  | underway  | ?    | BOF | 2870 | Metal Expert |
| Asia | China | Changli Hongxing Industry        |  | underway  | ?    | BOF | 3450 | Metal Expert |
| Asia | China | Xianfu Iron and Steel            |  | underway  | ?    | BOF | 2600 | Metal Expert |
| Asia | China | Jingye Iron and Steel            |  | underway  | ?    | BOF | 1500 | Metal Expert |
| Asia | China | Tongcai Industry and Trade       |  | underway  | ?    | BOF | 2000 | Metal Expert |
| Asia | China | Tongcai Industry and Trade       |  | underway  | ?    | EAF | 780  | Metal Expert |
| Asia | China | Shandong Iron and Steel Group    |  | operating | 2023 | BOF | 1150 | Metal Expert |
| Asia | China | Shandong Iron and Steel Group    |  | underway  | ?    | BOF | 1150 | Metal Expert |
| Asia | China | Shandong Iron and Steel Group    |  | underway  | ?    | BOF | 1150 | Metal Expert |
| Asia | China | Jinan Iron and Steel Group       |  | operating | 2023 | BOF | 1800 | Metal Expert |
| Asia | China | Yunnan Yuxi Iron and Steel Group |  | operating | 2023 | BOF | 1300 | Metal Expert |
| Asia | China | Yunnan Yuxi Iron and Steel Group |  | operating | 2023 | BOF | 1300 | Metal Expert |
| Asia | China | Yunnan Yuxi Iron and Steel Group |  | operating | 2023 | BOF | 1400 | Metal Expert |
| Asia | China | Yunnan Yuxi Iron and Steel Group |  | operating | 2023 | BOF | 1150 | Metal Expert |
| Asia | China | Fujian Sanbao Iron and Steel     |  | operating | 2023 | EAF | 787  | Metal Expert |
| Asia | China | Baicheng Fuda Steel Bar Rolling  |  | operating | 2023 | EAF | 787  | Metal Expert |

**28 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|      |       |                                 |                              |           |      |     |      |                        |
|------|-------|---------------------------------|------------------------------|-----------|------|-----|------|------------------------|
| Asia | China | Qian`an Jiujiang Wire           |                              | operating | 2023 | BOF | 1600 | Metal Expert           |
| Asia | China | Qian`an Jiujiang Wire           |                              | operating | 2023 | BOF | 1600 | Metal Expert           |
| Asia | China | Qian`an Jiujiang Wire           |                              | operating | 2023 | BOF | 1600 | Metal Expert           |
| Asia | India | Tata Steel BSL Ltd.             |                              | plan      | 2030 | BOF | 6070 | WM                     |
| Asia | India | Tata Steel BSL Ltd.             |                              | plan      | 2030 | EAF | 1550 | WM                     |
| Asia | India | Tata Steel                      |                              | plan      | 2024 | BOF | 5000 | Metal Expert           |
| Asia | India | Tata Steel                      |                              | underway  | 2025 | EAF | 750  | World Steel Capacities |
| Asia | India | JSW Steel Limited               | JSW Holdings                 | underway  | 2024 | BOF | 5000 | Company HP             |
| Asia | India | JSW Steel Limited               | JSW Holdings                 | plan      | 2026 | BOF | 1800 | WM                     |
| Asia | India | JSW Steel Limited               | JSW Holdings                 | plan      | ?    | EAF | 1200 | WM                     |
| Asia | India | JSW Steel Limited               | JSW Holdings                 | plan      | ?    | EAF | ?    | Sarralle               |
| Asia | India | NMDC                            | NMDC                         | operating | 2023 | BOF | 3000 | World Steel Capacities |
| Asia | India | Shree Uttam Steel and Power Ltd | Uttam Galva Steels Ltd(UGSL) | underway  | ?    | BOF | 1550 | World Steel Capacities |
| Asia | India | Shree Uttam Steel and Power Ltd | Uttam Galva Steels Ltd(UGSL) | plan      | ?    | BOF | 1550 | Metal Expert           |
| Asia | India | Mono Steel (India) Ltd.         |                              | underway  | ?    | IF  | ?    | World Steel Capacities |



|      |       |                                    |             |      |      |     |      |                                      |
|------|-------|------------------------------------|-------------|------|------|-----|------|--------------------------------------|
| Asia | India | Crest Steel (Una) Pvt. Ltd.        | Crest Steel | plan | ?    | IF  | ?    | Metal Expert, World Steel Capacities |
| Asia | India | Ramsarup Lohh Udyog Limited (RLUL) |             | plan | ?    | EAF | 700  | World Steel Capacities               |
| Asia | India | Brand Steel and Power Ltd          |             | plan | 2025 | EAF | 450  | WM                                   |
| Asia | India | Aloke Steel Industries             |             | plan | 2030 | EAF | 70   | WM                                   |
| Asia | India | Ankur Udyog Limited                |             | plan | 2032 | EAF | 250  | WM                                   |
| Asia | India | Texcon Steels Ltd                  |             | plan | 2030 | EAF | 130  | WM                                   |
| Asia | India | Welspun Power and Steel Ltd (WPSL) |             | plan | 2030 | BOF | 3100 | WM                                   |
| Asia | India | Welspun Power and Steel Ltd (WPSL) |             | plan | 2030 | BOF | 3300 | WM                                   |
| Asia | India | Xindia Steels                      |             | plan | 2036 | BOF | 2500 | WM                                   |
| Asia | India | Xindia Steels                      |             | plan | 2029 | BOF | 2500 | WM                                   |
| Asia | India | Kalyani Steel                      |             | plan | 2030 | BOF | 3000 | WM                                   |
| Asia | India | KIC Metaliks                       |             | plan | 2025 | EAF | 380  | WM                                   |
| Asia | India | Knovus Steels and Infrastructure   |             | plan | 2030 | EAF | 150  | WM                                   |
| Asia | India | Rungta Mines Limited (RML)         |             | plan | 2030 | EAF | 110  | WM                                   |
| Asia | India | Tata Metaliks (TML)                |             | plan | 2038 | BOF | 3000 | WM                                   |
| Asia | India | Ramsarup Industries Limited        |             | plan | ?    | EAF | 700  | WM                                   |

**30 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|      |       |                                          |                   |      |      |             |       |                                              |
|------|-------|------------------------------------------|-------------------|------|------|-------------|-------|----------------------------------------------|
| Asia | India | Jindal Steel and Power Ltd. (JSPL)       | O.P. Jindal Group | plan | 2034 | BOF         | 6000  | WM                                           |
| Asia | India | Jindal Steel and Power Ltd. (JSPL)       | O.P. Jindal Group | plan | 2024 | BOF         | 6000  | WM                                           |
| Asia | India | Jindal Steel and Power Ltd. (JSPL)       |                   | plan | ?    | BOF         | 2500  | Metal Expert                                 |
| Asia | India | Jindal Steel and Power Ltd. (JSPL)       |                   | plan | 2025 | EAF         | 3000  | Metal Expert, Company HP, Platts             |
| Asia | India | ArcelorMittal                            | ArcelorMittal     | plan | ?    | Steelmaking | 6000  | Metal Expert, Company HP(Annual Report 2018) |
| Asia | India | Godawari Power and Ispat                 |                   | plan | 2025 | BOF         | 1000  | Metal Expert                                 |
| Asia | India | Tata Steel                               |                   | plan | 2030 | BOF         | 5500  | WM                                           |
| Asia | India | Tata Steel                               |                   | plan | ?    | ?           | ?     | Metal Expert                                 |
| Asia | India | Tata Sponge Iron Ltd                     |                   | plan | ?    | BOF         | 1500  | World Steel Capacities                       |
| Asia | India | Tata Sponge Iron Ltd                     |                   | plan | 2025 | EAF         | 750   | WM                                           |
| Asia | India | BMM Ispat Limited                        |                   | plan | ?    | BOF         | 1100  | WM                                           |
| Asia | India | ArcelorMittal Nippon Steel India         |                   | plan | 2028 | BOF         | 24000 | World Steel Capacities, SEISI                |
| Asia | India | ArcelorMittal Nippon Steel India Limited |                   | plan | 2025 | BOF         | 6000  | World Steel Capacities                       |
| Asia | India | JSW Steel Limited                        |                   | plan | 2036 | BOF         | 6000  | WM                                           |
| Asia | India | JSW Steel Limited                        |                   | plan | 2025 | BOF         | 4000  | WM                                           |

|      |       |                                        |  |      |      |     |      |                        |
|------|-------|----------------------------------------|--|------|------|-----|------|------------------------|
| Asia | India | JSW Steel Limited                      |  | plan | 2032 | BOF | 3440 | WM                     |
| Asia | India | JSW Bengal Steel                       |  | plan | ?    | BOF | 3000 | World Steel Capacities |
| Asia | India | Jindal Maxsteel                        |  | plan | ?    | EAF | 1500 | World Steel Capacities |
| Asia | India | Jai Balaji Industries Limited (JBIL)   |  | plan | 2030 | EAF | 5000 | WM                     |
| Asia | India | Jai Balaji Jyoti Steels                |  | plan | 2030 | EAF | 860  | WM                     |
| Asia | India | Jindal Steel and Power Ltd. (JSPL)     |  | plan | 2025 | BOF | 3300 | Metal Expert           |
| Asia | India | Jindal Steel and Power Ltd. (JSPL)     |  | plan | 2025 | EAF | 3000 | Metal Expert           |
| Asia | India | Jindal Steel and Power Ltd. (JSPL)     |  | plan | ?    | BOF | 4000 | WM                     |
| Asia | India | Neelachal Ispat Nigam Limited (NINL)   |  | plan | ?    | BOF | 1000 | World Steel Capacities |
| Asia | India | NMDC                                   |  | plan | 2030 | BOF | 5000 | WM                     |
| Asia | India | SAIL                                   |  | plan | 2035 | BOF | 8800 | WM                     |
| Asia | India | SAIL                                   |  | plan | 2030 | BOF | 5600 | WM                     |
| Asia | India | Bhushan Power and Steel Limited (BPSL) |  | plan | 2023 | BOF | 2800 | WM                     |
| Asia | India | Bhushan Power and Steel Limited (BPSL) |  | plan | ?    | EAF | 900  | WM                     |
| Asia | India | Bhushan Power and Steel Limited (BPSL) |  | plan | 2030 | EAF | 3000 | WM                     |
| Asia | India | Arjas Steel                            |  | plan | 2030 | BOF | 620  | WM                     |

**32 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|      |       |                                      |                     |      |      |     |      |                                  |
|------|-------|--------------------------------------|---------------------|------|------|-----|------|----------------------------------|
| Asia | India | MSP Steel & Power Ltd (MSPSPL)       |                     | plan | 2025 | EAF | 580  | WM                               |
| Asia | India | MSP Metalics Ltd                     |                     | plan | ?    | IF  | 240  | World Steel Capacities           |
| Asia | India | Visa Steel                           |                     | plan | ?    | EAF | 2500 | WM                               |
| Asia | India | Shyam Steel Industries               |                     | plan | ?    | EAF | 320  | WM                               |
| Asia | India | Action Ispat & Power (P) Ltd.        |                     | plan | 2024 | EAF | 680  | WM                               |
| Asia | India | Chintpurni Steel                     |                     | plan | ?    | EAF | 300  | WM                               |
| Asia | India | Ispat Damodar Ltd.                   |                     | plan | 2025 | EAF | 190  | WM                               |
| Asia | India | Jharkhand Ispat Pvt Ltd              |                     | plan | 2030 | EAF | 70   | WM                               |
| Asia | India | Narbheram Power & Steel              |                     | plan | 2030 | EAF | 670  | WM                               |
| Asia | India | Prakash Industries                   |                     | plan | 2025 | EAF | 1000 | WM                               |
| Asia | India | Rashmi Metaliks Limited (RML)        |                     | plan | ?    | EAF | 350  | WM                               |
| Asia | India | Rashi Steel and Power Limited (RSPL) |                     | plan | 2030 | EAF | 240  | WM                               |
| Asia | India | Jayaswal Neco Industries Limited     |                     | plan | 2025 | EAF | 570  | WM                               |
| Asia | India | AP High Grade Steel                  | AP High Grade Steel | plan | ?    | BOF | 2000 | Metal Expert                     |
| Asia | India | Lloyds Metals and Energy             |                     | plan | ?    | IF  | 250  | Metal Expert                     |
| Asia | India | Lloyds Metals and Energy             |                     | plan | 2027 | EAF | 1200 | Metal Expert, Company HP, Platts |

|      |           |                                       |                                                    |           |      |             |       |                                                 |
|------|-----------|---------------------------------------|----------------------------------------------------|-----------|------|-------------|-------|-------------------------------------------------|
| Asia | India     | Gallantt Group                        |                                                    | plan      | 2024 | IF          | ?     | Metal Expert, Company HP, Platts                |
| Asia | India     | JSW Utkal Steel                       |                                                    | plan      | ?    | BOF         | 13200 | Kallanish                                       |
| Asia | Indonesia | Dexin Steel Indonesia                 | Delong Holdings (45%), Shanghai Decent Group (43%) | operating | 2023 | BOF         | 2500  | Company HP, Metal Expert                        |
| Asia | Indonesia | Krakatau POSCO                        | POSCO (70%)                                        | plan      | 2025 | BOF         | 3000  | SEALSI Presentation, Metal Expert. Company HP   |
| Asia | Indonesia | PT Gunung Raja Paksi                  | Gunung Steel Group                                 | plan      | ?    | EAF         | 500   | Platts, Metal Expert, Company HP                |
| Asia | Indonesia | Anshan Iron & Steel Group Corporation | Anshan Iron & Steel Group Corporation              | plan      | ?    | Steelmaking | 5000  | Platts                                          |
| Asia | Indonesia | Fuhai Group & Ansteel Group           | Fuhai Group                                        | plan      | ?    | Steelmaking | 1750  | The Jakarta Post                                |
| Asia | Indonesia | Hebel Bishi Steel Group               | Hebel Bishi Steel Group                            | plan      | ?    | Steelmaking | 3000  | Metal Expert, American Metal Market             |
| Asia | Indonesia | PT Gunung Raja Paksi                  | Gunung Steel Group (GSG)                           | plan      | ?    | Steelmaking | 3000  | Metal Expert                                    |
| Asia | Indonesia | Shaanxi Iron and Steel Group          | Shaanxi Iron and Steel Group                       | plan      | ?    | Steelmaking | 7500  | Metal Expert, 陕西日报 (Shaanxi' Daily), China Belt |

**34 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|       |           |                             |                                             |          |      |     |      |                                           |
|-------|-----------|-----------------------------|---------------------------------------------|----------|------|-----|------|-------------------------------------------|
|       |           |                             |                                             |          |      |     |      | and Road Portal (中国一带一路), 陕西煤业化工集团有限责任公司; |
| Asia  | Indonesia | Wuhan Iron & Steel (Wugang) | Wuhan Iron & Steel (Wugang)                 | plan     | ?    | EAF | 5000 | Platts                                    |
| Japan | Japan     | JFE Steel                   |                                             | plan     | 2027 | EAF | 2000 | Company HP, Metal Expert                  |
| Asia  | Japan     | Chubu Steel Plate Co.       |                                             | underway | 2024 | EAF | 700  | World Steel Capacities                    |
| Asia  | Korea     | Daehan Steel Co., Ltd.      |                                             | plan     | 2025 | EAF | 1000 | World Steel Capacities                    |
| Asia  | Korea     | POSCO                       |                                             | plan     | 2025 | EAF | 2500 | World Steel Capacities                    |
| Asia  | Myanmar   | Myingyan plant              |                                             | plan     | ?    | EAF | 200  | World Steel Capacities                    |
| Asia  | Myanmar   | Kunming Steel               | Kunming Iron and Steel Group Company (KISC) | plan     | ?    | BOF | 4000 | Metal Expert                              |
| Asia  | Malaysia  | Eastern Steel Sdn Bhd       | Hiap Teck Venture (HYVB) (55%)              | underway | 2024 | BOF | 1300 | SEAISI                                    |
| Asia  | Malaysia  | Kinsteel Bhd                |                                             | plan     | ?    | IF  | 500  | Metal Expert, World Steel Capacities      |
| Asia  | Malaysia  | Kinsteel Bhd                |                                             | plan     | ?    | EAF | 500  | Metal Expert                              |

|      |             |                                     |                           |          |      |             |       |                                  |
|------|-------------|-------------------------------------|---------------------------|----------|------|-------------|-------|----------------------------------|
| Asia | Malaysia    | New project by The Lion Group       | The Lion Group            | plan     | ?    | BOF         | 1600  | World Steel Capacities           |
| Asia | Malaysia    | Sarawak Iron and Steel              | Hebei Xinwuan Steel Group | underway | 2024 | BOF         | 10000 | Metal Expert, SEAISI             |
| Asia | Thailand    | Meranti Green Steel                 | Meranti Steel             | plan     | 2027 | EAF         | 2000  | Metal Expert, Company HP, Platts |
| Asia | Philippines | Philippine Iron and Steel Project   | SteelAsia Manufacturing   | plan     | ?    | Steelmaking | 4500  | SEAISI                           |
| Asia | Philippines | Philippine Iron and Steel Project   | SteelAsia Manufacturing   | plan     | 2026 | Steelmaking | 3500  | SEAISI                           |
| Asia | Philippines | Panhua Group                        | Panhua Group              | underway | 2024 | BOF         | 10000 | Metal Expert                     |
| Asia | Philippines | SteelAsia Manufacturing Corporation | SteelAsia Manufacturing   | plan     | ?    | EAF         | 500   | Metal Expert                     |
| Asia | Philippines | SteelAsia Manufacturing Corporation | SteelAsia Manufacturing   | plan     | ?    | EAF         | 800   | Metal Expert, Company HP, Platts |
| Asia | Philippines | SteelAsia Manufacturing Corporation | SteelAsia Manufacturing   | underway | 2024 | EAF         | 500   | Metal Expert                     |
| Asia | Philippines | SteelAsia Manufacturing Corporation | SteelAsia Manufacturing   | plan     | ?    | EAF         | ?     | World Steel Capacities           |
| Asia | Philippines | SteelAsia Manufacturing Corporation | SteelAsia Manufacturing   | plan     | ?    | EAF         | 800   | Metal Expert                     |
| Asia | Philippines | SteelAsia Manufacturing Corporation | SteelAsia Manufacturing   | plan     | ?    | EAF         | 600   | Metal Expert                     |
| Asia | Philippines | SteelAsia Manufacturing Corporation | SteelAsia Manufacturing   | plan     | ?    | EAF         | 1200  | Metal Expert                     |



**36 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|      |          |                                          |                                                                       |          |      |     |      |                        |
|------|----------|------------------------------------------|-----------------------------------------------------------------------|----------|------|-----|------|------------------------|
| Asia | Viet Nam | Formosa Plastics Group                   | Formosa Plastics Group                                                | plan     | ?    | BOF | 7000 | SEAISI                 |
| Asia | Viet Nam | Formosa Plastics Group                   | Formosa Plastics Group                                                | plan     | ?    | BOF | 7000 | SEAISI                 |
| Asia | Viet Nam | Hoa Sen Group                            | Hoa Sen Group                                                         | plan     | ?    | EAF | 800  | World Steel Capacities |
| Asia | Viet Nam | Hoa Sen Group                            | Hoa Sen Group                                                         | plan     | ?    | EAF | 500  | World Steel Capacities |
| Asia | Viet Nam | Vietnam Steel Corporation                | Vietnam Steel Corporation (VSC)                                       | plan     | ?    | BOF | 500  | Metal Expert           |
| Asia | Viet Nam | Viet - Trung Metallurgy Company          | Vietnam Steel Corporation                                             | plan     | ?    | BOF | 500  | Company HP             |
| Asia | Viet Nam | Hoa Phat Group                           |                                                                       | plan     | 2025 | BOF | 5600 | World Steel Capacities |
| Asia | Pakistan | Ittehad Steel                            | Ittehad Steel                                                         | underway | ?    | IF  | 600  | Metal Expert           |
| Asia | Pakistan | Indus Consortium Mining & Steel Industry | Mughal Steel, Star Cotton Corporation, Pak Steel, Ittehad Steel Mills | plan     | ?    | BOF | 1000 | World Steel Capacities |
| Asia | Pakistan | Naveena Steel Mills                      |                                                                       | plan     | ?    | IF  | 80   | Metal Expert           |
| Asia | Pakistan | Century Steel                            | Fuzhou Julitaihe International Company                                | underway | ?    | ?   | 500  | Metal Expert           |
| Asia | Pakistan | FF Steel                                 |                                                                       | underway | ?    | IF  | 250  | Metal Expert           |
| Asia | Pakistan | FF Steel                                 |                                                                       | plan     | ?    | ?   | ?    | Metal Expert           |

|      |            |                                          |                    |           |      |             |      |                                    |
|------|------------|------------------------------------------|--------------------|-----------|------|-------------|------|------------------------------------|
| Asia | Pakistan   | Mughal Steel                             |                    | operating | 2023 | IF          | 108  | Metal Expert                       |
| Asia | Pakistan   | Kamran Steel Re-Rolling Mills (Pvt) Ltd. |                    | underway  | ?    | IF          | 130  | World Steel Capacities             |
| Asia | Pakistan   | Hunza Steel                              |                    | underway  | 2024 | IF          | 90   | Company HP, Metal Expert           |
| Asia | Pakistan   | Hamza Steel                              |                    | underway  | 2024 | IF          | 300  | Company HP, Metal Expert           |
| CIS  | Azerbaijan | Baku Steel Company                       | Baku Steel Company | plan      | ?    | EAF         | ?    | Company HP, Metal Expert           |
| CIS  | Russia     | Usolye Metallurgical Plant               |                    | underway  | ?    | Steelmaking | ?    | Metal Expert                       |
| CIS  | Russia     | Don-Metal                                | Don-Metal          | plan      | 2025 | EAF         | 160  | Metal Expert, Comments from Russia |
| CIS  | Russia     | Hrombur                                  |                    | plan      | ?    | EAF         | 500  | Metal Expert                       |
| CIS  | Russia     | Ishstal plant                            |                    | plan      | ?    | EAF         | 300  | World Steel Capacities             |
| CIS  | Russia     | Don-Metal                                |                    | plan      | ?    | EAF         | 160  | Metal Expert                       |
| CIS  | Russia     | United Metallurgical Company (OMK)       |                    | underway  | 2025 | EAF         | 1800 | Metal Expert                       |
| CIS  | Russia     | Novostal-M                               |                    | plan      | 2024 | EAF         | 1200 | World Steel Capacities             |
| CIS  | Russia     | Novostal                                 |                    | plan      | ?    | EAF         | 1000 | Company HP, Metal Expert           |
| CIS  | Russia     | Surgutskiy MK                            |                    | underway  | ?    | EAF         | 100  | Metal Expert                       |

**38 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|        |            |                                          |           |          |      |     |      |                                |
|--------|------------|------------------------------------------|-----------|----------|------|-----|------|--------------------------------|
| CIS    | Russia     | Rostov Electrometallurgical Plant / REMZ |           | underway | 2024 | EAF | 1000 | kallanish, Metal Expert        |
| CIS    | Russia     | Metalloinvest                            |           | plan     | ?    | EAF | 1200 | kallanish                      |
| CIS    | Ukraine    | Metinvest                                | Metinvest | plan     | ?    | BOF | 3200 | World Steel Capacities, Platts |
| CIS    | Ukraine    | Metinvest                                | Metinvest | plan     | 2030 | EAF | 4500 | Metal Expert                   |
| CIS    | Ukraine    | Donetssteel                              |           | plan     | ?    | EAF | 1800 | Platts, Metal Expert           |
| CIS    | Kazakhstan | QazSpecSteel                             |           | plan     | 2026 | BOF | 400  | Metal Expert                   |
| CIS    | Kazakhstan | QazSpecSteel                             |           | plan     | 2026 | BOF | 400  | Metal Expert                   |
| Europe | Austria    | Böhler Edelstahl Gmbh                    |           | underway | ?    | EAF | 205  | Company HP, Metal Expert       |
| Europe | Austria    | Voestalpine Stahl Donawitz               |           | underway | 2027 | EAF | 850  | Company HP, Metal Expert       |
| Europe | Austria    | Voestalpine AG                           |           | underway | 2027 | EAF | 850  | Company HP, Metal Expert       |
| Europe | Belgium    | ArcelorMittal                            |           | plan     | 2026 | EAF | ?    | World Steel Capacities         |
| Europe | Germany    | ArcelorMittal                            |           | plan     | 2026 | EAF | ?    | World Steel Capacities         |
| Europe | Italy      | Acciaierie d'Italia                      |           | plan     | ?    | EAF | ?    | Metal Expert, Platts           |
| Europe | Italy      | Acciaierie d'Italia                      |           | plan     | ?    | EAF | ?    | Metal Expert, Platts           |

|        |                |                                           |                              |           |      |     |      |                                                  |
|--------|----------------|-------------------------------------------|------------------------------|-----------|------|-----|------|--------------------------------------------------|
| Europe | Netherlands    | Van Merksteijn International              | Van Merksteijn International | plan      | ?    | EAF | 1000 | Danieli PR                                       |
| Europe | Poland         | Cognor Group                              | PS HoldCo Sp. z o.o.         | operating | 2023 | EAF | 120  | Metal Expert                                     |
| Europe | Romania        | Galati Steelworks                         |                              | plan      | ?    | EAF | 4000 | Company HP                                       |
| Europe | Romania        | AFV Beltrame                              |                              | plan      | 2024 | EAF | 700  | World Steel Capacities                           |
| Europe | Sweden         | H2 Green Steel                            |                              | underway  | 2025 | EAF | 2500 | Metal Expert, Company HP, World Steel Capacities |
| Europe | Sweden         | SSAB Swedish Steel AB                     |                              | underway  | 2026 | EAF | ?    | Metal Expert, Company HP, World Steel Capacities |
| Europe | Spain          | ArcelorMittal                             |                              | underway  | 2025 | EAF | 1100 | Company HP                                       |
| Europe | Finland        | Blastr Green Steel                        |                              | plan      | 2026 | EAF | 2500 | Company HP, Metal Expert                         |
| Europe | France         | ArcelorMittal                             |                              | plan      | 2027 | EAF | ?    | Company HP                                       |
| Europe | France         | ArcelorMittal                             |                              | plan      | 2027 | EAF | ?    | Company HP                                       |
| Europe | United Kingdom | Liberty House                             | Liberty House Group          | plan      | ?    | EAF | ?    | Company HP                                       |
| Europe | United Kingdom | South Tees Development Corporation (STDC) |                              | plan      | ?    | EAF | ?    | Metal Expert                                     |
| Europe | Türkiye        | Izmir Demir Celik                         |                              | underway  | 2024 | EAF | 1400 | Metal Expert, kalkanish                          |

**40 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|             |         |                         |                       |           |      |     |      |                                                  |
|-------------|---------|-------------------------|-----------------------|-----------|------|-----|------|--------------------------------------------------|
| Europe      | Türkiye | Kaptan Demir Celik      |                       | plan      | 2024 | EAF | 2000 | World Steel Capacities                           |
| Europe      | Türkiye | Ekinciler Demir Celik   |                       | plan      | ?    | EAF | 1000 | World Steel Capacities                           |
| Europe      | Türkiye | Icdas                   |                       | plan      | 2025 | EAF | 5000 | World Steel Capacities                           |
| Europe      | Türkiye | Tufan Metalurji         |                       | plan      | 2024 | IF  | 244  | World Steel Capacities                           |
| Europe      | Türkiye | Yildizlar Holding       |                       | plan      | 2026 | EAF | 4000 | World Steel Capacities                           |
| Europe      | Türkiye | Hascelik                |                       | underway  | 2024 | EAF | 250  | Metal Expert, Company HP, World Steel Capacities |
| Middle East | Iran    | Mobarakeh Steel         | Morarakeh Steel (65%) | underway  | 2024 | EAF | 1000 | World Steel Capacities                           |
| Middle East | Iran    | Mobarakeh Steel Company |                       | operating | 2023 | EAF | 50   | Metal Expert, Company HP, World Steel Capacities |
| Middle East | Iran    | Khorasan Steel Complex  |                       | plan      | ?    | EAF | 1320 | Metal Expert, Company HP, World Steel Capacities |
| Middle East | Iran    | Khouzestan Oxin Steel   |                       | plan      | ?    | EAF | 1200 | World Steel Capacities                           |
| Middle East | Iran    | Khouzestan Steel        |                       | underway  | 2024 | EAF | 800  | World Steel Capacities                           |
| Middle East | Iran    | Esfahan Steel           |                       | plan      | ?    | BOF | 2280 | World Steel Capacities                           |

|             |      |                                              |                  |           |      |     |      |                                      |
|-------------|------|----------------------------------------------|------------------|-----------|------|-----|------|--------------------------------------|
| Middle East | Iran | Esfahan Steel                                |                  | plan      | ?    | EAF | 1650 | World Steel Capacities               |
| Middle East | Iran | Khouzestan Steel                             | Khouzestan Steel | plan      | ?    | EAF | 1250 | World Steel Capacities               |
| Middle East | Iran | Khouzestan Steel                             | Khouzestan Steel | plan      | ?    | EAF | 1250 | World Steel Capacities               |
| Middle East | Iran | Khouzestan Steel                             | Khouzestan Steel | plan      | ?    | EAF | 1250 | World Steel Capacities               |
| Middle East | Iran | Khouzestan Steel                             | Khouzestan Steel | plan      | ?    | EAF | 1250 | World Steel Capacities               |
| Middle East | Iran | Khouzestan Steel                             | Khouzestan Steel | underway  | ?    | EAF | 1000 | Company HP(IMIDRO), Metal Expert     |
| Middle East | Iran | Khouzestan Steel                             | Khouzestan Steel | plan      | 2026 | EAF | 1200 | World Steel Capacities               |
| Middle East | Iran | Khouzestan Steel                             | Khouzestan Steel | plan      | ?    | EAF | 1300 | World Steel Capacities               |
| Middle East | Iran | Iran Alloy Steel Company (IASCO)             |                  | underway  | ?    | EAF | 1000 | Metal Expert, World Steel Capacities |
| Middle East | Iran | Iran Alloy Steel Company                     |                  | operating | 2023 | EAF | 700  | World Steel Capacities               |
| Middle East | Iran | Iran National Steel Industrial Group (INSIG) |                  | underway  | 2024 | EAF | 430  | World Steel Capacities               |
| Middle East | Iran | Kaavian Steel                                |                  | plan      | ?    | EAF | 700  | World Steel Capacities               |
| Middle East | Iran | Mianeh Steel                                 | IMIDRO           | underway  | 2024 | EAF | 800  | Metal Expert                         |
| Middle East | Iran | Sabzevar Steel Complex                       | IMIDRO           | underway  | ?    | EAF | 800  | Metal Expert, World Steel Capacities |
| Middle East | Iran | Ghaenat Steel Complex                        | IMIDRO           | underway  | ?    | EAF | 800  | Metal Expert                         |

**42 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|             |      |                                                   |                                                               |          |      |     |      |                                      |
|-------------|------|---------------------------------------------------|---------------------------------------------------------------|----------|------|-----|------|--------------------------------------|
| Middle East | Iran | Saeb Steel Complex                                | Daric Investment Group                                        | plan     | ?    | EAF | 550  | Metal Expert                         |
| Middle East | Iran | Shams Iron & Steel Complex                        |                                                               | plan     | ?    | EAF | 1500 | World Steel Capacities               |
| Middle East | Iran | Sabalan Iron and Steel Complex                    |                                                               | plan     | ?    | EAF | 500  | World Steel Capacities               |
| Middle East | Iran | Zonouz steel complex                              | Daric Investment Group                                        | plan     | ?    | EAF | 500  | Company HP                           |
| Middle East | Iran | Bonab Steel Complex                               |                                                               | plan     | 2025 | ?   | 1450 | Metal Expert                         |
| Middle East | Iran | East Kaveh Steel Company (EKSC)                   |                                                               | plan     | ?    | EAF | 1000 | World Steel Capacities, Metal Expert |
| Middle East | Iran | Arvand Kaveh Steel                                |                                                               | plan     | ?    | EAF | 2500 | World Steel Capacities               |
| Middle East | Iran | Makran Steel Complex                              | IMIDRO                                                        | plan     | 2030 | EAF | 3200 | Metal Expert                         |
| Middle East | Iran | Gambron Steel                                     |                                                               | plan     | ?    | EAF | 2000 | World Steel Capacities               |
| Middle East | Iran | Jahan Foulad Gharb                                |                                                               | plan     | 2025 | EAF | 500  | WM                                   |
| Middle East | Iran | GHADIR Industries and Mines International Company | Ghadir International Mines and Industries Development Company | underway | 2024 | EAF | 1000 | World Steel Capacities, Company HP   |
| Middle East | Iran | Afa Steel                                         |                                                               | plan     | ?    | EAF | 600  | World Steel Capacities, Company HP   |



|             |      |                                                      |                                                                 |          |      |     |      |                        |
|-------------|------|------------------------------------------------------|-----------------------------------------------------------------|----------|------|-----|------|------------------------|
| Middle East | Iran | Amir Kabir Khazar Steel                              |                                                                 | plan     | ?    | EAF | 500  | World Steel Capacities |
| Middle East | Iran | Arian Steel                                          |                                                                 | plan     | ?    | EAF | 550  | World Steel Capacities |
| Middle East | Iran | Arvand Jahanara Steel Company (AJSCO)                | Arvand Jahanara Steel Company                                   | plan     | ?    | EAF | 1200 | World Steel Capacities |
| Middle East | Iran | Azna Steel                                           |                                                                 | plan     | ?    | EAF | 700  | World Steel Capacities |
| Middle East | Iran | Bafgh Mineral Complex Iron & Steel Company (B-MISCO) | Bafgh Mineral Complex Iron and Steel Industry Company (B-MISCO) | underway | 2024 | EAF | 800  | World Steel Capacities |
| Middle East | Iran | Boyer Ahmad Steel Complex (Boyer Sanat)              |                                                                 | plan     | ?    | EAF | 300  | World Steel Capacities |
| Middle East | Iran | Ardakan Steel                                        |                                                                 | plan     | ?    | EAF | 1000 | World Steel Capacities |
| Middle East | Iran | Chadormalu Mining & Industrial Co.                   |                                                                 | underway | 2024 | EAF | 600  | Metal Expert           |
| Middle East | Iran | Eghlid Pars Steel                                    |                                                                 | plan     | ?    | EAF | 1000 | Metal Expert           |
| Middle East | Iran | Fasa Steel Complex Co (Fasco)                        |                                                                 | plan     | ?    | EAF | 1500 | World Steel Capacities |
| Middle East | Iran | Foolad Alborz Iranian Company (FAICO)                |                                                                 | plan     | ?    | EAF | 800  | World Steel Capacities |
| Middle East | Iran | MIDHCO                                               |                                                                 | plan     | ?    | EAF | 1500 | World Steel Capacities |
| Middle East | Iran | MIDHCO                                               |                                                                 | plan     | ?    | EAF | 1500 | World Steel Capacities |
| Middle East | Iran | Kavir Damghan Steel Complex (KADASCO)                |                                                                 | plan     | ?    | IF  | 200  | World Steel Capacities |

**44 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|             |      |                                       |                          |          |      |     |      |                                                  |
|-------------|------|---------------------------------------|--------------------------|----------|------|-----|------|--------------------------------------------------|
| Middle East | Iran | Kavir Damghan Steel Complex (KADASCO) |                          | plan     | ?    | EAF | ?    | World Steel Capacities                           |
| Middle East | Iran | Khayyam Steel                         | Khayyam Steel Neyshabour | underway | 2024 | EAF | 500  | Metal Expert                                     |
| Middle East | Iran | Kurdistan Steel Company               | IMIDRO                   | underway | ?    | EAF | 1000 | Platts, Company HP, Metal Expert                 |
| Middle East | Iran | Malayer Steel Company                 |                          | plan     | ?    | IF  | 300  | World Steel Capacities                           |
| Middle East | Iran | Malekan Steel                         | Malekan Steel            | plan     | ?    | EAF | 400  | Metal Expert, World Steel Capacities             |
| Middle East | Iran | Malekan Steel                         | Malekan Steel            | plan     | ?    | EAF | 400  | World Steel Capacities                           |
| Middle East | Iran | Natanz Steel Company                  | Natanz Steel Industries  | plan     | ?    | EAF | 850  | Metal Expert                                     |
| Middle East | Iran | Neyshabur Steel Complex               |                          | plan     | ?    | EAF | 800  | World Steel Capacities                           |
| Middle East | Iran | North West Steel Industries (NWSI)    |                          | plan     | ?    | EAF | 800  | World Steel Capacities                           |
| Middle East | Iran | Orumieh Steel Company                 | Orumieh Steel Group      | plan     | ?    | EAF | 1200 | World Steel Capacities, Metal Expert, Company HP |
| Middle East | Iran | Orumieh Steel Company                 | Orumieh Steel Group      | plan     | ?    | IF  | 400  | World Steel Capacities                           |
| Middle East | Iran | Orumieh Steel Company                 | Orumieh Steel Group      | plan     | ?    | EAF | 800  | World Steel Capacities                           |
| Middle East | Iran | Persian Gulf Saba Steel               |                          | plan     | 2031 | EAF | 1500 | World Steel Capacities                           |
| Middle East | Iran | Persian Gulf Saba Steel               |                          | plan     | 2031 | EAF | 1500 | World Steel Capacities                           |

|             |      |                                         |                                         |          |      |     |      |                                      |
|-------------|------|-----------------------------------------|-----------------------------------------|----------|------|-----|------|--------------------------------------|
| Middle East | Iran | Persian Gulf Saba Steel                 |                                         | plan     | ?    | EAF | 1500 | World Steel Capacities               |
| Middle East | Iran | Qeshm Steel Development Co.(Q.E.S.D.Co) | Qeshm Steel Development Co.(Q.E.S.D.Co) | plan     | ?    | EAF | 1500 | Platts, Metal Expert, Company HP     |
| Middle East | Iran | Qeshm Steel Development Co.(Q.E.S.D.Co) | Qeshm Steel Development Co.(Q.E.S.D.Co) | plan     | ?    | EAF | 1500 | Platts, Metal Expert, Company HP     |
| Middle East | Iran | Saba Foulad Zagros                      | Saba Foulad Zagros                      | underway | ?    | EAF | 400  | Company HP                           |
| Middle East | Iran | Sadrfulad complex                       | Sadr Steel Company                      | plan     | ?    | EAF | 400  | World Steel Capacities               |
| Middle East | Iran | Samangan Steel Industries               |                                         | plan     | ?    | EAF | 750  | Metal Expert, World Steel Capacities |
| Middle East | Iran | Samangan Steel Industries               |                                         | plan     | ?    | EAF | 750  | Metal Expert, World Steel Capacities |
| Middle East | Iran | South Rouhina Steel                     |                                         | plan     | ?    | EAF | 550  | World Steel Capacities               |
| Middle East | Iran | Torbat Heydariyeh Steel                 | Torbat Heydariyeh Steel                 | plan     | ?    | EAF | 1450 | World Steel Capacities, Metal Expert |
| Middle East | Iran | Torbat Heydariyeh Steel                 |                                         | plan     | ?    | EAF | 1450 | World Steel Capacities               |
| Middle East | Iran | Brojen Steel                            |                                         | plan     | 2025 | EAF | 1000 | WM                                   |
| Middle East | Iran | Kavir Damghan Steel Complex (KADASCO)   | Kavir Damghan Steel Complex (KADASCO)   | plan     | ?    | IF  | 200  | Metal Expert                         |

**46 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|             |      |                                          |                                  |           |      |     |      |                          |
|-------------|------|------------------------------------------|----------------------------------|-----------|------|-----|------|--------------------------|
| Middle East | Iran | GolGohar Mining & Industrial Co          | Golgohar Mining & Industrial Co. | underway  | 2024 | EAF | 1500 | World Steel Capacities   |
| Middle East | Iran | GolGohar Mining & Industrial Co          |                                  | underway  | 2024 | EAF | 1500 | World Steel Capacities   |
| Middle East | Iran | GolGohar Mining & Industrial Co          |                                  | underway  | 2026 | EAF | 1300 | World Steel Capacities   |
| Middle East | Iran | National Iranian Steel Company (NISCO)   | IMIDRO                           | underway  | ?    | EAF | 800  | Metal Expert             |
| Middle East | Iran | North West Steel Industries (NWSI)       |                                  | plan      | ?    | EAF | 800  | World Steel Capacities   |
| Middle East | Iran | Kavand Nahan Zamin (KNZ)                 |                                  | plan      | ?    | EAF | 100  | Metal Expert             |
| Middle East | Iran | Kavir Steel Cooperative                  |                                  | underway  | ?    | IF  | 150  | Metal Expert             |
| Middle East | Iran | Sepid Farab Kavir Steel                  |                                  | underway  | 2024 | EAF | 800  | Metal Expert             |
| Middle East | Iran | Gohar Zamin Iron Ore Company             |                                  | plan      | ?    | EAF | 3000 | Metal Expert             |
| Middle East | Iran | Shahriar Tabriz Steel Industries Company |                                  | plan      | ?    | EAF | ?    | Metal Expert, Company HP |
| Middle East | UAE  | BILDCO                                   |                                  | plan      | ?    | EAF | 1000 | Metal Expert             |
| Middle East | UAE  | Arabian Gulf Steel Industries (AGSI)     |                                  | underway  | ?    | IF  | 150  | World Steel Capacities   |
| Middle East | Iraq | State Company for Iron & Steel (SCIS)    | United Brothers Holding          | underway  | ?    | EAF | 500  | Metal Expert             |
| Middle East | Iraq | Galiawa Group                            |                                  | operating | 2023 | EAF | 750  | Metal Expert             |
| Middle East | Iraq | Qaiwan Steel                             |                                  | underway  | 2024 | IF  | 400  | Metal Expert             |

|             |               |                                        |                         |           |      |     |      |                          |
|-------------|---------------|----------------------------------------|-------------------------|-----------|------|-----|------|--------------------------|
| Middle East | Oman          | Muscat Steel Industries                | Muscat Steel            | plan      | ?    | EAF | 200  | World Steel Capacities   |
| Middle East | Oman          | Shumookh Investment and Services (SIS) |                         | plan      | ?    | ?   | 400  | Metal Expert             |
| Middle East | Oman          | Vulcan Green Steel                     | Jindal Steel Group      | plan      | 2026 | EAF | 2500 | Metal Expert, Company HP |
| Middle East | Saudi Arabia  | Al-Qaryan Steel Company                | Al-Qaryan Steel Company | plan      | ?    | EAF | 300  | Metal Expert             |
| Middle East | Saudi Arabia  | Al-Yamamah Steel Industries            | Private                 | plan      | ?    | EAF | 1000 | Platts, Metal Expert     |
| Middle East | Saudi Arabia  | Arkan Steel                            | Al-Watania Group        | plan      | ?    | EAF | 600  | World Steel Capacities   |
| Middle East | Saudi Arabia  | Atoun Steel Industry                   |                         | plan      | ?    | EAF | 910  | Platts, Metal Expert     |
| Middle East | Saudi Arabia  | Gulf Tubing Co                         | Gulf Tubing Co          | plan      | ?    | EAF | 600  | Company HP               |
| Middle East | Saudi Arabia  | Madina Metal                           |                         | underway  | ?    | IF  | 300  | World Steel Capacities   |
| Middle East | Saudi Arabia  | Essar Group                            | Essar Group             | plan      | 2027 | EAF | 4000 | World Steel Capacities   |
| USMCA       | United States | U.S. Steel                             |                         | underway  | 2024 | EAF | 2720 | Metal Expert             |
| USMCA       | United States | Nucor Corporation                      |                         | plan      | 2024 | EAF | 570  | Metal Expert             |
| USMCA       | United States | North Star BlueScope Steel             | BlueScope Steel         | underway  | ?    | EAF | 850  | Company HP               |
| USMCA       | United States | AM/NS Calvert LLC                      | ArcelorMittal           | underway  | 2024 | EAF | 1500 | Metal Expert, Company HP |
| USMCA       | United States | Commercial Metals Company (CMC)        |                         | operating | 2023 | EAF | 453  | Metal Expert             |

**48 | LATEST DEVELOPMENTS IN STEELMAKING CAPACITY AND OUTLOOK UNTIL 2026**

|       |               |                                 |                         |           |      |             |      |                          |
|-------|---------------|---------------------------------|-------------------------|-----------|------|-------------|------|--------------------------|
| USMCA | United States | Commercial Metals Company (CMC) |                         | underway  | 2025 | EAF         | 453  | Metal Expert             |
| USMCA | United States | JSW USA                         | JSW Holdings            | plan      | ?    | EAF         | ?    | Platts                   |
| USMCA | United States | Liberty House Group             | Liberty House Group     | plan      | ?    | EAF         | ?    | Company HP               |
| USMCA | United States | Nucor Corporation               |                         | plan      | 2024 | EAF         | 544  | Metal Expert             |
| USMCA | United States | Nucor Corporation               |                         | underway  | 2026 | EAF         | 2721 | Metal Expert             |
| USMCA | United States | Nucor Corporation               |                         | underway  | 2025 | EAF         | 372  | Metal Expert, Company HP |
| USMCA | United States | Pacific Steel                   |                         | plan      | 2025 | Steelmaking | 380  | Company HP               |
| USMCA | United States | Highbar                         |                         | plan      | 2025 | EAF         | 544  | World Steel Capacities   |
| USMCA | United States | 72 Steel                        |                         | plan      | 2025 | EAF         | 454  | World Steel Capacities   |
| USMCA | United States | Ashoka Steel                    | Ashoka Steel Industries | plan      | 2025 | EAF         | 499  | Metal Expert, Company HP |
| USMCA | Canada        | Algoma                          |                         | underway  | 2024 | EAF         | 3356 | World Steel Capacities   |
| USMCA | Canada        | ArcelorMittal                   | ArcelorMittal           | plan      | 2028 | EAF         | 2400 | Metal Expert             |
| USMCA | Canada        | Gerdau Ameristeel               |                         | operating | 2023 | EAF         | 181  | World Steel Capacities   |
| USMCA | Mexico        | Deacero                         |                         | plan      | 2024 | EAF         | ?    | World Steel Capacities   |
| USMCA | Mexico        | Deacero                         |                         | plan      | 2026 | EAF         | 1500 | Metal Expert, Company HP |

|               |             |                               |                               |          |      |     |      |                                  |
|---------------|-------------|-------------------------------|-------------------------------|----------|------|-----|------|----------------------------------|
| USMCA         | Mexico      | Ternium                       |                               | plan     | 2026 | EAF | 2358 | World Steel Capacities           |
| Latin America | Brazil      | Aco Cearense                  |                               | plan     | 2025 | EAF | ?    | World Steel Capacities           |
| Latin America | Brazil      | Grupo Simec                   |                               | underway | ?    | EAF | 730  | Metal Expert, Kallanish          |
| Latin America | Brazil      | Grupo Simec                   |                               | plan     | ?    | EAF | 200  | Metal Expert                     |
| Latin America | Argentina   | Tenaris                       |                               | plan     | ?    | EAF | 950  | World Steel Capacities           |
| Latin America | Bolivia     | Empresa Siderurgica del Mutun | Empresa Siderurgica del Mutun | underway | 2024 | EAF | 1000 | Platts, Company HP, Metal Expert |
| Oceania       | Australia   | Liberty House Group           |                               | underway | 2025 | EAF | 1500 | World Steel Capacities           |
| Oceania       | New Zealand | New Zealand Steel             |                               | plan     | 2026 | EAF | ?    | World Steel Capacities           |

Source: <Company HP, government HP and media sources in the table.

## Annex B. AVAILABLE INFORMATION ON PLANT-LEVEL CLOSURES

**Table A 0.1. Closure data**

The rows highlighted in blue do not represent actual reductions, as new investments are either started or planned after the closure. Table summarises the plant-level closure information reported by public and commercial sources up to December 2023. Please note that this does not represent an exhaustive list of closures.

| Status | Region | Economies | Location                   | Company                             | Equipment | capacity<br>(thousand<br>metric<br>tonnes) | Sources      |
|--------|--------|-----------|----------------------------|-------------------------------------|-----------|--------------------------------------------|--------------|
| done   | Asia   | China     | Tangshan                   | Hebei Iron & Steel Group (HBIS)     | BOF       | 5840                                       | Metal Expert |
| done   | Asia   | China     | Tangshan                   | Hebei Iron & Steel Group (HBIS)     | BOF       | 1000                                       | Metal Expert |
| done   | Asia   | China     | Tangshan, Hebei            | Jinan Iron and Steel Group          | BOF       | 2930                                       | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Yunnan Yuxi Iron and Steel Group    | BOF       | ?                                          | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Yunnan Yuxi Iron and Steel Group    | BOF       | ?                                          | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Yunnan Yuxi Iron and Steel Group    | BOF       | ?                                          | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Yunnan Yuxi Iron and Steel Group    | BOF       | ?                                          | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Yunnan Yuxi Iron and Steel Group    | BOF       | 850                                        | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Yunnan Yuxi Iron and Steel Group    | BOF       | 850                                        | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Jiangsu Binxin Iron and Steel Group | BOF       | 1500                                       | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | China Baowu Steel Group             | BOF       | 850                                        | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | China Baowu Steel Group             | BOF       | 850                                        | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Hebei Puyang Industrial Group       | BOF       | 850                                        | Metal Expert |
| done   | Asia   | China     | Hongta District, Yuxi City | Hebei Puyang Industrial Group       | BOF       | 850                                        | Metal Expert |



|          |               |             |                            |                               |     |      |                        |
|----------|---------------|-------------|----------------------------|-------------------------------|-----|------|------------------------|
| done     | Asia          | China       | Hongta District, Yuxi City | Jiangsu Yonggang Group        | BOF | 2700 | Metal Expert           |
| done     | Asia          | China       | Hongta District, Yuxi City | Zhongxin Iron and Steel Group | BOF | 1900 | Metal Expert           |
| done     | Asia          | China       | Hongta District, Yuxi City | Zhongxin Iron and Steel Group | BOF | 1900 | Metal Expert           |
| done     | Asia          | Japan       | Keihin District            | JFE Steel                     | BOF | 4600 | Metal Expert           |
| expected | Africa        | Morocco     | Jorf Lasfar                | Sonasid                       | EAF | 800  | Metal Expert           |
| expected | Asia          | China       | Fuzhou City, Fujian        | Luoyuan Minguang Steel        | BOF | 1500 | Metal Expert           |
| expected | Asia          | China       | Dazhou City, Sichuan       | Sichuan Dazhou Iron and Steel | BOF | 2600 | ME, Kallanish          |
| expected | Asia          | China       |                            | Tangyin Iron and Steel        | BOF | 2800 | ME, Kallanish          |
| expected | Asia          | China       | Zhangzhou City, Fujian     | Sanbao Iron and Steel         | EAF | 300  | Metal Expert           |
| expected | Asia          | China       | Zhangzhou City, Fujian     | Sanbao Iron and Steel         | EAF | 600  | Metal Expert           |
| expected | Asia          | China       | Zhangzhou City, Fujian     | Sanbao Iron and Steel         | EAF | 650  | Metal Expert           |
| expected | Asia          | China       | Jinan, Shandong            | Shandong Iron and Steel Group | BOF | 1350 | Metal Expert           |
| expected | Asia          | China       | Jinan, Shandong            | Shandong Iron and Steel Group | BOF | 1350 | Metal Expert           |
| expected | Asia          | China       | Jinan, Shandong            | Shandong Iron and Steel Group | EAF | 360  | Metal Expert           |
| expected | USMCA         | Mexico      | Celaya                     | Deacero                       | EAF | 1100 | World Steel Capacities |
| expected | South America | Argentina   | Campana                    | Tenaris                       | EAF | 475  | World Steel Capacities |
| expected | South America | Brazil      | Jean de Monlevade          | ArcelorMittal                 | BOF | 1300 | World Steel Capacities |
| expected | Oceania       | Australia   | Whyalla, South Australia   | Liberty House Group           | BOF | 1300 | World Steel Capacities |
| expected | Oceania       | New Zealand | Glenbrook industrial area  | New Zealand Steel             | BOF | 650  | Metal Expert           |

Source: Company HP, government HP and media sources in the table.

## Annex C. STEELMAKING CAPACITY DATA BY ECONOMY

**Table A 0.1. Crude Steelmaking capacity developments**

|                              | Nominal crude steelmaking capacity |      |      |      |      |      |
|------------------------------|------------------------------------|------|------|------|------|------|
|                              | 2010                               | 2019 | 2020 | 2021 | 2022 | 2023 |
| <b>Africa</b>                | 33.6                               | 44.6 | 44.7 | 43.5 | 45.8 | 46.9 |
| Algeria                      | 3.3                                | 7.9  | 9.3  | 9.3  | 9.3  | 9.5  |
| Angola                       | 0.0                                | 0.5  | 0.5  | 0.5  | 0.5  | 0.5  |
| Botswana                     | 0.0                                | 0.1  | 0.1  | 0.1  | 0.1  | 0.1  |
| Cameroon                     | 0.2                                | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  |
| Democratic Republic of Congo | 0.1                                | 0.1  | 0.1  | 0.1  | 0.1  | 0.1  |
| Cote d'Ivoire                | 0.0                                | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| Egypt                        | 9.5                                | 15.6 | 15.6 | 14.4 | 15.2 | 16.0 |
| Ethiopia                     | 0.5                                | 0.8  | 0.8  | 0.8  | 0.8  | 0.8  |
| Gabon                        | 0.0                                | 0.1  | 0.1  | 0.1  | 0.1  | 0.1  |
| Ghana                        | 0.5                                | 0.5  | 0.5  | 0.5  | 0.5  | 0.5  |
| Kenya                        | 0.5                                | 0.6  | 0.6  | 0.6  | 0.6  | 0.6  |
| Libya                        | 1.7                                | 1.7  | 1.7  | 1.7  | 1.7  | 1.7  |
| Mauritius                    | 0.0                                | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| Morocco                      | 1.5                                | 2.8  | 2.8  | 2.8  | 4.4  | 4.4  |
| Mozambique                   | 0.0                                | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| Namibia                      | 0.0                                | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| Nigeria                      | 2.7                                | 3.1  | 3.1  | 3.1  | 3.1  | 3.1  |
| South Africa                 | 12.0                               | 9.4  | 8.1  | 8.1  | 8.1  | 8.1  |
| Sudan                        | 0.1                                | 0.1  | 0.1  | 0.1  | 0.1  | 0.1  |
| Tanzania                     | 0.0                                | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| Togo                         | 0.0                                | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| Tunisia                      | 0.2                                | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  |
| Uganda                       | 0.1                                | 0.1  | 0.1  | 0.1  | 0.1  | 0.1  |
| Zambia                       | 0.1                                | 0.1  | 0.1  | 0.1  | 0.1  | 0.1  |
| Zimbabwe                     | 0.8                                | 0.8  | 0.8  | 0.8  | 0.8  | 0.8  |

|                      | 2010   | 2019   | 2020   | 2021   | 2022   | 2023   |
|----------------------|--------|--------|--------|--------|--------|--------|
| <b>Asia</b>          | 1437.9 | 1616.5 | 1622.5 | 1622.6 | 1626.1 | 1618.7 |
| <b>Non-OECD Asia</b> | 1229.9 | 1406.4 | 1412.4 | 1418.7 | 1422.1 | 1419.3 |
| <b>Bangladesh</b>    | 3.2    | 6.1    | 7.0    | 7.3    | 7.3    | 7.3    |

|                                              |         |        |        |        |        |        |
|----------------------------------------------|---------|--------|--------|--------|--------|--------|
| <b>Bhutan</b>                                | 0.0     | 0.0    | 0.0    | 0.0    | 0.0    | 0.0    |
| <b>Cambodia</b>                              | 0.0     | 0.0    | 0.0    | 0.0    | 0.0    | 0.0    |
| <b>China (People's Republic of)</b>          | 1 057.9 | 1148.3 | 1147.9 | 1146.5 | 1149.9 | 1141.5 |
| <b>Chinese Taipei</b>                        | 26.9    | 29.4   | 29.4   | 29.4   | 29.4   | 29.4   |
| <b>Hong Kong (China)</b>                     | 0.0     | 0.0    | 0.0    | 0.0    | 0.0    | 0.0    |
| <b>India</b>                                 | 84.4    | 128.7  | 128.7  | 133.9  | 133.9  | 136.9  |
| <b>Indonesia</b>                             | 10.8    | 17.8   | 19.6   | 21.3   | 21.3   | 23.8   |
| <b>Japan</b>                                 | 132.0   | 128.5  | 128.5  | 122.4  | 122.4  | 117.8  |
| <b>Korea</b>                                 | 76.0    | 81.6   | 81.6   | 81.6   | 81.6   | 81.6   |
| <b>Democratic People's Republic of Korea</b> | 11.2    | 11.2   | 11.2   | 11.2   | 11.2   | 11.2   |
| <b>Lao People's Democratic Republic</b>      | 0.2     | 0.2    | 0.2    | 0.2    | 0.2    | 0.2    |
| <b>Malaysia</b>                              | 12.9    | 19.2   | 19.2   | 19.2   | 19.2   | 19.2   |
| <b>Mongolia</b>                              | 0.1     | 0.1    | 0.1    | 0.1    | 0.1    | 0.1    |
| <b>Myanmar</b>                               | 0.1     | 0.3    | 0.3    | 0.3    | 0.3    | 0.3    |
| <b>Nepal</b>                                 | 0.3     | 0.3    | 0.3    | 0.3    | 0.3    | 0.3    |
| <b>Pakistan</b>                              | 3.1     | 7.1    | 8.6    | 9.0    | 9.0    | 9.1    |
| <b>Philippines</b>                           | 1.8     | 1.8    | 1.8    | 1.8    | 1.8    | 1.8    |
| <b>Singapore</b>                             | 0.8     | 0.8    | 0.8    | 0.8    | 0.8    | 0.8    |
| <b>Sri Lanka</b>                             | 0.2     | 0.2    | 0.2    | 0.2    | 0.2    | 0.2    |
| <b>Thailand</b>                              | 9.7     | 11.4   | 11.4   | 11.4   | 11.4   | 11.4   |
| <b>Viet Nam</b>                              | 6.5     | 23.7   | 26.0   | 26.0   | 26.0   | 26.0   |
| <b>ASEAN-6</b>                               | 42.4    | 74.6   | 78.7   | 80.4   | 80.4   | 82.9   |

|                     |       |       |       |       |       |       |
|---------------------|-------|-------|-------|-------|-------|-------|
| <b>CIS</b>          | 139.6 | 143.4 | 142.6 | 143.9 | 145.0 | 145.0 |
| <b>Armenia</b>      | 0.0   | 0.2   | 0.2   | 0.2   | 0.2   | 0.2   |
| <b>Azerbaijan</b>   | 0.9   | 1.6   | 1.6   | 1.6   | 1.6   | 1.6   |
| <b>Belarus</b>      | 2.8   | 3.0   | 3.0   | 3.0   | 3.0   | 3.0   |
| <b>Georgia</b>      | 0.1   | 0.1   | 0.4   | 0.4   | 0.4   | 0.4   |
| <b>Kazakhstan</b>   | 7.1   | 7.7   | 7.7   | 7.7   | 7.7   | 7.7   |
| <b>Kyrgyzstan</b>   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| <b>Moldova</b>      | 1.0   | 1.0   | 1.0   | 1.0   | 1.0   | 1.0   |
| <b>Russia</b>       | 77.7  | 88.3  | 88.8  | 90.1  | 90.8  | 90.8  |
| <b>Turkmenistan</b> | 0.2   | 0.2   | 0.2   | 0.2   | 0.2   | 0.2   |
| <b>Ukraine</b>      | 48.8  | 40.2  | 38.7  | 38.7  | 38.7  | 38.7  |
| <b>Uzbekistan</b>   | 1.1   | 1.1   | 1.1   | 1.1   | 1.4   | 1.4   |

|                        | 2010  | 2019  | 2020  | 2021  | 2022  | 2023  |
|------------------------|-------|-------|-------|-------|-------|-------|
| <b>Europe</b>          | 297.7 | 279.6 | 279.7 | 280.3 | 281.5 | 283.7 |
| <b>Non-OECD Europe</b> | 13.9  | 12.9  | 12.9  | 12.9  | 12.9  | 12.9  |
| <b>EU</b>              | 227.8 | 208.2 | 205.6 | 205.6 | 205.6 | 205.7 |

|  |                           |      |      |      |      |      |      |
|--|---------------------------|------|------|------|------|------|------|
|  | <b>Austria</b>            | 8.5  | 8.5  | 8.5  | 8.5  | 8.5  | 8.5  |
|  | <b>Belgium</b>            | 15.1 | 8.9  | 8.9  | 8.9  | 8.9  | 8.9  |
|  | <b>Bulgaria</b>           | 1.2  | 1.2  | 1.2  | 1.2  | 1.2  | 1.2  |
|  | <b>Croatia</b>            | 0.5  | 0.3  | 0.3  | 0.3  | 0.3  | 0.3  |
|  | <b>Cyprus</b>             | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
|  | <b>Czechia</b>            | 7.8  | 6.8  | 6.8  | 6.8  | 6.8  | 6.8  |
|  | <b>Denmark</b>            | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
|  | <b>Estonia</b>            | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
|  | <b>Finland</b>            | 5.1  | 4.5  | 4.5  | 4.5  | 4.5  | 4.5  |
|  | <b>France</b>             | 22.3 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 |
|  | <b>Germany</b>            | 58.4 | 58.1 | 58.1 | 58.1 | 58.1 | 58.1 |
|  | <b>Greece</b>             | 3.7  | 3.9  | 3.9  | 3.9  | 3.9  | 3.9  |
|  | <b>Hungary</b>            | 2.0  | 2.0  | 2.0  | 2.0  | 2.0  | 2.0  |
|  | <b>Ireland</b>            | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
|  | <b>Italy</b>              | 38.8 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 |
|  | <b>Latvia</b>             | 0.8  | 0.9  | 0.9  | 0.9  | 0.9  | 0.9  |
|  | <b>Lithuania</b>          | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
|  | <b>Luxembourg</b>         | 3.7  | 2.4  | 2.4  | 2.4  | 2.4  | 2.4  |
|  | <b>Malta</b>              | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
|  | <b>Netherlands</b>        | 7.8  | 7.8  | 7.8  | 7.8  | 7.8  | 7.8  |
|  | <b>Poland</b>             | 12.0 | 12.0 | 9.4  | 9.4  | 9.4  | 9.5  |
|  | <b>Portugal</b>           | 1.7  | 1.7  | 1.7  | 1.7  | 1.7  | 1.7  |
|  | <b>Romania</b>            | 6.0  | 5.2  | 5.2  | 5.2  | 5.2  | 5.2  |
|  | <b>Slovak Republic</b>    | 5.5  | 4.9  | 4.9  | 4.9  | 4.9  | 4.9  |
|  | <b>Slovenia</b>           | 0.7  | 0.7  | 0.7  | 0.7  | 0.7  | 0.7  |
|  | <b>Spain</b>              | 20.3 | 18.8 | 18.8 | 18.8 | 18.8 | 18.8 |
|  | <b>Sweden</b>             | 6.0  | 6.0  | 6.0  | 6.0  | 6.0  | 6.0  |
|  | <b>Other Europe</b>       | 70.0 | 71.4 | 74.1 | 74.7 | 75.9 | 78.1 |
|  | <b>Albania</b>            | 0.9  | 0.9  | 0.9  | 0.9  | 0.9  | 0.9  |
|  | <b>Bosnia Herzegovina</b> | 1.8  | 1.8  | 1.8  | 1.8  | 1.8  | 1.8  |
|  | <b>Iceland</b>            | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
|  | <b>Macedonia</b>          | 0.5  | 0.5  | 0.5  | 0.5  | 0.5  | 0.5  |
|  | <b>Montenegro</b>         | 0.4  | 0.4  | 0.4  | 0.4  | 0.4  | 0.4  |
|  | <b>Norway</b>             | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  |
|  | <b>Serbia</b>             | 2.7  | 2.7  | 2.7  | 2.7  | 2.7  | 2.7  |
|  | <b>Switzerland</b>        | 1.4  | 1.4  | 1.4  | 1.4  | 1.4  | 1.4  |
|  | <b>Türkiye</b>            | 42.7 | 50.7 | 53.4 | 54.0 | 55.2 | 57.4 |
|  | <b>United Kingdom</b>     | 18.7 | 12.1 | 12.1 | 12.1 | 12.1 | 12.1 |

|  |      |      |      |      |      |      |
|--|------|------|------|------|------|------|
|  |      |      |      |      |      |      |
|  | 2010 | 2019 | 2020 | 2021 | 2022 | 2023 |

|                               |      |      |      |      |      |      |
|-------------------------------|------|------|------|------|------|------|
| <b>Latin America</b>          | 66.3 | 73.9 | 73.4 | 73.9 | 73.9 | 74.2 |
| <b>South America</b>          | 63.6 | 72.2 | 71.7 | 72.2 | 72.2 | 72.2 |
| <b>Non-OECD Latin America</b> | 62.2 | 69.8 | 69.3 | 69.9 | 69.9 | 70.1 |
| <b>Argentina</b>              | 6.7  | 7.3  | 7.3  | 7.3  | 7.3  | 7.3  |
| <b>Brazil</b>                 | 44.6 | 51.4 | 50.9 | 50.9 | 50.9 | 50.9 |
| <b>Bolivia</b>                | 0.0  | 0.0  | 0.0  | 0.2  | 0.2  | 0.2  |
| <b>Chile</b>                  | 2.0  | 2.0  | 2.0  | 2.0  | 2.0  | 2.0  |
| <b>Colombia</b>               | 2.0  | 2.0  | 2.0  | 2.0  | 2.0  | 2.0  |
| <b>Costa Rica</b>             | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| <b>Cuba</b>                   | 0.7  | 0.7  | 0.7  | 0.7  | 0.7  | 0.9  |
| <b>Dominican Republic</b>     | 0.4  | 0.4  | 0.4  | 0.4  | 0.4  | 0.4  |
| <b>Ecuador</b>                | 0.6  | 1.3  | 1.3  | 1.3  | 1.3  | 1.3  |
| <b>El Salvador</b>            | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  |
| <b>Guatemala</b>              | 0.5  | 0.5  | 0.5  | 0.5  | 0.5  | 0.5  |
| <b>Panama</b>                 | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| <b>Paraguay</b>               | 0.1  | 0.3  | 0.3  | 0.3  | 0.3  | 0.3  |
| <b>Peru</b>                   | 1.6  | 2.0  | 2.0  | 2.4  | 2.4  | 2.4  |
| <b>Puerto Rico</b>            | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| <b>Trinidad Tobago</b>        | 1.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| <b>Uruguay</b>                | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  |
| <b>Venezuela</b>              | 5.6  | 5.6  | 5.6  | 5.6  | 5.6  | 5.6  |

|                             |      |      |      |      |      |      |
|-----------------------------|------|------|------|------|------|------|
| <b>Middle East</b>          | 38.5 | 80.7 | 84.1 | 89.0 | 92.3 | 93.9 |
| <b>Non-OECD Middle East</b> | 37.9 | 80.1 | 83.6 | 88.5 | 91.8 | 93.4 |
| <b>Afghanistan</b>          | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| <b>Bahrain</b>              | 0.0  | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  |
| <b>Iran</b>                 | 22.5 | 48.3 | 50.3 | 54.8 | 57.4 | 58.2 |
| <b>Iraq</b>                 | 0.2  | 2.6  | 2.9  | 3.3  | 4.0  | 4.8  |
| <b>Israel</b>               | 0.6  | 0.6  | 0.6  | 0.6  | 0.6  | 0.6  |
| <b>Jordan</b>               | 0.6  | 1.2  | 1.2  | 1.2  | 1.2  | 1.2  |
| <b>Kuwait</b>               | 1.4  | 1.4  | 1.4  | 1.4  | 1.4  | 1.4  |
| <b>Lebanon</b>              | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  | 0.2  |
| <b>Oman</b>                 | 0.5  | 3.0  | 4.2  | 4.2  | 4.2  | 4.2  |
| <b>Qatar</b>                | 2.8  | 3.2  | 3.2  | 3.2  | 3.2  | 3.2  |
| <b>Saudi Arabia</b>         | 6.7  | 11.6 | 11.6 | 11.6 | 11.6 | 11.6 |
| <b>Syrian Arab Republic</b> | 0.1  | 2.6  | 2.6  | 2.6  | 2.6  | 2.6  |
| <b>United Arab Emirates</b> | 2.8  | 4.8  | 4.8  | 4.8  | 4.8  | 4.8  |
| <b>Yemen</b>                | 0.1  | 0.3  | 0.3  | 0.3  | 0.3  | 0.3  |

|  |             |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
|  |             |             |             |             |             |             |
|  | <b>2010</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>2023</b> |

|                      |       |       |       |       |       |       |
|----------------------|-------|-------|-------|-------|-------|-------|
| <b>North America</b> | 156.7 | 154.2 | 157.5 | 157.7 | 162.8 | 163.3 |
| <b>Canada</b>        | 18.6  | 16.2  | 16.2  | 16.2  | 16.2  | 16.3  |
| <b>Mexico</b>        | 20.3  | 27.7  | 27.7  | 27.7  | 27.7  | 27.7  |
| <b>United States</b> | 117.9 | 110.4 | 113.6 | 113.9 | 118.9 | 119.3 |

|                    |     |     |     |     |     |     |
|--------------------|-----|-----|-----|-----|-----|-----|
| <b>Oceania</b>     | 9.1 | 6.4 | 6.4 | 6.4 | 6.4 | 6.4 |
| <b>Australia</b>   | 8.1 | 5.4 | 5.4 | 5.4 | 5.4 | 5.4 |
| <b>New Zealand</b> | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |

|                       |        |        |        |        |        |        |
|-----------------------|--------|--------|--------|--------|--------|--------|
| <b>OECD TOTAL</b>     | 662.2  | 641.9  | 645.3  | 640.0  | 646.3  | 644.4  |
| <b>Non-OECD TOTAL</b> | 1517.2 | 1757.3 | 1765.5 | 1777.3 | 1787.4 | 1787.5 |

|                    |        |        |        |        |        |        |
|--------------------|--------|--------|--------|--------|--------|--------|
| <b>WORLD TOTAL</b> | 2179.5 | 2399.2 | 2410.8 | 2417.4 | 2433.7 | 2432.0 |
|--------------------|--------|--------|--------|--------|--------|--------|

*Note on China:*

The data on nominal crude steelmaking capacity provided for China do not include production capacity by “illegal” (“违法 Wéifǎ”) induction furnaces, nor do they reflect any changes in steelmaking capacity associated with those furnaces.

*Note on ASEAN-6:*

ASEAN-6 denotes the aggregate of member economies of SEAISI (The South East Asia Iron and Steel Institute) in the ASEAN region, i.e. Indonesia, Malaysia, Philippines, Singapore, Thailand and Viet Nam.

Source: OECD.

## Annex D. DATA FOR GLOBAL CRUDE STEELMAKING CAPACITY AND CRUDE STEEL PRODUCTION

**Table A 0.1. Global crude steelmaking capacity and crude steel production (data from 2010)**

| mmt                                       | 2000  | 2001  | 2002  | 2003  | 2004  | 2005  | 2006  | 2007  | 2008  | 2009  | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  | 2016  | 2017  | 2018  | 2019  | 2020  | 2021  | 2022  | 2023  |
|-------------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Capacity (LHS)                            | 1 191 | 1 221 | 1 348 | 1 486 | 1 558 | 1 665 | 1 753 | 1 864 | 1 955 | 2 068 | 2 179 | 2 269 | 2 321 | 2 413 | 2 432 | 2 421 | 2 417 | 2 404 | 2 378 | 2 399 | 2 411 | 2 417 | 2 434 | 2 432 |
| Production (LHS)                          | 850   | 852   | 905   | 971   | 1 063 | 1 148 | 1 250 | 1 348 | 1 343 | 1 239 | 1 435 | 1 540 | 1 562 | 1 652 | 1 674 | 1 623 | 1 633 | 1 737 | 1 829 | 1 877 | 1 881 | 1 962 | 1 888 | 1 888 |
| Capacity-Production Gap (RHS)             | 341   | 369   | 443   | 515   | 495   | 517   | 503   | 516   | 611   | 829   | 744   | 729   | 758   | 760   | 758   | 798   | 784   | 667   | 549.4 | 522.1 | 529.5 | 455.1 | 546.2 | 543.8 |
| Crude steel production as a % of capacity | 71.4% | 69.8% | 67.1% | 65.4% | 68.2% | 69.0% | 71.3% | 72.3% | 68.7% | 59.9% | 65.9% | 67.9% | 67.3% | 68.5% | 68.8% | 67.1% | 67.6% | 72.3% | 76.9% | 78.2% | 78.0% | 81.2% | 77.6% | 77.6% |

Note: Capacity data reflect information up to December 2023

Source: OECD for crude steelmaking capacity and World Steel Association for crude steel production

## Annex E. WORKING DEFINITIONS USED

### Steelmaking capacity

The OECD Secretariat employs a definition of nominal crude steelmaking capacity based on maximum theoretical equipment capacity<sup>1</sup>. This definition does not take into account yield losses, maintenance and other factors affecting the productivity of installed steelmaking equipment. Therefore, steelmaking capacity figures provided by the OECD should not be regarded as effective capacity.

Capacity is defined in volume (tonnes) and annual capacity data figures reflect all existing steelmaking capacity at the end of a calendar year.

### Steelmaking equipment

The OECD Secretariat considers as steelmaking equipment any equipment used to produce crude steel. The definition excludes iron-making equipment considered here as upstream, as well as casting, rolling or finishing equipment considered here as downstream. More specifically, the following equipment types are considered as crude steelmaking:

| Type                        | Code     |
|-----------------------------|----------|
| Electric arc furnace        | EAF      |
| Energy Optimising Furnace   | EOF      |
| Induction furnace           | IF       |
| LD Basic Oxygen furnace     | BOF      |
| Open hearth furnace         | OHF      |
| Steelmaking - not specified | STEELMKG |

### Assessing capacity developments

Information from the three databases described in Annexes A-C (existing capacity, new investments and closures) in this paper are used to assess capacity developments<sup>2</sup>. More specifically, changes in capacity are derived by taking into account new capacity additions and permanent closures in a given economy. In order to assess potential gross capacity additions in the future, investment projects are classified as “underway” or “planned”. A project classified as “underway” is one which is under construction or for which contracts for equipment have been awarded and a major financial or state commitment has been made. “Planned” projects are more uncertain because they are either at the feasibility or early planning stage, yet to receive financial or state backing, or not scheduled for completion at a specified time. The classification of projects and comments on their progress do not in any way represent a judgement or imply a view on the advisability or feasibility of the projects.

Because closures cannot be forecasted, the tables in this document provide only potential gross capacity additions and do not provide projections of net changes in capacity. It should be noted that planned or underway investments are sometimes altered due to changes in market conditions. Postponements refer to projects that were put on hold for a definite or



indefinite period, while cancellations are previously announced projects that will no longer be implemented.

### **Principle of overestimate**

The Secretariat assumes that in the absence of any further information, any projects classified as “underway” with a start date that expired, have since become “operating”. These projects are taken into account for the calculation of the annual capacity aggregate of the corresponding economy. The Secretariat may adjust the data retrospectively if it obtains new information of the status of the specific investment projects.

### **Steelmaking capacity closures**

The OECD Secretariat distinguishes between “permanent” and “temporary” steelmaking capacity closures. Permanent closures of capacity are considered to involve dismantling and scrapping of the equipment used for producing crude steel, or otherwise rendering such equipment permanently unusable for manufacturing crude steel. Temporary closures entail measures other than permanent closures as defined above, whereby production can be resumed in the future. Temporary closures include, for example, the idling of a plant's furnace. Only permanent closures are used for the purpose of calculating existing capacity. In practice, when compiling the database, it is unfortunately not always possible to understand from media sources if a closure is only temporary or permanent. This explains why the field value of “Type of closures” is sometimes set to “Others (unidentified)” in the OECD database on closures.

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## *Endnotes*

<sup>1</sup> This definition is also commonly referred to as nominal, rated or nameplate capacity.

<sup>2</sup> The list of data sources is available at <http://www.oecd.org/sti/ind/steelcapacity-methodology.htm>



Como se indicó anteriormente, los meses de septiembre 2023 a marzo de 2024 fueron tomados del Estudio de Precios. Para los precios de los meses de abril, mayo y junio el peticionario realizó el cálculo a partir de la misma metodología.

### 8.3. Determinación del precio de exportación

Para el cálculo del precio de exportación se consultó la base de datos mensual de importaciones fuente DIAN en cantidades (tonelada) y valores FOB para la subpartida arancelaria 7306.30.99.00, que corresponde a la tubería conduit objeto de investigación, de acuerdo con la depuración de la base de importaciones, realizada por el peticionario y explicada en detalle en la metodología aportada en el Anexo 17.

Como resultado se encontró, que el precio promedio ponderado de exportación de China al país fue de **668 US\$FOB/Ton**.

**Tabla 21. Precio FOB de exportación de China hacia Colombia (US\$/Ton) – Tubería Conduit**

#### Valor USD FOB

| sep-23  | oct-23  | nov-23  | dic-23  | ene-24  | feb-24  | mar-24  | abr-24  | may-24  | jun-24 | TOTAL     |
|---------|---------|---------|---------|---------|---------|---------|---------|---------|--------|-----------|
| 179.987 | 154.497 | 135.420 | 215.142 | 237.497 | 160.283 | 190.694 | 117.532 | 247.142 | 83.520 | 1.721.713 |

#### Ton

| sep-23 | oct-23 | nov-23 | dic-23 | ene-24 | feb-24 | mar-24 | abr-24 | may-24 | jun-24 | TOTAL |
|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|
| 252    | 222    | 214    | 301    | 392    | 248    | 262    | 185    | 403    | 99     | 2.579 |
| 10%    | 9%     | 8%     | 12%    | 15%    | 10%    | 10%    | 7%     | 16%    | 4%     | 100%  |

#### Precio FOB USD/Ton

| sep-23 | oct-23 | nov-23 | dic-23 | ene-24 | feb-24 | mar-24 | abr-24 | may-24 | jun-24 | PROMEDIO |
|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|----------|
| 714,10 | 695,74 | 633,77 | 715,06 | 605,21 | 645,85 | 728,06 | 635,31 | 612,87 | 840,43 | 683      |

#### Precio Promedio Ponderado

| sep-23 | oct-23 | nov-23 | dic-23 | ene-24 | feb-24 | mar-24 | abr-24 | may-24 | jun-24 | TOTAL      |
|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|------------|
| 69,79  | 59,91  | 52,51  | 83,43  | 92,10  | 62,15  | 73,95  | 45,58  | 95,84  | 32,39  | <b>668</b> |

Fuente: DIAN

### 8.4. Determinación del Margen de dumping

Al comparar el valor normal del país sustituto, el precio de México en su mercado interno, y el precio de exportación de China hacia Colombia, en



**COMISIÓN EUROPEA**

Bruselas, 10.4.2025  
SWD (2024) final

**DOCUMENTO DE TRABAJO DEL PERSONAL DIRECTIVO DE LA  
COMISIÓN**

**SOBRE DISTORSIONES SIGNIFICATIVAS EN LA ECONOMÍA DE LA  
REPÚBLICA POPULAR DE CHINA PARA LOS PROPÓSITOS DE  
INVESTIGACIONES PARA LA DEFENSA DEL COMERCIO**

*Ma. del Pilar de Restrepo*

**Ma. del Pilar Mejía de Restrepo**  
Traductora - Interprete Oficial  
Resolución No. 958  
Ministerio de Justicia  
Tel. 311 538 73 84

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*Ma. del Pilar de Restrepo*

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Traductora - Interprete Oficial  
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En general, la Comisión concluyó que *“el gobierno ha ejercido un control significativo sobre la conducta de los cinco estatales cooperantes con respecto a sus políticas de préstamo y evaluación del riesgo, cuando otorgan préstamos a la industria siderúrgica”*.<sup>1819</sup>

El control del gobierno sobre los bancos tiene una influencia directa sobre la manera en la cual los préstamos, el crédito y el acceso a finanzas en general, se otorga a los productores de acero. Es por lo tanto el control del gobierno sobre el sector financiero que, entre otros, ha creado las llamadas *‘compañías zombi’* y por lo tanto, desempeñó un papel importante en el grave problema de capacidad excesiva para la cual China es el primer contribuyente a nivel global.

Los hallazgos arriba mencionados de la Comisión claramente muestran que los productores chinos de acero se benefician de las medidas de apoyo estatales provenientes de las instituciones financieras, típicamente mediante acceso a financiación en términos no comerciales. Este acceso preferencial y concesionario da a las compañías chinas la habilidad para disminuir sus costos en relación con los de sus contrapartes extranjeros.

#### **14.4. MEDIDAS DE SOPORTE ESTATAL**

El gobierno ha usado consistentemente una amplia gama de medidas de apoyo estatal, incluyendo – y yendo también más allá – el soporte financiero descrito en la Sección 14.3, para promover la industria siderúrgica, y por lo tanto, para implementar los objetivos de las políticas industriales. Estas medidas otorgan una ventaja adicional a los receptores, *vis-à-vis* los competidores que no se benefician de las medidas, contribuyendo por ese medio a un campo de competencia desleal. La Comisión, lo mismo que otras autoridades investigativas, han encontrado consistentemente evidencia de estas medidas, según se describe a continuación.

La Comisión ha establecido que el gobierno proporciona numerosas formas de soporte estatal, algunas de las cuales se encontró son de naturaleza permanente y estructural en el sector del acero. En la investigación de HRF, se estableció que<sup>1820</sup>:

*La mayoría de esas medidas [esquemas de soporte investigados] son permanentes por naturaleza, tales como derechos de uso de tierra, exenciones de impuestos, y programas de concesiones. Además, los créditos recibidos fueron una característica constante de la política industrial china para soportar su industria siderúrgica. La Comisión concluyó que estos subsidios fueron de naturaleza estructural.*

Más específicamente, varias investigaciones de la Comisión contra subsidios, determinaron que los productores chinos de acero se benefician de numerosos esquemas de subsidio, dentro de las siguientes categorías principales<sup>1821</sup>:

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- Políticas preferenciales de préstamos, líneas de crédito, tasas preferenciales de interés, otra financiación, y garantías.

<sup>1819</sup> *Ibid.*, texto 128.

<sup>1820</sup> Regulación de Implementación de la Comisión (UE) 2017/969, recital 476. Los hallazgos de la Regulación (UE) 2017/969 se confirmaron en la revisión de expiración resultante en la Regulación 2023/1123 del 7 de junio de 2023 que impone un derecho compensatorio definitivo a las importaciones de cierto HRF de hierro, sin aleación o a otro acero de aleación que se origine en la República Popular de China después de una revisión de expiración conforme al Artículo 18 de la Regulación (U) 2016/1037 del Parlamento y del Concilio Europeos.

<sup>1821</sup> Una lista completa de todos los esquemas de subsidios que se encontraron compensables en cada una de las investigaciones a las que se hace referencia en esta sección, está disponible en los textos relevantes citados, en particular los recitales 49-126 de la Regulación (UE) 2023/1123 y recitales 46-203 de la Regulación (UE) 2019/688.



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# **2023 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE**



**UNITED STATES TRADE REPRESENTATIVE  
FEBRUARY 2024**

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# **2023 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE**



**UNITED STATES TRADE REPRESENTATIVE  
FEBRUARY 2024**

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## ABBREVIATIONS

|        |                                                              |
|--------|--------------------------------------------------------------|
| ACFTU  | All China Federation of Trade Unions                         |
| CBIRC  | China Banking and Insurance Regulatory Commission            |
| CED    | U.S.-China Comprehensive Economic Dialogue                   |
| CFDA   | China Food and Drug Administration                           |
| CNIPA  | China's National Intellectual Property Administration        |
| GACC   | General Administration of Customs of China                   |
| ISO    | International Organization for Standardization               |
| JCCT   | U.S.-China Joint Commission on Commerce and Trade            |
| MIIT   | Ministry of Industry and Information Technology              |
| MARA   | Ministry of Agriculture and Rural Affairs                    |
| MOF    | Ministry of Finance                                          |
| MOFCOM | Ministry of Commerce                                         |
| MOST   | Ministry of Science and Technology                           |
| NBC    | National Biosafety Committee                                 |
| NDRC   | National Development and Reform Commission                   |
| NMPA   | National Medical Products Administration                     |
| PBOC   | People's Bank of China                                       |
| SAC    | Standardization Administration of China                      |
| SAIC   | State Administration for Industry and Commerce               |
| SAMR   | State Administration for Market Regulation                   |
| SASAC  | State-owned Assets Supervision and Administration Commission |
| SAT    | State Administration of Taxation                             |
| SCLAO  | State Council's Legislative Affairs Office                   |
| SED    | U.S.-China Strategic Economic Dialogue                       |
| S&ED   | U.S.-China Strategic and Economic Dialogue                   |
| WTO    | World Trade Organization                                     |

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## FOREWORD

This is the 22nd report prepared pursuant to section 421 of the U.S.-China Relations Act of 2000 (P.L. 106-286), 22 U.S.C. § 6951 (the Act), which requires the United States Trade Representative (USTR) to report annually to Congress on compliance by the People's Republic of China (China) with commitments made in connection with its accession to the World Trade Organization (WTO), including both multilateral commitments and any bilateral commitments made to the United States. The report covers calendar year 2022. It also incorporates the findings of the Overseas Compliance Program, as required by section 413(b)(2) of the Act, 22 U.S.C. § 6943(b)(2).

In preparing this report, USTR drew on its experience in overseeing the U.S. Government's monitoring of China's WTO compliance efforts. USTR chairs the Trade Policy Staff Committee (TPSC) Subcommittee on China, an inter-agency body whose mandate is, *inter alia*, to assess China's efforts to comply with its WTO commitments. This TPSC subcommittee is composed of experts from USTR, the Departments of Agriculture, Commerce, Labor, Justice, State and Treasury, the Environmental Protection Agency, the

Federal Trade Commission and the U.S. Patent and Trademark Office, among other agencies. Members of the TPSC subcommittee work closely with State Department economic officers, Foreign Commercial Service officers, Enforcement and Compliance officers and Intellectual Property Attachés from the Commerce Department, Foreign Agricultural Service officers, Customs and Border Protection attachés and Immigration and Customs Enforcement attachés at the U.S. Embassy and Consulates General in China, who are active in gathering and analyzing information, maintaining regular contacts with U.S. industries operating in China and maintaining a regular dialogue with Chinese government officials at key ministries and agencies. The TPSC subcommittee meets in order to evaluate and coordinate U.S. engagement with China in the trade context.

To aid in its preparation of this report, USTR as chair of the TPSC published a notice in the Federal Register on August 17, 2023. The notice asked interested parties to submit written comments. A number of written comments were received from interested parties. These written comments are available at [www.regulations.gov](http://www.regulations.gov) under docket no. USTR-2023-0008.

## EXECUTIVE SUMMARY

In this report, we provide an updated assessment of China's WTO membership. This assessment reveals the unique and very serious challenge that China's state-led, non-market approach to the economy and trade continues to pose for the global trading community. While the United States and other like-minded WTO Members have pursued various WTO-focused strategies over the years to address the many problems created by China, it remains clear that new and more effective strategies – including strategies that involve taking actions outside the WTO where necessary – are critically needed to address those problems.

When China acceded to the WTO in 2001, it voluntarily agreed to embrace the WTO's open, market-oriented approach and to embed it in China's economic and trading system and institutions. China also agreed to take on the obligations set forth in existing WTO rules, while also making numerous China-specific commitments. As we previously documented, and as remains true today, China's record of compliance with these terms has been poor.

As has been previously documented, China has a long record of violating, disregarding and evading existing WTO rules. China has also sought to frustrate WTO oversight and accountability mechanisms, such as through its poor record of adhering to its WTO transparency obligations. In addition, and more critically, after more than two decades of WTO membership, China still embraces a state-led, non-market approach to the economy and trade, despite other WTO Members' expectations – and China's own representations – that China would transform its economy and pursue the open, market-oriented approach endorsed by the WTO. In fact, China's embrace of a state-led, non-market approach to the economy and trade has increased rather than decreased over the past decade, and the mercantilism that it generates has harmed and disadvantaged U.S. companies and workers, as well

as companies and workers of other WTO Members, often severely.

The vast majority of the harm that China inflicts upon other WTO Members is attributable not to China's periodic non-compliance with existing WTO rules, but rather to the daily impact of China's state-led, non-market approach to the economy and trade, which relies heavily on interventions in the market by the Chinese government and, increasingly in recent years, the Chinese Communist Party (CCP or the Party). As is well-documented, the Chinese government and the CCP routinely intervene in the market using a wide array of non-market policies and practices, both to provide artificial competitive advantages to Chinese industries and enterprises and to actively disadvantage foreign industries, enterprises and workers.

China's decision to continue pursuing a state-led, non-market approach to the economy and trade after acceding to the WTO takes on significantly added importance because China is the second largest economy in the world and the largest trader among WTO Members. As a result, as time has borne out, the policies and practices that it pursues can have a tremendous impact on bilateral and global trade.

As is now more than clear, China's approach to the economy and trade, which is characterized by a routine reliance on non-market policies and practices, undermines fair, market-oriented decisions made by foreign enterprises and distorts market outcomes in significant ways. Observers have coined various terms to describe China's economic system, from "state capitalism" to "China, Inc.," and, more recently, "CCP, Inc." Whatever terminology is used in an attempt to capture the essence of China's economic system, the unique challenge posed for the global trading community is clear. Foreign enterprises are competing not only against Chinese enterprises but also the Chinese state. As a result, the playing field is simply not level. It is heavily skewed against foreign enterprises

wherever they seek to compete against Chinese enterprises, whether it is in China's market or in other markets around the world.

It is important to highlight, moreover, that China has not simply continued to pursue what it termed a "socialist market economy" when it joined the WTO. China's so-called "socialist market economy" has turned decidedly predatory. In other words, China no longer relies on central planning simply to direct and guide the business decisions of Chinese industries and enterprises. Rather, China is now using its state-led, non-market approach to the economy and trade in ways designed to secure the dominance of Chinese enterprises, both in the China market and in global markets. As part of this pursuit of international dominance, China is targeting both traditional industries and emerging industries, not only by providing its own industries with unprecedented financial and regulatory support but also by actively pursuing policies and practices that are calculated to disadvantage and ultimately displace foreign competitors.

Over the years, the non-market policies and practices that China has deployed as it seeks to achieve and maintain the dominance of Chinese industries and enterprises are myriad. They are also constantly evolving. While the particular combination of non-market policies and practices that China deploys in pursuit of securing dominant market shares for Chinese businesses domestically and globally can vary from industry to industry, any list of the most common non-market policies and practices that the Chinese state currently deploys is long and includes:

- adopting and pursuing industrial plans that target specific industries for domination by Chinese enterprises, including by establishing capacity, production and export levels or market share targets;
- directing, pressuring or otherwise acting to ensure that Chinese enterprises adhere to the objectives set forth in the state's industrial plans;
- placing CCP officials in state-owned enterprises and private Chinese enterprises in management positions in order to monitor, direct, pressure or otherwise influence commercial decision making;
- deploying massive and frequently non-transparent subsidies relentlessly in pursuit of industrial plan objectives, including via policy banks, state-owned commercial banks and government investment and guidance funds at all levels of government;
- transferring risk to the state through loan guarantees and loan rollovers for Chinese enterprises in targeted industries;
- failing to publish final central level and provincial level measures that provide subsidies or other financial support to Chinese enterprises;
- directing, pressuring or otherwise acting to ensure that foreign enterprises operating in China not make business decisions that conflict with the objectives of the state's industrial plans, including in some cases by embedding CCP officials in those enterprises;
- according special regulatory and other preferences and competitive advantages to state-owned enterprises;
- directing or allowing government regulatory authorities to exercise their authority in a discriminatory manner, including by treating Chinese enterprises more favorably than foreign or foreign-invested enterprises;
- directing or sponsoring the theft of intellectual property rights, trade secrets and confidential business information for commercial use;

- engaging in forced or pressured technology transfer;
  - directing, pressuring or otherwise acting to ensure that Chinese enterprises pursue acquisitions of foreign enterprises whose technologies are needed to achieve the state's industrial plan objectives;
  - directing, pressuring or otherwise acting to ensure that Chinese enterprises purchase Chinese-made products over imported products in accordance with the state's industrial plan objectives;
  - directing, pressuring or otherwise acting to ensure that Chinese enterprises invest in and secure access to raw materials outside of China for the sole use of Chinese enterprises producing downstream products in accordance with the state's industrial plan objectives;
  - retaliating against foreign enterprises when they offend the Chinese state or otherwise act in a manner that displeases the Chinese state, thereby creating a chilling business environment for all foreign enterprises, especially ones with business operations located in China;
  - using selective or arbitrary application or enforcement of intellectual property law to achieve the state's industrial plan objectives;
  - using selective or arbitrary application or enforcement of competition law to achieve the state's industrial plan objectives;
  - pursuing unique national standards when international standards already exist in order to leverage the economic power of China's market to promote or compel the adoption of those standards in global markets;
  - using unfair labor practices, such as forced labor, restrictions on labor mobility, institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management, the denial of the rights of workers to associate and to organize and collectively bargain, and a prohibition on the formation of independent trade unions to represent workers, which artificially lower labor costs for Chinese enterprises, especially in industrial sectors;
  - condoning lax enforcement of environmental laws and regulations, which artificially lowers labor costs for Chinese enterprises, especially in industrial sectors;
  - creating or maintaining persistent non-market excess capacity in industries through state-owned enterprises and private Chinese enterprises, to the detriment of competing foreign enterprises in the China market and in global markets around the world;
  - directing the judiciary to render decisions that serve the state's industrial plan objectives; and
  - failing to publish all central level and provincial level laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.
- It is evident that China does not deploy these non-market policies and practices in isolation or only in a few industries. China resorts to some combination of these non-market policies and practices in many industries. China's efforts are also relentless. China has shown every indication that it will continue to intervene in the market in any way that it deems necessary to achieve the state's industrial plan objectives. China does not act with moderation.
- An example of the magnitude of China's efforts can be seen in a review of how China pursues one type of non-market policy or practice, namely, China's practice of directing or sponsoring the theft of intellectual property rights, trade secrets and

confidential business information for commercial use. In recent public remarks, intelligence and law enforcement officials from the Five Eyes countries – Australia, Canada, New Zealand, the United Kingdom and the United States – characterized the scale of the Chinese state's pursuit and sponsorship of this type of theft as unprecedented in human history. They added that it is the biggest of any country in the world and, indeed, bigger than every other country in the world combined. In the United States alone, in 2023, there were approximately 2,000 active investigations into apparent state-sponsored theft by China covering a diverse array of industries, from aviation to biotechnology to robotics, among many others. The Five Eyes officials noted that while all countries engage in clandestine activities for national security purposes, China is different in that the Chinese state steals information and then uses it for commercial advantage.

Plainly, China's approach is far different from the open, market-oriented approach envisioned by the WTO membership and pursued by the United States and almost all other WTO Members. China routinely deploys economic and trade policies and practices that promote unfair competition and state-directed outcomes rather than fair competition and market-based outcomes. China often does not enable or allow enterprises to make their own commercial decisions, nor does it treat all enterprises engaged in commercial activities equally or allow private actors to determine the allocation of resources. China also does not require its regulatory authorities to administer in a fair, transparent, impartial and reasonable manner all laws, regulations and other measures pertaining to or affecting trade in goods, trade in services, investment and trade-related aspects of intellectual property rights. In addition, China does not maintain an independent judiciary, nor does it publish all laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.

At present, moreover, there are no indications that China is considering taking meaningful steps toward the adoption of the open, market-oriented economic

system that the WTO membership has endorsed and expects of all WTO Members. In fact, China continues to take steps designed to increase, not decrease, the role of the Chinese state in the market.

Critically, the WTO has been unable to effectively address China's continued pursuit of a state-led, non-market approach to the economy and trade. While some of the non-market policies and practices pursued by China are disciplined by existing WTO rules, resort to WTO dispute settlement has proven ineffective in changing or discouraging China's behavior in any fundamental way. For the most part, however, it has become clear that China's non-market policies and practices are not effectively disciplined by existing WTO rules. Indeed, when WTO Members developed and agreed on the existing WTO rules, they simply did not contemplate that a WTO Member would ever pursue many of the policies and practices that now emanate from China's state-led, non-market approach to the economy and trade. In short, China's approach is fundamentally at odds with the multilateral trading system.

It is now more than two decades since China joined the WTO, and it is clear that China has not lived up to the bargain that it struck with WTO Members when it acceded to the WTO, as recounted above. With existing WTO disciplines having proved to be ineffective, or simply not designed to discipline many of the types of harmful non-market policies and practices deployed by the Chinese state, it is also clear – and has been clear for some time – that solutions independent of the WTO are needed.

While the WTO can still play a role in addressing certain aspects of the unique challenge that China poses for the global trading community, the United States believes, realistically, that other strategies are needed. For that reason, the United States has been pursuing a multi-faceted approach that accounts for the current realities in the U.S.-China trade relationship and the many problems that China generates for the United States and other trading

partners, both now and likely in the future. As the U.S. Trade Representative previously announced, the U.S. approach includes four principal components.

First, it is critical that the United States take steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow. Important steps taken to date include the passage of the CHIPS and Science Act, the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, as well as the many subsequent efforts to implement those Acts.

Second, the United States is continuing to pursue bilateral engagement with China. China is an important trading partner, and every avenue for obtaining real change in its economic and trade regime must be utilized. We are focused on the United States' most fundamental concerns with China's state-led, non-market approach to the economy and trade, enumerated above, rather than on resuming dialogues focused on isolated issues that leave the core China challenge unaddressed. At the same time, the United States will continue to work to hold China accountable for its existing commitments.

Third, it is clear that domestic trade tools – including updated or new domestic trade tools reflecting today's realities – will be necessary to secure a more level playing field for U.S. workers and businesses. The United States continues to explore how best to use and improve domestic trade tools to achieve that end.

Finally, it is equally critical for the United States to work intensely and broadly with allies and like-minded partners in order to build support for solutions to the many significant problems that China's state-led, non-market approach to the economy and trade has created for the global trading community. The United States recognizes that each trading partner may be impacted differently by the many types of non-market policies and practices that China pursues, but we all must work together if we are to be able to find viable

solutions. This work is ongoing and is taking place in bilateral, regional and multilateral fora, including the WTO.

Importantly, among U.S. trading partners, there is a growing convergence about the need to approach trade relations with China with more realism, like the United States has been doing. China's increased use of economic coercion in recent years has certainly played a role in this convergence. As its economic power has grown, the Chinese government more and more has resorted to the threat or use of measures affecting trade and investment in an abusive, arbitrary or pretextual manner to pressure, induce or influence a foreign government into taking, or not taking, a decision or action in order to achieve a strategic political or policy objective, or to prevent or interfere with the foreign government's exercise of its legitimate sovereign rights or choices. It is particularly troubling to witness an authoritarian government using economic coercion to influence the policies being pursued by democratic countries. However, even so, the more significant factor in this convergence of thinking is the incontrovertible evidence of the significant harm being caused by China's state-led, non-market – and predatory – approach to the economy and trade. Indeed, this harm is not confined to the advanced market economies, as emerging and developing economies tend to be particularly adversely impacted by China's non-market policies and practices.

At the same time, despite China's rhetoric, the United States does not view “decoupling” from China as the solution to the many problems posed by China's state-led, non-market approach to the economy and trade. Indeed, if the United States were to decouple from China, it would not address those problems.

The United States has taken targeted actions, including on export controls and outbound investment, to protect our national security, consistent with our approach to the U.S.-China economic and trade relationship, which is more

appropriately characterized as one of de-risking and diversifying, not decoupling. Because the Chinese government continually intervenes in the market and actively seeks to advantage Chinese enterprises and disadvantage foreign enterprises, the United States is not in a position to rely on the good will of the Chinese state when it comes to supply chains, especially for critical minerals. Similarly, U.S. companies with operations in China are not able to have confidence that they will be treated fairly by the Chinese state, and they increasingly are re-evaluating the degree of their dependence on the China market.

Nevertheless, the United States still seeks to trade with China, just as the United States seeks to do with other countries. But the terms of competition must be fair. U.S. companies and workers need to be able to compete on a level playing field with Chinese companies and workers, whether in the U.S. market, China's market or other markets around the world.

For two-way trade to expand, both the United States and China need to be committed to it. But questions remain about China's commitment, as China itself appears to be pursuing a decoupling strategy – and not just from the United States.

China's "dual circulation" strategy, in place since 2020, touts the importance of China continuing to participate in international trade, while simultaneously seeking to become self-sufficient domestically. What this means in reality is that, for now, China will continue to export to the world (often at predatory prices), including the negative externalities from its industrial policies, and China will continue to welcome foreign companies operating in China and continue to import products needed by Chinese companies, especially in

technology products. However, once Chinese companies are capable of displacing the foreign competition in any particular industry in the China market, the Chinese state will no longer welcome foreign companies and their products.

Another by-product of China's drive for domestic self-sufficiency, of course, is the non-market excess capacity that it inevitably creates, to the detriment of foreign producers and efficient investment around the world. Indeed, in 2022, China accounted for the largest global trade surplus in the history of the world, totaling \$877.6 billion, which was more than three times the total for the country with the next largest global trade surplus, Russia.

Whatever term might best describe China's "dual circulation" strategy, it is plainly not a strategy ever envisioned by, or condoned by, the WTO membership. The autarky that this strategy envisions runs counter to the WTO's goal of developing an integrated, more viable and durable multilateral trading system. In other words, this strategy is best viewed as further evidence of China's broader intent to re-shape the international order and move the world away from rules-based engagement premised on market-based competition.

The United States, in contrast, remains committed to the WTO and the shared values upon which it is based, including openness, fair competition, non-discrimination, reciprocity and transparency as well as adherence to the rule of law. But serious challenges threaten those core values, most notably the challenge posed by the policies and practices that emanate from China's state-led, non-market – and predatory – approach to the economy and trade.



## INTRODUCTION

In this report, we first provide a broad assessment of China's WTO membership to date. Next, we discuss past strategies that have been used, without success, in an attempt to address the many problems that China's state-led, non-market approach to the economy and trade creates for the United States and other WTO Members. We then describe the nature of the China challenge as it exists today and explain how the United States' trade policy is dealing with it. Lastly, we catalogue, on a topic-by-topic basis, the many specific trade concerns generated by China's outlier behavior.

## ASSESSMENT OF CHINA'S WTO MEMBERSHIP

In assessing China's WTO membership below, we first recall the terms of China's accession to the WTO. As explained below, these terms included commitments to adhere to the rules and principles set forth in the WTO agreements as well as an unprecedented number of China-specific commitments intended to facilitate China's intended transition to a market economy. These terms also included an expectation that China would pursue an open and market-oriented approach to the economy and trade, like other WTO Members. After reviewing the terms of China's accession to the WTO, we then review China's record of compliance, which has been poor.

### CHINA'S WTO ACCESSION

In July of 1986, China applied for admission to the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT). The GATT formed a Working Party in March of 1987, composed of all interested GATT contracting parties, to examine China's application and negotiate terms for China's accession. For the next eight years, negotiations

were conducted under the auspices of the GATT Working Party. Following the formation of the WTO on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), a successor WTO Working Party, composed of all interested WTO Members, took over the negotiations.

Like all WTO accession negotiations, the negotiations with China had three basic aspects. First, China provided information to the Working Party regarding its trade regime. China also updated this information periodically during the 15 years of negotiations to reflect changes in its trade regime. Second, each interested WTO Member negotiated bilaterally with China regarding market access concessions and commitments in the goods and services areas, including, for example, the tariffs that would apply on industrial and agricultural goods and the commitments that China would make to open up its market to foreign services suppliers. The most trade liberalizing of the concessions and commitments obtained through these bilateral negotiations were consolidated into China's Goods and Services Schedules and apply to all WTO Members. Third, overlapping in time with these bilateral negotiations, China engaged in multilateral negotiations with Working Party members on the rules that would govern trade with China. Throughout these multilateral negotiations, U.S. leadership in working with China was critical to removing obstacles to China's WTO accession and achieving a consensus on appropriate rules commitments. These commitments are set forth in China's Protocol of Accession and an accompanying Report of the Working Party.

WTO Members formally approved an agreement on the terms of accession for China on November 10, 2001, at the WTO's Fourth Ministerial Conference, held in Doha, Qatar. One day later, China signed the agreement and deposited its instrument of ratification with the Director-General of the WTO. China became the 143rd member of the WTO on December 11, 2001. China's Protocol of Accession, accompanying Working Party Report and Goods and



Services Schedules are available on the WTO's website ([www.wto.org](http://www.wto.org)).

To accede to the WTO, China agreed to take concrete steps to remove trade barriers and open its markets to foreign companies and their exports from the first day of accession in virtually every product sector and for a wide range of services. Supporting these steps, China also agreed to undertake important changes to its legal framework, designed to add transparency and predictability to business dealings.

Like all acceding WTO Members, China also agreed to assume the obligations of more than 20 existing multilateral WTO agreements. Areas of principal concern to the United States and China's other trading partners, as evidenced by the accession negotiations, included core principles of the WTO, such as most-favored nation treatment, national treatment, transparency and the availability of independent review of administrative decisions. Other key concerns arose in the areas of agriculture, sanitary and phytosanitary measures, technical barriers to trade, trade-related investment measures, customs valuation, rules of origin, import licensing, antidumping, subsidies and countervailing measures, trade-related aspects of intellectual property rights and services. For some of its obligations, China was allowed minimal transition periods, where it was considered necessary.

Through its membership in the WTO, China also became subject to the same expectations as other WTO Members, as set forth in the Marrakesh Declaration issued in April 1994 at the conclusion of the Uruguay Round negotiations. There, among other things, WTO Members expressly affirmed their view that the WTO Member economies would participate in the international trading system based on "open, market-oriented policies."

Even though the terms of China's accession agreement are directed at the opening of China's market to WTO Members, China's accession agreement also includes provisions designed to

address issues related to any injury that U.S. or other WTO Members' industries and workers might experience based on import surges or unfair trade practices, particularly during what was envisioned to be a time of transition for China from a non-market economy to a market economy. These mechanisms include: (1) a special textile safeguard mechanism (which expired on December 11, 2008, seven years after China's WTO accession); (2) a unique, China-specific safeguard mechanism allowing a WTO Member to take action against increasing Chinese imports that disrupt its market (which expired on December 11, 2013, 12 years after China's WTO accession); (3) an expression of the ability of WTO Members to use an antidumping methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product; and (4) an expression of the ability to use methodologies for identifying and measuring subsidy benefits to Chinese enterprises that are not based on terms and conditions prevailing in China.

With China's consent, the WTO also created a special multilateral mechanism for reviewing China's compliance on an annual basis. Known as the Transitional Review Mechanism, this mechanism operated annually for eight years after China's accession. A final review, looking back over the first 10 years of China's WTO membership, took place in 2011.

### EXPECTATIONS OF WTO MEMBERSHIP

For all WTO Members, the expectations of WTO membership are clearly set forth in the Marrakesh Declaration issued in April 1994 at the conclusion of the Uruguay Round negotiations. There, WTO Members expressly affirmed their view that the establishment of the WTO ushers in a "new era of global economic cooperation" that "reflect[s] the widespread desire to operate in a fairer and more open multilateral trading system." WTO Members

further made clear their determination that their economies would participate in the international trading system, based on both “open, market-oriented policies” and “the commitments set out in the Uruguay Round Agreements and Decisions.”

As this language makes clear, it was not contemplated that any WTO Member would reject market-based policies in favor of a state-led trade regime. It also was not contemplated that any WTO Member would pursue mercantilist outcomes instead of policies promoting a fairer and more open multilateral trading system. Rather, it was expected that each WTO Member would pursue open, market-oriented policies. The pursuit of open, market-oriented policies means not only adhering to the agreed rules but also observing in good faith the fundamental principles that run throughout the many WTO agreements, which include non-discrimination, openness, reciprocity, fairness and transparency.

When China acceded to the WTO in 2001, it agreed to embrace the WTO’s open, market-oriented approach and embed it in its trading system and institutions. Through China’s commitments and representations, WTO Members understood that China intended to dismantle existing state-led, mercantilist policies and practices, and they expected China to continue on its then-existing path of economic reform and successfully complete a transformation to a market-oriented economy and trade regime.

China’s protocol of accession to the WTO sets out China’s obligations under the WTO agreements as well as numerous additional China-specific commitments made necessary because of the need for China to transform its approach to the economy and trade. China itself acknowledged “the evolving nature of its economy,” and it confirmed that “a socialist market economy system was applied” in China. Similarly, WTO Members highlighted that “China was continuing the process of transition towards a full market economy.” WTO Members noted, for example, that “the special features of

China’s economy, in its present state of reform, still created the potential for a certain level of trade-distorting subsidization.”

For these reasons, it was agreed that special safeguard-like provisions would be included among the terms of China’s protocol of accession as protective measures while China completed its transformation into a market economy. As noted above, for example, China’s protocol of accession included a China-specific safeguard mechanism, special antidumping rules and special methodologies for identifying and measuring subsidy benefits. It also created a unique, 10-year review mechanism designed to monitor China’s progress in implementing its many WTO commitments and to secure updated information on the use of industrial plans by China.

### CHINA’S WTO COMPLIANCE RECORD

As has been catalogued in prior reports, China has a poor record when it comes to complying with WTO rules and observing the fundamental principles on which the WTO agreements are based – non-discrimination, openness, reciprocity, fairness and transparency. Too often, China flouts the rules to achieve industrial domination objectives. In addition, and of serious concern to the United States and other WTO Members, China has not made sufficient progress in transitioning toward a market economy. China continues to embrace a state-led, non-market and mercantilist approach to the economy and trade. This approach results in sophisticated and expansive policies and practices that often evade effective WTO disciplines and cause serious harm to markets, workers and industries in the United States and other WTO Members. At the same time, China has used the benefits of WTO membership – including its guarantee of open, non-discriminatory access to the markets of other WTO Members – to become the WTO’s largest trader, while resisting calls for further liberalization of its trade regime by claiming to be a “developing” country.

### ADOPTION OF MARKET-ORIENTED POLICIES

Since last year's report, our assessment of China's record in terms of transitioning to a market economy has not changed. More than two decades after its accession to the WTO, China has still not embraced open, market-oriented policies. The state remains in control of China's economy, and it heavily intervenes in the market to achieve anticompetitive industrial policy objectives. Indeed, the state's already sizable role continues to grow, not recede.

As we detailed in prior reports, China pursues a wide array of continually evolving interventionist policies and practices. It offers substantial government guidance, resources and regulatory support to domestic industries, including China's state-owned enterprises and numerous other domestic companies. At the same time, it also seeks to limit market access for imported goods and services and restrict the ability of foreign manufacturers and services suppliers to do business in China in various ways. The benefits that China's industries realize from these non-market policies and practices largely come at the expense of China's trading partners and their workers and companies, as markets all over the world are distorted, and the playing field is heavily skewed against foreign companies that seek to compete against Chinese companies, whether in China's market or markets outside of China.

This situation has worsened over the past decade. Since new leaders assumed power in China in 2013, the state's role in the economy – effectuated by the Chinese government and, increasingly, the CCP – has grown. While China has repeatedly signaled in recent years that it is pursuing “economic reform,” China's concept of “economic reform” differs from the type of change that a country would be pursuing if it were embracing open, market-oriented policies. For China, “economic reform” appears to mean deepening the management of the economy by the government and the Party and strengthening state-owned and state-invested enterprises. Meanwhile, as the state's role in the economy has increased in

recent years, the depth and breadth of challenges facing U.S. and other foreign companies doing business in China – or competing with favored Chinese companies in markets outside of China – have similarly increased.

To fully appreciate the challenges presented by China's non-market economy, it is vital to understand the extent to which the state still maintains control over economic decision-making in China. As we catalogued in prior reports, a thorough examination of China's Constitution, relevant directives and pronouncements by China's leadership, legislative and regulatory measures issued by the Chinese government, China's industrial plans and the actions of the Chinese government and the CCP leave no doubt that the state maintains a tight grip on virtually all economic activity. Indeed, the government and the Party have constitutional mandates to develop a “socialist market economy with Chinese characteristics.” To fulfill these mandates, the framework of China's economy is set by the government and the Party, which exercise control directly and indirectly over the allocation of resources through instruments such as government ownership and control of key economic actors and innumerable government directives. The government and the Party also direct and channel economic actors to meet the state's planning targets. The government and the Party permit market forces to operate only to the extent that they accord with China's industrial policy objectives, which typically target industries for domination by Chinese companies. When there is conflict between market outcomes and the state's objectives, the government and the Party intervene to ensure that the state's objectives prevail.

Aside from the role of the government and the Party in managing the economy, there are also serious concerns over how the government and the Party exercise influence over the operations and investment decisions of state-owned and state-invested enterprises and private enterprises, including foreign-invested enterprises. This

influence continues to grow, as the Party is increasing its control over key actors in China's economy and not, as had been hoped, enabling China's transition to a market economy.

China claims that its state-owned and state-invested enterprises make business decisions independently of the state and based on market principles. However, the government and the Party continue to exercise control over state-owned and state-invested enterprises. Among other things, they appoint and control key executives through the Chinese Communist Party Organization Department. They also provide state-owned and state-invested enterprises with preferential access to important inputs (such as land and capital) and other competitive advantages unavailable to private Chinese companies. State-owned and state-invested enterprises, in turn, play an outsized role in China's economy. For example, state-owned and state-invested enterprises outstrip private Chinese companies in terms of their share of total credit, their market dominance in key industries and their share of total market capitalization on China's stock market.

Both state-owned and state-invested enterprises and private Chinese companies also host internal Party committees capable of exercising government and Party influence over their corporate governance and business decisions. This arrangement is codified in Chinese law under Article 19 of the *Company Law*, which applies to both state-owned and state-invested enterprises and private Chinese companies. In recent years, moreover, the Party has taken steps to increase the strength and presence of Party committees within all of these companies. For example, state-owned and state-invested enterprises and private Chinese companies are being pressured to amend their articles of association to ensure Party representation on their boards of directors, usually as the Chairman of the Board, and to ensure that important company decisions are made in consultation with Party cells.

Increasingly in recent years, China has also taken "golden shares" in large private Chinese companies. Under this type of arrangement, the Chinese government via a government guidance fund or other state-backed entity purchases a small stake in the company in exchange for a seat on the board of directors or veto rights. The result is stronger Chinese government oversight and control of the company's operations.

As we explained in prior reports, U.S. industry associations report that the Party is also taking steps to influence the managerial and investment decisions of foreign-invested enterprises in China through the insertion of Party cells. According to these reports, these efforts, in some cases, are beginning to affect the decision-making processes of some Chinese-foreign joint ventures in China.

Further reinforcing the Party's influence over enterprises in China is the *Social Credit System*, a tool endorsed by the Party that the government is increasingly using to monitor, rate and condition not only the conduct of all individuals in China, but also all domestic and foreign companies in China. This system has become operational, but so far there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented, as local governments experiment with their own pilot social credit schemes. In any event, it appears that the government will use the threat of poor ratings and corresponding adverse consequences under the *Social Credit System*, among other things, to ensure that all economic actors in China operate in accordance with China's industrial policy objectives and do not cross political redlines on sensitive matters like human rights.

Separate from these various mechanisms used to control company behavior, the government and the Party continue to control or otherwise influence the prices of key factors of production. The result is that the means of production in China are not allocated

or priced according to market principles. For example, all land in China is property of the state, as either state-owned urban land or collectively owned rural land. The state also exerts a high degree of control over energy and other input prices. In addition, there are significant institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management, contrary to International Labor Organization principles. China denies workers the right of association and the right to organize and collectively bargain. China prohibits the formation of independent trade unions to represent workers, and workers do not have the legal right to strike, which is an important lever in collective action and negotiation with management over wages in market economies. In addition, government restrictions on labor mobility continue to inhibit and guide labor flows, causing distortions on the supply side of the labor market.

The government and the Party also exercise strong control over the financial sector. Five large commercial banks that are majority state-owned entities operate large branch networks on a nationwide basis and account for nearly half of total commercial bank assets. There are also three large state-owned policy banks, as well as scores of city commercial banks and credit unions under local government control. In addition to the ownership of these banks by the government, the state exercises other forms of influence over banking decisions. The Party, through its Organization Department, appoints executives in state-owned banks and other state-owned financial institutions. China's central bank, the People's Bank of China (PBOC), also meets frequently with large banks in China to ensure that their lending decisions align with PBOC and government objectives. In addition, the *Law on Commercial Banks* provides that "commercial banks are to conduct their business of lending in accordance with the needs of national economic and social development and under the guidance of the industrial policies of the state."

Similarly, China's legal system continues to function as an instrument by which the government and the Party can secure discrete economic outcomes, channel broader economic policy and pursue the state's industrial policy objectives. Key legal institutions, such as the courts, are structured to respond to the Party's direction, both broadly and on a case-specific basis. As a general matter, to the extent that companies and individuals seek to act independently of government or Party direction, the legal system does not provide a venue for them to achieve these objectives on a systemic or consistent basis. In addition, companies and individuals continue to face challenges in obtaining impartial outcomes, either because of protectionism or corruption.

The larger issue of China's restrictions on the freedom of information also impacts China's economic system. For example, while China's Internet firewall and the Party's regular censorship of audio-visual and print media have many negative effects outside China's economic system, they also create distortions in China's economy, and these distortions affect the ability of foreign companies to operate and compete effectively in China's market.

In March 2021, China finalized and issued the *14th Five-Year Plan (2021-2025) for National Economic and Social Development*, which runs from 2021 through 2025. Like its predecessor, the *14th Five-year Plan* covers all sectors of China's economy and is not limited to one overarching plan, but instead will include hundreds of sub-plans. In this regard, various institutions participate in plan formulation and execution, including central government bodies with legislative and regulatory authority, thousands of provincial and local government authorities, various organs of the Party and key Chinese companies.

When compared to the industrial plans of other WTO Members, China's industrial plans are not merely more extensive. They are also fundamentally

different in kind. In several significant ways, China's industrial plans go well beyond traditional approaches to guiding and supporting domestic industries:

- First, adherence to the objectives of China's industrial plans is effectively mandatory. Chinese companies have little discretion to ignore them, even when market forces would dictate different commercial behavior.
- Second, the financial support that the state provides to domestic industries in pursuit of China's industrial plan objectives is massive, relentless and highly market-distorting. Indeed, this financial support is provided on a scale never before seen in the world, and much of it is not transparently provided. As previously noted, this financial support often leads to severe excess capacity in China – followed by China's widespread dumping of the inevitable excess production into the markets of other WTO Members, which not only depresses global prices but also distorts investment decisions by market actors in markets around the world. This assault on global markets causes serious harm to other WTO Members' industries, companies and workers, while the WTO does not provide effective mechanisms for addressing this problem.
- Third, China's industrial planning is more comprehensive and complex than in any other country, as it is made up of hundreds of plans across industries and at all levels of government.
- Fourth, in pursuit of its industrial plan objectives, China goes well beyond merely guiding or supporting the development of domestic industries as it actively seeks to impede, disadvantage and harm the foreign competition by skewing the playing field against imported goods and services and foreign manufacturers and services suppliers. Indeed, China actively targets entire industries for

domination by Chinese companies, often by explicitly setting market share goals that it pursues through a wide array of non-market policies and practices. In other words, China's approach to industrial planning is fundamentally predatory in nature.

When combined with the large size of China's economy and China's large share of global trade, the policies and practices that China pursues in support of its industrial plans transform China into a unique and pressing challenge for the United States and other market economies as well as for the WTO and the multilateral trading system. Moreover, this troubling situation is not static. China continues to develop and implement new policies and practices to maintain and enhance the state's control over the economy and trade.

### COMPLIANCE WITH WTO RULES

Since last year's report, our assessment of China's record in terms of complying with WTO rules and observing the fundamental principles on which the WTO agreements are based has not changed. China's record remains poor.

As we detailed in prior reports, China's economic and trade regime has generated many WTO compliance concerns over the years. Too often, WTO Members have had to resort to the WTO's dispute settlement mechanism to change problematic Chinese policies and practices. The United States, for example, has brought 27 cases against China at the WTO covering a wide range of important policies and practices, such as: (1) discriminatory requirements in the automobile sector; (2) discriminatory taxes in the integrated circuit sector; (3) hundreds of prohibited subsidies in a wide range of manufacturing sectors; (4) inadequate intellectual property rights enforcement in the copyright area; (5) significant market access barriers in copyright-intensive industries; (6) severe restrictions on foreign suppliers of financial information services; (7) export restraints on



numerous raw materials; (8) a denial of market access for foreign suppliers of electronic payment services; (9) repeated improper use of trade remedies; (10) excessive domestic support for key agricultural commodities; (11) the opaque and protectionist administration of tariff-rate quotas for key agricultural commodities; and (12) discriminatory regulations on technology licensing. Even though the United States prevailed in these WTO disputes, as other WTO Members have done in their disputes against China, they take years to litigate, consume significant resources and often require further efforts when China fails to comply with WTO rules.

In addition, China has often taken steps to obscure its actions to make it more difficult for trading partners to even challenge them in the WTO's adjudicative system. The WTO's dispute settlement mechanism was designed to facilitate the resolution of disagreements over whether an action breaches a WTO obligation, but where the action is so obscured that it is difficult to demonstrate it as a factual matter, the dispute settlement mechanism can fail to be an effective disciplinary tool. In this regard, as USTR has explained in prior reports, China disregards many of its WTO transparency obligations, which places its trading partners at a disadvantage and often serves as a cloak for China to conceal unfair, non-market and distortive trade policies and practices from scrutiny.

For example, during the first 15 years of its WTO membership, China failed to notify any sub-central government subsidies to the WTO, despite the fact that most subsidies in China are provided by provincial and local governments. The magnitude and significance of this problem is illustrated by the five WTO cases that the United States has brought challenging prohibited subsidies maintained by China. While those cases involved hundreds of subsidies, most of the subsidies were provided by sub-central governments. The United States was able to bring those cases only because of its own

extensive investigatory efforts to uncover China's opaque subsidization practices. Most other WTO Members lack the resources to conduct the same types of investigations.

Despite these efforts, China continued to shield massive sub-central government subsidies from the scrutiny of other WTO Members, while in recent years also obscuring massive central government subsidies provided through a newer vehicle known as "government guidance funds." While China claims that these government guidance funds are wholly private, the facts plainly reveal that the funds are run by government agencies and state-owned enterprises and provide state capital to Chinese companies. Together with other complimentary non-market practices, the massive and relentless subsidization provided by China's central government and sub-central governments distorts global markets and contributes to the serious excess capacity problems that have been plaguing industries like steel, aluminum, solar panels and fishing and have been devastating foreign competitors. Similar results can be expected in other industries now being targeted by China for dominance.

In sum, the WTO's dispute settlement mechanism has not been effective in addressing the serious issues that arise from a WTO Member's state-led, non-market approach to the economy and trade that systematically disadvantages that Member's trading partners and broadly conflicts with the fundamental, market-oriented underpinnings of the WTO system. The value of the dispute settlement mechanism is also undermined where a WTO Member does not operate in good faith. As a result, over time, despite the enforcement efforts of the United States and other WTO Members, China was able to continue to pursue its predatory non-market policies and practices, which WTO rules and the dispute settlement mechanism have proven unable to discipline effectively.

## PAST EFFORTS TO ADDRESS THE CHINA CHALLENGE

In the past, the United States has intensively pursued both WTO-focused strategies and strategies outside the WTO in an effort to address the unique challenge posed by China. Other WTO Members have also made similar efforts. Those strategies have been unsuccessful in securing fundamental changes in China's state-led, non-market approach to the economy and trade.

### WTO-FOCUSED STRATEGIES

For many years following China's accession to the WTO, a variety of bilateral and multilateral efforts were pursued by the United States and other WTO Members to address the unique challenges presented by China's WTO membership. However, even though these efforts were persistent, they did not result in meaningful changes in China's state-led, non-market approach to the economy and trade.

The United States itself pursued a dual track approach in an effort to resolve the many concerns that arose in our trade relationship with China. One track involved using high-level bilateral dialogues, and the other track focused on enforcement at the WTO.

The United States approached its bilateral dialogues with China in good faith and put a great deal of effort into them. These dialogues were intended to push China toward complying with and internalizing WTO rules and principles and making necessary market-oriented changes. However, they only achieved isolated, incremental progress. At times, the United States did secure broad commitments from China for fundamental shifts in the direction of Chinese policies and practices, but China repeatedly failed to follow through on them. Moreover, over time, commitments from China became more difficult to secure.

Meanwhile, at the WTO, the United States brought 27 cases against China, often in collaboration with like-minded WTO Members. The United States secured victories in every one of its cases that was decided. Other WTO Members were also successful in many cases that they brought against China. Still, even when China changed the specific practices that had been challenged, it did not typically change the underlying policies, and meaningful reforms by China remained elusive.

As has become clear, the WTO's dispute settlement mechanism is of only limited value in addressing a situation where a WTO Member is dedicated to a state-led economic and trade regime that prevails over market forces. The WTO's dispute settlement mechanism is designed to address good faith disputes in which one Member believes that another Member has adopted a measure or taken an action that breaches a WTO obligation. This mechanism is not designed to address a trade regime that broadly conflicts with the fundamental underpinnings of the WTO system. No amount of WTO dispute settlement by other WTO Members would be sufficient to remedy this systemic problem. Indeed, many of the most harmful policies and practices being pursued by China are not even directly disciplined by WTO rules.

Overreaching by the WTO's Appellate Body in deciding WTO dispute settlement cases has also shielded China's non-market policies and practices from discipline and has affirmatively undermined the efforts of the United States and other WTO Members to protect our workers and businesses from the harmful impacts of China's predatory non-market economic system. The Appellate Body's erroneous substantive interpretations have undermined core values, such as the ability to protect workers and businesses from non-market economic harms, to promote democracy and human rights or to protect human health or the environment. At the same time, China has sought to use the WTO dispute settlement system to subject



U.S. national security measures to review, pursuing a strategy that would convert the WTO into a permanent venue for national security disagreements. As a result, the United States has been clear that fundamental reform is needed to ensure a well-functioning WTO dispute settlement system that supports WTO Members in the resolution of their disputes and in doing so limits the needless complexity and interpretive overreach seen in recent years. Among the objectives for reform, the United States has been clear that the dispute settlement system should preserve the policy space in WTO rules for WTO Members to address their critical societal interests and to support, rather than undermine, the WTO's role as a forum for discussion and negotiation. Most critically, fundamental reform must ensure that the WTO respects the essential security interests of WTO Members, including the United States.

Over the years, in addition to pursuing WTO dispute settlement cases, the United States has actively participated in meetings at the WTO addressing China's adherence to its WTO obligations. For example, the United States took on a leading role in the numerous China-specific Transitional Review Mechanism meetings from 2002 through 2011, which involved annual meetings of most WTO committees and councils. However, China consistently approached these meetings in ways that frustrated WTO Members' efforts to secure a meaningful assessment of China's compliance efforts. The United States also raised, as it continues to do, China-related issues at regular meetings of WTO committees and councils, including the WTO's General Council. Among other things, the United States sought to highlight how China's trade-disruptive economic model works, the costs that it exacts from other WTO Members and the benefits that China receives from it. While these efforts raised awareness among WTO Members, they did not lead to meaningful changes in China's approach to the economy and trade.

In theory, the WTO membership could have adopted new rules expressly requiring members like China to

abandon non-market economic systems and state-led, mercantilist trade regimes. For two basic reasons, however, Members have not pursued any negotiation of new WTO rules that would change China's problematic approach to the economy and trade in a meaningful way.

First, new WTO rules disciplining China would require agreement among all WTO Members, including China. China has shown no willingness at the WTO to consider fundamental changes to its economic system or trade regime. Given the extent to which China has benefited and continues to benefit from the current state of affairs, it was not realistic to expect that China would agree to effective new WTO disciplines on its behavior. Indeed, China has been using its WTO membership to develop rapidly – albeit largely in an anticompetitive manner that comes at the expense of others. China is now the second largest economy in the world, and it is also the largest goods trader – and the largest exporter – among WTO Members. It is therefore highly unlikely that China would agree to new WTO disciplines targeted at its policies and practices. In fact, in connection with ongoing discussions at the WTO relating to needed WTO reform, China has stated that it would not alter its state-led, non-market approach to the economy and trade.

Second, China has a long record of not pursuing ambitious outcomes at the WTO. Past agreements, even relatively narrow ones, have been difficult to achieve, and even when an agreement is achieved, it is significantly less ambitious because of China's participation.

As these experiences make clear, it is unrealistic to believe that actions at the WTO alone will be sufficient to force or persuade China to make fundamental changes to its economic system or trade regime. The WTO's trading system was designed for countries that are truly committed to fair competition based on market principles, not for an economically powerful country determined to maintain a state-led, non-market approach to the

economy and trade, and China has demonstrated no willingness to change its approach in any meaningful way.

### STRATEGIES OUTSIDE THE WTO

In recent years, it became evident to the United States that new strategies were needed to deal with the many problems generated by China's state-led, non-market approach to the economy and trade, including solutions independent of the WTO. For example, in August 2017, the United States launched an investigation into China's acts, policies and practices relating to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974. The findings made in this investigation in March 2018 led to, among other things, substantial U.S. tariffs on imports from China as well as corresponding retaliation by China. Against this backdrop of rising tensions, in January 2020, the two sides signed what is commonly referred to as the "Phase One Agreement." This Agreement included commitments from China to improve market access for the agriculture and financial services sectors, along with commitments relating to intellectual property and technology transfer and a commitment by China to increase its purchases of U.S. goods and services.

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

Given these dynamics, and given China's interest in a more stable relationship with the United States,

China followed through in implementing some provisions of the Phase One Agreement. At the same time, China has not yet implemented some of the more significant commitments that it made in the Phase One Agreement, such as commitments in the area of agricultural biotechnology and the required risk assessment that China is to conduct relating to the use of ractopamine in cattle and swine. Intellectual property is another area where China still must take a number of actions to implement its commitments. In addition, China fell far short of implementing its commitments to purchase U.S. goods and services in 2020 and 2021.

The reality is that this Agreement did not meaningfully address the more fundamental concerns that the United States has with China's state-led, non-market policies and practices and their harmful impact on the U.S. economy and U.S. workers and businesses. China's government continues to employ extensive industrial policies of a kind not found in market economies. It provides substantial government guidance, massive financial resources and favorable regulatory support to domestic industries across the economy, often in pursuit of specific targets for capacity and production levels and dominant market shares. In furtherance of its industrial policy objectives, China's government has also limited market access for imported goods and services and restricted the ability of foreign manufacturers and services suppliers to do business in China. It has also used various, often illicit, means to secure foreign intellectual property and technology to further its industrial policy objectives.

The principal beneficiaries of these non-market policies and practices are China's state-owned and state-invested enterprises and numerous nominally private domestic companies. The benefits that Chinese industries receive largely come at the expense of China's trading partners, including their workers, businesses and consumers. As a result, markets all over the world have faced distorted signals, and the playing field is heavily skewed

against foreign businesses that seek to compete against Chinese enterprises, whether in China, in the United States or globally.

The industrial policies that flow from China's predatory non-market economic system have systematically distorted critical sectors of the global economy such as steel, aluminum, solar and fisheries, devastating markets in the United States and other countries. At the same time, as is their design, China's industrial policies are increasingly responsible for displacing companies in new, emerging sectors of the global economy, as the Chinese government and the CCP powerfully intervene in these sectors on behalf of Chinese companies. Companies in economies disciplined by the market cannot effectively compete with both China's domestic companies and the Chinese state.

### TODAY'S CHINA CHALLENGE

Like many other WTO Members, the United States expects, and seeks to ensure, that its trading partners' economic and trade regimes promote fair, market-oriented conditions for competition. Market orientation implies the freedom for enterprises and individuals to pursue their interests and goals on a level playing field. Indeed, in establishing the WTO, members agreed that "open, market-oriented policies" were at the foundation of the multilateral trading system.

In the case of China, more than two decades after its accession to the WTO, it has still not embraced a market-oriented approach to the economy and trade. Instead, unlike the market-oriented approaches found in the United States and other WTO Members, China continues to pursue a state-led, non-market approach to the economy and trade, which is decidedly predatory in nature. China heavily relies on market-distorting industrial plans covering virtually every sector of the economy, and these industrial plans are typically designed to provide substantial competitive advantages to Chinese enterprises and to impose substantial

competitive disadvantages on competing foreign enterprises, as China seeks to secure dominant market shares for Chinese companies, both in China and globally.

Under China's approach, control and direction of all aspects of the economy is retained by the Chinese government and the CCP, facilitated by a reliance on rule *by* law rather than rule *of* law. The mere fact that decisions in the marketplace are often made based on the objectives of the state, rather than based on commercial considerations, distorts China's economy and, in turn, the global economy in ways that can damage and weaken the economies of China's trading partners. This damage is exacerbated by the overriding objective of the Chinese state's intervention in the market, which is to secure dominant positions for Chinese enterprises in numerous targeted industries. It is also exacerbated, of course, because China is the second largest economy in the world and the largest trader among WTO Members.

A host of harmful policies and practices currently emanate from China's predatory non-market economic and trade regime. Key examples include: numerous industrial plans that target specific industries for domination by Chinese enterprises; the placement of CCP officials in state-owned enterprises and private Chinese enterprises in order to control commercial decision making; massive and relentless subsidization of domestic industries (including financial support to and through state-owned enterprises and other state entities at multiple levels of government and a banking system dominated by state-owned banks favoring state-owned enterprises and targeted industries); discriminatory regulatory practices; investment and market access restrictions; import substitution; the creation and maintenance of persistent non-market excess capacity in industrial sectors; forced or pressured technology transfer; state-sponsored theft of intellectual property, trade secrets and confidential business information; state-directed acquisitions of foreign companies with valuable technologies; continued gaps in intellectual property

protection and enforcement; violations of internationally recognized labor rights (including forced labor); lax or unenforced environmental standards; increased adoption of unique Chinese national standards (including reportedly through the China Standards 2035 plan, which seeks to set the global standards for next-generation technologies); overly broad cybersecurity regulation designed to favor domestic companies; unwarranted data localization requirements and cross-border data transfer restrictions; the misuse of competition policy for industrial policy objectives; purposeful obfuscation of trade and economic policies, especially with regard to China's subsidization practices; and inadequate regulatory transparency.

As has become evident to the United States and China's other trading partners, one of the more problematic manifestations of China's predatory non-market economic and trade regime is the creation of non-market excess capacity – that is, capacity that would not have been created and would not persist if market forces were operating properly. In the past, China itself has acknowledged excess capacity in several industries, including steel, cement, electrolytic aluminum, flat glass and shipbuilding. Numerous other excess capacity industries have been identified by industry associations in the United States and other countries. Some of the Chinese industries most likely to inflict the disastrous consequences of severe excess capacity on the world in the future can be found in the *Made in China 2025* industrial plan. Through that plan, the Chinese government is seeking to create dominant Chinese companies in 10 broad sectors, including advanced information technology, robotics and automated machine tools, aircraft and aircraft components, maritime vessels and marine engineering equipment, advanced rail equipment, new energy vehicles, electrical generation and transmission equipment, agricultural machinery, new materials and pharmaceuticals and medical devices. By some estimates, the Chinese government is making available more than \$500 billion of financial support to these sectors, often

using large government guidance funds that China attempts to shield from scrutiny by claiming that they are wholly private. Based on the recent history of the steel and aluminum industries, China's non-market distortions in these newer sectors will likely result in oversupply, leading to loss of jobs and production in market economies and, in some cases, less choice, lower quality, less innovation and higher prices for consumers over time.

Another example of the harm that can be caused by China's predatory non-market economic and trade regime involves forced or pressured technology transfer. In USTR's Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation, USTR issued two extensive factual reports that detailed how the Chinese government uses foreign ownership restrictions, such as formal and informal joint venture requirements, to require or pressure technology transfer from U.S. companies to Chinese entities. The reports also explained how China imposes substantial restrictions on, and intervenes in, U.S. companies' investments and activities, including through restrictions on technology licensing terms. In addition, the reports analyzed how the Chinese government directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese entities to obtain cutting-edge technologies and intellectual property and to generate large-scale technology transfer in industries deemed important by the state's industrial plans. Finally, the reports illustrated how the Chinese government has conducted or supported cyber intrusions into U.S. commercial networks, with the targets being intellectual property and sensitive commercial information held by U.S. firms. While these reports focused on the harm caused to U.S. interests, it is not a problem borne solely by the United States. As in the case of non-market excess capacity, China's unfair policies and practices relating to forced or pressured technology transfer also affect other WTO Members whose companies have developed or are developing advanced technologies.

Closely related to its pursuit of forced or pressured technology transfer, China also sponsors and engages in the theft of intellectual property rights, trade secrets and confidential business information for commercial use. As noted earlier in the report, intelligence and law enforcement officials from the Five Eyes countries – Australia, Canada, New Zealand, the United Kingdom and the United States – have publicly characterized the Chinese state's sponsorship and pursuit of this type of theft as being on a scale unprecedented in human history. In the United States alone, in 2023, there were approximately 2,000 active investigations into apparent Chinese theft covering a diverse array of U.S. industries, from aviation to biotechnology to robotics, among many others.

In addition to non-market excess capacity, forced or pressured technology transfer and state-sponsorship of the theft of intellectual property rights, trade secrets and confidential business information, China's predatory non-market economic and trade regime also causes serious harm to industries, companies and workers in the United States and other WTO Members in other ways. For example, Chinese companies use the artificial competitive advantages provided to them by the extensive interventionist policies and practices of the Chinese state to undersell their foreign competition, both in China and around the world. To some extent, the harm to foreign manufacturers is reflected in the very large number of antidumping and countervailing duty investigations that have been initiated against China by the investigating authorities of WTO Members. Since China joined the WTO in 2001, it has been the number one target for both antidumping and countervailing duty investigations. At the same time, many types of interventionist policies and practices are not capable of being addressed by antidumping and countervailing duty regimes, so the harm caused by China is only partially reflected in those antidumping and countervailing duty investigations.

In sum, China's approach to the economy and trade has not moved toward a stronger embrace of open,

market-oriented principles and instead has seen a doubling-down on state capitalism "with Chinese characteristics." The state remains in control of China's economy, and it heavily intervenes in the market to achieve China's industrial policy objectives, which typically target industries for domination by Chinese companies. Along the way, the state subsidizes industries that would not otherwise form or thrive, directs activities that a private business would not choose to undertake and seeks access to foreign technologies often through nefarious ways, among many other problematic policies and practices.

The evidence is clear, moreover, that when a trading partner with China's size – China is the second largest economy in the world and the largest goods trader among WTO Members – routinely pursues these types of non-market policies and practices, the distortions that it creates impose substantial costs on its trading partners. The Chinese state's decisions in the marketplace are not driven by market factors, but their effects on markets push U.S. and international companies out of sectors, such as steel, aluminum, solar panels and fisheries. Once China's dominance is established, barriers to entry can lock-in China's dominance over the long term. As a result, markets all over the world are less fair and well-functioning than they should be, and the playing field is heavily skewed against U.S. and other foreign companies that seek to compete against Chinese companies, whether in China's market or markets outside of China.

In the United States, it is widely accepted that the existing WTO rules do not, and cannot, effectively discipline many of China's most harmful policies and practices. It is similarly evident to us that China has become quite adept at circumventing the existing rules, as well as the attempted enforcement of those rules, by obscuring state involvement in the economy in ways that the WTO rules did not anticipate at the time of their negotiation. These problems are exacerbated by China's long record of flouting the transparency obligations that it undertook when it joined the WTO. At the same

time, there is no expectation that China would agree to new WTO rules disciplining its problematic behavior. As a result, in the United States' view, while the WTO still has a significant role to play, enforcement of WTO rules has become less significant and solutions independent of the WTO are necessary, including solutions pursued through bilateral engagement and the use of domestic trade tools, to counter the harm caused by China's unfair and anticompetitive policies and practices.

In recent years, it has become apparent that the views of other WTO Members have also been evolving toward the United States' view regarding the limits of the WTO when it comes to addressing the China challenge. While the WTO remains a strong focus for the United States and many of the United States' trading partners, there is a growing awareness that it may be necessary to pursue solutions outside the WTO in order to avoid the severe harm that will likely continue to result from China's predatory non-market economic and trade regime. For example, some of the United States' trading partners are now exploring or adopting possible new domestic trade tools to address the challenges posed by China's state-led trade regime. These and other like-minded trading partners have also begun working with the United States — sometimes confidentially — in pursuit of new joint strategies to address China's harmful non-market policies and practices. Many of these same trading partners have also intensified their work on deterring and responding to China's increasing use of economic coercion, including through joint and coordinated strategies.

It is also noteworthy that, in recent years, many of China's trading partners have also become increasingly skeptical of China's rhetoric. For example, China often touts its strong commitment to win-win outcomes in international trade matters, but its actions plainly belie its words. Through state-led industrial plans like *Made in China 2025*, which targets 10 strategic emerging sectors, China pursues a zero-sum approach. It first seeks to develop and dominate its domestic markets. Once China

develops, acquires or steals new technologies and Chinese enterprises become capable of producing the same quality products in those industries as the foreign competition, the state suppresses the foreign competition domestically and then supports Chinese enterprises as they "go out" and seek dominant positions in global markets. Countries with industries like steel, aluminum, solar panels and fisheries have experienced this reality, and they know that a new wave of severe and persistent non-market excess capacity can be expected in industries like those targeted by *Made in China 2025*, to the detriment of China's trading partners.

As China's economy grew over the years since its accession to the WTO, every country in the world has witnessed China become a regular user of economic coercion, directed not only against foreign companies but also increasingly foreign governments, including in democratic countries. Indeed, China no longer hesitates to take on foreign governments whose policies or practices are perceived to undermine either China's economic and trade interests or China's political interests. China's coercive economic measures in this context have taken a variety of forms, including, for example, import restrictions, export restrictions, restrictions on bilateral investment, regulatory actions, state-led and state-encouraged boycotts, and travel bans. Many countries have been directly subjected to this economic coercion. At the same time, one intended by-product of this economic coercion is broader in scope, as China seeks to create an environment that mutes international objections to China's non-market policies and practices, even when China blatantly flouts the WTO's rules-based international trading system.

Finally, it has also not gone unnoticed among China's trading partners — particularly the democratic market economies — that China's leadership appears confident in its state-led, non-market approach to the economy and trade and feels no need to conform to global norms. China's leadership also demonstrates confidence in its ability to quiet dissenting voices. Indeed, it has become increasingly



evident that China's leadership is seeking to establish new global norms that better reflect and support not only China's approach to the economy and trade but also China's governance model, providing a potentially attractive alternative for other authoritarian regimes around the world.

In sum, the reality confronting the United States and other WTO Members is not simply that China has chosen to pursue an economic and trade regime that conflicts in significant and harmful ways with the market-oriented approach endorsed by the WTO membership, to the detriment of our workers and businesses. China also does not hold the same core values as other WTO members, especially the democratic market economies. China plainly does not embrace our core values, which, like the fundamental principles of the WTO, include openness, fair competition, non-discrimination, reciprocity and transparency as well as adherence to the rule of law.

### U.S. TRADE POLICY TOWARD CHINA

As a starting point, any U.S. trade policy toward China must account for current realities in the U.S.-China trade relationship and the many problems that China's state-led, non-market approach to the economy and trade creates for the United States and other trading partners, both now and likely in the future. Given that China's problematic approach has evolved and become more sophisticated, our strategies also need to evolve and become more sophisticated. We also need to find ways to address — and to protect ourselves against — the many non-market policies and practices routinely generated by China's state-led, non-market approach to the economy and trade. Those policies and practices directly harm American workers, farmers, businesses and consumers, threaten our technological edge, weaken the resiliency of our supply chains and undermine our national interest. They also inflict similar harms on many of our trading partners.

Given these circumstances, it is clear that any strategic approach pursued by the United States must focus not only on the near-term, but also on the longer term, if the United States is to compete effectively with China and build resilience against the harms caused by China's predatory behavior. Any strategic approach should also be pursued in coordination with our many important, like-minded trading partners around the world.

Looking back over the first 22 years of China's WTO membership, and observing China's current leadership and clear policy direction, it would be appropriate to assume that the problems currently created by China will be with us for some time. We cannot expect that China will willingly make fundamental changes to its state-led, non-market approach to the economy and trade in the near-term or even the medium-term.

It is also clear that effective strategies for dealing with China need to be flexible. The United States must be prepared to adapt and adjust its strategic approach over time as China's non-market policies and practices evolve and as global trade patterns shift and alliances and interests change.

For all of these reasons, the United States is now pursuing a multi-faceted strategic approach as it seeks to address the China challenge. This approach involves the pursuit of strategic domestic investment, bilateral engagement of China, enforcement actions, the deployment of domestic trade tools and close coordination with allies and partners.

### DOMESTIC INVESTMENT

The United States has been working to ensure that we are taking the steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow. We therefore have been working to strengthen our economy, our supply chains, our infrastructure, our workers, our farmers and our

businesses and to lay a solid foundation for us to continue to innovate and maintain our technological edge. Important steps taken to date include the passage of the CHIPS and Science Act, the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, as well as the many subsequent efforts to implement those Acts.

### BILATERAL ENGAGEMENT

The United States continues to pursue bilateral engagement with China. China is an important trading partner, and every avenue for obtaining real change in its approach to the economy and trade must be utilized.

The United States' focus is on addressing the most fundamental problems emanating from China's state-led, non-market approach to the economy and trade, rather than seeking isolated, incremental changes in China's trade policies and practices. Of particular concern are China's industrial plans, which target specific industries for dominance and are pursued through a wide array of non-market policies and practices, such as discriminatory regulation, forced or pressured technology transfer, state-sponsored theft of intellectual property, the non-market activities of state-owned and state-invested enterprises, massive, unrelenting and often non-transparent subsidization, market access restrictions and repression of internationally recognized labor rights, including the use of forced labor, among other harmful policies and practices. China's increasing use of economic coercion is another significant concern.

At the same time, it is clear that prior U.S. efforts have not led to fundamental changes in China's approach to the economy and trade. Ultimately, it will be up to China to decide whether and to what extent it is willing to work constructively with the United States to address these significant concerns.

### ENFORCEMENT

It is important for the bilateral relationship to demonstrate that China must honor its promises. We therefore have been working to ensure that China lives up to its existing trade commitments, including its WTO commitments and the ones that China made in the Phase One Agreement.

### DOMESTIC TRADE TOOLS

The use of domestic trade tools is also a key focus of U.S. trade policy toward China. To the extent that China's unfair, non-market and distortive policies and practices persist, the United States is prepared to use domestic trade tools strategically as needed in order to achieve a more level playing field with China for U.S. workers and businesses.

It is also apparent that existing trade tools need to be strengthened, and new trade tools need to be forged. China pursues unfair policies and practices that were not contemplated when many of the U.S. trade statutes were drafted decades ago, and we are therefore exploring ways in which to work with the Congress to update our trade tools to counter them.

In one significant action to date, as previously discussed, USTR pursued an investigation under the authority of Section 301 of the Trade Act of 1974 into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. In March 2018, after a thorough review and analysis of the evidence, USTR issued a detailed report, finding that China had engaged in a range of unfair and harmful conduct:

- First, USTR found that China uses foreign ownership restrictions, including joint venture requirements, equity limitations and other investment restrictions, to require or pressure



technology transfer from U.S. companies to Chinese entities. USTR also found that China uses administrative review and licensing procedures to require or pressure technology transfer, which, *inter alia*, undermines the value of U.S. investments and technology and weakens the global competitiveness of U.S. companies.

- Second, USTR found that China imposes substantial restrictions on, and intervenes in, U.S. companies' investments and activities, including through restrictions on technology licensing terms. These restrictions deprive U.S. technology owners of the ability to bargain and set market-based terms for technology transfer. As a result, U.S. companies seeking to license technologies must do so on terms that unfairly favor Chinese recipients.
- Third, USTR found that China directs and facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and to generate large-scale technology transfer in industries deemed important by Chinese government industrial plans.
- Fourth, USTR found that China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies. These actions provide the Chinese government with unauthorized access to intellectual property, trade secrets and confidential business information, such as technical data, negotiating positions and sensitive and proprietary internal business communications. The purpose of these actions is to support China's strategic development goals, including its science and technology advancement, military modernization and economic development.

Based on these findings, the United States took a range of responsive actions. These actions included the successful prosecution of a WTO dispute settlement case challenging Chinese measures that deny foreign patent holders the ability to enforce their patent rights against a Chinese joint venture partner after a technology transfer contract ends and that impose mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology as compared to Chinese technology, as well as the imposition of substantial additional tariffs on imports of Chinese goods. Over time, as has been previously reported, these tariffs eventually covered \$370 billion of Chinese imports, with additional tariffs of 25 percent on \$250 billion of Chinese imports and additional tariffs of 15 percent on a further \$120 billion of Chinese imports, while China responded through the imposition of retaliatory tariffs on various imports of U.S. goods.

In December 2019, after one year of negotiations, the United States announced that the two sides had finalized the text of an economic and trade agreement, which was later signed in January 2020. This agreement, commonly referred to as the "Phase One Agreement," included commitments from China on intellectual property, technology transfer, agriculture, financial services, currency and foreign exchange, and the purchase of U.S. goods and services. The commitments varied in ambition, and in effectiveness. For example, some commitments related to financial services reflected reforms that China was already contemplating or pursuing, as China had begun easing foreign investment restrictions in some financial services sectors in 2017. In addition, in the area of intellectual property rights, while China committed to make a number of changes to its laws and regulations, China saw many of these changes as now needed by its domestic businesses, given their own increasing efforts at innovation. It also remains unclear how faithfully and fairly China will actually enforce the changes to its laws and regulations. Meanwhile, other

commitments that China made, such as in the area of technology transfer, are difficult to verify given the tactics that China takes to obscure its activities.

Notably, the Phase One Agreement did not address many of the U.S. concerns that the United States had been seeking to address in its negotiations with China. The unresolved issues included critical concerns in areas such as industrial plans, subsidies, state-owned enterprises, excess capacity, state-sponsored theft of intellectual property, standards, cybersecurity, data localization requirements, restrictions on cross-border data transfers, competition law enforcement and regulatory transparency as well as certain issues in the areas of intellectual property, technology transfer and services market access that were not addressed in the Phase One Agreement.

In light of the limited progress represented by the Phase One Agreement, the United States did not make major changes to the existing Section 301 tariffs. After some minor adjustments, the United States kept in place tariffs on \$370 billion of Chinese imports, which included 25 percent tariffs on \$250 billion of Chinese imports and 7.5 percent tariffs on \$120 billion of Chinese imports. The United States also decided not to move forward with plans to raise the tariff rate for some of the existing Section 301 tariffs or to impose new tariffs on additional Chinese imports.

Since the Phase One Agreement entered into force in February 2020, the United States has been closely monitoring China's progress in implementing its commitments. The United States has also been utilizing the consultation arrangements set forth in the agreement, including regular meetings required by the agreement between the two sides. Through these many engagements, the United States has raised various concerns that have arisen regarding China's implementation progress. In addition, official trade data appears to show that China fell far short of implementing its commitments to purchase U.S. goods and services in calendar years 2020 and 2021. Serious concerns with China's implementation

efforts have also arisen in other areas, including intellectual property rights, where the implementation of several commitments has been proceeding slowly, and agriculture, particularly with regard to China's commitments relating to agricultural biotechnology, the risk assessment that China is required to conduct relating to the use of ractopamine in cattle and swine, the registration of U.S. food facilities and trade in U.S. poultry products.

In 2024, USTR expects to complete a statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR is examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers.

### **ALLIES AND PARTNERS**

Despite the size of the U.S. economy, the United States cannot do it alone. There are limits to bilateral engagement and the impact of enforcement actions and domestic trade tools. That is why the United States is working more intensely and broadly with allies and partners. Just as we are reassessing our domestic trade tools, we are also rethinking how the United States can coordinate with its trading partners to address the challenges that China poses for the global economy.

As more and more U.S. allies and partners come to understand the need for new approaches for dealing with China and its non-market policies and practices, the United States is working more intensely and broadly with them, both in existing international trade fora and initiatives and in new ones. The COVID-19 pandemic, followed by Russia's full-scale invasion of Ukraine, and their impacts on supply chains and global economic conditions, have laid bare the vulnerabilities and interdependencies of

economies around the world and have underscored the need to build up economic security and resiliency across sectors. The concentration of supply chains in China is a particular problem, especially in light of the many serious risks and potential harms that emanate from China's state-led, non-market approach to the economy and trade. There is a strong need for new thinking and new coalitions of allies and partners, including not only on a bilateral basis — especially with major trading partners — but also regionally and multilaterally, to find global solutions to the many serious problems posed by China's state-led, non-market approach to the economy and trade.

For example, the United States and the European Union (EU) have established a Trade and Technology Council, and the United States and Japan have established a Partnership for Trade. In both venues, one important component of the engagement focuses on better understanding and developing strategies for addressing non-market policies and practices.

Notably, as a result of meetings of the Trade and Technology Council, the United States and the EU have been discussing and exploring possible coordinated actions to address China's non-market policies and practices in the medical devices sector and in the clean energy sector. The two sides have also been exchanging information on China's extensive use of government guidance funds, which provide large amounts of financial support to Chinese companies, and on non-market excess capacity in the legacy semiconductor chips sector. In addition, the two sides have expressed serious concerns regarding China's use of economic coercion, including against allies and partners of the United States and the EU, and resolved to cooperate on strategies for addressing this problem.

Separately, in 2022, the United States and the EU held the first Ministerial Meeting of the Working Group on Large Civil Aircraft. Since then, the two sides have met regularly at the working level to explore strategies for confronting the challenges

posed by China's non-market policies and practices in the aviation sector.

Over the past two years, the United States, the EU and Japan have also begun to deepen their trilateral work, focusing on the identification of problems arising from non-market policies and practices, including in sectors such as legacy semiconductor chips. The three trading partners have also sought to identify gaps in existing trade tools and where further work is needed to develop new trade tools to address non-market policies and practices, as well as possible cooperation in utilizing existing tools. The three trading partners have also highlighted the importance of WTO reform in an effort to build a free and fair rules-based multilateral trading system that benefits all its members and helps secure shared prosperity for all.

The United States is also holding discussions with many other like-minded trading partners, including in the Indo-Pacific region, on how to strengthen our existing trade relationships. Given that trade with China poses so many serious risks and potential harms, the United States believes that market economies should enhance their trade with each other.

As part of its discussions with like-minded trading partners, the United States is also working to make critical supply chains less vulnerable and more secure, sustainable and resilient. The United States recognizes the need to cooperate with trading partners to diversify international suppliers and reduce geographic concentration risk, especially in China, and to address vulnerabilities that can result in shortages of key goods. This joint work can also enable more effective responses to non-market policies and practices that have eroded critical supply chains. Reducing geographic concentration also reduces opportunities for economic coercion while contributing to a more stable and secure trading environment.

At the same time, the United States is continuing to pursue initiatives at the WTO. For example, the U.S.

agenda at the WTO includes pushing for and building support for meaningful WTO reforms to update the organization and respond to contemporary challenges, including those posed by China's state-led, non-market approach to the economy and trade. One U.S. proposal relates to "special and differential treatment," where certain WTO Members rely on self-declared developing country status to inappropriately seek "special and differential treatment" to avoid making meaningful commitments in WTO negotiations. The United States has also offered, and will continue to pursue, a proposal intended to increase consequences for WTO Members who fail to adequately notify industrial subsidies. More recently, in connection with the WTO's upcoming 13th Ministerial Conference, the United States has been advocating for the establishment of a work stream broadly focused on state intervention, including an analysis of gaps in existing WTO rules to discipline it.

Similar work is taking place in fora such as the Group of Seven (G7), the Group of Twenty (G20) and the Organization for Economic Cooperation and Development (OECD). For example, at the G7 Leaders Meeting, held in June 2022, the United States and the other members of the G7 discussed the challenges that China's non-market policies and practices pose to the multilateral trading system. They determined to continue to build a shared understanding of this problem and to consult on collective approaches for addressing it. They also specifically committed to work together to develop coordinated actions to ensure a level playing field, to counter economic coercion and to reduce strategic dependencies. Subsequently, in May 2023, the G7 Leaders decided to launch the Coordination Platform on Economic Coercion. In addition, in October 2023, the G7 trade ministers issued a statement reaffirming their shared concerns regarding a wide and evolving range of non-market policies and practices, particularly when they are an integral part of comprehensive strategies to pursue global market dominance. The statement also highlighted the fact that non-market policies and practices distort

competition and lead to unfair trade and have a particularly negative impact on industrial development in emerging and developing economies.

## SPECIFIC TRADE CONCERNS

At present, China pursues numerous unfair, non-market and distortive policies and practices that cause particular concern for the United States and U.S. stakeholders. The key concerns are summarized below.

### INDUSTRIAL PLANS

China continues to pursue an extensive number of industrial plans and supporting policies and practices that target industries for domination by Chinese companies, both in China and globally. Pursuant to these industrial plans, the Chinese state offers substantial government guidance, resources and regulatory support to Chinese companies while actively seeking to limit market access for imported goods, foreign manufacturers and foreign services suppliers. The beneficiaries of these non-market policies and practices, which are constantly evolving, include not only China's state-owned enterprises but also other domestic Chinese companies.

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

sophisticated approach to “indigenous innovation,” which is evident in numerous supporting and related industrial plans. Under China’s harmful and anticompetitive approach to indigenous innovation, the common, overriding aim is to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to enable Chinese companies to dominate international markets.

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

In pursuit of these objectives, subsequently released documents set specific targets for capacity and production levels and market shares for the dozens of industries that comprise the 10 broad sectors targeted in *Made in China 2025*. In October 2015, China’s National Manufacturing Strategic Advisory Committee published the *Made in China 2025 Key Area Technology Roadmap*, and since then it has published two updated editions of this document. The first update took place in February 2018, with the issuance of the *Made in China 2025 Key Area Technology and Innovation Greenbook – Technology Roadmap (2017)*. Like its predecessor, the updated document sets explicit market share and other targets to be attained by Chinese companies in dozens of high-technology industries, often both in

the China market and globally. For example, it calls for “indigenous new energy vehicle annual production” to have a “supplying capacity that can satisfy more than 80 percent of the market” in China by 2020, up from a 70 percent target set in the 2015 document. In November 2020, the 2017 document was updated with the issuance of the *Made in China Key Area Technology Innovation Greenbook – Technology Roadmap (2019)*.

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

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

sectors. Developing countries are especially at risk of severe harm from industrial plans like *Made in China 2025*.

While public references to *Made in China 2025* subsided after June 2018 reportedly in response to an order from the central government, it is clear that China remains committed to achieving the underlying goals of *Made in China 2025* and continues to seek dominance for Chinese firms in the sectors that it views as strategic, both in China's market and globally. For example, in September 2020, the central government issued a guiding opinion encouraging investment in "strategic emerging industries," a term used to describe an earlier initiative from which *Made in China 2025* evolved. Among other things, the guiding opinion called for the support and creation of industrial clusters for strategic emerging industries, along with the use of various types of government support and funding. The guiding opinion specifically encouraged provincial and local governments to support industries such as advanced information technology, NEVs and biopharmaceuticals. More recently, the October 2022 Report to the 20th Party Congress also underscored the continuing importance of China's industrial policy objectives, calling for efforts to promote the development of strategic emerging industries and to "cultivate new growth engines such as next-generation information technology, artificial intelligence, biotechnology, new energy, new materials, high-end equipment and green industry."

In March 2021, the National People's Congress passed the *14th Five-Year Plan (2021-2025) for National Economic and Social Development* (the *14th Five-Year Plan*), together with a document titled *Long-Range Objectives Through Year 2035*. The *14th Five-Year Plan* and subsequently issued sector-specific five-year plans, along with five-year plans issued by sub-central governments, make clear that China will continue to pursue its various industrial domination objectives. While industrial plans like *Made in China 2025* were not named in the *14th Five-Year Plan*, there continues to be overlap between the industries identified in China's five-year

plans with both *Made in China 2025* industries and strategic emerging industries. More recent plans, including those issued at the sub-central level of government, also make clear that the state will continue to support these key industries. In addition, other longer-ranging plans, such as the *New Energy Vehicle Industry Development Plan (2021-2035)* and *China Standards 2035*, reaffirm China's strong commitment to a state-led, non-market approach to the economy and trade.

### STATE-OWNED ENTERPRISES

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

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



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

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

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

also called for "reforming" China's state-owned and state-invested enterprises.

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

With regard to the reform of China's state-owned enterprises, one example of China's efforts included an announcement that China would classify these enterprises into commercial, strategic or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. However, this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy and resource interests and cyber and information security interests. Similarly, in recent years, China has pursued reforms through efforts to realize "mixed ownership." These efforts included pressuring private companies to invest in, or merge with, state-owned and state-invested enterprises as a way to inject innovative practices into and create new opportunities for inefficient state-owned and state-invested enterprises. As should be evident, these various reforms do not strengthen the role of the market. Rather, they are intended to strengthen the role of state-owned enterprises in the economy and to direct state capital toward certain industries,

including those specified in *Made in China 2025*, in pursuit of China's industrial domination objectives.

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

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

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

otherwise create disadvantages for foreign companies and their technologies, products and services.

### TECHNOLOGY TRANSFER

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



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

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

In 2024, USTR expects to complete a statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR is examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers.

### INDIGENOUS INNOVATION

Policies aimed at promoting China's so-called "indigenous innovation" continue to represent an

important component of China's industrialization efforts. Through intensive, high-level bilateral engagement with China since 2009, the United States has attempted to address these policies, which provide various preferences when intellectual property is owned or developed in China, both broadly across sectors of China's economy and specifically in the government procurement context. For example, at the May 2012 meeting of the U.S.-China Strategic and Economic Dialogue (S&ED), China committed to treat intellectual property owned or developed in other countries the same as intellectual property owned or developed in China. The United States also used the U.S.-China Joint Commission on Commerce and Trade (JCCT) process in 2012 and subsequent discussions to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. At the December 2014 JCCT meeting, China clarified and underscored that it will treat intellectual property owned or developed in other countries in the same manner as domestically owned or developed intellectual property. Once again, however, these commitments were not fulfilled. China continues to pursue myriad policies that require or favor the ownership or development of intellectual property in China.

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

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

## SUBSIDIZATION

### INDUSTRIAL SUBSIDIES

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

The United States and other WTO Members also have continued to press China to notify all of its subsidies to the WTO in accordance with its WTO obligations while also submitting counter notifications listing hundreds of subsidy programs that China has failed to notify. Over the years, China's WTO subsidy notifications have marginally improved at times in terms of timeliness and completeness, but not consistently. Nevertheless, since joining the WTO more than 20 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central

government subsidy until July 2016, when it provided information largely only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO case. While China has continued to notify some sub-central government subsidies in its more recent subsidy notifications, these notifications are woefully inadequate and do not address the most distortionary sub-central government subsidies, such as the increasingly prolific, and very large, "government guidance funds" that can be found at all levels of government in China.

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

Separately, the United States has continued to pursue a series of proposals to reform the functioning of the WTO Committee on Subsidies and Countervailing Measures. These proposals have focused on ensuring that Members timely provide written responses to written questions regarding their subsidy programs.

### EXCESS CAPACITY

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

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

From 2000 to 2022, China accounted for 72 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States, Canada, Mexico and Brazil.

At the same time, China's steel production is continually reaching new highs, eclipsing demand. In

2020, China's steel production climbed above one billion metric tons for the first time, reaching 1,065 million metric tons, a seven percent increase from 2019, and remained high at 1,018 million metric tons in 2022, despite a significant contraction in domestic steel demand. This sustained ballooning of greenhouse gas (GHG) emissions-intensive steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, has flooded the global market with excess steel and steel-intensive products at a time when steel and other manufacturing sectors outside of China are facing renewed weakness in market conditions, growing global excess capacity, a slowdown in world economic growth and continued disruptions in supply chains. In 2022, China exported more steel than the world's second, third and fourth largest steel producers (India, Japan and the United States) combined. Furthermore, China's exports from January through September 2023 were 36 percent higher than during the same period in 2022. Today, China remains by far the world's largest exporter of steel and steel-intensive products. China's steel production also remains far dirtier than the steel production that it displaces in the United States and most other countries, thereby undermining global efforts to transition to a clean-energy economy.

Similarly, primary aluminum production capacity in China increased by more than 1,400 percent between 2000 and 2022, with China accounting for 80 percent of global capacity growth during that period. China's expansion of production capacity has driven price declines globally, but even with these low prices, China has continued to expand its production capacity. Much of this additional capacity has been built with government support and relies on GHG emissions-intensive sources of electricity. China's primary aluminum capacity now accounts for 57 percent of global capacity and is more than double the capacity of the next eight aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, as China's aluminum production has continued to increase despite global

demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. aluminum producers and workers.

Excess capacity in China hurts various U.S. workers and industries not only through direct exports from China to the United States, but also through its impact on global prices and supply and through indirect trade of steel and aluminum-intensive products, which makes it difficult for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has acted under Section 232 of the Trade Expansion Act of 1962 to impose additional duties on steel and aluminum products after finding that steel and aluminum products are being imported into the United States in such quantities and under such circumstances as to threaten to impair U.S. national security. In the United States' view, in the absence of efforts to redress China's anticompetitive behavior, the risk is that steel and aluminum producers in the United States and many other countries with market-oriented economies will be forced to close, which would, among other things, create even greater dependencies on China.

### AGRICULTURAL DOMESTIC SUPPORT

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China maintains direct payment programs, minimum support prices for basic commodities and input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. In 2016, China established subsidies for starch and ethanol producers to incentivize the purchase of domestic corn, resulting in higher volumes of exports of processed corn products from China in 2017 and 2018. In addition, in 2022, China began encouraging soybean production through

various support programs, such as through increased subsidies for crop rotations, awards to counties with high oilseed production, incentives to promote the intercropping of corn and soybeans, and subsidies for "demonstration farming" of soybeans on alkali and salty land.

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

In September 2016, the United States launched a WTO case challenging China's government support for the production of wheat, corn and rice as being in excess of China's commitments. Like other WTO Members, China committed to limit its support for producers of agricultural commodities. China's market price support programs for wheat, corn and rice appear to provide support far exceeding the agreed levels. This excessive support creates price distortions and skews the playing field against U.S. farmers. In October 2016, consultations took place. In January 2017, a WTO panel was established to hear the case. Hearings before the panel took place in January and April 2018, and the panel issued its decision in February 2019, ruling that China's domestic support for wheat and rice was WTO-inconsistent. China originally agreed to come into compliance with the panel's recommendations by March 31, 2020. The United States subsequently agreed to extend this deadline to June 30, 2020. In July 2020, the United States submitted a request for

authorization to suspend concessions and other obligations pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor the operation of China's market price support programs for wheat and rice.

### FISHERIES SUBSIDIES

It is estimated that China is the world's largest provider of harmful fisheries subsidies, with support exceeding \$4.2 billion annually. These subsidies contribute to overfishing and overcapacity that threatens global fish stocks. Indeed, China is the world's largest producer of marine capture fisheries and, in the years since its WTO accession, has continued to support its fishing fleet through subsidies and other market-distorting means. China's annual fisheries harvest is nearly double that of the next largest producer in the world in terms of marine capture and triple that of other top producers, like the United States, India and Japan. At the same time, reports continue to emerge about Chinese-flagged fishing vessels engaging in illegal, unreported and unregulated (IUU) fishing in distant waters, including in areas under the jurisdiction of other WTO Members. While China has made some progress in reducing subsidies to domestic fisheries, it continues to shift its overcapacity to international fisheries by providing a much higher rate of subsidy support to Chinese distant water fishery enterprises.

For several years, the United States has been raising its long-standing concerns over China's fisheries subsidies programs. In 2015, the United States submitted a written request for information pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies

Agreement). This submission addressed fisheries subsidies provided by China at central and sub-central levels of government. The subsidies at issue were set forth in nearly 40 measures and included a wide range of subsidies, including fishing vessel acquisition and renovation grants, grants for new fishing equipment, subsidies for insurance, subsidized loans for processing facilities, fuel subsidies and the preferential provision of water, electricity and land. When China did not respond to this request, the United States submitted an Article 25.10 counter notification covering these same measures. More recent subsidy notifications by China have been more fulsome, but still incomplete.

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

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

## IMPORT POLICIES

### TRADE REMEDIES

As of December 2023, China had in place 117 antidumping measures, affecting imports from 17 countries or regions, with two new antidumping investigations underway. China also had in place five countervailing duty measures, affecting imports from two countries or regions. The greatest systemic shortcomings in China's antidumping and countervailing duty practice continue to be in the areas of transparency and due process. Over the years, China has often utilized antidumping and countervailing duty investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending antidumping and countervailing duty proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

The conduct of antidumping investigations by China's Ministry of Commerce (MOFCOM) continues to fall short of full commitment to the fundamental tenets of transparency and procedural fairness embodied in the WTO's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, commonly known as the Antidumping Agreement. The United States and other WTO Members accordingly have expressed concerns about key lapses in transparency and due process in China's conduct of antidumping investigations. The principal areas of concern include: MOFCOM's inadequate disclosure of key documents placed on the record by domestic Chinese producers; insufficient disclosures of the essential facts underlying MOFCOM decisions, such as dumping margin calculations and evidence supporting injury and dumping conclusions; MOFCOM's failure to issue supplemental questionnaires in instances where MOFCOM identifies information deficiencies; the improper

rejection of U.S. respondents' reported cost and sales data; the unjustified use of facts available; and MOFCOM's failure to adequately address critical arguments or evidence put forward by interested parties. These aspects of China's antidumping practice have been raised with MOFCOM in numerous proceedings over the past several years.

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

On several occasions in the past, the United States has expressed serious concerns about China's pursuit of antidumping and countervailing duty remedies that appear to be retaliatory and intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO antidumping and countervailing duty rules and the trade remedy provisions of China's accession agreement. It also appears that China has used arbitrary economic and trade measures, including antidumping and countervailing duty investigations, as a form of economic coercion designed to achieve China's political goals. The antidumping and countervailing duties that China imposed on imports of Australian barley and imports of Australian wine in 2021 provide two obvious examples of this tactic.

In certain recent investigations of U.S. imports, China has also made determinations without legal or factual support. For example, in the final countervailing duty determination on imports of n-propanol from the United States, China found that



alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required by the Subsidies Agreement.

### **TARIFF-RATE QUOTA ADMINISTRATION FOR AGRICULTURAL COMMODITIES**

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized as of December 2023. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. As a result, China's TRQs for wheat, corn and rice seldom fill even when they are oversubscribed. For example, from 2020 to 2023, China's corn imports exceeded TRQ levels, but the TRQ issuance, application and allocation processes lacked transparency, and large state-owned enterprises in China appear to have been the primary beneficiaries of the increased imports.

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

ongoing administration of the tariff-rate quotas for wheat, corn and rice.

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

### **VAT REBATES FOR AGRICULTURAL COMMODITIES**

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

### **ENVIRONMENTAL POLICIES**

#### **IMPORT BAN ON SCRAP MATERIALS AND RECYCLABLE MATERIALS**

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

Since 2017, China has issued numerous measures that limit or ban imports of most scrap and recovered materials, such as certain types of plastic,

paper and metals. China has also employed import licensing and inspection measures to restrict imports of scrap materials contrary to international standards and practices. Notably, China does not universally apply similar restrictions to domestic processors of domestically sourced scrap and recovered materials.

In 2020, China amended the *Law on the Prevention and Control of Environmental Pollution by Solid Waste*. According to this amended law, the intent is to reduce imports of solid waste essentially to zero.

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

In addition to impacting the global market for scrap and recovered materials, the tightened restrictions have raised the costs of recycling in the United States, leading some communities to end recycling programs. Additionally, other countries, particularly in Southeast Asia, have introduced their own regulatory changes that in some ways parallel the changes in China's import regime, such as by setting impossibly high purity standards for recyclable materials, imposing new import licensing requirements and requiring pre-shipment and post-shipment inspections. As a result, significant amounts of U.S. scrap materials and recyclable materials have not found new buyers, leading to increased landfilling, incineration and air pollution and increased demand for virgin materials globally.

### IMPORT BAN ON REMANUFACTURED PRODUCTS

China prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains restrictions that prevent remanufacturing process inputs (known as cores) from being imported into China's customs territory, except special economic zones. These import prohibitions and restrictions undermine the

development of industries in many sectors in China, including mining, agriculture, healthcare, transportation and communications, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China. Nevertheless, China is apparently prepared to pay this price in order to limit imports of remanufactured goods.

### LABOR

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

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



In July 2020, the United States issued a Xinjiang Supply Chain Business Advisory for U.S. businesses whose supply chains run through Xinjiang, China. The United States updated this advisory in July 2021. As updated, the advisory calls urgent attention to U.S. businesses' supply chain risks and identifies serious investing and sourcing considerations for businesses and individuals with exposure to entities engaged in forced labor and other human rights abuses linked to Xinjiang. The advisory also describes U.S. government actions taken to date to counter the use of forced labor in Xinjiang and to prohibit the importation of goods produced in whole or in part with forced labor or convict labor. In September 2023, the United States issued an addendum to the updated advisory to further highlight reports on state-sponsored forced labor and human rights abuses in Xinjiang as well as to stress the urgency for businesses to undertake appropriate due diligence measures.

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

The United States also published its UFLPA Enforcement Strategy in June 2022. This Enforcement Strategy took into account input received from private individuals, industry associations, consultancy and risk-management companies, civil society organizations, non-governmental organizations (NGOs), labor unions and others who shared their views on potential measures to prevent the importation of goods mined, produced or manufactured wholly or in part with forced labor in China into the United States. The main components of the Enforcement Strategy include (1) an assessment of the risk of importing goods made with forced labor in China, (2) the development of the UFLPA Entity List and descriptions of forced-labor schemes, (3) the consideration of efforts, initiatives and tools to

identify and trace the origin of goods, (4) a description of relevant legal authorities and tools to prevent entry of violative goods, (5) a description of resources, (6) the development of importer guidance and (7) the development of a coordination plan with NGOs and the private sector.

Various U.S. agencies have been working to compile and update the UFLPA Entity List, a consolidated register of four distinct lists, including: (1) a list of entities in Xinjiang that mine, produce or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor; (2) a list of entities that work with the government authorities of Xinjiang to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz or members of other persecuted groups out of Xinjiang; (3) a list of entities that export products mined, produced or manufactured by entities in lists 1 or 2 above from China into the United States; and (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government authorities in Xinjiang or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing assistance" program or any other government labor scheme that uses forced labor. To date, dozens of entities have been designated on the UFLPA Entity List.

Separately, in June 2022, President Biden issued the Memorandum on Combating Illegal, Unreported and Unregulated Fishing and Associated Labor Abuses. This Memorandum notes that, if left unchecked, IUU fishing and associated labor abuses threaten the livelihoods and human rights of fishers around the world and will undermine U.S. economic competitiveness, national security and fishery sustainability. It also notes that this behavior will exacerbate the environmental and socioeconomic effects of climate change. In December 2022, the Treasury Department sanctioned individuals associated with China's distant water fishing vessels for serious human rights abuse, including forced labor, of workers aboard these vessels.

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

## SANITARY AND PHYTOSANITARY MEASURES

### OVERVIEW

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

### AGRICULTURAL BIOTECHNOLOGY APPROVALS

The Chinese regulatory approval process for agricultural biotechnology products creates significant uncertainty among developers and traders, slowing commercialization of products and creating adverse trade impacts, particularly for U.S. exports of corn, soy, canola and alfalfa. Despite some recent product approvals, the process remains lengthy and opaque and continues to reflect significant asynchrony relative to approvals issued by regulatory authorities in many other countries.

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

Since 2021, China's National Biosafety Committee (NBC) has issued biosafety certificates to foreign developers for several new GE products for import for feed or processing, including alfalfa, canola, corn, cotton, soybean, and sugarcane products. Some of these approved products had been under review for more than 10 years. During the same time period, China has issued biosafety certificates to Chinese developers for well over 100 new corn, cotton, and soybean products for domestic cultivation. These approvals continue the recent trend of expanding domestic approvals for GE crops beyond solely cotton.

China's approach to agricultural biotechnology remains among the most significant commitments under the Phase One Agreement for which China has not demonstrated full implementation. Despite the commitments that China made, there remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these

meetings and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months, as it had committed to do, even when taking into account recent approvals.

### FOOD SAFETY

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

In November 2019, China's regulatory authorities issued draft measures for public comment that would require the registration of all foreign food manufacturers. The United States submitted comprehensive written comments on the draft measures to China's regulatory authorities. The United States also raised concerns about them before the WTO TBT Committee and the WTO SPS Committee. More than 15 WTO Members supported the concerns raised by the United States.

In April 2021, China's regulatory authorities issued final versions of these measures, now known as Decrees 248 and 249, with an implementation date of January 1, 2022. In correspondence delivered to

foreign missions in Beijing in September 2021, China's regulatory authorities laid out a non-transparent, multi-tier system where producers of certain products are required to be registered by foreign regulatory authorities, while producers of other products are eligible to self-register. Decrees 248 and 249 also establish new labeling and conformity assessment requirements. In July 2023, China implemented additional registration requirements for certain products under Decree 248, expanding the burden on foreign food safety regulators. Moreover, the tasks being required of foreign food safety regulators are fundamentally beyond the traditional roles of regulatory authorities. These various additional requirements have already disrupted trade, especially for new U.S. food manufacturers unable to meet the requirements for first-time registration.

Decree 248 and similar prior measures continue to place excessive strain on food producers, traders and exporting countries' regulatory authorities, with no apparent added benefit to food safety. They instead provide China with a tool to control food imports, as decided by China's state planners, and to retaliate against food producers from countries whose governments challenge Chinese government policies or practices in non-trade areas.

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

### POULTRY

In the Phase One Agreement, China agreed to maintain measures consistent with the World

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

Starting in February 2022, the United States notified China of detections of HPAI in multiple U.S. states. In the ensuing months, several states recovered from these detections, and they were deemed HPAI-free by the United States. The United States submitted reports to China for these states and requested approval to resume exporting poultry from these states to China. China has yet to confirm the restoration of market access.

### PORK

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

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

has not yet made any progress on next steps based on the risk assessment, which will need to include the establishment of MRLs or import tolerances.

### BEEF

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

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

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

another example of China's inadequate implementation of the Phase One Agreement.

## TECHNICAL BARRIERS TO TRADE

### STANDARDS

The Chinese government continues to pursue changes to its standards system, including by moving from a government-led system to one that incorporates both government guidance and outside input. At times, Chinese government officials have also indicated they provide equal treatment to foreign companies in connection with China's standardization work. However, in practice, the Chinese government continues to limit foreign participation in standards setting and, at times, still pursues unique national standards for strategic reasons.

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

As these implementing measures have been issued, China's existing technical committees have continued to develop standards. U.S. and other foreign companies have reported that they are often not permitted to participate in these domestic standards-setting processes, and even in technical

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

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

Notably, U.S. concerns about China's standards regime are not limited to the implications for U.S. companies' access to China's market. China's ongoing efforts to develop unique national standards aims eventually to serve the interests of Chinese companies seeking to compete globally, as the Chinese government's vision is to use the power of its large domestic market to influence the development of international standards. The United States remains very concerned about China's policies with regard to standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised *Standardization Law*.

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

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

### COSMETICS

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

The CSAR implementing measures contain provisions that would require companies to disclose full product formulations, ingredient suppliers, manufacturing methods, claims and safety data to both NMPA and local agents in China when products are registered or notified. In addition, these measures require companies to publish claims abstracts that may contain trade secrets and confidential business information on NMPA's website. The United States has expressed concern to China that its regulators are applying an approach that treats cosmetics as having much higher safety risks than is warranted. China's filing and registration requirements for cosmetics also significantly diverge from those in other major markets and do not align with international standards, making compliance very burdensome for exporters.

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

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



the conformity of product and ingredient safety and performance claims.

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

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

### INVESTMENT RESTRICTIONS

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

separate regimes for domestic investors and investments and foreign investors and investments and invite opportunities for discriminatory treatment.

There has also been a lack of substantial liberalization of China's investment regime, evidenced by the continued application of prohibitions, foreign equity caps and joint venture requirements and other restrictions in certain sectors. China's most recent version of its *Foreign Investment Negative List*, which entered into force in January 2022, leaves in place significant investment restrictions in a number of areas important to foreign investors, such as key services sectors, certain types of agriculture and several extractive industries. With regard to services sectors, China maintains prohibitions or restrictions in key sectors such as cloud computing services and other Internet-related services, telecommunications services, film production and film distribution services, and video and entertainment software services. With regard to agriculture, China maintains prohibitions on the development of agricultural biotechnologies and restrictions on the development of new varieties of corn and wheat. Similarly, China maintains prohibitions on the exploration, mining and processing of all of the 17 types of rare earths as well as tungsten.

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

*Information Protection Law* and related implementing measures, including ones that unduly restrict cross-border data flows and impose data localization requirements, have serious negative implications for foreign investors and investments. Foreign companies also continue to report that Chinese government officials may condition investment approval on a requirement that a foreign company transfer technology, conduct research and development (R&D) in China, satisfy performance requirements relating to exportation or the use of local content or make valuable, deal-specific commercial concessions.

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

More recently, the investment climate has turned unusually negative, in large part because of actions taken by the Chinese government. For example, over the past year, purportedly in implementing amendments to China's *Counterespionage Law* that broaden the definition of espionage, Chinese security officials raided and detained staff at several multinational companies operating in China that help investors perform due diligence regarding existing or potential new investments in China. With no effective judicial oversight or other means for challenging these actions, investor confidence in China has been severely damaged.

In August 2023, perhaps in an effort to restore investor confidence, China's State Council released a new measure, titled *Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, in the apparent hope of attracting increased levels of foreign investment. Often referred to as Document No. 11, this measure sets forth general guidance to central

level ministries and sub-central government authorities on 24 topics related to foreign investment. China has issued similar guidance in the past without meaningfully following through.

### COMPETITION POLICIES

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

In November 2021, China elevated the status of SAMR's anti-monopoly bureau, by designating a vice minister as its official-in-charge and re-naming it the National Anti-Monopoly Agency while also separating its functions into three bureaus. The division into three bureaus appears to have allowed SAMR to increase the number of staff responsible for antimonopoly law enforcement. It remains to be seen how the elevated status of the National Anti-Monopoly Agency and its increased staff will impact anti-monopoly policy enforcement in China.

In June 2022, the National People's Congress Standing Committee passed amendments to the *Anti-Monopoly Law*. These amendments gave SAMR expanded authority to investigate potential anti-competitive behavior as well as the authority to impose increased fines for certain conduct and the authority to impose up to a five-times fine multiplier for particularly serious violations.

As previously reported, China's implementation of the *Anti-Monopoly Law* has generated various



concerns. A key concern is the extent to which the *Anti-Monopoly Law* is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the *Anti-Monopoly Law* does apply to state-owned enterprises, to date they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of SASAC. In addition, provisions in the *Anti-Monopoly Law* protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Another key concern relates to how the *Anti-Monopoly Law* is applied to foreign companies. Many U.S. companies have cited selective enforcement of the *Anti-Monopoly Law* against foreign companies seeking to do business in China as a major concern, and they have highlighted in particular the comparatively limited enforcement of this law against state-owned enterprises. In recent years, China has begun to increase the number of actions taken against private Chinese companies and wholly domestic transactions.

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

U.S. industry has also expressed concern about insufficient predictability, due process and transparency in *Anti-Monopoly Law* investigative processes of foreign companies. For example, U.S. industry reports that, through the threat of steep fines and other penalties, China's regulatory authorities have pressured foreign companies to "cooperate" in the face of unspecified allegations and have discouraged or prevented foreign companies from bringing counsel to meetings. In addition, U.S. companies continue to report that the

Chinese regulatory authorities sometimes make "informal" suggestions regarding appropriate company behavior, including how a company is to behave outside China, strongly suggesting that a failure to comply may result in investigations and possible punishment. More recently, high-level policy statements suggest increased *Anti-Monopoly Law* enforcement where technology owned or controlled by foreign companies allegedly implicates national security concerns or implicates technology being prioritized for indigenous innovation in China.

Given the state-led nature of China's economy, the need for careful scrutiny of anti-competitive government restraints and regulation is high. The *Anti-Monopoly Law's* provisions on the abuse of administrative (i.e., government) power are potentially important instruments for reducing the government's interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council's adoption of the *Opinions on Establishing a Fair Competition Review System* in 2016 reflected a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anti-competitive regulation of competition. Increased oversight in this area was also reflected in the amendments to the *Anti-Monopoly Law* in 2022, which included a new chapter regarding the abuse of administrative monopoly. SAMR has since issued draft rules regarding the abuse of administrative monopoly, and SAMR has also identified the elimination of administrative monopolies as an enforcement priority. It remains to be seen whether SAMR will have sufficient authority and resources to implement this enforcement priority robustly.

## EXPORT POLICIES

### EXPORT RESTRAINTS

Over the years, China has deployed a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material

inputs where it holds the leverage of being among the world's leading producers. In many instances, through these export restraints, it appears that China has been able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China.

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

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

rare earth exporters need to abide by laws and regulations in the area of export controls. More recently, in November 2023, China began requiring exporters to provide detailed reporting on transactions involving rare earths.

In 2023, China also began applying its export control regime to other critical minerals. As of August 2023, China is requiring export licenses for products containing gallium or germanium. Similarly, as of December 2023, China is requiring export licenses for products containing graphite.

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

Meanwhile, U.S. companies report that China has also instituted export restrictions on corn starch, apparently in an effort to stabilize domestic prices. To date, however, the Chinese government still has not published an official notice.

### VAT REBATES AND RELATED POLICIES

As in prior years, in 2023, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products for which China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also contributed to severe excess capacity in these same industries.

An apparently positive development took place at the July 2014 S&ED meeting, when China committed

to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. To date, China has not made any movement toward the adoption of international best practices.

## INTELLECTUAL PROPERTY PROTECTION

### OVERVIEW

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

The Phase One Agreement addresses numerous longstanding U.S. concerns relating to China's inadequate intellectual property protection and enforcement. Specifically, the agreement requires China to revise its legal and regulatory regimes in a number of ways in the areas of trade secrets, pharmaceutical-related intellectual property, patents, trademarks and geographical indications. In addition, the agreement requires China to make numerous changes to its judicial procedures and to

establish deterrent-level penalties. China must also take a number of steps to strengthen enforcement against pirated and counterfeit goods, including in the online environment, at physical markets and at the border.

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

### TRADE SECRETS

Serious inadequacies in the protection and enforcement of trade secrets in China have been the subject of high-profile engagement between the United States and China in recent years. Several instances of trade secret theft for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Particularly troubling are reports that actors affiliated with the

Chinese government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' proprietary information and intellectual property, for the purpose of providing commercial advantages to Chinese enterprises.

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

At the November 2016 JCCT meeting, China claimed that it was strengthening its trade secrets regime and bolstering several areas of importance, including the availability of evidence preservation orders and damages based on market value as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. China amended the *Anti-Unfair Competition Law*, effective January 2018 and April 2019, as well as the *Administrative Licensing Law*, effective April 2019, and the *Foreign Investment Law*, effective January 2020. Nevertheless, the amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement. In 2022, China published additional draft amendments to the *Anti-Unfair Competition Law*, but they contain few changes to the law's trade secrets provisions.

The Phase One Agreement significantly strengthens protections for trade secrets and enforcement against trade secret theft in China. In particular, the chapter on intellectual property requires China to expand the scope of civil liability for misappropriation beyond entities directly involved in

the manufacture or sale of goods and services, to cover acts such as electronic intrusions as prohibited acts of trade secret theft and to shift the burden of proof in civil cases to the defendants when there is a reasonable indication of trade secret theft. It also requires China to make it easier to obtain preliminary injunctions to prevent the use of stolen trade secrets, to allow for initiation of criminal investigations without the need to show actual losses, to ensure that criminal enforcement is available for willful trade secret misappropriation and to prohibit government personnel and third party experts and advisors from engaging in the unauthorized disclosure of undisclosed information, trade secrets and confidential business information submitted to the government.

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

therefore remains incomplete. Indeed, China has only published a draft judicial interpretation. The United States will continue to monitor the effectiveness of all of these measures.

### BAD FAITH TRADEMARK REGISTRATION

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

At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad faith trademarks and asserted that it was taking further steps to combat bad faith trademark filings. Amendments to the *Trademark Law* made in 2019 and subsequent implementing measures, including SAMR’s *Provisions on Standardizing Applications for Registrations of Trademarks* issued in 2019 and the *Trademark Examination and Review Guidelines* updated in 2021 by the China National Intellectual Property Administration (CNIPA), require the disallowance of bad faith trademark applications. In January 2023, China proposed further amendments to the *Trademark Law* regarding bad faith trademarks.

However, implementation in this area by China to date suggests that right holders remain insufficiently protected, as bad faith trademarks remain widespread and problems persist with the large number of inconsistent decisions, low rate of success for oppositions, lack of transparency in opposition proceedings and unavailability of default judgments against applicants who fail to appear in proceedings. Onerous documentation requirements are also an ongoing concern for right holders. China acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public

Documents (Apostille Convention), effective November 2023. The United States will monitor China’s implementation of the obligations under the Apostille Convention and whether it addresses right holders’ concerns regarding foreign government document legalization requirements.

As a result of these deficiencies, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and “holding them for ransom” or seeking to establish a business building off of U.S. companies’ global reputations. The Phase One Agreement requires China to address longstanding U.S. concerns regarding bad-faith trademark registration, such as by invalidating or refusing bad faith trademark applications. The United States will continue to monitor developments in this area of long-standing concern closely.

### ONLINE INFRINGEMENT

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

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

At the November 2016 JCCT meeting, China agreed to actively promote electronic commerce-related

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

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

In May 2020, the National People's Congress issued the *Civil Code*, which included updated notice-and-takedown provisions. In September 2020, the Supreme People's Court issued *Guiding Opinions on Hearing Intellectual Property Disputes Involving E-Commerce Platform* and the *Official Reply on the Application of Law in Network-Related Intellectual Property Infringement Disputes*. These measures relate to issues such as expeditious takedowns and the validity of notices and counter-notifications, but have only recently taken effect. In November 2020, the National People's Congress adopted long-pending amendments to the *Copyright Law*,

including provisions relating to increasing civil remedies for copyright infringement, new rights of public performance and broadcasting for producers of sound recordings, and protections against circumvention of technological protection measures. Right holders have welcomed these developments but have noted the need for effective implementation as well as new measures to address online piracy. The United States will closely monitor the impact of these measures going forward.

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

### COUNTERFEIT GOODS

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



remainder of this law would be forthcoming. Although the final *Drug Administration Law*, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, it remains unclear how these requirements will be implemented or enforced.

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

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

## PHARMACEUTICALS AND MEDICAL DEVICES

### PHARMACEUTICALS

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices, regulatory approvals that are delayed or linked to extraneous criteria, weak protections against the unfair commercial use and unauthorized disclosure of regulatory data, issues with the implementation of an efficient mechanism to resolve patent infringement disputes, requirements to share ownership with a Chinese partner of patent rights arising from research generated by using human genetic resources in China and implementation of patent term extensions for unreasonable marketing approval delays, including limits on the type of protection provided. While China has implemented some helpful reforms, the United States still has many of the same concerns with China's pharmaceutical market, especially as it pertains to treatment of foreign companies.

In its WTO accession agreement, China committed to provide effective protection against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. To provide this protection, known as regulatory data protection (RDP), China committed to enact laws and regulations to ensure that no person, other than the submitter of the data, could rely on the submitted data in a product approval application without permission from the submitter for six years from the date on which China granted marketing approval to the submitter.

In 2017, CFDA finally issued several draft notices addressing the issue of RDP. These draft notices set out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain

marketing approval for pharmaceutical products, and they also sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, the proposed framework did not provide for a six-year period of RDP despite the commitment that China had made in its WTO accession agreement in 2001.

In 2018, CFDA's successor agency, NMPA, issued draft *Drug Registration Regulations* and draft implementing measures on drug trial data that would preclude or condition the duration of RDP on whether clinical trials occur in China and whether marketing approval is sought first in China. Subsequently, China issued a revised *Drug Administration Law* in 2019, followed by NMPA's revised draft *Drug Registration Regulations* in 2020 and NMPA's revised draft *Drug Administration Law Implementing Regulations* in 2021. Despite the opportunities that these revised draft measures afforded China's regulatory authorities, the concerning limitations on RDP were not removed, and China still has not created a regulatory framework providing for the six-year period of RDP as it had committed to do in 2001.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals, largely because of the opaque and unpredictable nature of the bidding processes. In November 2018, a National Drug Centralized Procurement Pilot Scheme was launched. Then, in January 2019, the State Council issued a Pilot Plan for National Centralized Drug Procurement and Use. In January 2023, China's National Healthcare Security Administration (NHSA) published the 2022 edition of its annual National Reimbursement Drug List (NRDL), which became effective on March 1, 2023. U.S. industry also cites the need for increased transparency and greater harmony between national and provincial bidding processes as well as a greater emphasis on a competitive, market-based approach to evaluating a product's value and relevant bids. In December 2022, NHSA and CNIPA jointly issued the *Opinions on*

*Strengthening the Protection of Intellectual Property Rights in the Field of Centralized Pharmaceutical Procurement*, which sets out to establish a coordination mechanism to remove patent-infringing drugs from the NRDL, with further implementing measures to follow.

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

In October 2020, China amended the *Patent Law* to provide for patent term extensions for unreasonable patent and marketing approval delays, and it also added a mechanism for the early resolution of potential patent disputes, known as patent linkage. Implementing measures for the patent linkage mechanism were issued in July 2021, as NMPA and CNIPA jointly issued the *Trial Implementation Measures for the Mechanism for Early Resolution of Drug Patent Disputes* and the Supreme People's Court issued the *Regulations on Several Issues Concerning the Application of Law in the Trial of Civil Patent Disputes Related to Drug Registration Application*. In 2021 and 2022, CNIPA issued draft implementing rules for the amended *Patent Law* and drafts of amendments to the *Patent Examination Guidelines*. In December 2023, China released the final implementing rules for the amended *Patent Law*.



Among other things, the United States and U.S. industry remain concerned about China's implementation of patent term extensions for unreasonable patent and marketing approval delays, including the limits on the type of protection provided by China's regulatory framework. The United States and U.S. industry also remain concerned about China's patent linkage mechanism.

### MEDICAL DEVICES

For many years, working closely with U.S. industry, the United States has raised concerns about China's pricing and tendering procedures for medical devices and its discriminatory treatment of imported medical devices. Notably, at the November 2015 JCCT meeting, China committed that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, despite this commitment, China continues to pursue a wide range of policies that direct China's purchasing authorities to prioritize the procurement of domestic medical device manufacturers over imported medical device manufacturers.

Separately, the United States has pressed China's regulatory authorities to develop sound payment systems for medical devices that are transparent, predictable and competitive. The United States has also urged China to adequately recognize quality, safety and the costs of R&D in its approach to procurement policy.

In 2019, China's State Council launched a concerning volume-based procurement (VBP) approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. Since then, the VBP approach has become further engrained in China's system, with the formation of multi-province and municipal alliances to conduct joint procurements under VBP. In 2020, China implemented its first national VBP tender, which has been followed by additional national tenders in 2021 and 2022. However, U.S. industry reports that the

vast majority of VBP tendering activities are occurring at the sub-national level. In practice, moreover, implementation of China's VBP prioritizes cost over the product's value or quality.

According to U.S. industry, if China continues to pursue VBP without significant changes, it could lead to the creation of a low-cost, low-quality medical devices sector in China, with Chinese medical device companies developing monopolies in the manufacture and sale of various low-quality medical devices in the China market. This outcome would operate to the disadvantage of innovative medical device companies, many of which are foreign companies, and the patients who rely on advanced medical technologies. Currently, medical device companies that are successful at winning bids often have very thin profit margins or even lose money. Reportedly, some medical device companies are reducing training to healthcare providers in order to offer the expected price cuts. In addition, given the size of China's medical device market, monopolies from China could expand and then prioritize exports of their low-quality medical devices to third countries. With the choice between a higher cost but more effective product or a lower cost, lower quality product, countries with greater budget constraints, and greater vulnerability to Chinese influence, may be more inclined to procure China's offerings. Overall, China's VBP approach poses a risk to the medical device sector and the provision of high-quality medical treatment worldwide.

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

Meanwhile, the *Made in China 2025* industrial plan announced by the State Council in 2015 seeks to prop up China's domestic medical device sector through a series of support policies, including

targeted funds and procurement policies. The goal of these policies is to significantly increase the market share of domestically owned and domestically manufactured medical devices, and correspondingly decrease market share of foreign medical devices, by 2025. At the same time, some provincial governments directly subsidize the purchase of domestically manufactured medical devices. In addition, some provincial governments have issued guidelines urging medical institutions to prioritize the procurement of local medical equipment over imported equipment. In at least one province, the guidelines suggest that only imported medical devices for which there is not a domestic replacement will be eligible for procurement.

As discussed in more detail in the Government Procurement section below, in August 2023, China's State Council issued the *Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, known as Document 11. Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises are able to participate fairly in China's government procurement market, consistent with existing Chinese law. One of the suggestions is to provide a definition for "produced in China." To the extent that China follows through on the State Council's suggestions, the United States urges China to make any draft implementing measures public and to provide a reasonable period for the public to submit comments.

U.S. industry also reports that while sub-central governments in China have always provided some financial support to domestic medical devices companies, their support appears to have increased since 2020. U.S. industry notes that this trend could be attributed to the COVID-19 pandemic, China's five-year industrial plan for medical equipment covering the years 2021 to 2025, the *Action Plan to Promote the High-Quality Development of the Medical Equipment Industry (2023-2025)* or perhaps

all three of them. The United States will monitor this situation closely and will encourage China to be transparent in its approach.

## SERVICES

### OVERVIEW

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

In 2023, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery and legal services. In addition, China's *Cybersecurity Law* and related implementing measures include mandates to purchase domestic information and communications technology (ICT) products and services, while China's *Cybersecurity Law*, *Data Security Law* and *Personal Information Protection Law* and related implementing measures include excessive restrictions on cross-border data flows, and excessive requirements to store and process data locally. These types of data measures undermine U.S. services suppliers' ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China also has failed to fully address U.S.

concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

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

### **BANKING SERVICES**

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

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

In the Phase One Agreement, China committed to remove some of these barriers and to expand opportunities for U.S. financial institutions, including bank branches, to supply securities investment fund

custody services by considering their global assets when they seek licenses. China also agreed to review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis. In addition, China committed to consider the international qualifications of U.S. financial institutions when evaluating license applications for Type-A lead underwriting services for all types of non-financial debt instruments in China.

### **SECURITIES, ASSET MANAGEMENT AND FUTURES SERVICES**

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

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

### **INSURANCE SERVICES**

In the Phase One Agreement, China committed to accelerate the removal of the foreign equity caps for life, pension and health insurance so that they are removed no later than April 1, 2020. In addition, it confirmed the removal of the 30-year operating

requirement, known as a “seasoning” requirement, which had been applied to foreign insurers seeking to establish operations in China in all insurance sectors. China also committed to remove all other discriminatory regulatory requirements and processes and to expeditiously review and approve license applications.

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

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

Finally, some U.S. insurance companies established in China have encountered difficulties in getting CBIRC, replaced by the National Administration of Financial Regulation (NAFR) in March 2023, to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge NAFR to issue timely approvals when U.S. insurance companies seek to expand their branch networks in China.

### **ELECTRONIC PAYMENT SERVICES**

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

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

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

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China’s market. In June 2020, four months after the entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license from PBOC to operate in China’s market. In November 2023, after years of delays, Mastercard was finally able to secure a license to operate in the

China market. Meanwhile, PBOC has been delaying action for even longer periods of time on the licensing application submitted by another U.S. supplier, Visa. The United States continues to closely monitor this situation with concern.

### INTERNET-ENABLED PAYMENT SERVICES

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

### TELECOMMUNICATIONS SERVICES

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

has succeeded in establishing a new joint venture to enter this sector.

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

### INTERNET REGULATORY REGIME

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

China continues to engage in extensive blocking of legitimate websites, imposing significant costs on both suppliers and users of web-based services and products. According to the latest data, China currently blocks most of the largest global sites, and

U.S. industry research has calculated that more than 10,000 sites are blocked, affecting billions of dollars in business, including communications, networking, app stores, news and other sites. Even when sites are not permanently blocked, the often arbitrary implementation of blocking, and the performance-degrading effect of filtering all traffic into and outside of China, significantly impair the supply of many cross-border services, often to the point of making them unviable.

### VOICE-OVER-INTERNET PROTOCOL SERVICES

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

### CLOUD COMPUTING SERVICES

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

to independently develop its business. It has essentially handed over its business to a Chinese company that may well become a global competitor. This treatment has generated serious concerns in the United States and among other WTO Members as well as U.S. and other foreign companies.

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

### AUDIO-VISUAL AND RELATED SERVICES

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

China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, foreign investment in TV production and foreign investment in TV stations and channels. China also imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration's (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in



each of several categories, including foreign movies, TV shows, cartoons, documentaries and other foreign TV programs, made available for display via broadcasting institutions and online audio-visual content platforms. It also would prohibit foreign TV shows in prime time. Although this measure has not yet been issued in final form, it continues to raise serious concerns, as it appears that, as a matter of practice, it has been implemented in China since 2021, including by online audio-visual content platforms.

### THEATRICAL FILMS

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

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, before stalling when China embarked on a major government reorganization that involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.-China trade negotiations that began following a meeting between the two countries' Presidents on the margins of the Group of 20 Heads of State and Government Summit in Buenos Aires in December 2018. To date, no agreement has been reached on the further

meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

### ONLINE VIDEO AND ENTERTAINMENT SERVICES

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

### LEGAL SERVICES

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

### EXPRESS DELIVERY SERVICES

The United States continues to have concerns regarding China's implementation of the 2009 *Postal Law* and related regulations through which China prevents foreign service suppliers from participating in the document segment of its domestic express delivery market. Meanwhile, in the package segment, China applies overly burdensome and inconsistent regulatory approaches and reportedly has provided more favorable treatment to Chinese service suppliers when awarding business permits. China also does not always allow foreign service suppliers to participate on an equal basis in the development of laws, regulations and other measures, including standards, for the express delivery services sector, nor does China always publicly announce the requirements for obtaining a business license.

### DIGITAL TRADE AND ELECTRONIC COMMERCE POLICIES

#### DATA RESTRICTIONS

In 2023, China continued to build out its expansive state control over the collection, storage, processing and sharing of data. China's *Data Security Law* entered into force in September 2021, and China's *Personal Information Protection Law* entered into force in November 2021. These laws operate together with the *Cybersecurity Law*, which took effect in June 2017, the *National Security Law*, which has been in effect since 2015, and various implementing measures, including the *Security Assessment Measures for Outbound Transfers of Data*, which took effect in September 2022, to prohibit or severely restrict cross-border transfers of "important data," a broadly and vaguely defined term, and, in certain cases, personal information collected by companies through their operations in China. These laws and implementing measures also impose local data storage and processing requirements on companies operating in China that collect "important data" and, in certain cases, personal information.

It has been reported that, as a result of China's implementation of the *Security Assessment Measures for Outbound Transfers of Data*, China now has a backlog of thousands of applications from companies seeking to export data. In addition, in September 2023, China released a draft of revisions to the *Security Assessment Measures for Outbound Transfers of Data*, while allowing only a two-week public comment period. Many aspects of the draft revisions are troubling.

Cross-border transfers of data are routine in the ordinary course of business in many sectors and are fundamental to business activity in those sectors. Given the wide range of businesses and business activities that are dependent on cross-border transfers of data and flexible access to global computing facilities, these developments continue to generate serious concerns in the United States and many other countries.

#### SECURE AND CONTROLLABLE ICT POLICIES

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



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

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

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

Meanwhile, sector-specific policies under this broad framework continue to be proposed and deployed across China's economy. A high-profile example from December 2014 was a proposed measure drafted by the China Banking Regulatory Commission that called for 75 percent of ICT products used in the

banking system to be "secure and controllable" by 2019 and that would have imposed a series of criteria that would shut out foreign ICT providers from China's banking sector. Not long afterwards, a similar measure was proposed for the insurance sector.

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

Again, however, China has not honored its promises. The numerous draft and final implementation measures issued by China since 2017 in the area of cybersecurity raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout the past year, the United States conveyed its serious concerns about China's approach to cybersecurity regulation

through bilateral engagement and multilateral engagement, including at WTO committee and council meetings, in an effort to persuade China to revise its policies in this area in light of its WTO obligations and bilateral commitments. These efforts are currently ongoing.

### ENCRYPTION

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

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

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

### GOVERNMENT PROCUREMENT

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

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

China’s current government procurement regime is governed by two important laws. The *Government Procurement Law*, administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other

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

China's *Foreign Investment Law*, which entered into force in January 2020, and the related October 2021 Ministry of Finance Notice 35 state that China will provide equal treatment to foreign companies invested in China and to domestic Chinese companies with regard to government procurement opportunities. However, foreign companies report a marked increase in preference for domestic Chinese companies over foreign companies invested in China.

In July 2022, the Ministry of Finance issued draft amendments to the *Government Procurement Law*. Among other changes, these draft amendments would codify the requirement that officials at all levels of government refrain from purchasing non-domestic products whenever domestic products are available. The draft amendments, which have not yet been finalized, do not define the term "domestic product."

In August 2023, China's State Council issued the *Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, known as Document 11. One of the 24 topics addressed in Document 11 is government procurement. Specifically, Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure

that foreign-invested enterprises can participate in China's government procurement market, consistent with existing Chinese law. In this article, the State Council recommends clarifying the meaning of "produced in China" as it relates to China's government procurement laws and regulations and providing unspecified support for foreign-invested enterprises to encourage them to develop their cutting-edge products in China. It also recommends accelerating amendments to the *Government Procurement Law*. While China's leadership has been touting Document 11 to the foreign business community as a demonstration of China's sincerity about fostering a more welcoming environment for foreign companies in China, Document 11 provides little clarity as to how its suggestions would be implemented, nor does it identify timelines for acting on them. Moreover, many of the suggestions fail to demonstrate a willingness to make meaningful changes, as they either restate outcomes that China previously achieved or offer outcomes that would fall short of China's WTO commitments. Going forward, the United States expects China to make any forthcoming draft implementing measures accessible to the public, including the foreign business community, and to provide a reasonable period of time to submit comments on them.

Under both its government procurement regime and its tendering and bidding regime, China continues to implement policies favoring products, services and technologies made or developed by Chinese-owned and Chinese-controlled companies through explicit and implicit requirements that hamper foreign companies from fairly competing in China. For example, notwithstanding China's commitment to equal treatment, foreign companies continue to report cases in which "domestic brands" and "indigenous designs" are required in tendering documents. Since China has not yet adopted clear rules on what constitutes a "domestic product," procurement officials often prefer to err on the side of caution and purchase products from domestic Chinese companies.

## ADMINISTRATIVE PROCESS

### ADMINISTRATIVE LICENSING

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

### TRANSPARENCY

#### OVERVIEW

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

#### PUBLICATION OF TRADE-RELATED MEASURES

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

At the central government level, moreover, China tends to take a narrow view of the types of trade-related measures that need to be published in the official journal. For those government entities whose trade-related measures are published in the official journal, China more commonly (but still not

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

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

#### NOTICE-AND-COMMENT PROCEDURES

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

publishing draft departmental rules or normative documents for public comment.

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

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

Currently, outside the context of Phase One Agreement implementing measures, the process for issuing new measures in China can be opaque and unpredictable and implemented without adequate notice. China still needs to improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also needs to formalize its use of notice-and-comment procedures for all normative documents. In addition, even when China provides for a notice-and-comment period, too often it issues the final measure immediately after the end of the comment period, suggesting that it did not give serious consideration to the comments received.

China also needs to implement consistently the notice-and-comment obligations applicable to all WTO Members. Most notably, China needs to adhere consistently to the notice-and-comment periods required by the TBT Agreement and the SPS Agreement.

### TRANSLATIONS

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

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

### INQUIRY POINT

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

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

### SOCIAL CREDIT SYSTEM

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

Chinese government has continued to take steps to make the social credit system fully operational.

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

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

However, currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented. Certain central



government agencies and sub-central government agencies maintain their own rating systems, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a censure list.

In November 2022, NDRC and PBOC jointly published a draft *Social Credit Construction Law* that would give the social credit system a legal basis, further embedding it into China's regulatory network. The draft law seeks to establish NDRC and PBOC as the main government agencies for construction of the social credit system. Their responsibilities would include overall coordination, supervision and guidance of the construction of the social credit system and taking the lead in organizing the formulation and implementation of relevant policies and standards. The draft law also seeks to provide formal legal definitions for certain terms used in implementing the social credit system, such as "untrustworthy," "credit supervision" and "credit information." In addition, the draft law seeks to codify the protection of certain rights, as it calls for the establishment of a social credit system that maintains the security of social credit information and strictly protects state secrets, business secrets and personal privacy, while also protecting the lawful rights and interests of natural persons, legal persons and unincorporated organizations. To date, the draft law has not been issued in final form.

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

government procurement bidding. Like the draft law, neither the draft *Catalogue of Public Credit Information* nor the draft *List of Disciplinary Measures* has been issued in formal form.

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

Foreign companies have numerous concerns with China's social credit system, which is becoming increasingly complex and expansive. They are concerned that the Chinese government will use it to disadvantage foreign companies or provide favorable treatment to domestic companies. They are concerned that the Chinese government will use the social credit system to pressure them to act in furtherance of China's industrial policies or other state priorities or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. In addition, foreign companies are concerned about the opaque nature of the social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the *Measures for Administration of the List of Serious Violators of Trust and Law* includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first

time that it has been censured when a Chinese government agency posts its name on the agency's website, even though the censuring of a company can cause severe harm to the company's reputation and adversely impact its efforts to attract customers, secure needed financing or make new investments. When Chinese government agencies begin to pursue joint punishment in the way that NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company's entire business operations.

Foreign companies are also concerned about the links between corporate social credit and individual social credit. They can foresee the Chinese government using the social credit system as another tool to ensure that foreign companies and those who work for them do not cross political redlines on sensitive matters like human rights. Foreign companies can also foresee the Chinese

government potentially using corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign companies or their officials for behavior or speech outside of China. Similarly, foreign companies are concerned that China will abuse its legion of laws regulating how data is stored and transferred to access information to use against them.

### OTHER NON-TARIFF MEASURES

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



**REPORTE DE 2023 AL CONGRESO  
SOBRE EL CUMPLIMIENTO DE CHINA CON  
LA ORGANIZACIÓN MUNDIAL DEL TRABAJO**



**REPRESENTANTE COMERCIAL DE  
LOS ESTADOS UNIDOS  
FEBRERO DE 2024**

*Ma. del Pilar de Restrepo*

**Ma. del Pilar Mejía de Restrepo**  
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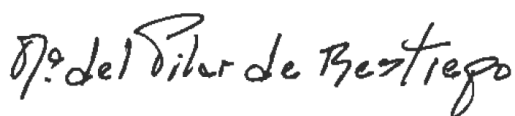
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## **Capacidad Excesiva**

Debido a su enfoque dirigido por el estado hacia la economía, China es el principal delincuente del mundo en la creación de capacidad no comercial, según lo evidencian las situaciones de capacidad excesiva severa y persistente en varias industrias. China también está bien en su camino de crear severa capacidad excesiva en otras industrias a través de su búsqueda de planes industriales tales como *Hecho en China 2025*, conforme al cual el gobierno chino repartiendo cientos de billones de dólares para soportar a las compañías chinas y exigiéndoles que logren metas previamente establecidas para la participación en el mercado local – a expensas de las importaciones – y participación en el mercado global en cada una de las 10 industrias manufactureras avanzadas.

En las industrias manufactureras tales como las de acero y aluminio, los planeadores de la economía china han contribuido a la capacidad excesiva masiva de China a través de varias medidas de apoyo gubernamental. Para el acero, la sobreproducción resultante ha distorsionado los mercados globales, dañando a los trabajadores estadounidenses y a los fabricantes tanto en el mercado de EEUUA como en los mercados de países terceros, donde las exportaciones EEUUA de acero y de productos intensivos en acero compiten con las exportaciones provenientes de China. Esta sobreproducción ha dañado igualmente a los trabajadores y fabricantes de muchos de los aliados y socios de los Estados Unidos. Aunque China ha reconocido públicamente su capacidad excesiva en sus industrias de acero y aluminio, todavía no ha dado pasos significativos para tratar las causas fundamentales de



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este problema de manera sostenible. De hecho, China continúa replicando estos resultados en otras industrias.

Desde 2000 hasta 2022, China ha contabilizado el 72 por ciento del crecimiento de la capacidad global en la fabricación de acero, un aumento muy en exceso del aumento de la demanda global y china en el mismo período. Actualmente, la capacidad de China representa alrededor de la mitad de la capacidad global y dos veces la capacidad de fabricación de acero combinada de la UE, EEUUA, Japón, Canadá, México y Brasil.

Al mismo tiempo, la producción de acero de China está continuamente alcanzando nuevas alturas, eclipsando la demanda. En 2022, la producción de acero de China se trepó por encima de un billón de toneladas métricas por primera vez, alcanzando 1.065 millones de toneladas métricas, un aumento del siete por ciento desde 2019, y permaneció alta en 1.018 millones de toneladas métricas en 2022, a pesar de una contracción significativa de la demanda local de acero. Este globo sostenido de producción de acero, intensiva en emisiones gas de efecto invernadero (GHG, por sus siglas en inglés), combinado con el debilitamiento del crecimiento económico y la disminución del sector chino de la construcción, ha inundado el mercado global con exceso de acero y con productos intensivos en acero en un momento en el que el acero y otros sectores manufactureros por fuera de China están enfrentando una debilidad renovada en las condiciones del mercado, crecimiento de la capacidad global en exceso, disminución del crecimiento económico e interrupciones continuadas en las cadenas de suministro. En 2022, China exportó más acero que los segundo, tercero y cuarto mayores productores de acero del mundo (India, Japón y los EEUUA) combinados. Además, las exportaciones de China de enero a septiembre de 2023 fueron 36% más altas que durante el mismo período de 2022. Hoy en día, China permanece con mucho siendo el mayor exportador de acero y de productos intensivos en acero. La producción china de acero también permanece mucho más sucia que la producción de acero que desplaza en los EEUUA y en muchos otros países, minando así los esfuerzos globales a la transición hacia una economía de energías limpias.

Igualmente, la capacidad primaria de producción de aluminio en China aumentó en más de 1.400 por ciento entre 2000 y 2022, siendo China responsable del 80% del crecimiento de la capacidad global durante ese período. La expansión de China de su capacidad de producción ha impulsado los declives de precios en todo el mundo, pero incluso con estos bajos precios, China ha continuado expandiendo su capacidad de producción. Mucha de esta capacidad adicional se ha construido con apoyo gubernamental y descansa en fuentes de emisiones intensivas de GHG de electricidad. La capacidad primaria china de aluminio ahora contabiliza el 57% de la capacidad global y es más del doble de la capacidad combinada de los siguiente ocho países productores de aluminio. Como en el sector del acero, la producción china de aluminio también ha crecido en años recientes, ya que la producción china de aluminio ha continuado aumentado a pesar de los choques de la

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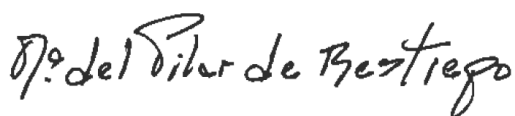
demanda. La capacidad y la producción chinas continúan contribuyendo a grandes desequilibrios y distorsiones de precios en los mercados globales, dañando a los productores y trabajadores del aluminio.

La capacidad excesiva de China daña a varios trabajadores e industrias de los EEUUA no solo a través de exportaciones directas desde China hacia los EEUUA, sino también a través de su impacto en los precios y el suministro globales y a través del comercio indirecto de productos intensivos en acero y aluminio, lo que hace difícil que los fabricantes competitivos del mundo permanezcan siendo viables. De hecho, las industrias domésticas en muchos de los socios comerciales de China continúan pidiendo a sus gobiernos que impongan medidas comerciales para responder a los efectos distorsionantes del comercio de la capacidad excesiva de China. Además, los EEUUA ha actuado bajo la Sección 232 de la Ley de Expansión Comercial de 1962 para imponer aranceles adicionales a los productos de acero y aluminio después de encontrar que los productos de acero y aluminio se están importando a los EEUUA en tales cantidades y bajo tales circunstancias que amenazan con deteriorar la seguridad nacional de los EEUUA. En opinión de los EEUUA, en ausencia de esfuerzos para compensar el comportamiento anticompetitivo de China, el riesgo es que los productores de acero y aluminio en los EEUUA y en muchos otros países con economías de mercado se vean obligados a cerrar, lo que entre otras cosas, crearía incluso mayores dependencias de China.

### **Apoyo Doméstico o Local Agrícola**

Durante varios años, China ha estado aumentando significativamente los subsidios domésticos y otras medidas de apoyo para su sector agrícola. China mantiene programas de pago directo, precios mínimos de apoyo para bienes básicos y subsidios a los insumos. China ha implementado un sistema de reservas de algodón, basado en precios mínimos de compra, y basado en precios objetivos del algodón. En 2016, China estableció subsidios para los productores de almidón y de etanol para incentivar la compra de maíz doméstico, con el resultado de más altos volúmenes de exportaciones de productos de maíz procesado desde China en 2017 y 2018. Además, en 2022, China empezó a estimular la producción de soya a través de varios programas de apoyo, tales como a través de subsidios aumentados para rotaciones de cosechas, recompensas a condados con alta producción de semillas de aceite, incentivos para promover el intercalamiento de maíz y soya, y subsidios para la “agricultura de demostración” de soya en tierra alcalina y salada.

China presentó una notificación relativa a medidas de apoyo doméstico a la OMC en mayo de 2015, pero solo suministró información hasta 2010. En diciembre de 2028, China notificó las medidas de apoyo doméstico para el período 2011-2016. Esta notificación mostró que China había excedido su nivel *de minimis* de apoyo doméstico para la soya (en 2012, 2014 y 2015), de algodón (desde 2011 hasta 2016), de maíz (desde 2013 hasta 2016),



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de colza (desde 2011 hasta 2013), y de azúcar (2012). La situación fue probablemente peor, pues las metodologías usadas por China para calcular los niveles de apoyo doméstico resultaron en subestimados. Además, los programas de apoyo notificados por China aparentemente fallaron en respaldar el soporte dado a nivel subnacional por parte de los gobiernos provincial y local y, posiblemente también el soporte administrado a través de empresas estatales.

En septiembre de 2016, los EEUUA lanzaron un caso de la OMC desafiando el soporte del gobierno chino para la producción de trigo, maíz y arroz que mostró ser excesivo para los compromisos de China. Como otros miembros de la OMC, China se comprometió a limitar su apoyo a los productores de bienes agrícolas. Los programas de apoyo a los precios del mercado de China para el trigo, maíz y arroz parecen dar un apoyo que excede con mucho los niveles acordados. Este apoyo excesivo crea distorsiones y sesgos de precios en el campo de juego contra los agricultores de los EEUUA. En octubre de 2016, se realizaron consultas. En enero de 2017, se estableció el panel de la OMC para escuchar el caso. Las audiencias anteriores al panel se realizaron en enero y abril de 2018, y el panel emitió su decisión en febrero de 2019, decidiendo que el apoyo doméstico de China al trigo y al arroz era inconsistente con la OMC. China originalmente aceptó cumplir con las recomendaciones del panel hacia el 31 de marzo de 2020. Subsiguientemente los EEUUA acordaron extender esta fecha límite hasta el 30 de junio de 2020.

## **Políticas de Importación**

### **Remedios Comerciales**

En diciembre de 2023, tenía 117 medidas antidumping vigentes, afectando las importaciones provenientes de 17 países o regiones, con dos nuevas investigaciones antidumping en curso. China también tenía vigentes cinco medidas compensatorias, afectando las importaciones provenientes de dos países o regiones. Las mayores deficiencias sistémicas de la práctica antidumping y compensatoria de China continúan estando en las áreas de transparencia y del debido proceso. A lo largo de los años, China con frecuencia ha utilizado investigaciones antidumping y derechos compensatorios más como herramienta retaliatoria que como mecanismo para anular los efectos del dumping o de los subsidios injustos dentro de su mercado doméstico. En respuesta, los EEUUA han presionado a China de manera bilateral en dos reuniones de la OMC y a través de comentarios escritos presentados en conexión con los procedimientos antidumping y compensatorios pendientes para cumplir a cabalidad con las reglas de la OMC en la conducción de sus investigaciones de remedios comerciales.

La realización de investigaciones antidumping por parte del Ministerio Chino de Comercio (MOFCOM) continúa quedándose corto en cuanto al compromiso total con los principios



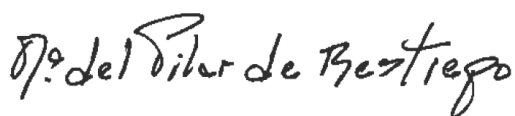
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fundamentales de transparencia y justicia procedimental embebidos en el Acuerdo de la OMC sobre la Implementación del Artículo VI del Acuerdo General sobre Tarifas y Comercio de 1994, comúnmente conocido como Acuerdo Antidumping. Los EEUA y otros miembros de la OMC han expresado concordantemente preocupaciones acerca de los lapsos claves en la transparencia y el debido proceso en la conducción de China de las investigaciones antidumping. Las áreas principales de preocupación incluyen: la divulgación inadecuada del MOFCOM de los documentos claves colocados en el registro por parte de los productores chinos locales; divulgaciones insuficiente de hechos esenciales que subyacen las decisiones del MOFCOM, tales como cálculos marginales de dumping y evidencia que apoya conclusiones de daños y dumping; el incumplimiento del MOFCOM en emitir cuestionarios suplementarios en casos en los que el MOFCOM identifica deficiencias de información; el rechazo inadecuado de los datos de costos y ventas reportados por los demandados de los EEUA; el uso injustificado de hechos disponibles; y el incumplimiento del MOFCOM en entregar adecuadamente argumentos críticos o evidencia presentados por las partes interesadas. Estos aspectos de la práctica antidumping de China se han presentado ante el MOFCOM en varios procedimientos a lo largo de varios años anteriores.

Una revisión de la conducción de China de las investigaciones de derechos compensatorios deja ver claramente que, como en el área de antidumping, China necesita mejorar su transparencia y debido proceso cuando realiza estas investigaciones. Además, los Estados Unidos han anotado preocupaciones procedimentales específicas a la realización de China de investigaciones de derechos compensatorios. Por ejemplo, en años recientes, China ha iniciado investigaciones de subsidios alegados que levantaron preocupaciones, dados los requerimientos con respecto a “evidencia suficiente” en el Artículo 11.2 del Acuerdo de Subsidios. Los EEUA también están preocupados acerca de la aplicación que hace China de los hechos disponibles bajo el Artículo 12.7 del Acuerdo de Subsidios.

En varias ocasiones en el pasado, los EEUA ha expresado serias preocupaciones acerca de la búsqueda que hace China de los remedios antidumping y de derechos compensatorios que parece ser retaliatoria y dirigida a desestimar a los EEUA y otros socios comerciales del ejercicio legítimo de sus derechos bajo las reglas antidumping y de derechos compensatorios de la OMC y de las disposiciones de remedios comerciales del acuerdo de la adhesión de China. También parece que China ha usado medidas arbitrarias económicas y comerciales, incluyendo antidumping e investigaciones compensatorias, como forma de coerción económica diseñada para lograr las metas políticas de China. El antidumping y los derechos compensatorios que China impuso a las importaciones de cebada y vino Australianos en 2021 son dos ejemplos obvios de esta táctica.

En algunas investigaciones recientes de las importaciones de los EEUA, China también ha tomado determinaciones sin apoyo legal o fáctico. Por ejemplo, en la determinación final de los derechos compensatorios sobre importaciones de n-propanol desde los EEUA,



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China encontró que los subsidios alegados al petróleo y gas de los EEUA pasaron automáticamente hasta productos petroquímicos sin suministrar el análisis requerido por el Acuerdo de Subsidios.



**NOTA DE LA TRADUCTORA:** María del Pilar Mejía de Restrepo, Traductora Oficial registrada ante el Ministerio de Relaciones Exteriores de Colombia, Resolución 958, que suscribe, declara que la presente Traducción Oficial, que consta de 9 páginas, es una versión fiel y correcta al español del documento adjunto, **Declaración de Nombre Comercial**, escrito en idioma inglés y que se ha tenido a la vista. Se certifica la fidelidad de la traducción, más no se asume responsabilidad alguna por la autenticidad o el contenido del documento en su lengua de origen.

Firmado en Bogotá, D.C., a los 24 días del mes de enero de 2023.

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**Informe de Estimaciones Comerciales Domesticas 2024**

# **BARRERAS AL COMERCIO EXTERIOR**



**REPRESENTANTE COMERCIAL DE LOS ESTADOS  
UNIDOS**

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## AGRADECIMIENTOS

La Oficina del Representante Comercial de los Estados Unidos (USTR, por sus siglas en inglés) es responsable de la preparación de este informe. La Representante Comercial de los Estados Unidos, Katherine C. Tai, reconoce con gratitud las contribuciones de todo el personal del USTR a la redacción y producción de este informe y resalta, en particular, las contribuciones de Brian Rose, Catherine White, Sean Murphy y Sonia Franceski.

Se expresa nuestro agradecimiento a los miembros asociados del Poder Ejecutivo del Comité Permanente de Política Comercial (TPSC, por sus siglas en inglés). El TPSC está conformado por las siguientes entidades del Poder Ejecutivo: los Departamentos de Agricultura, Estado, Comercio, Defensa, Energía, Salud y Servicios Humanos, Seguridad Nacional, Interior, Justicia, Transporte y Tesoro; la Agencia de Protección Ambiental; la Oficina de Administración y Presupuesto; el Consejo de Asesores Económicos; el Consejo de Calidad Ambiental; la Agencia de los Estados Unidos para el Desarrollo Internacional; la Administración de Pequeñas Empresas; el Consejo Económico Nacional; el Consejo de Seguridad Nacional; y, la Oficina del Representante Comercial de los Estados Unidos; así como el miembro sin derecho a voto, la Comisión de Comercio Internacional de los Estados Unidos. Al preparar el informe, se solicitó información sustancial a las embajadas de los Estados Unidos.



Oficina del Representante Comercial de los Estados Unidos  
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## **LISTA DE ACRÓNIMOS DE USO FRECUENTE**

|                                        |                                                                                                  |
|----------------------------------------|--------------------------------------------------------------------------------------------------|
| APHIS (por sus siglas en inglés) ..... | Servicio de Inspección de Sanidad Agropecuaria y Vegetal, EE. UU., Departamento de Agricultura   |
| CET (por sus siglas en inglés) .....   | Arancel Externo Común                                                                            |
| CVA (por sus siglas en inglés) .....   | Acuerdo sobre Valoración en Aduana de la OMC                                                     |
| DOL (por sus siglas en inglés) .....   | Departamento de Trabajo de EE. UU.                                                               |
| UE .....                               | Unión Europea                                                                                    |
| FDA (por sus siglas en inglés) .....   | Administración de Alimentos y Medicamentos, Departamento de Salud y Servicios Humanos de EE. UU. |
| FMVSS (por sus siglas en inglés) ..... | Normas Federales de Seguridad de Automotores de EE. UU.                                          |
| TLC.....                               | Tratado de Libre Comercio                                                                        |
| AGCS .....                             | Acuerdo General sobre el Comercio de Servicios de la OMC                                         |
| GATT (por sus siglas en inglés) .....  | Acuerdo General sobre Aranceles Aduaneros y Comercio                                             |
| GI (por sus siglas en inglés).....     | Indicación Geográfica                                                                            |
| GPA (por sus siglas en inglés).....    | Acuerdo sobre Contratación Pública de la OMC                                                     |
| HS (por sus siglas en inglés).....     | Sistema Armonizado                                                                               |
| HTS (por sus siglas en inglés) .....   | Arancel de Aduanas Armonizado                                                                    |
| TIC .....                              | Tecnología de la Información y las Comunicaciones                                                |
| PI.....                                | Propiedad intelectual                                                                            |
| NMF.....                               | Nación más favorecida                                                                            |
| LMR.....                               | Límite máximo de residuos                                                                        |
| MPYME.....                             | Micro, pequeña y mediana empresa                                                                 |
| OCDE .....                             | Organización para la Cooperación y el Desarrollo Económico                                       |
| PYME .....                             | Pequeña y mediana empresa                                                                        |
| SPS (por sus siglas en inglés) .....   | Sanitarios y Fitosanitarios                                                                      |
| OTC .....                              | Obstáculos técnicos al comercio                                                                  |
| TFA (por sus siglas en inglés) .....   | Acuerdo sobre Facilitación del Comercio de la OMC                                                |
| TIFA .....                             | Acuerdo Marco de Comercio e Inversión                                                            |
| Contingente arancelario .....          | Contingente arancelario                                                                          |
| CEPE .....                             | Comisión Económica para Europa de las Naciones Unidas                                            |
| USDA (por sus siglas en inglés).....   | Departamento de Agricultura de EE. UU.                                                           |
| USTR (por sus siglas en inglés).....   | Representante Comercial de los Estados Unidos                                                    |
| IVA .....                              | Impuesto sobre el Valor Añadido                                                                  |
| VoIP (por sus siglas en inglés) .....  | Voz sobre Protocolo de Internet                                                                  |
| WOAH (por sus siglas en inglés) .....  | Organización Mundial de Sanidad Animal                                                           |
| OMC .....                              | Organización Mundial del Comercio                                                                |

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# CHINA

## ACUERDOS COMERCIALES

En enero de 2020, Estados Unidos y China firmaron el Acuerdo Económico y Comercial entre el Gobierno de los Estados Unidos de América y el Gobierno de la República Popular China, comúnmente conocido como el (Acuerdo de la Fase Uno). Este acuerdo incluía compromisos por parte de China para mejorar el acceso de los Estados Unidos a los mercados en los sectores agrícolas y de servicios financieros, abstenerse de aplicar políticas y prácticas adversas relacionadas con la propiedad intelectual (PI) y la transferencia de tecnología, y aumentar sus compras de determinados bienes y servicios estadounidenses.

Si bien China cumplió con algunas disposiciones del Acuerdo de la Fase Uno, aún no ha cumplido con algunos de los compromisos más importantes. Con respecto al comercio de productos agropecuarios, por ejemplo, el Acuerdo de la Fase Uno aborda muchos obstáculos no arancelarios y ha ampliado el acceso a los mercados para diversas exportaciones de productos alimenticios, agrícolas y pesqueros de los Estados Unidos. En particular, China aplicó reformas significativas en algunos subsectores agrícolas, como los cárnicos y avícolas, y en el registro de instalaciones. Sin embargo, China aún no ha cumplido algunos de sus compromisos agrícolas más importantes, como los compromisos en materia de biotecnología agrícola y el compromiso de hacer una evaluación de los riesgos relacionados con el uso de ractopamina en ganado bovino y porcino. Además, China estuvo muy lejos de cumplir sus compromisos de comprar ciertas cantidades de bienes y servicios estadounidenses específicos en 2020 y 2021.

Es importante destacar y está claro que el Acuerdo de la Fase Uno no ha conducido a cambios fundamentales en el régimen comercial, no de mercado, dirigido por el Estado de China ni a su impacto perjudicial en la economía estadounidense y en los agricultores, ganaderos, trabajadores y empresas estadounidenses. De hecho, muchos de los compromisos contraídos en la primera fase del Acuerdo reflejan cambios que China ya había estado planeando o persiguiendo en su propio beneficio o que de otro modo servían a sus intereses, como los cambios relacionados con la protección de la propiedad intelectual y la apertura de más sectores de servicios financieros. Otros compromisos a los que China accedió reflejaban un cálculo, ya que los consideraba un apaciguamiento de las prioridades estadounidenses de la Administración anterior, como lo demuestra la atención prestada al sector agropecuario en la Acuerdo de la Fase Uno y los nuevos compromisos relacionados con las compras de bienes y servicios estadounidenses por parte de China, ostensiblemente como medio para reducir el déficit comercial bilateral.

## RÉGIMEN COMERCIAL, NO DE MERCADO, DIRIGIDO POR EL ESTADO

### Planes para la Industria

China continúa aplicando un amplio número de planes para la industria, políticas y prácticas de apoyo que apuntan a ciertas industrias para que sean dominadas por empresas chinas, tanto en China como a nivel mundial. De acuerdo con estos planes para la industria, el Gobierno chino da muchísima orientación, recursos y apoyo regulatorio a las empresas chinas, al tiempo que busca activamente limitar el acceso al mercado chino de bienes importados, fabricantes extranjeros y proveedores de servicios extranjeros. Los beneficiarios de estas políticas y prácticas no comerciales, que están en constante evolución, incluyen no solo a las empresas estatales de China, sino también a otras empresas domesticas chinas.

Uno de los planes para la industria de mayor alcance y más dañinos es Hecho en China 2025. El Consejo de



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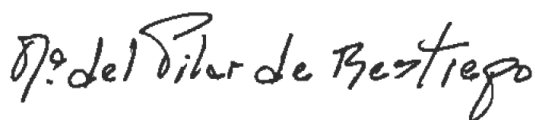
Estado de China publicó este plan industrial en mayo de 2015. Se trata de un plan de 10 años, dirigido a 10 sectores estratégicos, entre ellos la tecnología de la información avanzada, maquinaria herramienta automatizada y robótica, equipos de aviación y de vuelos espaciales, equipos de ingeniería marítima y buques de alta tecnología, equipos avanzados de tránsito ferroviario, los vehículos de nueva energía (NEV por su sigla en inglés), equipos de generación de energía, maquinaria agrícola, nuevos materiales, productos biofarmacéuticos y dispositivos médicos avanzados. Si bien, supuestamente está destinado simplemente a aumentar la productividad industrial a través de técnicas de fabricación más avanzadas y flexibles, Hecho en China 2025 es emblemático de la evolución del enfoque de China y cada vez más sofisticado hacia la "innovación autóctona", que es evidente en numerosos planes para la industria de apoyo y relacionados. Con sujeción al enfoque perjudicial y anticompetitivo de China a la innovación autóctona, el objetivo común y primordial es sustituir las tecnologías, productos y servicios extranjeros por tecnologías, productos y servicios chinos en el mercado chino, por todos los medios posibles, para permitir que las empresas chinas dominen primero el mercado chino y luego utilicen ese dominio como trampolín para conquistar los mercados internacionales.

Hecho en China 2025, que representa los primeros 10 años de una estrategia de 30 años conocida como la Estrategia de Nación Manufacturera Fuerte, busca fortalecer a las empresas chinas en los 10 sectores estratégicos específicos a expensas y en detrimento de las empresas extranjeras y sus tecnologías, productos y servicios a través de un proceso de varios pasos durante 10 años. El objetivo inicial de Hecho en China 2025 es garantizar, a través de diversos medios, que las empresas chinas desarrollen, extraigan o adquieran su propia tecnología, propiedad intelectual y conocimientos "autóctonos" y sus propias marcas. El próximo objetivo de Hecho en China 2025 es sustituir tecnologías, productos y servicios nacionales por tecnologías, productos y servicios extranjeros en el mercado chino. El objetivo final de Hecho en China 2025 es capturar cuotas de mercado mundial mucho mayores en los 10 sectores estratégicos objetivo.

En la búsqueda de estos objetivos, documentos publicados posteriormente establecen objetivos específicos de capacidad y niveles de producción y cuota de mercado para las docenas de industrias que comprenden los 10 amplios sectores de los que trata Hecho en China 2025. En octubre de 2015, el Comité Asesor Estratégico Nacional de Manufactura de China publicó la Hoja de Ruta Áreas Clave de Tecnológica de Hecho en China 2025, y desde entonces ha publicado dos ediciones actualizadas de este documento. La primera actualización tuvo lugar en febrero de 2018, con la publicación del Libro Verde de Tecnología e Innovación del Área Clave Hecho en China 2025 - Hoja de Ruta Tecnológica (2017). Al igual que su predecesor, el documento actualizado establece una cuota de mercado explícita y otros objetivos que deben alcanzar las empresas chinas en docenas de industrias de alta tecnología, a menudo tanto en el mercado chino como a nivel mundial. Por ejemplo, pide que la "producción anual de vehículos de nueva energía autóctonos" tenga una "capacidad de suministro que pueda satisfacer más del 80 por ciento del mercado" en China para 2020, frente al objetivo del 70 por ciento establecido en el documento de 2015. En noviembre de 2020, el documento de 2017 se actualizó con la publicación del Libro Verde de Innovación de Áreas Clave de Tecnológica de Hecho en China - Hoja de Ruta Tecnológica (2019).

Muchas de las herramientas políticas que está utilizando el Gobierno chino para lograr los objetivos de Hecho en China 2025 plantean serias preocupaciones. Varias de estas herramientas no tienen precedentes e incluyen numerosos tipos de intervención y apoyo estatal que trabajan en conjunto entre sí y están diseñadas para promover el desarrollo de la industria china en gran parte restringiendo, aprovechando, discriminando o creando desventajas para las empresas extranjeras y sus tecnologías, productos y servicios. De hecho, incluso se pueden aplicar medidas aparentemente neutras en favor de las empresas del país, como ha demostrado la experiencia anterior, especialmente en los niveles subcentrales del gobierno.

Hecho en China 2025 también difiere del apoyo a la industria objetivo de otros miembros de la Organización



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Mundial del Comercio (OMC) en su nivel de ambición y, quizás lo más importante, en la escala y el tipo de recursos que el Gobierno chino está invirtiendo en la búsqueda de los objetivos de su plan industrial. De hecho, según algunas estimaciones, el Gobierno chino está poniendo a disposición más de 500.000 millones de dólares de apoyo financiero a los sectores de Hecho en China 2025, a menudo utilizando, entre muchos otros vehículos, grandes "fondos de direccionamiento gubernamental", que China intenta proteger del escrutinio alegando que son totalmente privados. Incluso si China no logra alcanzar plenamente los objetivos establecidos en Hecho en China 2025, es probable que cree o exacerbe distorsiones del mercado, cree un grave exceso de capacidad en muchos de los sectores objetivo y distorsione las decisiones de inversión de las empresas extranjeras. También es probable que cause un daño duradero a los intereses de Estados Unidos, así como a los intereses de los aliados y socios de Estados Unidos, ya que las empresas respaldadas por China aumentan su participación de mercado a expensas de las empresas extranjeras que operan en estos sectores. Los países en desarrollo, donde al menos algunos de los cuales han experimentado desindustrialización, corren un riesgo especial de sufrir graves daños por planes para la industria como Hecho en China 2025.

Si bien las referencias públicas a Hecho en China 2025 disminuyeron después de junio de 2018, supuestamente en respuesta a una orden del gobierno central, está claro que China sigue comprometida con el logro de los objetivos subyacentes de Hecho en China 2025 y continúa buscando el dominio de las empresas chinas en los sectores que considera estratégicos, tanto en el mercado Chino como a nivel mundial. Por ejemplo, en septiembre de 2020, el gobierno central emitió un concepto rector en la que animaba a invertir en "industrias emergentes estratégicas", un término utilizado para describir una iniciativa anterior a partir de la cual evolucionó Hecho en China 2025. Entre otras cosas, el concepto rector pedía el apoyo y la creación de clústeres industriales para las industrias emergentes estratégicas, junto con el uso de diversos tipos de apoyo y financiación gubernamentales. El concepto rector alentó específicamente a los gobiernos provinciales y locales a apoyar industrias como la tecnología de la información avanzada, los NEV y los productos biofarmacéuticos. Más recientemente, el Informe al XX Congreso del Partido de octubre de 2022 también subrayó la continua importancia de los objetivos de la política industrial de China, instando a realizar esfuerzos para promover el desarrollo de industrias emergentes estratégicas y "cultivar nuevos motores de crecimiento como la tecnología de la información de próxima generación, la inteligencia artificial, la biotecnología, las nuevas energías, los nuevos materiales, los equipos de alta gama y la industria verde".

En marzo de 2021, la Asamblea Popular Nacional aprobó el 14° Plan Quinquenal (2021-2025) para el Desarrollo Económico y Social Nacional (el 14° Plan Quinquenal), junto con un documento titulado Objetivos a largo plazo hasta el año 2035. El 14° Plan Quinquenal y los subsecuentes planes quinquenales sectoriales emitidos, junto con los planes quinquenales emitidos por los gobiernos subcentrales, dejan claro que China seguirá persiguiendo sus diversos objetivos de dominación industrial. Si bien los planes para la industria como Hecho en China 2025 no se mencionaron en el 14° Plan Quinquenal, sigue habiendo superposición entre las industrias identificadas en los planes quinquenales de China con las industrias de Hecho en China 2025 y las industrias emergentes estratégicas. Los planes más recientes, incluidos los emitidos a nivel subcentral del gobierno, también dejan claro que el Gobierno chino seguirá apoyando a estas industrias clave. Además, otros planes de mayor alcance, como el Plan de Desarrollo de la Industria de Vehículos de Nueva Energía (2021-2035) y los Estándares de China 2035, reafirman el fuerte compromiso de China con un enfoque no de mercado de la economía y del comercio dirigido por el Estado.

### **Transferencia de tecnología**

Por años, las preocupaciones graves y de larga data de Estados Unidos con respecto a la transferencia forzada o presionada de tecnología permanecieron sin resolver, a pesar de los repetidos compromisos bilaterales de



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alto nivel de China para eliminar o dejar de aplicar políticas y prácticas adversas. En agosto de 2017, la Oficina del Representante Comercial de los Estados Unidos (USTR, por sus siglas en inglés) trató de abordar estas preocupaciones iniciando una investigación en virtud de la Sección 301 de la Ley de Comercio de 1974 (Sección 301) centrada en las políticas y prácticas del Gobierno Chino relacionadas con la transferencia de tecnología, la propiedad intelectual y la innovación. Concretamente, en su aviso de inicio, el Representante de los Estados Unidos para Temas Comerciales Internacionales identificó cuatro categorías de conductas reportadas del Gobierno chino que serían objeto de su investigación: 1) el uso de diversos instrumentos para exigir o presionar la transferencia de tecnologías y propiedad intelectual a empresas chinas; (2) privar a las empresas estadounidenses la posibilidad de establecer términos basados en condiciones de mercado en las negociación de licencias de tecnología con empresas chinas; (3) intervenir los mercados dirigiendo o facilitando injustamente la adquisición de empresas y activos estadounidenses por parte de empresas chinas para obtener tecnologías de vanguardia y propiedad intelectual; y (4) llevar a cabo o apoyar robos cibernéticos e intrusiones no autorizadas en redes informáticas comerciales de EE. UU. para obtener ganancias comerciales. En marzo de 2018, el USTR emitió un informe que respaldaba las conclusiones de que las cuatro categorías de actos, políticas y prácticas abarcadas en la investigación eran no razonables o discriminatorios y gravaban y/o restringían el comercio de los Estados Unidos. En noviembre de 2018, el USTR emitió un informe actualizado que concluyó que China no había tomado ninguna medida para cambiar sus políticas y prácticas adversas. Sobre la base de las conclusiones de la investigación del USTR en el marco del artículo 301, los Estados Unidos adoptaron una serie de medidas de respuesta, incluida la búsqueda de una resolución exitosa en la OMC, retando determinadas medidas discriminatorias de concesión de licencias de tecnología mantenidas por China, además de la imposición de aranceles adicionales sustanciales a las importaciones chinas.

El Acuerdo de la Fase Uno, firmado en enero de 2020, aborda ciertos aspectos de las prácticas comerciales desleales Chinas que se presentaron en el informe de la Sección 301 del USTR. En el acuerdo, China se comprometió a poner fin a su práctica de larga data de obligar o presionar a empresas extranjeras para que transfieran su tecnología a empresas chinas, como condición para obtener acceso al mercado, obtener aprobaciones administrativas o recibir beneficios del Gobierno chino. China también se comprometió a ser transparente, justo y dar garantías procesales en los procedimientos administrativos y a garantizar que la transferencia de tecnología y la concesión de licencias se hagan en condiciones de mercado, que sean voluntarias y reflejen un mutuo acuerdo. Por otra parte, China se comprometió a abstenerse de dirigir o apoyar inversión en el exterior destinada a adquirir tecnología extranjera de conformidad con su planeación industrial distorsionante.

Desde la entrada en efecto del Acuerdo Fase Uno, en febrero de 2020, Estados Unidos ha interactuado continuamente con la comunidad empresarial estadounidense, que ha expresado su preocupación por las acciones informales y no escritas de China que obligan o presionan a las empresas estadounidenses a transferir su tecnología a entidades chinas, incluso como condición para obtener acceso al mercado. Estados Unidos ha confrontado a China a medida que surgen problemas y continuará monitoreando de cerca los desarrollos.

A lo largo de 2023, la USTR llevó a cabo la revisión de cuatro años, obligada por estatutos, de los aranceles que se habían impuesto a las importaciones chinas, como resultado de la investigación de la Sección 301 sobre los actos, políticas y prácticas desleales Chinas relacionadas con la transferencia de tecnología, la propiedad intelectual y la innovación. Como parte de este análisis, el Representante de los Estados Unidos para las Temas Comerciales Internacionales ha estado examinando la eficacia de las medidas arancelarias para lograr los objetivos de la investigación inicial, otras medidas que podrían adoptarse y los efectos de esas medidas en la economía de los Estados Unidos, incluidos los consumidores.



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## **POLÍTICAS DE IMPORTACIÓN**

### **Aranceles e impuestos**

#### **Aranceles**

La tasa arancelaria media de nación más favorecida (NMF) aplicada por China fue del 7,5% en 2022 (últimos datos disponibles). En 2022, el promedio de las tasas arancelarias NMF aplicadas por China fue del 13,9 % para productos agrícolas y de 6,4 % para productos no agrícolas (últimos datos disponibles). China ha consolidado el 100 por ciento de sus líneas arancelarias en la OMC, con un promedio aritmético de los tasas arancelarias consolidadas de la OMC del 10,0 por ciento.

En abril de 2018, China impuso aranceles que oscilaban entre el 15% y el 25% sobre una serie de productos agrícolas, siderúrgicos y de aluminio importados de Estados Unidos en represalia por la decisión de EE.UU. de ajustar las importaciones de EE.UU. de artículos de acero y aluminio, en virtud de la Sección 232 de la Ley de Expansión Comercial de 1962, incluyendo sus enmiendas. La decisión de Estados Unidos se basó en la determinación de que la cantidad y las circunstancias de las importaciones estadounidenses de productos de acero y aluminio, incluidas las circunstancias de grave exceso de capacidad y la consiguiente sobreproducción procedente de China, amenazaban con perjudicar la seguridad nacional de los Estados Unidos. En julio de 2018, Estados Unidos inició un proceso de solución de diferencias contra China en la OMC en relación con los aranceles de represalia de China. En agosto de 2023, un panel de la OMC emitió su informe, dictaminando que esos aranceles de represalia eran incompatibles con la OMC. China apeló el fallo del panel en septiembre de 2023. Estados Unidos continuará tomando todas las medidas necesarias para proteger sus intereses frente a este tipo de represalias.

En 2018 y 2019, China impuso una serie de aranceles retaliativos a los productos estadounidenses tras las acciones de Estados Unidos en virtud de la Sección 301 para abordar los actos, políticas y prácticas chinas injustas relacionadas con la transferencia de tecnología, la propiedad intelectual y la innovación. Estos aranceles siguen vigentes.

#### ***Administración de cuotas arancelarios para productos agrícolas***

A diciembre de 2023, el acceso a los mercados prometido a través del sistema de cuotas arancelarias (TRQ por sus siglas en inglés) establecido en virtud del Acuerdo de Adhesión de China a la OMC aún no se había implementado plenamente. Debido a la escasa definición de los criterios de China para los solicitantes, a la falta de claridad de los procedimientos para distribuir las asignaciones de TRQ y a la falta de anunciar los resultados de la asignación y reasignación de cuotas, los comerciantes no están seguros de las oportunidades de importación disponibles y los productores de todo el mundo se enfrentan a menores oportunidades de acceso al mercados. Como resultado, las cuotas arancelarias de China para trigo, maíz y arroz rara vez se copan, incluso cuando están sobre suscritas. Por ejemplo, de 2020 a 2023, las importaciones de maíz de China superaron los niveles de la cuota arancelaria, pero el procesos de emisión, solicitud y asignación de cuotas arancelarias carecieron de transparencia, y las grandes empresas estatales de China parecen haber sido las principales beneficiarias del aumento de las importaciones.

En diciembre de 2016, Estados Unidos inició una disputa ante la OMC contra la administración de cuotas s arancelarias para trigo, maíz y arroz por parte de China. Las consultas tuvieron lugar en febrero de 2017. En septiembre de 2017 se estableció un grupo especial de la OMC para conocer el caso a petición de los Estados Unidos, y otros 17 Miembros de la OMC se unieron en calidad de terceros. El panel emitió su informe en abril de 2019, dictaminando que la administración de cuotas arancelarias para trigo, maíz y arroz

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por parte de China era incompatible con las normas de la OMC. En julio de 2021, los Estados Unidos presentó una solicitud de autorización para suspender concesiones y otras obligaciones de conformidad con el artículo 22 del Entendimiento de Normas y Procedimientos por los que se rige el Entendimiento de Solución de Diferencias (ESD) sobre la base que China no había establecido sus medidas de conformidad con sus obligaciones en el marco de la OMC. Después de que China se opusiera a esta solicitud, el asunto se sometió a arbitraje de conformidad con el artículo 22 del ESD. El arbitraje está actualmente suspendido, y los Estados Unidos sigue vigilando de cerca la administración en curso por parte de China de las cuotas arancelarias para trigo, maíz y arroz.

Como parte del Acuerdo de la Fase Uno, China acordó que, a partir del 31 de diciembre de 2019, su administración de cuotas arancelarias para trigo, maíz y arroz se ajustaría a sus obligaciones en el marco de la OMC. Además, China acordó introducir mejoras específicas en su administración de cuotas arancelarias de trigo, maíz y arroz, en particular en lo que respecta a la metodología de asignación, y al trato de los comerciantes no estatales solicitantes de cuotas comerciales. China también se comprometió a una mayor transparencia. Sin embargo, al 31 de diciembre de 2023, China no ha demostrado la plena implementación de estos compromisos.

### **Impuestos**

El Gobierno chino trató de controlar las importaciones de productos agrícolas primarios aumentando o reduciendo el descuento del impuesto sobre el valor agregado (IVA) para gestionar los suministros internos. A veces, China refuerza sus objetivos internos imponiendo o retirando el IVA. Estas prácticas han causado una enorme distorsión e incertidumbre en los mercados mundiales de trigo, maíz y soya, así como en los productos intermedios elaborados de estos productos básicos.

## **BARRERAS TÉCNICAS AL COMERCIO / BARRERAS SANITARIAS Y FITOSANITARIAS**

### **Seguridad alimentaria**

La implementación en curso de la Ley de Seguridad Alimentaria de 2015, por parte de China, ha llevado a la introducción de innumerables medidas nuevas. Estas medidas incluyen el registro de las instalaciones del exportador y productos para casi todos los productos alimenticios y agropecuarios. En general, la notificación de estas medidas por China al Comité de Obstáculos Técnicos al Comercio de la OMC (Comité OTC de la OMC) y al Comité de Medidas Sanitarias y Fitosanitarias de la OMC (Comité MSF de la OMC) ha sido desigual.

En noviembre de 2019, las autoridades regulatorias de China emitieron un borrador de medidas para comentarios públicos que requerirían el registro de todos los fabricantes de alimentos extranjeros. Los Estados Unidos presentó comentarios escritos exhaustivos sobre el proyecto de medida a las autoridades regulatorias chinas. Los Estados Unidos también planteó preocupaciones al respecto ante los Comités OTC y MSF de la OMC. Más de 15 Miembros de la OMC apoyaron las preocupaciones planteadas por los Estados Unidos.

En abril de 2021, las autoridades regulatorias chinas emitieron versiones finales de estas medidas, ahora conocidas como Decretos 248 y 249, con fecha de implementación del 1 de enero de 2022. En la correspondencia entregada a las misiones extranjeras en Pekín en septiembre de 2021, las autoridades regulatorias Chinas expusieron un sistema no transparente y de varios niveles en el que los productores de determinados productos deben estar registrados por autoridades regulatorias internacionales, mientras que



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los productores de otros productos pueden autorregistrarse. Los Decretos 248 y 249 también establecen nuevos requisitos de etiquetado y evaluación de la conformidad. En julio de 2023, China implementó requisitos de registro adicionales para ciertos productos, en virtud del Decreto 248, ampliando la carga sobre los reguladores internacionales de inocuidad alimentaria. Además, las tareas que se requieren de los reguladores internacionales de inocuidad de los alimentos van fundamentalmente más allá de las funciones tradicionales de las autoridades regulatorias. Estos diversos requisitos adicionales ya han interrumpido el comercio, especialmente para los nuevos fabricantes de alimentos de EE. UU. que no pueden cumplir con los requisitos para el registro de primera vez.

El Decreto N.º 248 y otras medidas anteriores similares siguen ejerciendo una presión excesiva sobre los productores de alimentos, los comercializadores y las autoridades regulatorias de los países exportadores, sin ningún beneficio añadido aparente para la inocuidad de los alimentos. En cambio, proporcionan a China una herramienta para controlar las importaciones de alimentos de acuerdo con los dictados de los planificadores estatales Chinos y para tomar represalias contra los productores de alimentos de países cuyos gobiernos desafían las políticas o prácticas del gobierno chino en áreas no comerciales.

En el Acuerdo de la Fase Uno, China se comprometió a no aplicar normas de inocuidad de los alimentos que no estuvieran basadas en la ciencia o en el riesgo, y a que sólo aplicaría las normas de inocuidad de alimentos en la medida necesaria para proteger la vida o la salud de las personas. China también acordó ciertos procedimientos para registrar instalaciones estadounidenses que producen diversos productos alimenticios. A pesar de las reiteradas solicitudes de aclaración de Estados Unidos sobre la relación entre los procedimientos de registro de instalaciones establecidos en el Acuerdo de la Fase Uno y los requisitos del Decreto N.º 248, China no ha facilitado información suficiente.

### **Obstáculos técnicos al comercio**

#### **Estándares**

El Gobierno chino sigue tratando de introducir cambios en su sistema de estándares, en particular pasando de un sistema dirigido por el Gobierno a uno que incorpore tanto la orientación del Gobierno como los aportes de las partes interesadas. En ocasiones, los funcionarios del Gobierno chino también han indicado que proporcionan un trato igualitario a las empresas extranjeras en relación con el trabajo de normalización de China. Sin embargo, en la práctica, el Gobierno de China sigue limitando la participación extranjera en el establecimiento de estándares y, en ocasiones, sigue aplicando normas nacionales singulares por razones estratégicas.

En enero de 2018 entró en efecto la Ley revisada de Estandarización de China. Desde entonces, China ha promulgado numerosas medidas de aplicación, algunas de las cuales contienen referencias positivas a la capacidad de las empresas con inversión extranjera para participar en las actividades de estandarización de China y pretenden reconocer el valor de las normas internacionales. Desafortunadamente, muchas de estas medidas de implementación causan preocupación a la industria estadounidense, ya que parecen centrarse en el desarrollo de estándares chinos sin prestar suficiente atención a los estándares existentes. Además, no estipulan explícitamente que todas las partes interesadas extranjeras puedan participar en igualdad de condiciones con los competidores nacionales en todos los aspectos del proceso de estandarización.

A medida que se han ido publicando estas medidas para su aplicación, los comités técnicos existentes en China han seguido elaborando normas. Las empresas estadounidenses, y de otros países, han informado de que a menudo no se les permite participar en estos procesos donde se establecen las normas nacionales, e incluso en comités técnicos, en los que ha sido posible la participación de algunos interesados extranjeros,



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Traductora Oficial Resolución 958 del Ministerio de Justicia de Colombia

Traducción Oficial No: 268/24 del inglés al español fechada el 22 de septiembre de 2024

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por lo general ha sido en condiciones menos favorables que las aplicables a sus competidores nacionales. Por ejemplo, el comité técnico de normas de ciberseguridad (conocido como TC-260) permite la participación de empresas extranjeras en el desarrollo y establecimiento de normas, y varias empresas estadounidenses y de otros países pueden participar en algunos de los grupos de trabajo del TC-260. Sin embargo, a las empresas extranjeras no se les permite generalmente participar como miembros con derecho a voto, e informan de dificultades para participar en aspectos clave del proceso de estandarización, como la redacción. También tienen prohibido participar en ciertos grupos de trabajo del TC-260, como el grupo de trabajo sobre estándares de cifrado.

A lo largo de los años, las partes interesadas estadounidenses también han informado que, en algunos casos, los funcionarios del gobierno chino han presionado a las empresas extranjeras que pretenden participar en el proceso de establecimiento de normas para que concedan licencias de su tecnología o propiedad intelectual en condiciones desfavorables. Además, China ha seguido aplicando normas nacionales únicas en una serie de sectores de alta tecnología. Estados Unidos sigue presionando a China para que aborde estas preocupaciones específicas, pero este compromiso bilateral ha resultado en mínimos avances.

En particular, las preocupaciones de Estados Unidos sobre el régimen de normas de China no se limitan a las implicaciones para el acceso de las empresas estadounidenses al mercado chino. Los esfuerzos en curso de China para desarrollar normas nacionales únicas tienen como objetivo final servir a los intereses de las empresas chinas que buscan competir a nivel mundial, ya que la visión del Gobierno chino es utilizar el poder de su gran mercado interno para influir en el desarrollo de normas internacionales. Los Estados Unidos sigue muy preocupados por las políticas de China con respecto a las normas y han expresado, y seguirán expresando sus preocupaciones a China, de manera bilateral y multilateralmente, a medida que China sigue elaborando y promulgando medidas de aplicación de su Ley de estandarización revisada.

En octubre de 2021, el Comité Central del Partido Comunista Chino y el Consejo de Estado publicaron un borrador para el Desarrollo de la Estandarización Nacional, que estableció objetivos para el sistema de estandarización de China. Reitera el deseo de que el sistema de estandarización de China sea guiado por el gobierno e impulsado por el mercado. También pide que el sistema de estandarización de China se reoriente de la cantidad a la calidad y que pase de un enfoque nacional a un enfoque nacional e internacional igualitario.

El borrador para el Desarrollo de la Estandarización Nacional de octubre de 2021 se basa en parte en una iniciativa que China anunció en 2019, conocida como Normas de China 2035. La falta de transparencia con respecto a los hallazgos de la iniciativa es preocupante, particularmente dada la preocupación mundial de larga data sobre la participación extranjera inadecuada en los procesos de establecimiento de estándares de China, el uso de estándares personalizados sin fundamento y ciertas prácticas de concesión de licencias en los procesos de establecimiento de estándares de China.

### **Cosméticos**

En los últimos años, Estados Unidos y la industria estadounidense han interactuado con la Administración de Alimentos y Medicamentos de China (CFDA por sus siglas en inglés) y su sucesora, la Administración Nacional de Productos Médicos (NMPA por sus siglas en inglés), para resaltar las graves preocupaciones con la regulación para cosméticos de China. Actualmente, la regulación para cosméticos China se rige por el Reglamento de Supervisión y Administración de Cosméticos (CSAR por sus siglas en inglés), que se emitió en junio de 2020 y entró en efecto en enero de 2021. Los Estados Unidos ha planteado en repetidas ocasiones serias preocupaciones con respecto a la CSAR y sus numerosas medidas de aplicación, tanto bilateralmente como en las reuniones del Comité OTC de la OMC y del Consejo del Comercio de Mercancías de la OMC,



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al igual que varios otros Miembros de la OMC.

Las medidas de implementación del CSAR contienen disposiciones que exigirían a las empresas que divulguen las formulaciones completas de sus productos, proveedores de ingredientes, métodos de fabricación, declaraciones y los datos de seguridad tanto a la NMPA como a los agentes locales en China, cuando los productos se registren o notifiquen. Además, estas medidas exigen que las empresas publiquen en el sitio web de la NMPA resúmenes de propiedades que puedan contener secretos e información comerciales confidencial. Los Estados Unidos ha expresado su preocupación a China por el hecho de que sus reguladores estén aplicando un enfoque que considera que los cosméticos presentan riesgos de seguridad mucho mayor de lo que se justifica. Los requisitos de presentación y registro de China para los cosméticos también difieren significativamente de los de otros mercados importantes sin una razón regulatoria válida, lo que hace que el cumplimiento sea muy oneroso para los exportadores.

A los Estados Unidos le preocupa especialmente que las medidas de aplicación del CSAR no ofrezcan garantías adecuadas sobre la forma en que se protegerá la información no divulgada, los secretos y la información comerciales confidencial contra la divulgación no autorizada. China tampoco ha atendido las peticiones de los Estados Unidos y de los titulares de derechos de cosméticos de que la NMPA establezca un mecanismo jurídicamente exigible para vigilar y proteger los secretos y la información comerciales confidencial que suelen relacionar las empresas cuando presentan cosméticos.

Además, China sigue exigiendo duplicar pruebas en el país para evaluar muchas declaraciones de seguridad y rendimiento de productos e ingredientes, sin tener en cuenta la aplicabilidad de datos internacionales u otros medios para establecer la conformidad. En respuesta a las preocupaciones de los Estados Unidos, China indicó que permitiría que los laboratorios extranjeros con instalaciones en China hagan las pruebas requeridas. Sin embargo, este cambio no aborda la carga de los requisitos Chinos, que no tienen en cuenta la aplicabilidad de las pruebas hechas a través de laboratorios internacionalmente reconocidos fuera de China, así como otros medios utilizados por los reguladores y las industrias extranjeras para evaluar la conformidad de las declaraciones de seguridad y rendimiento de los productos e ingredientes.

Los Estados Unidos también pone en tela de juicio la afirmación de China de que sus requisitos en materia de buenas prácticas de fabricación (GMP por sus siglas en inglés) de cosméticos otorgan el mismo trato a los cosméticos en general y especializados, importados y nacionales. Si el gobierno del país de un importador de cosméticos no emite certificados de exportación o de fabricación de productos cosméticos, el único medio que China proporciona para establecer la conformidad con las GMP de China para cosméticos generales es la experimentación con animales. Los Estados Unidos y otros Miembros de la OMC han solicitado en repetidas ocasiones que China examine los numerosos medios alternativos disponibles para establecer la conformidad con las GMP, incluida la utilización de certificados de segunda parte o de terceros basados en las Directrices de la norma ISO 22716 sobre GMP en materia de cosméticos. Aunque China acepta algunos certificados de GMP emitidos por gobiernos estatales de EE. UU., el proceso sigue siendo inconsistente e incierto para los exportadores.

En resumen, después de años de que los Estados Unidos se comprometió con China bilateralmente y a través de la Cooperación Internacional en la Regulación de Cosméticos, la OMC y otros foros para compartir puntos de vista y experiencia con respecto a la regulación de cosméticos, China aún no ha abordado las principales preocupaciones de los Estados Unidos, incluido el uso de buenas prácticas regulatorias para facilitar la evaluación de la conformidad de los cosméticos y evitar el trato discriminatorio, tampoco ha dado confianza en que se protegerá la propiedad intelectual de los Estados Unidos. Hasta que China resuelva estas preocupaciones, muchas empresas estadounidenses se verán impedidas de acceder, o simplemente no podrán acceder, al mercado chino.



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## **Barreras sanitarias y fitosanitarias**

### **Visión general**

China sigue siendo un mercado difícil e impredecible para los exportadores agrícolas estadounidenses, en gran parte debido a la aplicación incoherente de regulaciones y a la intervención selectiva en el mercado por parte de las autoridades regulatorias Chinas. La falta de voluntad de China para seguir sistemáticamente las normas y estándares internacionales basados en la ciencia y aplicar la reglamentación de manera transparente y basada en normas complica e impide aún más el comercio de productos agrícolas.

### **Aprobaciones de Biotecnología Agrícola**

El proceso de aprobación regulatoria chino para productos de biotecnología agrícola crea una incertidumbre significativa entre los desarrolladores y comerciantes, lo que ralentiza la comercialización de productos y crea impactos comerciales adversos, particularmente para las exportaciones estadounidenses de maíz, soya, canola y alfalfa. A pesar de algunas recientes aprobaciones de productos, el proceso sigue siendo largo y opaco y continúa reflejando una significativa falta de sincronía en relación con las aprobaciones emitidas por las autoridades regulatorias en muchos otros países.

Durante muchos años, las aprobaciones de productos biotecnológicos por parte de las autoridades regulatorias Chinas se materializaron principalmente solo después de una intervención política de alto nivel. En el Acuerdo de la Fase Uno, los Estados Unidos logró que China se comprometiera a aplicar un sistema transparente, previsible, eficiente y basado en la ciencia y en los riesgos para el examen de productos de biotecnología agrícola. En el acuerdo también se pedía a China que mejorara su proceso de autorización reglamentaria para productos de biotecnología agrícola, en particular completando los exámenes de los productos para su uso como piensos o su posterior procesamiento en un plazo medio no superior a 24 meses y mejorando la transparencia de su proceso de examinación. China también acordó trabajar con los importadores y el Gobierno de Estados Unidos para abordar situaciones que involucran la presencia de bajos niveles de materiales genéticamente modificados (GE por sus siglas en inglés) en los despachos. Además, China acordó establecer un proceso de aprobación reglamentaria para todos los ingredientes alimentarios derivados de microorganismos modificados genéticamente (GMM por sus siglas en inglés), en lugar de seguir restringiendo el acceso al mercado únicamente a las enzimas derivadas de GMM.

Desde 2021, el Comité Nacional de Bioseguridad (NBC, por sus siglas en inglés) de China ha emitido certificados de bioseguridad a desarrolladores extranjeros para varios nuevos productos transgénicos para su importación como piensos o para procesamiento, incluidos productos de alfalfa, canola, maíz, algodón, soya y caña de azúcar. Algunos de estos productos aprobados habían estado bajo revisión durante más de 10 años. Durante el mismo período, China ha emitido certificados de bioseguridad a los desarrolladores chinos para más de 100 nuevos productos de maíz, algodón y soya para el cultivo doméstico. Estas aprobaciones continúan la tendencia reciente de ampliar las aprobaciones domesticas para cultivos transgénicos más allá del algodón.

El enfoque de China con respecto a la biotecnología agrícola sigue siendo uno de los compromisos más importantes contraídos en el marco del Acuerdo de la Fase Uno, respecto de los cuales China no ha demostrado su plena aplicación. A pesar de los compromisos asumidos por China, sigue habiendo una importante falta de transparencia en lo que respecta a los procedimientos para convocar reuniones del NBC, en particular en lo que respecta a las fechas y los puntos del orden del día de esas reuniones y al proceso de notificación de los resultados a los solicitantes y de solicitud de información adicional en apoyo de las solicitudes de productos. Si bien el NBC está obligado a reunirse al menos dos veces al año, las reuniones



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no se celebran de conformidad con una frecuencia regular, y la información sobre las reuniones no se divulga ampliamente con el público de manera transparente y previsible. Además, al llevar a cabo su proceso de aprobación, China sigue pidiendo información que no es pertinente para el uso previsto de un producto o información que los solicitantes han facilitado anteriormente. Por esta y otras razones, China no ha reducido el tiempo medio en su proceso de aprobación de productos de biotecnología agrícola para piensos o procesamiento posterior a menos de 24 meses, como se había comprometido a hacer en el Acuerdo de la Fase Uno, incluso teniendo en cuenta las aprobaciones hechas en 2023.

### **Aves de corral**

En el Acuerdo de la Fase Uno, China acordó mantener medidas coherentes con las directrices de la Organización Mundial de Sanidad Animal (OMSA) para futuros brotes de gripe aviar. China también acordó firmar un protocolo de regionalización dentro de los 30 días posteriores a la entrada en efecto del acuerdo, lo que hizo para ayudar a evitar restricciones injustificadas a nivel nacional sobre enfermedades animales en el futuro. Este protocolo requiere que China reanude la aceptación de importaciones de aves de corral de estados con detección de influenza aviar de alta patogenicidad (IAAP) dentro de los cinco días posteriores a la recepción de un informe de EE. UU. de que los estados están libres de IAAP. Tras la aplicación del protocolo, China cumplió inicialmente sus términos.

A partir de febrero de 2022, Estados Unidos notificó a China sobre la detección de gripe aviar altamente patógena en varios estados de EE. UU. En los meses siguientes, varios estados se recuperaron de estas detecciones, y los Estados Unidos lo consideraron libres de IAAP. Los Estados Unidos presentaron informes a China en relación con estos Estados y solicitaron la aprobación para reanudar la exportación de aves de corral de esos Estados a China. A finales de 2023, China aún no había confirmado el restablecimiento del acceso a los mercados.

### **Cerdo**

China mantiene un enfoque hacia la carne de cerdo estadounidense que parece inconsistente con los estándares internacionales, lo que limita el potencial de un importante mercado de exportación dado el creciente consumo de carne de China y la gran escasez de carne de cerdo doméstica debido a la peste porcina africana. En concreto, China prohíbe el uso de determinados medicamentos veterinarios y estimulantes del crecimiento en lugar de aceptar los límites máximos de residuos (LMR) establecidos por el Codex Alimentarius (Codex).

Como parte del Acuerdo de la Fase Uno, China acordó ampliar la lista de productos porcinos que son elegibles para importación, incluidos productos procesados como el jamón y ciertos tipos de vísceras que son inspeccionados por el Servicio de Inspección e Inocuidad de los Alimentos del Departamento de Agricultura de los Estados Unidos para el comercio nacional e internacional. China también acordó hacer una evaluación del riesgo de la ractopamina en el ganado porcino y bovino lo antes posible y establecer un grupo de trabajo conjunto con los Estados Unidos para examinar las próximas medidas sobre la base de la evaluación del riesgo. Al 31 de diciembre de 2023, China no ha terminado la evaluación de riesgos y, por lo tanto, aún no ha avanzado en los próximos pasos basados en la evaluación de riesgos, que deberán incluir el establecimiento de LMRs o tolerancias en las importaciones.

### **Carne de Res**

En mayo de 2017, China se comprometió a permitir la reanudación de los envíos de carne de res de EE. UU. a su mercado de conformidad con las normas internacionales de inocuidad alimentaria y salud animal. Sin



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embargo, al mes, China dio marcha atrás e insistió en que mantendría ciertas condiciones relacionadas con medicamentos veterinarios, estimuladores del crecimiento y la sanidad animal que eran incompatibles con normas internacionales de inocuidad alimentaria y sanidad animal. Por ejemplo, China insistió en mantener una prohibición de tolerancia cero sobre el uso de beta-agonistas y hormonas sintéticas comúnmente utilizadas por los productores mundiales de ganado bajo estrictos controles veterinarios y siguiendo las directrices del Codex. Bajo estas condiciones, la carne de res de solo alrededor del tres por ciento del ganado de EE.UU. calificaba para la importación a China.

En el Acuerdo de la Fase Uno, China también acordó ampliar el alcance de los productos de carne vacuna de los Estados Unidos cuya importación se permite, eliminar las restricciones de edad para el ganado sacrificado para exportación a China y reconocer el sistema de trazabilidad de la carne vacuna y los productos de carne vacuna de los Estados Unidos. China también acordó establecer LMR compatibles con las normas y directrices del Codex para tres hormonas sintéticas utilizadas legalmente desde hace décadas en los Estados Unidos. En los casos donde aún no existen normas y directrices en el Codex, China acordó utilizar LMR establecidos por otros países que han hecho evaluaciones de riesgos con base científica.

Aunque China confirmó a los Estados Unidos que había adoptado LMR compatibles con el Codex para el uso de las tres hormonas sintéticas en la carne vacuna, todavía no ha publicado los LMR. La falta de publicación contribuye a la ambigüedad regulatoria para los productores y comercializadores de carne de res de EE. UU., que siguen sin saber qué productos se permitirán importar a China. El hecho de que China no haya publicado los LMR es otro ejemplo de la aplicación inadecuada por parte de China del Acuerdo de la Fase Uno.

## CONTRATACIÓN PÚBLICA

En su Acuerdo de Adhesión a la OMC, China se comprometió a adherirse al Acuerdo sobre Contratación Pública (ACP) de la OMC y a abrir su vasto mercado de contratación pública a los Estados Unidos y a otras países del ACP. Más de dos décadas después, este compromiso sigue sin cumplirse, mientras que la contratación pública de China ha seguido creciendo. De hecho, solo a 31 de diciembre de 2023, la contratación pública a nivel del gobierno central asciende a aproximadamente USD500.000 millones, incluso sin considerar la contratación de las empresas estatales.

A lo largo de los años, los Estados Unidos, la Unión Europea (UE) y otras países del ACP han considerado que las ofertas de China en materia de ACP son muy decepcionantes en cuanto a alcance y cobertura. China presentó su sexta oferta revisada en octubre de 2019. Esta oferta mostró avances en una serie de áreas, incluidos los umbrales, la cobertura en el nivel subcentral del gobierno, la cobertura de entidades y la cobertura de servicios. No obstante, no estuvo a la altura de las expectativas de los Estados Unidos y dista mucho de ser aceptable para los Estados Unidos y otras países del ACP, ya que siguen existiendo deficiencias significativas en varias áreas críticas, entre ellas los umbrales, la cobertura de las entidades, la cobertura de las empresas de propiedad estatal, la cobertura de los servicios y las amplias exclusiones que exigirían compensaciones, requisitos en materia de contenido nacional y transferencia de tecnología para la contratación abarcada. Aunque desde entonces China ha declarado que "acelerará su proceso de adhesión" al ACP, no ha presentado una nueva oferta desde octubre de 2019. La comunicación más reciente de China, presentada en junio de 2021, no fue más que una actualización de su lista de asuntos, en la que se informa a los suscriptores en el ACP de los cambios introducidos en el régimen de contratación pública vigente en China desde su última actualización.

El actual régimen de contratación pública de China se rige por dos leyes importantes. La Ley de Contratación Pública, administrada por el Ministerio de Hacienda, que regula las compras hechas con fondos fiscales por



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entidades estatales y otras de todos los niveles del gobierno Chino, pero no aplican a las contrataciones hechas por empresas de propiedad estatal. La Ley de Licitaciones y Licitaciones es competencia de la Comisión Nacional de Desarrollo y Reforma (NDRC por su sigla en inglés) e impone procedimientos uniformes de licitación y licitación para determinadas clases de proyectos de contratación en China, en particular los proyectos de construcción y obras, independientemente del tipo de entidad (*por ejemplo*, un organismo gubernamental o una empresa de propiedad estatal) que lleve a cabo la contratación. Ambas leyes abarcan contratos importantes que las Partes en el ACP considerarían contratación pública que reúnen las condiciones para ser objeto de cobertura en el marco del ACP.

La Ley de Inversión Extranjera de China, que entró en efecto en enero de 2020, y el Aviso 35 del Ministerio de Finanzas de octubre de 2021 establecen que China proporcionará un trato igualitario a las empresas extranjeras con inversión en China y a las empresas chinas con respecto a las oportunidades de contratación pública. Sin embargo, las empresas extranjeras informan de un marcado aumento de la preferencia por las empresas chinas sobre las extranjeras con inversión en China.

En julio de 2022, el Ministerio de Hacienda publicó un proyecto de reforma a la Ley de Contratación Pública. Entre otros cambios, este proyecto de enmienda codificaría el requisito de que los funcionarios de todos los niveles del gobierno se abstengan de comprar productos no domésticos siempre que haya disponibilidad de productos nacionales. El proyecto de enmienda, que aún no se ha finalizado, no define el término "producto nacional".

En agosto de 2023, el Consejo de Estado de China emitió los Conceptos Sobre la Optimización Adicional del Entorno de Inversión Extranjera y la Mejora en la Atracción de Inversión Extranjera, conocido como Documento 11. Uno de los 24 temas abordados en el Documento 11 es la contratación pública. Concretamente, en el artículo 6 del Documento 11 se ofrecen varias sugerencias sobre la forma en que los ministerios de nivel central y las autoridades gubernamentales subcentrales podrían trabajar para garantizar que las empresas con inversión extranjera puedan participar en el mercado de contratación pública de China, de conformidad con la legislación china vigente. En el artículo 6, el Consejo de Estado recomienda que se aclare el significado de "producido en China" en lo que se refiere a las leyes y reglamentos de contratación pública de China y que se preste apoyo sin especificar a las empresas con inversión extranjera para estimularlas a desarrollar productos de vanguardia en China. También recomienda acelerar las enmiendas a la Ley de Contratación Pública. Si bien los líderes Chinos han estado promocionando el Documento 11 a la comunidad empresarial extranjera como una demostración de la sinceridad de China sobre el fomento de un entorno más acogedor para las empresas extranjeras en China, el Documento 11 proporciona poca claridad sobre cómo se implementarían sus sugerencias, ni identifica plazos para actuar en consecuencia. Además, muchas de las sugerencias no demuestran la voluntad de hacer cambios significativos, ya que repiten los resultados que China había logrado anteriormente u ofrecen resultados que no estarían a la altura de los compromisos de China en el marco de la OMC. De cara al futuro, los Estados Unidos espera que China ponga a disposición del público, incluida la comunidad empresarial extranjera, los borradores de los proyectos de medidas de aplicación que se produzcan, y que se conceda un plazo prudencial para presentar observaciones al respecto.

Tanto en el marco de su régimen de contratación pública como de su régimen licitaciones y subastas, China sigue aplicando políticas que favorecen los productos, servicios y tecnologías fabricados o desarrollados por empresas de propiedad y controladas por China mediante requisitos explícitos e implícitos que impiden que empresas extranjeras compitan de manera leal en China. Por ejemplo, a pesar del compromiso de China con la igualdad de trato, las empresas extranjeras siguen informando de casos en los que se exigen "marcas nacionales" y "dibujos y modelos locales" en los pliegos de licitación. Dado que China aún no ha adoptado reglas claras sobre lo que constituye un "producto nacional", los funcionarios encargados a menudo prefieren

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pecar de cautelosos y comprar productos de empresas nacionales chinas.

## **PROTECCIÓN DE LA PROPIEDAD INTELECTUAL**

### **Visión general**

Tras su adhesión a la OMC, China emprendió una amplia revisión de su marco legislativo y regulatorio destinado a proteger los derechos de propiedad intelectual de los titulares de derechos nacionales y extranjeros, de conformidad con lo dispuesto en el Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (Acuerdo sobre los ADPIC) de la OMC. A pesar de los diversos planes y directrices emitidos por el Consejo de Estado, las deficiencias en el régimen de protección y observancia de la propiedad intelectual de China siguen presentando graves obstáculos para las exportaciones y la inversión de los Estados Unidos. Como resultado, al igual que en 2022, China fue incluida en la Lista de Vigilancia Prioritaria en el [Informe Especial 301 2023](#) de la USTR. Además, varios mercados de China se encuentran entre los enumerados en [Revisión de Mercados Notorios por Falsificación y Piratería de 2023](#) (Lista de Mercados Notorios), que identifica los mercados en línea y físicos que ejemplifican los desafíos clave en la lucha mundial contra la piratería y la falsificación y explica el daño no solo a las empresas estadounidenses, sino también a los trabajadores estadounidenses.

El Acuerdo de la Fase Uno aborda numerosas preocupaciones de larga data de Estados Unidos relacionadas con la inadecuada protección y aplicación de la propiedad intelectual por parte de China. En concreto, el acuerdo exige a China que revise sus regímenes jurídicos y regulatorios de diversas maneras en las áreas de secretos comerciales, propiedad intelectual, relacionada con los productos farmacéuticos, patentes, marcas de fábrica o de comercio e indicaciones geográficas. Además, el acuerdo requiere que China haga realice cambios en sus procedimientos judiciales y establezca sanciones a nivel disuasorio. China también debe tomar una serie de medidas para fortalecer la aplicación de la ley contra los productos pirateados y falsificados, incluso en el entorno en línea, en los mercados físicos y en la frontera.

China ha publicado varios proyectos de medidas para que se formulen observaciones y ha adoptado algunas medidas definitivas relativas a la aplicación del capítulo sobre propiedad intelectual en el Acuerdo de la Fase Uno. En particular, China reformó la Ley de Patentes, la Ley de Derecho de Autor y el Derecho Penal. China también ha informado de un aumento de las medidas coercitivas contra los medicamentos falsificados y de un aumento de las medidas aduaneras contra los productos pirateados y falsificados. Al mismo tiempo, China tiene pendiente finalizar el proyecto de medidas que ha publicado y de publicar otros proyectos de medidas, tales como determinadas medidas relativas a patentes, indicaciones geográficas y secretos comerciales, de conformidad con el Plan de Acción en materia de Propiedad Intelectual que publicó en abril de 2020. Además, China aún no ha demostrado que: 1) ha publicado datos en línea trimestralmente sobre medidas coercitivas contra productos falsificados con riesgos para la salud y la seguridad, medidas coercitivas en los mercados físicos y medidas coercitivas en la frontera; 2) el aumento de las medidas coercitivas contra falsificaciones con riesgos para la salud y la seguridad y en los mercados físicos; 3) aumento en la formación del personal de aduanas; o (4) asegurar el uso, únicamente, de software con licencia en agencias gubernamentales y empresas de propiedad estatal. Los Estados Unidos sigue vigilando la aplicación por parte de China del capítulo relativo a la propiedad intelectual del Acuerdo de la Fase Uno, incluidas las repercusiones de las medidas finales que se han dictado.

### **Secretos comerciales**

Las graves deficiencias en la protección y aplicación de los secretos comerciales en China han sido motivo de un confrontación de alto perfil entre Estados Unidos y China en los últimos años. Se han producido varios



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casos de robo de secretos comerciales en beneficio de empresas chinas tanto dentro como fuera de China. En muchos casos, los delincuentes siguen actuando con impunidad. Particularmente preocupantes son los informes de que actores afiliados al gobierno y al ejército chino se han infiltrado en los sistemas informáticos de empresas estadounidenses, robando terabytes de datos, incluida información patentada y propiedad intelectual de las empresas, con el fin de proporcionar ventajas comerciales a empresas chinas.

En los diálogos bilaterales de alto nivel con Estados Unidos a lo largo de los años, China se ha comprometido a emitir directrices judiciales para fortalecer su régimen de secretos comerciales. China también se ha comprometido a no tolerar la apropiación indebida de secretos comerciales para uso comercial patrocinada por el Estado. Además, los Estados Unidos ha instado a China a que introduzca algunas reformas fundamentales en sus leyes y regulaciones relacionados con secretos comerciales, en particular en lo que respecta a un proyecto de revisión de la Ley contra la Competencia Desleal. Los Estados Unidos también ha instado a China a tomar medidas para abordar las deficiencias en el universo de actores patrocinados por el Estado y para promover conciencia pública sobre la disciplina en materia de secretos comerciales.

En la reunión de noviembre de 2016 de la Comisión Conjunta de Comercio y Comercio (JCCT, por sus siglas en inglés) entre Estados Unidos y China, China afirmó que estaba fortaleciendo su régimen de secretos comerciales y reforzando varias áreas de importancia, incluida la disponibilidad de órdenes de preservación de pruebas y daños basados en valor de mercado, así como la emisión de una interpretación judicial sobre medidas cautelares preliminares y otros asuntos. China reformó la Ley contra la Competencia Desleal, en efecto en enero de 2018 y abril de 2019, así como la Ley de Licencias Administrativas, en efecto en abril de 2019, y la Ley de Inversión Extranjera, en efecto en enero de 2020. Sin embargo, las reformas aún no abordan plenamente las deficiencias críticas en el alcance de las protecciones y los obstáculos a la aplicación de la ley. En 2022, China publicó proyectos adicionales de reformas a la Ley contra la Competencia Desleal, pero contienen pocos cambios en las disposiciones de la ley sobre secretos comerciales.

El Acuerdo de la Fase Uno fortalece significativamente la protección de secretos comerciales y la aplicación de la ley contra el robo de secretos comerciales en China. En particular, el capítulo sobre propiedad intelectual exige a China que amplíe el alcance de la responsabilidad civil por apropiación indebida, más allá de las entidades directamente involucradas en la fabricación o venta de bienes y servicios, para abarcar actos como intrusiones electrónicas como actos prohibidos de robo de secretos comerciales, y que traslade la carga de la prueba en los casos civiles a los demandados cuando haya indicios razonables de robo de secretos comerciales. También exige a China que facilite a los titulares de derechos la obtención de medidas cautelares para impedir el uso de secretos comerciales robados, que permita el inicio de investigaciones penales sin necesidad de demostrar pérdidas reales, que garantice la aplicación de la ley penal por la apropiación indebida deliberada de secretos comerciales, y que prohíba a los funcionarios públicos y a expertos y asesores externos participar en la divulgación no autorizada de información no divulgada. secretos e información comercial confidencial presentada al gobierno.

En 2020, China publicó varias medidas relacionadas con la aplicación civil, penal y administrativa de relacionada con secretos comerciales. En septiembre de 2020, el Tribunal Supremo Popular emitió Disposiciones sobre varios temas relacionados con la aplicación de la ley en casos civiles de infracción de secretos comerciales y la Interpretación III sobre varios temas relacionados con la aplicación de la ley en el tratamiento de casos penales de violación de derechos de propiedad intelectual. En septiembre de 2020, la Fiscalía Popular Suprema y el Ministerio de Seguridad Pública también emitieron la Decisión sobre la Reforma de las Normas de Expedientes para el Registro de Casos de Infracción de Secretos Comerciales Penales. Estas medidas se refieren a cuestiones como el alcance de la responsabilidad por la apropiación indebida de secretos comerciales, los actos prohibidos de robo de secretos comerciales, las medidas cautelares preliminares y los umbrales para la iniciación de investigaciones penales por robo de secretos

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comerciales. En diciembre de 2020, la Asamblea Popular Nacional aprobó reformas a la Ley Penal que incluían cambios en los umbrales para la investigación y causas penales y el alcance de los actos delictivos de robo de secretos comerciales. Las reformas al Código Penal exigen la revisión de determinadas interpretaciones judiciales y normas de enjuiciamiento emitidas anteriormente. Sin embargo, tres años después de la aprobación de las enmiendas del Código Penal, estas otras medidas no se han modificado y, por lo tanto, la aplicación de las reformas al Código Penal sigue siendo incompleta. De hecho, China solo ha publicado un borrador de interpretación judicial. Los Estados Unidos continúan monitoreando la efectividad de todas estas medidas.

### **Registro de Marcas de Mala Fe**

El hecho de que se sigan registrando marcas de mala fe en China sigue siendo motivo de gran preocupación. Por ejemplo, los usurpadores de marcas intentan aprovecharse cuando el propietario de una marca original aún no ha registrado su marca en China, registrando esa marca y luego tratando de vendérsela al propietario original de la marca. El registro de marca de mala fe también se produce cuando se registran marcas que tienen la intención de engañar o confundir a los consumidores.

En la reunión del JCCT de noviembre de 2016, China señaló públicamente el daño que puede causar el registro de marcas de mala fe y afirmó que estaba tomando nuevas medidas para combatir estas solicitudes. Las reformas a la Ley de Marcas hechas en 2019 y las medidas de implementación posteriores, incluidas las Disposiciones sobre la Normalización de las Solicitudes de Registro de Marcas de la Administración Estatal de Regulación del Mercado (SAMR por sus siglas en inglés) emitidas en 2019 y las Directrices de Examen y Revisión de Marcas actualizadas en 2021 por la Administración Nacional de Propiedad Intelectual de China (CNIPA por sus siglas en inglés), requieren la no autorización de solicitudes de marcas de mala fe. En enero de 2023, China propuso nuevas reformas a la Ley de Marcas en relación con el registro de marcas en mala fe.

Sin embargo, la aplicación en este ámbito por parte de China, al 31 de diciembre de 2023, sugiere que los titulares de derechos siguen estando insuficientemente protegidos, ya que las marcas registradas en mala fe sigue siendo muy común y persisten los problemas con el gran número de decisiones incoherentes, la baja tasa de éxito de las oposiciones, la falta de transparencia en los procesos de oposición y la falta de sentencias por no comparecencia contra los solicitantes que no comparecen en los procedimientos. Los onerosos requisitos de documentación también son una preocupación constante para los titulares de derechos. China se adhirió a la Convención de 5 de octubre de 1961 por la que se suprime el requisito de legalización de documentos públicos extranjeros (Convención de la Apostilla), con efecto a partir de noviembre de 2023. Los Estados Unidos supervisará la aplicación por parte de China de las obligaciones contraídas en virtud del Convenio de la Apostilla y si se abordan las preocupaciones de los titulares de derechos en relación con los requisitos de legalización de documentos de gobiernos extranjeros.

Como resultado de estas deficiencias, las empresas estadounidenses de todos los sectores industriales siguen enfrentándose a solicitantes chinos que registran sus marcas y las "retienen para pedir rescate" o que buscan establecer su negocio con base en la reputación global de empresas estadounidenses. El Acuerdo de la Fase Uno exige a China que garantice una protección y ejecución adecuada y efectiva de los derechos de marca, en particular contra los registros de marcas en mala fe. Los Estados Unidos seguirá vigilando de cerca la evolución de la situación en esta esfera de preocupación de larga data.

### **Infracción en línea**



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La piratería en línea sigue a gran escala en China, afectando a una amplia gama de industrias, incluidas las relacionadas con la distribución de música, películas, libros y revistas, software y videojuegos legítimos.

Si bien el aumento de las actividades que aseguran el cumplimiento ha ayudado a detener el flujo de ventas en línea de algunas ofertas pirateadas, se necesitan medidas y atención mucho más sostenidas para marcar una diferencia significativa para los creadores de contenido y los titulares de derechos, en particular las pequeñas y medianas empresas. En respuesta a la pandemia de COVID-19, los informes indican que muchos infractores se han trasladado a Internet para distribuir sus productos pirateados y falsificados, lo que aumenta aún más la necesidad de medidas que aseguren el cumplimiento específicas y sostenidas en el entorno en línea.

Estados Unidos ha instado a China a considerar maneras de crear un entorno político más amplio para ayudar a fomentar el crecimiento de mercados sanos para contenido legítimo y con licencia. Estados Unidos también ha instado a China a revisar las normas actuales que han demostrado ser contraproducentes.

En la reunión del JCCT de noviembre de 2016, China acordó promover activamente legislación relacionada con el comercio electrónico, fortalecer la supervisión sobre infracciones y falsificación en línea, y trabajar con Estados Unidos para explorar el uso de nuevos enfoques para mejorar la capacidad de los mecanismos que aseguren cumplimiento en línea. En diciembre de 2016 y noviembre de 2017, China publicó borradores de una nueva Ley de Comercio Electrónico para comentarios públicos. En comentarios escritos, los Estados Unidos subrayó que la versión final de esta ley no debería socavar el actual sistema de notificación y eliminación y debería promover una cooperación eficaz para disuadir se comentan infracciones en línea. En agosto de 2018, China adoptó su nueva Ley de Comercio Electrónico, que entró en efecto en enero de 2019. Esta ley fue una oportunidad para que China estableciera disposiciones estrictas sobre la protección y la observancia de la propiedad intelectual para su mercado de comercio electrónico, que es el más grande del mundo. Sin embargo, tal como se redactó, la ley introdujo disposiciones que debilitan la capacidad de los titulares de derechos para proteger sus derechos en línea y que alivian la responsabilidad de las plataformas de comercio electrónico con sede en China por vender productos falsificados y otras mercancías infractoras.

El acuerdo de la Fase Uno exige a China que proporcione procedimientos de cumplimiento que permitan una acción eficaz y rápida contra las infracciones en el entorno en línea, que exija retiradas expeditas y que garantice la validez de las notificaciones de retirada y apelaciones. También exige a China que adopte medidas efectivas contra las plataformas de comercio electrónico que no adopten las medidas necesarias contra las infracciones.

En mayo de 2020, la Asamblea Popular Nacional publicó el Código Civil, que incluía disposiciones actualizadas sobre notificación y eliminación. En septiembre de 2020, el Tribunal Supremo Popular emitió un Concepto Orientativo sobre Audiencias de Disputas de Propiedad Intelectual que Involucran Plataformas de Comercio Electrónico y la Respuesta Oficial sobre la Aplicación de la Ley en Disputas de Infracción de Propiedad Intelectual Relacionadas en la Red. Estas medidas se refieren a cuestiones como la eliminación rápida y la validez de las notificaciones y apelaciones, pero sólo han entrado en efecto recientemente. En noviembre de 2020, la Asamblea Popular Nacional adoptó reformas a la Ley de Derecho de Autor, pendientes desde hacía mucho tiempo, incluidas disposiciones relacionadas con el aumento de las compensaciones por infracción de derechos de autor, nuevos derechos de funciones e interpretación en público y radiodifusión para los productores de grabaciones sonoras, y protecciones contra la elusión de las medidas tecnológicas de protección. Los titulares de derechos han acogido con beneplácito estos avances, pero han señalado la necesidad de una aplicación efectiva, así como de nuevas medidas para hacer frente a la piratería en línea. Estados Unidos seguirá de cerca el impacto de estas medidas en el futuro.



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En agosto de 2021, SAMR emitió un borrador de reformas a la Ley de Comercio Electrónico para comentarios públicos. Estos proyectos de reforma intentan abordar además preocupaciones que se han planteado sobre los procedimientos y las sanciones en el marco del sistema de notificación y eliminación de China.

### **Productos falsificados**

La falsificación en China sigue siendo muy extendida y afecta a una amplia gama de productos. En abril de 2019, China reformó su Ley de Marcas, que entró en efecto en noviembre de 2019, para exigir a los tribunales civiles que ordenen la destrucción de productos falsificados, pero estas reformas siguen sin proporcionar todo el alcance de las para los titulares de derechos. Una de las muchas áreas de especial preocupación en los Estados Unidos tiene que ver con los medicamentos. A pesar de años de Estados Unidos confrontar, China no ha logrado mejorar adecuadamente su regulación para la fabricación de ingredientes farmacéuticos activos para evitar su uso en medicamentos falsificados y de inferior calidad. En la reunión del Diálogo Estratégico y Económico (S&ED por sus siglas en inglés) de julio de 2014 entre Estados Unidos y China, China se comprometió a desarrollar y considerar seriamente reformas a la Ley de Administración de Medicamentos que requerirán un control regulatorio de los fabricantes de productos químicos a granel que pueden usarse como ingredientes farmacéuticos activos. En la reunión del Grupo S&ED de junio de 2015, China se comprometió además a publicar las revisiones de la Ley de Administración de Medicamentos en forma de borrador para que el público formule comentarios y a considerar las opiniones de Estados Unidos y otras partes interesadas pertinentes. En octubre de 2017, China publicó borradores limitados de revisiones de la Ley de Administración de Medicamentos y declaró que se presentarían futuras revisiones propuestas para el resto de esta ley. Aunque la Ley final de Administración de Medicamentos, emitida en agosto de 2019, requiere que los productos y los ingredientes farmacéuticos activos cumplan con los estándares de fabricación, aún no está claro cómo se implementarán o harán cumplir estos requisitos.

El acuerdo de la Fase Uno exige que China adopte medidas efectivas para aplicar la ley contra productos farmacéuticos falsificados y productos relacionados, incluidos los ingredientes farmacéuticos activos, y que aumente significativamente las medidas para detener la fabricación y distribución de falsificaciones con riesgos significativos para la salud o la seguridad. El acuerdo también exige que China disponga que sus autoridades judiciales ordenen el decomiso y la destrucción de los productos pirateados y falsificados, junto con los materiales e implementos utilizados principalmente en su fabricación. Además, el acuerdo requiere que China aumente significativamente el número de acciones de cumplimiento en los mercados físicos de China y contra las mercancías que se exportan o en tránsito. Además, exige a China que garantice, a través de auditorías de terceros, que los organismos gubernamentales y las empresas de propiedad estatal sólo utilicen software con licencia.

En agosto de 2020, el SAMR emitió los Conceptos sobre el fortalecimiento de la destrucción de mercancías infractoras y falsificadas, y el Consejo de Estado modificó las Disposiciones sobre el traslado de presuntos casos penales por parte de los órganos administrativos para la aplicación de la ley, que se relacionan con el traslado de casos de propiedad intelectual de las autoridades administrativas a las autoridades penales. China ha reportado un aumento en las medidas coercitivas contra medicamentos falsificados y un aumento de las medidas aduaneras contra los productos pirateados y falsificados, pero aún no ha demostrado que haya aumentado las medidas coercitivas contra las falsificaciones con riesgos para la salud y la seguridad y en los mercados físicos, aumentado la formación del personal aduanero y garantizado el uso únicamente de programas informáticos con licencia en los organismos y empresas estatales.

### **Innovación Interna**



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Las políticas destinadas a promover la "innovación interna" de China siguen representando un componente importante de los esfuerzos de industrialización de China. A través de entablar conversaciones bilaterales intensivas y de alto nivel con China desde 2009, los Estados Unidos ha tratado de abordar estas políticas, que otorgan diversas preferencias cuando la propiedad intelectual se posee o se desarrolla en China, tanto en general, en todos los sectores de la economía china, como específicamente en el contexto de la contratación pública. Por ejemplo, en la reunión del Grupo S&ED de mayo de 2012, China se comprometió a tratar la propiedad intelectual, de propiedad o desarrollada en otros países, de la misma manera que la propiedad intelectual de propiedad o desarrollada en China. Los Estados Unidos también utilizó el proceso del JCCT en 2012 y las conversaciones posteriores para presionar a China para que revisara o eliminara medidas específicas que parecían ser incompatibles con este compromiso. En la reunión del JCCT de diciembre de 2014, China aclaró y subrayó que trataría la propiedad intelectual, de propiedad o desarrollada en otros países, de la misma manera que la propiedad intelectual de propiedad nacional o desarrollada. Una vez más, sin embargo, estos compromisos no se cumplieron. China sigue aplicando innumerables políticas que exigen o favorecen la propiedad o el desarrollo de la propiedad intelectual en China.

Los Estados Unidos logró una serie de compromisos similares de China en el contexto de la contratación pública, en el que China acordó desvincular las políticas de innovación autóctonas en todos los niveles del Gobierno chino de las preferencias en materia de contratación pública, incluso mediante la promulgación de una medida del Consejo de Estado por la que se ordenaba que los gobiernos provinciales y locales eliminaran los vínculos restantes para diciembre de 2011. Muchos años después, sin embargo, esta promesa no se había cumplido. En la reunión del JCCT de noviembre de 2016, en respuesta a las preocupaciones de Estados Unidos con respecto a la continua emisión de decenas de medidas inconsistentes, China anunció que su Consejo de Estado había emitido un documento que exigía a todas las agencias y a todos los gobiernos subcentrales que "limpiaran aún más las medidas relacionadas que vinculan la política de innovación indígena con la provisión de preferencias de contratación pública".

A lo largo de los años, el impulso subyacente a las políticas de innovación internas de China se ha mantenido sin cambios, ya que el liderazgo de China ha seguido haciendo hincapié en la necesidad de promover las capacidades de innovación internas. A través de planes como el 14º Plan Quinquenal para la Protección y Utilización de los Derechos Nacionales de Propiedad Intelectual, China ha seguido aplicando políticas discriminatorias que fomentan los "derechos de propiedad intelectual internos" y las "tecnologías básicas" que son propiedad de China o se han desarrollado en ella. En consecuencia, el USTR ha estado utilizando mecanismos como una investigación en virtud de la Sección 301 para tratar de abordar, entre otras cosas, el uso por parte de China de políticas de innovación internas para obligar o presionar a extranjeros a poseer o desarrollar su propiedad intelectual en China.

## **BARRERAS A LOS SERVICIOS**

### **Visión general**

Las perspectivas para los proveedores de servicios estadounidenses en China deberían ser prometedores, considerando el tamaño del mercado chino. No obstante, la participación de Estados Unidos en el mercado de servicios de China sigue estando muy por debajo de la participación de Estados Unidos en el mercado mundial de servicios, y la Organización para la Cooperación y el Desarrollo Económicos (OCDE) sigue calificando el régimen de servicios de China como uno de los más restrictivos entre las principales economías del mundo.

En 2023, persistieron numerosos desafíos en varios sectores de servicios. Al igual que en años anteriores, los reguladores chinos continuaron utilizando procesos regulatorios discriminatorios, prohibiciones



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informales de entrada y expansión, aprobaciones caso por caso en algunos sectores de servicios, requisitos de licencia y operación excesivamente onerosos, y otros medios para frustrar los esfuerzos de los proveedores de servicios estadounidenses para alcanzar su pleno potencial de mercado en China. Estas políticas y prácticas afectan a los proveedores de servicios de EE. UU. en una amplia gama de sectores, incluida la computación en la nube, telecomunicaciones, producción y distribución de películas, servicios de video y entretenimiento en línea, mensajería exprés y los servicios legales. Además, la Ley de Ciberseguridad de China y las medidas de aplicación conexas incluyen mandatos para comprar productos y servicios nacionales de tecnología de la información y las comunicaciones (TIC), mientras que la Ley de Ciberseguridad, la Ley de Seguridad de Datos y la Ley de Protección de la Información Personal de China y las medidas de aplicación conexas incluyen restricciones excesivas a los flujos de datos transfronterizos y requisitos excesivos para almacenar y procesar datos localmente. Este tipo de medidas sobre datos socavan la capacidad de los proveedores de servicios estadounidenses para aprovechar las oportunidades de acceso al mercado en China al prohibir o restringir severamente la transferencia transfronteriza de información que son rutinarias en el curso ordinario de los negocios y son fundamentales para cualquier actividad comercial. Los requisitos de localización de datos de China también plantean preocupaciones sobre la vigilancia estatal. Además, China no ha abordado plenamente las preocupaciones de los Estados Unidos en esferas que han sido objeto de un procedimiento de solución de diferencias en el marco de la OMC, incluidos los servicios de pago electrónico y la importación y distribución de películas cinematográficas.

El Acuerdo de la Fase Uno aborda una serie de obstáculos comerciales y de inversión de larga data para los proveedores estadounidenses de una amplia gama de servicios financieros, incluidos los servicios bancarios, de seguros, de títulos valores, de gestión de activos, de calificación crediticia y de pago electrónico, entre otros. Los obstáculos abordados en el acuerdo incluyen requisitos de empresas conjuntas, limitaciones de capital extranjero y diversos requisitos regulatorios discriminatorios. La eliminación de estas barreras está diseñada para permitir que los proveedores de servicios financieros de EE. UU. compitan en un campo de juego más nivelado y amplíen su oferta de exportación de servicios en el mercado chino. Sin embargo, las restricciones excesivas de China a los flujos de datos transfronterizos podrían seguir creando desafíos significativos para los proveedores de servicios financieros de EE. UU. en China.

### **Servicios Bancarios**

Aunque China ha abierto su sector bancario a la competencia extranjera en forma de bancos de propiedad totalmente extranjera, China ha mantenido restricciones al acceso a los mercados de otras maneras que han impedido que los bancos extranjeros establezcan, se expandan y obtengan una participación de mercado significativa en China. Recientemente, sin embargo, China ha adoptado algunas medidas para suavizar o eliminar restricciones al acceso al mercado.

Por ejemplo, China ha eliminado una serie de barreras de larga data para los bancos extranjeros, incluido el requisito de activos mínimos de USD10.000 millones para establecer un banco extranjero en China y el requisito de activos mínimos de USD20.000 millones para establecer una sucursal en china de un banco extranjero. China también ha eliminado el límite a la participación accionaria que un solo inversionista extranjero puede tener en un banco de propiedad china.

En Acuerdo de la Fase Uno, China se comprometió a eliminar algunas de estas barreras y a ampliar las oportunidades para que instituciones financieras estadounidenses, incluidas las sucursales bancarias, suministren servicios de custodia de fondos de inversión en títulos valores teniendo en cuenta sus activos globales cuando soliciten licencias. China también acordó revisar y aprobar las solicitudes de instituciones financieras estadounidenses calificadas para licencias de custodia de fondos de inversión en títulos valores de manera expedita. Además, China se comprometió a tener en cuenta las calificaciones internacionales de



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las instituciones financieras estadounidenses al evaluar las solicitudes de licencia para los servicios de suscripción tipo A para todo tipo de instrumentos de deuda no financiera en China.

### **Servicios de Títulos Valores, Gestión de Activos y Futuros**

En el Acuerdo de la Fase Uno, China se comprometió a eliminar los límites máximos de las acciones extranjeras en los sectores de títulos valores, gestión de activos y futuros a más tardar el 1 de abril de 2020. También se comprometió a garantizar que los proveedores estadounidenses de servicios de títulos valores, gestión de activos y futuros puedan acceder al mercado Chino de manera no discriminatoria, incluso en lo que respecta a la revisión y aprobación de las solicitudes de licencia.

De conformidad con sus compromisos en la Fase Uno del Acuerdo, China anunció que a partir del 1 de abril de 2020 permitiría la creación de empresas de propiedad totalmente extranjera para los sectores de gestión de títulos valores y activos (es decir, fondos), y que a partir del 1 de enero de 2020 permitiría la creación de empresas de propiedad totalmente extranjera para el sector de futuros. Antes de estos anuncios, China había mantenido un tope de capital extranjero del 51 por ciento para estos sectores. En los últimos cuatro años, algunas instituciones financieras estadounidenses han solicitado y recibido licencias para operar como empresas de propiedad totalmente extranjera en estos sectores. Los Estados Unidos está vigilando estos y otros acontecimientos a medida que las empresas estadounidenses siguen tratando de obtener licencias y realizar operaciones en estos sectores.

### **Servicios de Seguros**

En el Acuerdo de la Fase Uno, China se comprometió a acelerar la eliminación de los límites de capital extranjero para los seguros de vida, pensiones y salud, de modo que se eliminen a más tardar el 1 de abril de 2020. Además, confirmó la eliminación del requisito de funcionamiento a 30 años, conocido como requisito de "maduración", que se había aplicado a los aseguradoras extranjeras que buscaban establecer operaciones en China en todos los ramos de seguros. China también se comprometió a eliminar todas los demás requisitos y procesos regulatorios discriminatorios y a examinar y aprobar con prontitud las solicitudes de licencia.

En consonancia con los compromisos asumidos por China en el Acuerdo de la Fase Uno, la Comisión Reguladora de Banca y Seguros de China (CBIRC por sus siglas en inglés) anunció que, a partir del 1 de enero de 2020, China permitiría la creación de empresas de propiedad totalmente extranjera para los sectores de seguros de vida, pensiones y salud. Antes de este anuncio, China había mantenido límites máximos de capital extranjero y solo permitía que las empresas extranjeras se establecieran como empresas conjuntas chino-extranjeras en estos sectores. En diciembre de 2020, la CBIRC emitió una medida que proporcionaba más transparencia con respecto a su intención de permitir que las empresas con inversión extranjera se beneficien de esta apertura.

En otros sectores de seguros, los Estados Unidos sigue alentando a China a que establezca procedimientos más transparentes a fin de permitir mejor la participación extranjera en el mercado chino. Entre los sectores que necesitan más transparencia figuran los seguros de crédito a la exportación y los seguros contra riesgos políticos.

Por último, algunas compañías de seguros estadounidenses establecidas en China han tenido dificultades para conseguir que la CBIRC, sustituida por la Administración Nacional de Regulación Financiera (NAFR por sus siglas en inglés) en marzo de 2023, emita las aprobaciones oportunas de sus solicitudes de apertura de nuevas sucursales para ampliar sus operaciones. Los Estados Unidos sigue instando a la NAFR a que emita aprobaciones oportunas cuando las compañías de seguros estadounidenses traten de ampliar sus redes



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de sucursales en China.

### **Servicios de Pago Electrónico**

En una disputa ante la OMC que inició en 2010, Estados Unidos desafió las restricciones de China a las empresas extranjeras, incluidas las principales empresas estadounidenses de procesamiento de tarjetas de crédito y débito, que habían estado tratando de suministrar servicios de pago electrónico a bancos y otras empresas que emiten o aceptan tarjetas de crédito y débito en China. Los Estados Unidos argumentó que China se había comprometido en su Acuerdo de Adhesión a la OMC a abrir este sector en 2006, y un panel de la OMC estuvo de acuerdo con Estados Unidos en una decisión emitida en 2012. Posteriormente, China acordó cumplir con las resoluciones del panel de la OMC en 2013, pero no permitió que los proveedores extranjeros solicitaran licencias hasta junio de 2017, cuando el regulador de China, el Banco Popular de China (PBOC por sus siglas en inglés), finalizó el establecer un proceso de concesión de licencias de dos etapas en el que un proveedor debe completar primero un año de trabajo preparatorio antes de poder solicitar una licencia.

En enero de 2020, cuando Estados Unidos y China firmaron el Acuerdo de la Fase Uno, ningún proveedor extranjero de servicios de pago electrónico había podido obtener la licencia necesaria para operar en el mercado chino debido en gran medida a los retrasos causados por el Banco Popular de China. En ocasiones, el PBOC se había negado incluso a aceptar solicitudes de proveedores estadounidenses para iniciar los trabajos preparatorios, el primero de los dos pasos necesarios en el proceso de concesión de licencias. Mientras tanto, a lo largo de los años en que China retrasó activamente la apertura de su mercado a los proveedores extranjeros, el campeón nacional de China, China Union Pay, ha utilizado su acceso exclusivo a las transacciones en moneda nacional en el mercado chino, y los ingresos que conlleva, para respaldar sus esfuerzos por construir su red de servicios de pago electrónico en el extranjero, incluso en los Estados Unidos. En otras palabras, China decidió conscientemente mantener prácticas distorsionadoras del mercado que benefician a sus propias empresas, incluso frente a fallos adversos de la OMC.

En el Acuerdo de la Fase Uno, China se comprometió a garantizar que el PBOC aplique un proceso de concesión de licencias mejorado y oportuno para los proveedores estadounidenses de servicios de pago electrónico a fin de facilitar su acceso al mercado chino. En junio de 2020, cuatro meses después de la entrada en efecto del Acuerdo de la Fase Uno, American Express se convirtió en el primer proveedor extranjero de servicios de pago electrónico en obtener una licencia del PBOC para operar en el mercado chino. En noviembre de 2023, después de años de retrasos, MasterCard finalmente pudo obtener una licencia para operar en el mercado chino. Mientras tanto, el PBOC ha estado retrasando la acción por períodos de tiempo aún más largos en la solicitud de licencia presentada por otro proveedor estadounidense, Visa. Los Estados Unidos sigue vigilando de cerca esta situación con preocupación.

### **Servicios de pago por Internet**

El PBOC emitió por primera vez regulaciones para los proveedores no bancarios de servicios de pago en línea en 2010, y posteriormente comenzó a procesar solicitudes para licenciatarios. En 2015 se reforzó aún más la normativa, con disposiciones adicionales destinadas a aumentar la seguridad y la trazabilidad de las transacciones. De acuerdo con un informe de EE.UU., de las más de 200 licencias emitidas hasta junio de 2014, solo dos se habían otorgado a proveedores con inversión extranjera, y esas dos eran para servicios muy limitados. Este informe proporcionó pruebas claras que respaldan las preocupaciones de las partes interesadas sobre las dificultades que enfrentan para ingresar al mercado de China y el lento proceso que enfrentan las empresas extranjeras para obtener licencias. En 2018, el PBOC anunció que permitiría a proveedores extranjeros, sobre una base no discriminatoria, suministrar servicios de pago habilitados por



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Internet. Al mismo tiempo, como en muchos otros sectores, el PBOC exige a los proveedores que localicen sus datos e instalaciones en China. En enero de 2021, PayPal se convirtió en la primera empresa extranjera en obtener la propiedad total de una plataforma de pago en China, junto con una licencia para suministrar servicios de pago. Los Estados Unidos seguirá vigilando de cerca la evolución de la situación en esta área.

### **Servicios de Telecomunicaciones**

Las restricciones impuestas por China para los servicios básicos de telecomunicaciones, tales como la prohibición informal de la entrada de nuevos productos, un tope del 49 por ciento a la participación extranjera, el requisito de que los proveedores extranjeros sólo puedan establecer empresas conjuntas con empresas de propiedad estatal y requisitos de capital excesivamente altos, han impedido que proveedores extranjeros accedan al mercado chino de servicios de telecomunicación básica. Desde que China adhirió a la OMC, hace casi dos decenios, ni una sola empresa extranjera ha logrado establecer una nueva empresa conjunta para ingresar en este sector.

Las restricciones impuestas por China a los servicios de telecomunicaciones de valor añadido menos regulados también han creado graves obstáculos a la entrada al mercado a proveedores extranjeros que tratan de incursionar en este sector. Estas restricciones incluyen procedimientos opacos y arbitrarios para la concesión de licencias, límites máximos a la participación extranjera en el capital y moratorias periódicas e injustificadas sobre la emisión de nuevas licencias. Como consecuencia de esto, sólo unas pocas docenas de proveedores con inversión extranjera han obtenido licencias para prestar servicios de telecomunicaciones de valor añadido, mientras que hay miles de proveedores nacionales con licencia.

### **Régimen Regulatorio de Internet**

El régimen regulatorio de Internet de China es restrictivo y poco transparente, afecta a una amplia gama de actividades de servicios comerciales hechas a través de Internet, y está supervisado por múltiples organismos sin una jurisdicción clara. La economía de Internet de China ha experimentado un auge en la última década y es la segunda en tamaño, solo después de la de Estados Unidos. El crecimiento en China ha estado marcado por sectores de servicios similares a los que se encuentran en los Estados Unidos, incluidos sitios web minoristas, motores de búsqueda, educación vocacional y de adultos en línea, viajes, publicidad, servicios audiovisuales y juegos de computadora, correo electrónico y mensajes de texto, búsquedas de empleo en línea, consultoría por Internet, servicios de mapas, aplicaciones, registro de dominios web y comercio electrónico. Sin embargo, en el mercado chino, las empresas chinas dominan debido en gran parte a las restricciones impuestas a las empresas extranjeras por el Gobierno chino. Al mismo tiempo, las empresas extranjeras siguen tropezando con grandes dificultades para tratar de ofrecer estos y otros servicios basados en Internet a través de las fronteras.

China sigue bloqueando ampliamente sitios web legítimos, lo que impone costos significativos tanto a los proveedores como a los usuarios de servicios y productos basados en la web. China actualmente bloquea la mayoría de los sitios más grandes del mundo, y la investigación de la industria estadounidense ha calculado que más de 10,000 sitios están bloqueados, lo que afecta miles de millones de dólares en negocios, incluidas comunicaciones, redes, tiendas de aplicaciones, noticias y otros sitios. Incluso cuando los sitios no están bloqueados permanentemente, la implementación a menudo arbitraria del bloqueo y el efecto degradante del rendimiento de filtrar todo el tráfico hacia y desde China perjudican significativamente el suministro de muchos servicios transfronterizos, a menudo hasta el punto de hacerlos inviables.

### **Servicios de voz sobre protocolo de Internet**



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Si bien los servicios de voz sobre protocolo de Internet (VoIP por sus siglas en inglés) de computadora a computadora están permitidos en China, las autoridades regulatorias chinas han restringido la capacidad de ofrecer servicios de VoIP interconectados a la red pública de telecomunicaciones conmutada (*es decir*, para llamar a un número de teléfono tradicional) al servicio básico de telecomunicaciones con licencia. No hay una justificación obvia para tal restricción, que priva a los consumidores de una opción de comunicación útil, y los Estados Unidos sigue abogando por su eliminación.

### **Servicios de computación en la nube**

Especialmente preocupante es el trato de China a las empresas extranjeras que buscan participar en el desarrollo de servicios de computación en la nube, incluidos los servicios de procesamiento y almacenamiento de datos informáticos y los servicios de aplicaciones de software proporcionados a través de Internet. China prohíbe a las empresas extranjeras establecidas en China prestar directamente cualquiera de estos servicios. Dada la dificultad de prestar estos servicios a nivel transfronterizo (en gran parte debido a las políticas restrictivas chinas), la única opción que tiene una empresa extranjera para acceder al mercado chino es establecer una asociación contractual con una empresa china, que sea titular de la licencia necesaria para un centro de datos de Internet, y entregar su valiosa tecnología, propiedad intelectual, conocimientos técnicos y desarrollo de marcas como parte de este acuerdo. Si bien el proveedor de servicios extranjeros obtiene un derecho de licencia del acuerdo, no tiene relación directa con los clientes de China y no tiene la capacidad de desarrollar su negocio de forma independiente. Básicamente, ha entregado su negocio a una empresa china que bien podría convertirse en un competidor global. Este trato ha generado serias preocupaciones en los Estados Unidos y en otros Miembros de la OMC, así como en empresas estadounidenses y de otros países.

En los principales mercados, incluida China, los servicios de computación en la nube generalmente se ofrecen a través de presencia comercial de una de dos maneras. Se ofrecen como un servicio integrado en el que el propietario y el operador de una red de telecomunicaciones también ofrece servicios informáticos, incluidas las funciones de almacenamiento y procesamiento de datos, a través de esa red. También se ofrecen como un servicio informático autónomo, con conexión al sitio del servicio informático proporcionado por separado por un proveedor de servicios de telecomunicaciones. Aunque los compromisos contraídos por China en el marco del Acuerdo General sobre el Comercio de Servicios (AGCS) de la OMC incluyen servicios pertinentes para ambos enfoques, ninguno de ellos está abierto actualmente a las empresas con inversión extranjera en China.

### **Servicios Audiovisuales y Conexos**

China prohíbe a las empresas extranjeras prestar servicios de producción y distribución de películas en China. Además, las restricciones impuestas por China en el área de servicios cinematográficos han desmotivado por completo la inversión de empresas extranjeras de salas de cine en China.

Las restricciones impuestas por China a los servicios relacionados con televisión y radio limitan en gran medida la participación de proveedores extranjeros. Por ejemplo, China prohíbe la retransmisión de canales de televisión extranjeros, la inversión extranjera en la producción de televisión y la inversión extranjera en estaciones y canales de televisión. China también impone cuotas sobre la cantidad de programación extranjera que se puede ver en un canal de televisión chino al día. Además, en septiembre de 2018, la Administración Nacional de Radio y Televisión (NRTA, por sus siglas en inglés) emitió un proyecto con una medida adversa que impondría nuevas restricciones en el ya muy restringido mercado chino de contenidos creativos extranjeros. Requeriría que el gasto en contenido extranjero no represente más del 30 por ciento del total de programas disponibles en cada una de varias categorías, incluidas películas, programas



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de televisión, dibujos animados, documentales y otros programas de televisión extranjeros, disponibles para su exhibición a través de instituciones de radiodifusión y plataformas de contenido audiovisual en línea. También prohibiría los programas de televisión extranjeros en horario de máxima audiencia. Aunque la versión final de esta medida aún no se ha emitido, sigue suscitando serias preocupaciones, ya que parece que, en la práctica, se ha aplicado en China desde 2021, incluso por parte de las plataformas de contenidos audiovisuales en línea.

### **Largometrajes**

En febrero de 2012, los Estados Unidos y China llegaron a una solución alternativa con respecto a determinadas resoluciones relativas a la importación y distribución de películas de cine en una diferencia en el marco de la OMC que los Estados Unidos había ganado. Las dos partes firmaron un memorándum de entendimiento (MOU, por sus siglas en inglés) que prevé aumentos sustanciales en el número de películas extranjeras importadas y distribuidas en China cada año, junto con ingresos adicionales sustanciales para los productores de películas estadounidenses. Sin embargo, China aún no ha cumplido plenamente los compromisos contraídos en el MOU, en particular en lo que respecta a compromisos fundamentales para abrir oportunidades de distribución cinematográfica para las películas importadas. Como resultado, Estados Unidos ha estado presionando a China para que implemente plenamente el MOU.

En 2017, de acuerdo con los términos del MOU, las dos partes comenzaron a discutir sobre la provisión de una compensación significativa adicional a los Estados Unidos en un MOU actualizado. Estas conversaciones continuaron hasta marzo de 2018, antes de estancarse cuando China se embarcó en una importante reorganización gubernamental que implicó cambios significativos para la Oficina de Cine de China. Las conversaciones se reanudaron en 2019 como parte de negociaciones comerciales más amplias entre Estados Unidos y China que comenzaron después de una reunión entre los presidentes de los dos países al margen de la Cumbre de Jefes de Estado y de Gobierno del Grupo de los 20 en Buenos Aires en diciembre de 2018. Al 31 de diciembre de 2023, no se ha llegado a un acuerdo sobre la compensación significativa adicional que China debe a Estados Unidos. Estados Unidos seguirá presionando a China para que cumpla con sus obligaciones.

### **Servicios de video y entretenimiento en línea**

China restringe el suministro en línea de servicios extranjeros de video y entretenimiento a través de medidas que afectan tanto a las plataformas de contenido como a las de distribución, como parte de su estructura de gobierno autoritario. China exige a las empresas extranjeras que concedan licencias de sus contenidos a empresas chinas y también impone pesadas restricciones a los contenidos, que se aplican mediante requisitos exhaustivos de revisión de contenidos que se basan en criterios vagos y poco transparentes. Con respecto a las plataformas de distribución, la NRTA ha exigido a los proveedores chinos de plataformas en línea que no gasten más del 30 por ciento de su presupuesto de adquisición en contenido extranjero. La NRTA también ha implantado numerosas medidas que impiden que los proveedores extranjeros califiquen para una licencia, como los requisitos de que todas las plataformas de video sean de propiedad china. La NRTA y otras autoridades regulatorias chinas también han tomado medidas para impedir el suministro transfronterizo de servicios de vídeo en línea, lo que puede implicar los compromisos de China en el marco del AGCS en relación con la distribución de vídeo.

### **Servicios Legales**

China restringe los tipos de servicios legales que pueden proporcionar los bufetes de abogados extranjeros, incluso mediante la prohibición de que los bufetes de abogados extranjeros contraten abogados calificados



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para ejercer el derecho chino. También restringe la capacidad de los bufetes de abogados extranjeros para representar a sus clientes ante agencias gubernamentales chinas e impone largas demoras a los bufetes de abogados extranjeros que buscan establecer nuevas oficinas. Además, a partir de la versión de la Lista Negativa de Inversión Extranjera de China que entró en efecto en julio de 2020, China ha añadido una prohibición explícita sobre la posibilidad de que un abogado extranjero se convierta en socio de un bufete de abogados nacional. Según se informa, China también está considerando proyectos de medidas regulatorias que restringirían aún más la capacidad de los bufetes de abogados extranjeros de operar en China.

### **Servicios de mensajería exprés**

Los Estados Unidos sigue preocupado por la aplicación por parte de China de la Ley Postal de 2009 y los reglamentos conexos, en virtud de los cuales China impide a proveedores de servicios extranjeros participar en el segmento de documentos de su mercado nacional de mensajería exprés. Mientras tanto, en el segmento de paquetes, China aplica enfoques regulatorios excesivamente onerosos e inconsistentes y, según se informa, ha brindado un trato más favorable a los proveedores de servicios chinos al otorgar permisos comerciales. China tampoco siempre permite que proveedores de servicios extranjeros participen en igualdad de condiciones en la elaboración de leyes, regulaciones y otras medidas, incluidas normas, para el sector de los servicios de mensajería exprés, ni siempre anuncia públicamente los requisitos para obtener una licencia comercial.

## **BARRERAS AL COMERCIO DIGITAL**

### **Restricciones de datos**

En 2023, China continuó desarrollando su amplio control estatal sobre la recopilación, el almacenamiento, el procesamiento y el intercambio de datos. La Ley de Seguridad de Datos de China entró en efecto en septiembre de 2021, y la Ley de Protección de Información Personal de China entró en efecto en noviembre de 2021. Estas leyes operan junto con la Ley de Ciberseguridad, la cual entró en efecto en junio de 2017, la Ley de Seguridad Nacional, que está en efecto desde 2015, y diversas medidas de implementación, incluidas las Medidas de Evaluación de la Seguridad para la Transferencia Saliente de Datos, que entraron en efecto en septiembre de 2022, para prohibir o restringir severamente las transferencias transfronterizas de datos importantes, un término amplio y vagamente definido, y, en ciertos casos, información personal recopilada por las empresas a través de sus operaciones en China. Estas leyes y medidas de implementación también imponen requisitos locales de almacenamiento y procesamiento de datos a las empresas que operan en China y que recopilan datos importantes y, en ciertos casos, información personal. Los requisitos de localización de datos de China también plantean preocupaciones sobre la vigilancia estatal.

Se ha informado que, como resultado de la aplicación por parte de China de las Medidas de Evaluación de la Seguridad para las Transferencias Salientes de Datos, China tiene una acumulación de miles de solicitudes de empresas que buscan exportar datos. Además, en septiembre de 2023, China publicó un borrador de revisiones de las Medidas de Evaluación de Seguridad para las Transferencias Salientes de Datos, al tiempo que solo permitió un período de comentarios públicos de dos semanas. Muchos aspectos del borrador del proyecto de revisión parecen preocupantes.

Las transferencias transfronterizas de datos son rutinarias en el curso ordinario de los negocios en muchos sectores y son fundamentales para la actividad empresarial en esos sectores. Dada la amplia gama de negocios y actividades comerciales que dependen de las transferencias transfronterizas de datos y del acceso flexible a las instalaciones informáticas mundiales, estos acontecimientos siguen generando serias preocupaciones en Estados Unidos y muchos otros países.



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### **Políticas de tecnología de la información y de comunicaciones seguras y controlables**

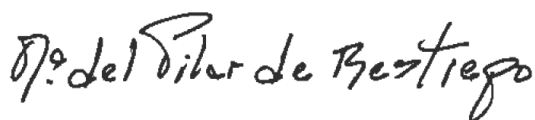
Las medidas de implementación de la Ley de Ciberseguridad de China siguen siendo una fuente continua de grave preocupación desde la promulgación de la ley en 2016. Estas medidas son excesivamente amplias y sirven para promover la industria nacional a expensas de las contrapartes comerciales Chinas. De particular preocupación son las Medidas para la Revisión de la Ciberseguridad, publicadas por primera vez en 2016 y actualizadas posteriormente en 2020 y 2021. Esta medida implementa un elemento del régimen de ciberseguridad creado por la Ley de Ciberseguridad. En concreto, la medida pone en marcha un proceso de revisión para regular la compra de productos y servicios de TIC por parte de los operadores de infraestructuras de información críticas y los operadores de plataformas en línea en China. El proceso de revisión debe considerar, entre otras cosas, los posibles riesgos de seguridad nacional relacionados con la interrupción del servicio, la fuga de datos y la confiabilidad de las cadenas de suministro. Además, en septiembre de 2022, China publicó un borrador de revisión de la Ley de Ciberseguridad con un período de comentarios por parte del público de 15 días. El proyecto de revisión introduciría sanciones para los operadores de infraestructuras críticas de información que utilicen productos o servicios que no se hayan sometido a la revisión de seguridad requerida, y también aumentaría las multas por determinadas violaciones a la Ley de Ciberseguridad.

Como se ha demostrado en la implementación de medidas de la Ley de Ciberseguridad, el enfoque de China consiste en imponer severas restricciones a una amplia gama de productos y servicios de TIC de Estados Unidos y otros países con el objetivo aparente de apoyar las políticas de localización de tecnología de China, fomentando la sustitución de productos y servicios TIC extranjeros por productos nacionales. Las partes interesadas estadounidenses y de otros países, así como los gobiernos de todo el mundo, expresaron serias preocupaciones sobre los requisitos de que los equipos de TIC y otros productos y servicios de TIC en sectores críticos sean seguros y controlables, ya que el Gobierno chino utiliza estos requisitos para perjudicar a las empresas no chinas.

Adicionalmente la Ley de Ciberseguridad, China ha hecho referencia a sus requisitos de seguridad y control en una variedad de medidas que se remontan a 2013. A través de estas medidas, China ha ordenado que los usuarios chinos de tecnología de la información compren productos chinos y favorezcan a los proveedores de servicios chinos, ha impuesto requisitos nacionales de investigación y desarrollo (I&D), ha considerado la ubicación donde se hace la I&D como un factor de riesgo de ciberseguridad y ha exigido la transferencia o divulgación del código fuente u otra propiedad intelectual. En la actualización de 2019 de las Medidas para la Revisión de la Ciberseguridad, China agregó hechos políticos, diplomáticos y otros acontecimientos no comerciales como posibles factores de riesgo a tener en cuenta.

Además, en 2015, China promulgó una Ley de Seguridad Nacional y una Ley de Lucha contra el Terrorismo, que incluyen disposiciones que citan no solo los objetivos de seguridad nacional y lucha contra el terrorismo, sino también las políticas económicas e industriales. El Consejo de Estado también publicó un plan en 2015 que establece un calendario para la adopción de productos y servicios seguros y controlables en los ministerios críticos para 2020.

Mientras tanto, se siguen proponiendo y desplegando políticas sectoriales específicas en este amplio marco en toda la economía de China. Un ejemplo de alto perfil de diciembre de 2014 fue una medida propuesta por la Comisión Regulatoria Bancaria de China que pedía que el 75% de los productos de TIC utilizados en el sistema bancario fueran seguros y controlables para 2019 y que habrían impuesto una serie de criterios que excluirían a los proveedores extranjeros de TIC del sector bancario de China. Poco después, se propuso una medida similar para el sector asegurador.



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En 2015, Estados Unidos, en colaboración con otros gobiernos y grupos de interés de todo el mundo, planteó serias preocupaciones sobre el régimen seguro y controlable de China en los niveles más altos del gobierno de China. Durante una visita de Estado en septiembre de 2015 en Washington, D.C., los presidentes de Estados Unidos y China se comprometieron con un conjunto de principios para el comercio de tecnologías de la información. La cuestión también se planteó en relación con la reunión del Grupo S&ED de junio de 2015 y la reunión del JCCT de noviembre de 2015, en la que China asumió una serie de importantes compromisos adicionales con respecto a la política tecnológica. China reiteró muchos de estos compromisos en la reunión del JCCT de noviembre de 2016, en la que afirmó que sus políticas seguras y controlables no limitan o impiden innecesariamente las oportunidades de venta comercial para los proveedores extranjeros de TIC ni imponen innecesariamente condiciones y restricciones basadas en el país de origen de las compras, ventas o usos comerciales de las TIC. China también acordó que notificaría al Comité OTC de la OMC sobre los reglamentos técnicos pertinentes.

Una vez más, sin embargo, China no ha cumplido sus promesas. Los numerosos borradores y medidas finales de implementación emitidos por China desde 2017 en el área de la ciberseguridad plantean serias dudas sobre el enfoque de China con respecto a la regulación de la ciberseguridad. Las medidas Chinas no parecen estar en consonancia con el enfoque no discriminatorio y no restrictivo del comercio al que se ha comprometido, y las partes interesadas del mundo están aún más preocupadas por las implicaciones de las medidas de seguridad de las TIC de China en los muchos sectores económicos que emplean tecnologías digitales. En consecuencia, a lo largo del año pasado, los Estados Unidos transmitió su profunda preocupación por el enfoque de China en materia de reglamentación de la ciberseguridad a través de la participación bilateral y multilateral, incluso en las reuniones del Comité y el Consejo General de la OMC, en un esfuerzo por persuadir a China de que revise sus políticas en esta área a la luz de sus obligaciones en el marco de la OMC y los compromisos bilaterales. Estos esfuerzos están actualmente en curso.

### **Encriptación**

El uso de productos y servicios de TIC depende cada vez más de un cifrado robusto, una funcionalidad esencial para proteger la privacidad y salvaguardar información comercial confidencial. Las partes interesadas siguen citando los requisitos onerosos sobre el uso del cifrado, incluidos los procesos de aprobación intrusivos y, en muchos casos, el uso obligatorio de algoritmos de cifrado nacionales (*por ejemplo*, para Wifi y productos celulares de cuarta generación (4G)), como un obstáculo comercial importante.

En octubre de 2019, China adoptó una Ley de Criptografía que incluye requisitos restrictivos para los productos de cifrado comerciales que "involucran la seguridad nacional, la economía nacional y la vida de las personas, y el interés público", que deben someterse a una evaluación de seguridad. Esta amplia definición de productos comerciales de cifrado, que deben someterse a una evaluación de seguridad, suscita la preocupación de que la Ley de Criptografía dé lugar a restricciones innecesarias sobre productos y servicios de TIC extranjeros. En agosto de 2020, la Administración Estatal de Criptografía emitió el borrador del Reglamento Administrativo de Criptografía Comercial para implementar la Ley de Criptografía. Este borrador de la medida no abordó las preocupaciones que los Estados Unidos y muchas otras partes interesadas habían planteado con respecto a la Ley de Criptografía.

En el futuro, los Estados Unidos continuará monitoreando la implementación de la Ley de Criptografía y medidas relacionadas. Los Estados Unidos permanecerá atento a la introducción de nuevos requisitos que obstaculicen el uso tecnológicamente neutral de un cifrado robusto y estandarizado.

### **BARRERAS A LA INVERSIÓN**



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China trata de proteger muchas industrias nacionales a través de un régimen de inversión restrictivo. Muchos aspectos del actual régimen de inversión de China siguen causando serias preocupaciones a los inversionistas extranjeros. Por ejemplo, la Ley de Inversión Extranjera de China y sus reglamentos para su aplicación, que entraron en efecto en enero de 2020, perpetúan regímenes separados para los inversionistas y las inversiones nacionales y extranjeras.

También ha habido una falta de liberalización sustancial del régimen de inversiones de China, como lo demuestra la aplicación continuada de prohibiciones, topes a la participación extranjera y requisitos en materia de empresas conjuntas y otras restricciones en determinados sectores. La versión más reciente de la Lista Negativa de Inversiones Extranjeras de China, que entró en efecto en enero de 2022, mantiene importantes restricciones a la inversión en una serie de áreas importantes para los inversionistas extranjeros, como los sectores de servicios clave, ciertos tipos de agricultura y varias industrias extractivas. Con respecto a los sectores de servicios, China mantiene prohibiciones o restricciones en sectores clave como los servicios de computación en la nube y otros servicios relacionados con Internet, servicios de telecomunicaciones, servicios de producción y distribución de películas y servicios de programas informáticos de vídeo y entretenimiento. Con respecto a la agricultura, China mantiene prohibiciones al desarrollo de biotecnologías agrícolas y restricciones al desarrollo de nuevas variedades de maíz y trigo. Del mismo modo, China mantiene prohibiciones sobre la exploración, la minería y el procesamiento de los 17 tipos de minerales de tierras raras, así como del tungsteno.

La Ley de Inversiones Extranjeras de China, los reglamentos de aplicación y otras medidas conexas sugieren que China persigue el objetivo de sustituir su sistema de aprobación administrativa, caso por caso, para una amplia gama de inversiones por un sistema que sólo se aplicaría a sectores restringidos. Sin embargo, actualmente no está claro si China está logrando plenamente ese objetivo en la práctica. Además, incluso en el caso de los sectores que se han liberalizado, la posibilidad de que se intensifiquen los requisitos en materia de licencias para empresas extranjeras o la aplicación de procesos de concesión de licencias que perjudiquen a las empresas extranjeras podría dificultar el logro de un acceso significativo a los mercados. Además, la posibilidad de un mecanismo de revisión de seguridad nacional nuevo y excesivamente amplio, y el impacto cada vez más adverso de la Ley de Ciberseguridad, la Ley de Seguridad de Datos y la Ley de Protección de la Información Personal de China y las medidas de implementación relacionadas tienen graves implicaciones negativas para los inversores y las inversiones extranjeras. Las empresas extranjeras también continúan informando que los funcionarios del gobierno chino pueden condicionar la aprobación de inversiones al requisito de que una empresa extranjera transfiera tecnología, haga investigación y desarrollo en China, cumpla con los requisitos de desempeño relacionados con la exportación o el uso de contenido local, o haga concesiones comerciales valiosas y específicas de acuerdos.

A lo largo de los años, Estados Unidos ha expresado repetidamente su preocupación a China por su régimen de inversión restrictivo. Dado que las restricciones a la inversión de China ejercen presión sobre las empresas estadounidenses para que transfieran tecnología a las empresas chinas, fueron objeto de la investigación de la Sección 301 de la USTR. Las medidas de respuesta adoptadas por Estados Unidos en esa investigación tienen por objeto, en parte, abordar esta preocupación.

En los últimos años, el clima de inversión se ha vuelto inusualmente desafiante, en gran parte debido a las medidas adoptadas por el Gobierno chino. Por ejemplo, el año pasado, supuestamente, al implementar reformas a la Ley de Contraespionaje de China que amplían la definición de espionaje, los funcionarios de seguridad chinos allanaron y detuvieron al personal de varias empresas multinacionales que operan en China que ayudan a los inversionistas a hacer la debida diligencia con respecto a inversiones existentes o nuevas posibles en China. Sin una supervisión judicial efectiva u otros medios para impugnar estas acciones, los inversionistas han informado de que su confianza en China se ha visto gravemente afectada.



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En agosto de 2023, el Consejo de Estado de China emitió los Conceptos sobre la optimización adicional del entorno de inversión extranjera y la mejora de la atracción de inversión extranjera, con la aparente esperanza de atraer mayores niveles de inversión extranjera. Esta medida, conocida como Documento 11, establece una orientación general para los ministerios del nivel central y las autoridades del gobierno subcentral sobre 24 temas relacionados con inversión extranjera. China ha emitido una guía similar en el pasado sin hacer un seguimiento importante.

## **SUBSIDIOS**

### **Subsidios Industriales**

China sigue otorgando subsidios masivos a sus industrias nacionales, que han causado daño a la industria estadounidense y a la industria de otros países Miembros de la OMC. Algunas de estas subvenciones también parecen estar prohibidas por las normas de la OMC. En la medida de lo posible, los Estados Unidos ha tratado de hacer frente a estas subvenciones mediante procedimientos en materia de derechos compensatorios llevados a cabo por el Departamento de Comercio de los Estados Unidos y casos de solución de diferencias en la OMC.

Los Estados Unidos y otros Miembros de la OMC también han seguido presionando a China para que informe sobre todas sus subvenciones a la OMC, de conformidad con sus obligaciones en el marco de la OMC, al tiempo que han presentado contra notificaciones en las que enumeran cientos de programas de subvenciones que China no ha notificado. A lo largo de los años, los reportes de subvenciones exigidas por China en el marco de la OMC han mejorado marginalmente en ocasiones en términos de puntualidad y exhaustividad, pero no de manera coherente. Sin embargo, desde que adhirió a la OMC hace más de 20 años, China aún no ha presentado a la OMC un reporte completo de las subvenciones mantenidas por el gobierno central, y no reportó ni una sola subvención del gobierno subcentral hasta julio de 2016, cuando proporcionó información en gran medida solo sobre las subvenciones del gobierno subcentral que los Estados Unidos había impugnado como subvenciones prohibidas en una diferencia en la OMC. Si bien China ha seguido reportando algunas subvenciones del gobierno subcentral en sus notificaciones de subvenciones más recientes, esas notificaciones son lamentablemente inadecuadas y no abordan las subvenciones del gobierno subcentral más distorsionadoras, como los cada vez más prolíficos y muy grandes "fondos de orientación del gobierno" que se pueden encontrar en todos los niveles del gobierno de China.

Los Estados Unidos comenzó a trabajar con la UE y Japón en 2018 para identificar nuevas medidas efectivas y posibles reglas que podrían abordar las prácticas adversas de los subsidios chinos que actualmente no están cubiertas por las obligaciones existentes. En enero de 2020, los ministros de comercio de los Estados Unidos, la UE y el Japón emitieron una declaración en la que acordaron reforzar las normas de la OMC en materia de subvenciones mediante: 1) la prohibición de determinados tipos de subvenciones inauditas; 2) exigir al país que concede la subvención que demuestre, en el caso de otros tipos de subvenciones causantes de distorsión, que la subvención otorgada no causó efectos desfavorables; 3) construir sobre la base de las normas vigentes sobre el "perjuicio grave"; (4) el fortalecimiento de las reglas de reporte, y (5) el desarrollo de una nueva definición de lo que constituye un "organismo público". En noviembre de 2021, los ministros de Comercio de los Estados Unidos, la UE y Japón renovaron su compromiso de colaborar entre sí, en particular, en lo que respecta a la determinación de los ámbitos en los que es necesario seguir trabajando para desarrollar nuevas herramientas y otras medidas para hacer frente a políticas y prácticas que no son de mercado. Desde entonces, Estados Unidos, la Unión Europea y Japón también han estado trabajando juntos para identificar subsidios de China en sectores específicos, como el sector de los semiconductores.

Por aparte, los Estados Unidos ha seguido presentando una serie de propuestas para reformar el



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funcionamiento del Comité de Subvenciones y Medidas Compensatorias de la OMC. Estas propuestas se han centrado en garantizar que los Miembros respondan oportunamente por escrito a las preguntas formuladas sobre sus programas de subvenciones.

### **Apoyo a la Agricultura Interna**

Durante varios años, China ha aumentado significativamente los subsidios internos y otras medidas de apoyo a su sector agrícola. China mantiene programas de pagos directos, precios mínimos de sostenimiento para los productos básicos y subvenciones a los insumos. China ha establecido un sistema de reservas de algodón, basado en precios mínimos de compra, y programas de precios indicativos para el algodón. En 2016, China estableció subsidios para los productores de almidón y etanol para incentivar la compra de maíz nacional, lo que resultó en mayores volúmenes de exportaciones de productos de maíz procesados de China en 2017 y 2018. Además, en 2022, China comenzó a fomentar la producción de soya a través de diversos programas de apoyo, como el aumento de los subsidios a las rotaciones de cultivos, los premios a los condados con alta producción de semillas oleaginosas, los incentivos para promover los cultivos intercalados de maíz y soya, y subsidios para el cultivo de demostración de soya en tierras alcalinas y de alta salinidad.

China presentó a la OMC una notificación relativa a medidas de ayuda interna en mayo de 2015, pero solo facilitó información hasta 2010. En diciembre de 2018, China reportó medidas de ayuda interna para el período 2011-2016. Este reporte mostraba que China había superado su *nivel de minimis* de ayuda interna para la soya (en 2012, 2014 y 2015), el algodón (de 2011 a 2016), el maíz (de 2013 a 2016), la colza (de 2011 a 2013) y el azúcar (2012). Es probable que la situación sea aún peor, ya que los métodos utilizados por China para calcular los niveles de ayuda interna dan lugar a subestimaciones. Además, los programas de apoyo notificados por China aparentemente no tuvieron en cuenta el apoyo prestado a nivel subnacional por los gobiernos provinciales y locales y, posiblemente, el apoyo administrado a través de empresas de propiedad estatal.

En septiembre de 2016, Estados Unidos inició una disputa en la OMC contra el apoyo del gobierno de China a la producción de trigo, maíz y arroz por exceder los compromisos de China. Al igual que otros Miembros de la OMC, China se comprometió a limitar su apoyo a los productores de productos agrícolas. Los programas de sostenimiento de los precios del mercado de China para trigo, maíz y arroz parecen proporcionar una ayuda muy superior a los niveles acordados. Este apoyo excesivo crea distorsiones de precios y sesga el campo de juego en contra de los agricultores estadounidenses. En octubre de 2016 se celebraron consultas en la OMC. En enero de 2017, se estableció un panel de la OMC para escuchar el caso. Las audiencias ante el Grupo Especial tuvieron lugar en enero y abril de 2018, y el Grupo Especial emitió su decisión en febrero de 2019, en la que dictaminó que la ayuda interna de China al trigo y al arroz era incompatible con las normas de la OMC. Originalmente, China acordó cumplir con las recomendaciones del panel para el 31 de marzo de 2020. Posteriormente, Estados Unidos acordó prorrogar este plazo hasta el 30 de junio de 2020. En julio de 2020, los Estados Unidos presentó una solicitud de autorización para suspender concesiones y otras obligaciones de conformidad con el artículo 22 del ESD sobre la base que China no había impuesto medidas en conformidad con sus obligaciones en el marco de la OMC. Después de que China se opusiera a esta solicitud, el asunto se sometió a arbitraje de conformidad con el artículo 22 del ESD. El arbitraje está actualmente suspendido, y los Estados Unidos sigue vigilando de cerca el funcionamiento de los programas de sostenimiento de los precios del mercado de China para el trigo y el arroz.

### **Subsidios a la pesca**

Se estima que China es el mayor proveedor mundial de subsidios pesqueros adversos, con un apoyo que supera los USD4.200 millones de dólares anuales. Estos subsidios contribuyen a la sobrepesca y al exceso



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de capacidad que amenazan las poblaciones mundiales de peces. De hecho, China es el mayor productor mundial de pesca de captura marina y, en los años transcurridos desde su adhesión a la OMC, ha seguido apoyando a su flota pesquera mediante subvenciones y otros medios que distorsionan el mercado. La cosecha pesquera anual de China es casi el doble que la del siguiente mayor productor del mundo, en términos de captura marina y el triple que la de otros principales productores, como Estados Unidos, India y Japón. Al mismo tiempo, siguen surgiendo informes sobre buques pesqueros de bandera china que hacen actividades de pesca ilegal, no declarada y no reglamentada (INDNR) en aguas lejanas, incluidas zonas bajo la jurisdicción de otros Miembros de la OMC. Si bien China ha hecho algunos progresos en la reducción de los subsidios a las pesqueras nacionales, continúa trasladando su exceso de capacidad a las pesqueras internacionales, al proporcionar una tasa mucho más alta de apoyo de subsidios a las empresas chinas de pesca en aguas distantes.

Durante varios años, Estados Unidos ha estado planteando sus preocupaciones de larga data sobre los programas de subsidios a la pesca de China. En 2015, los Estados Unidos presentó una solicitud escrita de información de conformidad con el párrafo 8 del artículo 25 del Acuerdo sobre Subvenciones y Medidas Compensatorias de la OMC (Acuerdo sobre Subvenciones de la OMC). Esta comunicación se refería a las subvenciones a la pesca otorgadas por China en los niveles central y subcentral del gobierno. Las subvenciones en litigio se establecían en casi 40 medidas e incluían una amplia gama de subvenciones, entre ellas subvenciones para la adquisición y renovación de buques pesqueros, subvenciones para nuevos equipos de pesca, subvenciones para seguros, préstamos subvencionados para instalaciones de elaboración, subvenciones a los combustibles y el suministro preferencial de agua, electricidad y tierras. Cuando China no respondió a esta solicitud, los Estados Unidos presentó una contra reporte de conformidad con el párrafo 10 del artículo 25 que abarcaba esas mismas medidas. Los reportes más recientes de subvenciones por parte de China han sido más completos, pero siguen siendo incompletos.

Además, los Estados Unidos ha participado activa y constructivamente en las negociaciones de la OMC sobre las subvenciones a la pesca, presionando para que se logren resultados significativos que prohíban los tipos más perjudiciales de subvenciones a la pesca. Los Estados Unidos y varios Miembros de la OMC, con ideas afines, han presentado varias propuestas destinadas a lograr un resultado ambicioso para esas negociaciones. En particular, en junio de 2022, los Miembros de la OMC adoptaron el texto del Acuerdo de la OMC sobre Subvenciones a la Pesca, que incluye varias disciplinas importantes, como las prohibiciones de las subvenciones a los buques u operadores que practican la pesca INDNR, las subvenciones a la pesca relativa a las poblaciones sobreexplotadas y las subvenciones a la pesca en alta mar no reglamentada. Este Acuerdo también contiene sólidas disposiciones en materia de transparencia para reforzar las notificaciones de los Miembros de la OMC en materia de subvenciones y permitir una vigilancia eficaz del cumplimiento de las obligaciones de los Miembros de la OMC. El Acuerdo entrará en efecto cuando haya sido aceptado por dos tercios de los Miembros de la OMC.

De cara al futuro, los Estados Unidos seguirá investigando el alcance total de las subvenciones a la pesca de China y seguirán presionando a China para que cumpla plenamente sus obligaciones pertinentes en el marco de las subvenciones de la OMC. Los Estados Unidos también instará a los Miembros de la OMC a que apoyen disciplinas adicionales y ambiciosas sobre las subvenciones perjudiciales a la pesca como parte de futuras negociaciones de la OMC sobre las subvenciones a la pesca.

### **Exceso de capacidad**

Debido a su enfoque de economía dirigida por el Estado, China es el principal infractor del mundo en la creación de capacidad no comercial, como lo demuestran las situaciones graves y persistentes de exceso de capacidad en varias industrias, incluidas el acero y el aluminio. China también está en camino de crear un



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grave exceso de capacidad en otras industrias, como semiconductores antiguos, la energía solar y los vehículos eléctricos, a través de su búsqueda de planes para la industria como Hecho en China 2025, en virtud del cual el Gobierno chino está repartiendo cientos de miles de millones de dólares para apoyar a empresas chinas y exigirles que alcancen objetivos preestablecidos de participación en el mercado interno - a expensas de las importaciones- y participación en el mercado global en cada una de las 10 industrias manufactureras avanzadas.

En industrias manufactureras como el acero y el aluminio, los planificadores económicos de China han contribuido a un exceso masivo de capacidad en China, a través de diversas medidas de apoyo gubernamental. En el caso del acero, la sobreproducción resultante ha distorsionado los mercados mundiales, perjudicando a los trabajadores y fabricantes estadounidenses tanto en el mercado estadounidense como en los mercados de terceros países, donde las exportaciones estadounidenses de acero y productos intensivos en acero compiten con las exportaciones de China. Esta sobreproducción ha perjudicado de manera similar a los trabajadores y fabricantes de muchos de los aliados y socios de Estados Unidos. Si bien China ha reconocido públicamente su exceso de capacidad en sus industrias de acero y aluminio aún no ha tomado medidas significativas para abordar las causas fundamentales de este problema de manera sostenible. De hecho, China sigue replicando estos resultados en otras industrias.

De 2000 a 2022, China representó el 72% del crecimiento de la capacidad siderúrgica mundial, un aumento muy superior al aumento de la demanda mundial y china durante el mismo período. En la actualidad, la capacidad de China representa aproximadamente la mitad de la capacidad mundial y más del doble de la capacidad siderúrgica combinada de la UE, Japón, Estados Unidos, Canadá, México y Brasil.

Al mismo tiempo, la producción de acero de China está alcanzando continuamente nuevos máximos, eclipsando la demanda. En 2020, la producción de acero de China superó los mil millones de toneladas métricas por primera vez, alcanzando los 1.065 millones de toneladas métricas, un aumento del siete por ciento con respecto a 2019, y se mantuvo alta en 1.018 millones de toneladas métricas en 2022, a pesar de una contracción significativa en la demanda interna de acero. Este aumento sostenido de la producción de acero intensiva en emisiones de gases de efecto invernadero (GEI), combinado con el debilitamiento del crecimiento económico y la desaceleración del sector de la construcción chino, ha inundado el mercado mundial con un exceso de acero y productos intensivos en acero en un momento en que el acero y otros sectores manufactureros fuera de China se enfrentan a una renovada debilidad en las condiciones del mercado, un creciente exceso de capacidad mundial, una desaceleración en el crecimiento económico mundial y continuas interrupciones en las cadenas de suministro. En 2022, China exportó más acero que el segundo, tercer y cuarto mayor productor de acero del mundo (India, Japón y Estados Unidos) juntos. Además, las exportaciones de China, de enero a septiembre de 2023, fueron un 36 por ciento más altas que durante el mismo período de 2022. En la actualidad, China sigue siendo, de lejos, el mayor exportador mundial de acero y productos de uso intensivo de acero. La producción de acero de China también sigue siendo mucho más sucia en términos de GEI que la producción de acero que desplaza de Estados Unidos y de la mayoría de los demás países, lo que socava los esfuerzos mundiales para la transición a una economía de energía limpia.

Del mismo modo, la capacidad de producción de aluminio primario en China aumentó en más de 1.400% entre 2000 y 2022, y China representó el 80 por ciento del crecimiento de la capacidad mundial durante ese período. La expansión de la capacidad de producción de China ha impulsado la caída de los precios a nivel mundial, pero incluso con estos bajos precios, China ha seguido expandiendo su capacidad de producción. Gran parte de esta capacidad adicional se ha construido con el apoyo del gobierno y depende de fuentes de electricidad, intensivas en emisiones de GEI. La capacidad de aluminio primario de China representa el 57 por ciento de la capacidad mundial y es más del doble de la capacidad de los siguientes ocho países



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productores de aluminio combinados. Al igual que en el sector siderúrgico, la producción de aluminio de China también se ha disparado en los últimos años, ya que la producción de aluminio de China ha seguido aumentando a pesar de las perturbaciones de la demanda mundial. La capacidad y la producción de China continúan contribuyendo a importantes desequilibrios y distorsiones de precios en los mercados globales, perjudicando a los productores y trabajadores estadounidenses de aluminio.

El exceso de capacidad en China perjudica a varias industrias y trabajadores estadounidenses no solo a través de las exportaciones directas de China a Estados Unidos, sino también a través de su impacto en los precios y la oferta mundiales y a través del comercio indirecto de productos intensivos en acero y aluminio, lo que dificulta que los fabricantes competitivos de todo el mundo sigan siendo viables. De hecho, las ramas de producción nacionales de muchos de los interlocutores comerciales de China siguen pidiendo a sus respectivos gobiernos que impongan medidas comerciales para responder a los efectos de distorsión del comercio del exceso de capacidad de China. Además, los Estados Unidos ha actuado en virtud del artículo 232 de la Ley de Expansión del Comercio de 1962 para imponer derechos adicionales a los productos de acero y aluminio, después de constatar que las importaciones de productos de acero y aluminio se están importando en los Estados Unidos en tales cantidades y en tales circunstancias que amenazan con menoscabar la seguridad nacional de los Estados Unidos. A juicio de los Estados Unidos, en ausencia de esfuerzos para corregir el comportamiento anticompetitivo de China, se corre el riesgo de que los productores de acero y aluminio de los Estados Unidos y de muchos otros países con economías de mercado se vean obligados a cerrar, lo que, entre otras cosas, crearía una dependencia aún mayor de China.

## **PRÁCTICAS ANTICOMPETITIVAS**

Como se mencionó anteriormente, la aplicación de la Ley Antimonopolio por parte de China ha suscitado diversas preocupaciones. Una preocupación fundamental es la medida en que se aplica la Ley Antimonopolio a empresas de propiedad estatal. Si bien las autoridades regulatorias chinas han aclarado que la Ley Antimonopolio se aplica a las empresas estatales, al 31 de diciembre de 2023, han iniciado acciones de ejecución principalmente contra empresas estatales a nivel de gobierno provincial, en lugar de empresas estatales a nivel de gobierno central, bajo la supervisión de la Comisión de Supervisión y Administración de Activos de Propiedad Estatal (SASAC por sus siglas en inglés). Además, las disposiciones de la Ley Antimonopolio protegen las operaciones lícitas de las empresas de propiedad estatal y los monopolios gubernamentales en industrias consideradas de importancia nacional. Otra preocupación clave se relaciona con la forma en que se aplica la Ley Antimonopolio a las empresas extranjeras. Muchas empresas estadounidenses han citado la aplicación selectiva de la Ley Antimonopolio contra empresas extranjeras que tratan de hacer negocios en China como una preocupación importante, y han destacado en particular la aplicación comparativamente limitada de esta ley contra empresas de propiedad estatal. En los últimos años, China ha comenzado a aumentar el número de acciones tomadas contra empresas privadas chinas y transacciones totalmente nacionales.

Otra preocupación expresada por la industria estadounidense es que las medidas correctivas impuestas a las empresas estadounidenses y de otros países en procesos de fusiones no siempre parecen estar destinadas a restablecer la competencia. Por el contrario, estas medidas correctivas parecen estar concebidas para promover los objetivos de la política industrial de China, como cuando las autoridades regulatorias tratan de exigir la transferencia de tecnología o una reducción de los derechos de licencia de propiedad intelectual.

La industria estadounidense también ha expresado su preocupación por la insuficiente previsibilidad, garantías procesales y transparencia en los procesos de investigación a las empresas extranjeras en virtud de la Ley Antimonopolio. Por ejemplo, la industria estadounidense informa que, mediante la amenaza de fuertes multas y otras sanciones, las autoridades regulatorias chinas han presionado a las empresas extranjeras para



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que cooperen frente a acusaciones no especificadas y han desestimulado o impedido que las empresas extranjeras lleven abogados a las reuniones. Además, las empresas estadounidenses continúan informando que las autoridades regulatorias chinas a veces hacen sugerencias informales sobre el comportamiento apropiado de la empresa, incluida la forma en que una empresa debe comportarse fuera de China, lo que sugiere fuertemente que el incumplimiento puede resultar en investigaciones y posibles sanciones. Más recientemente, las declaraciones de política de alto nivel sugieren un aumento de la aplicación de la ley antimonopolio cuando la tecnología propiedad o controlada por empresas extranjeras supuestamente implica preocupaciones de seguridad nacional o implica que la tecnología se prioriza para la innovación interna en China.

Dada la naturaleza estatal de la economía china, es muy necesario un escrutinio cuidadoso de las restricciones y regulaciones gubernamentales anticompetitivas. Las disposiciones de la Ley Antimonopolio sobre el abuso del poder administrativo (*es decir*, del gobierno) son instrumentos potencialmente importantes para reducir la injerencia del Gobierno en los mercados y para promover el establecimiento y mantenimiento de mercados cada vez más competitivos en China. La adopción por parte del Consejo de Estado de los Dictámenes sobre el Establecimiento de un Sistema de Revisión de la Competencia Leal en 2016 reflejó una útil ampliación de la supervisión por parte de los organismos antimonopolio de China sobre las restricciones gubernamentales indebidas a la competencia y la regulación anticompetitiva de la competencia. El aumento de la supervisión en esta materia también se reflejó en las reformas a la Ley Antimonopolio en 2022, que incluyeron un nuevo capítulo sobre el abuso del monopolio administrativo. Desde entonces, el SAMR ha publicado borradores de normas relativas al abuso del monopolio administrativo, y también ha determinado que la eliminación de los monopolios administrativos es una prioridad que se debe observar. Queda por ver si SAMR tendrá la suficiente autoridad y recursos para implementar esta prioridad de manera sólida.

## **EMPRESAS ESTATALES**

Si bien muchas disposiciones del Acuerdo de Adhesión de China a la OMC disciplinan indirectamente las actividades las empresas de propiedad estatal y con inversión estatal, China también acordó algunas disciplinas específicas. En particular, acordó que las leyes, regulaciones y otras medidas relativas a la compra de bienes o servicios para la venta comercial por empresas de propiedad estatal y con inversión estatal, o relacionadas con la producción de bienes o el suministro de servicios para la venta comercial o con fines no gubernamentales por parte de empresas de propiedad e inversión estatal, estarían sujetas a determinadas normas específicas de la OMC. China también acordó afirmativamente que las empresas de propiedad estatal y en las que invirtiera el Estado tendrían que hacer compras y ventas basándose únicamente en consideraciones comerciales, como el precio, la calidad, la comerciabilidad y la disponibilidad, y en que el Gobierno chino no influiría directa o indirectamente en las decisiones comerciales de las empresas de propiedad estatal y con inversión estatal. Adicionalmente, China acordó que las empresas, de otros Miembros de la OMC, tendrían una oportunidad adecuada de competir por las ventas y compras de empresas de propiedad estatal y en las que invirtió el Estado en términos y condiciones no discriminatorios.

En diálogos bilaterales posteriores con Estados Unidos, China asumió nuevos compromisos. En particular, China se comprometió a desarrollar un entorno de mercado de competencia leal para las empresas de todo tipo de propiedad y a proporcionarles un trato no discriminatorio en lo que respecta a la concesión de créditos, incentivos fiscales y las políticas regulatorias.

Sin embargo, en lugar de adoptar medidas que hicieran efectivos sus compromisos, China tomó medidas destinadas a fortalecer el papel de las empresas de propiedad y con inversiones estatales en la economía y a protegerlas de la competencia extranjera. China estableció la SASAC y adoptó la Ley de Activos de Empresas de Propiedad Estatal, además de muchas otras medidas que obligan a la propiedad y el control



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estatales de muchos sectores industriales importantes. El Partido Comunista Chino (PCCh) también se aseguró un papel decisivo en las principales de las empresas estatales y con inversión estatal, en cuanto decisiones de negocio, cambios de personal, acuerdos de proyectos y movimiento de fondos. La premisa fundamental de estas medidas es permitir que el Gobierno y el Partido chinos intervengan en las estrategias comerciales, la gestión y las inversiones de estas empresas a fin de garantizar que desempeñen un papel dominante en la economía nacional, de acuerdo con el objetivo general de desarrollar la "economía socialista de mercado" de China y los planes de China para la dominación industrial. En los últimos años, el liderazgo del Partido en las empresas de propiedad y con inversión estatal se ha fortalecido a través de prácticas como el nombramiento de una persona como presidente de la junta directiva y secretario del Partido para una empresa de propiedad estatal y la exigencia del establecimiento de comités del Partido en las empresas de propiedad estatal.

Por aparte, el Gobierno chino también ha dictado una serie de medidas que restringen la capacidad de las empresas de propiedad estatal y con inversión estatal para aceptar inversiones extranjeras, en particular en sectores clave. *(Algunas de estas medidas se analizan más adelante en la sección de Inversión de este Capítulo del Informe de la NTE).*

En su Decisión del Tercera Pleno de 2013, China respaldó una serie de pronunciamientos de reforma económica de gran alcance, en los que se pedía que el mercado fuera "decisivo" en la asignación de recursos, se redujera la intervención del Gobierno chino en la economía, se acelerara la apertura de China a los bienes y servicios extranjeros y se mejorara la transparencia y el estado de derecho para permitir una competencia leal en el mercado chino. También pidió "reformular" las empresas estatales de China y con inversión estatal.

Sin embargo, en lugar de acoger realmente el rol del mercado, China buscó fortalecer el papel del Estado en la economía. Las declaraciones del presidente de China también dejaron en claro que China sigue viendo el papel del Estado de manera muy diferente a la de Estados Unidos y otras economías de mercado. En octubre de 2016, el presidente de China pidió que se fortaleciera el papel del PCCh en las empresas estatales y enfatizó que las empresas estatales deberían ser "fuerzas importantes" para implementar estrategias nacionales y mejorar el poder nacional. En febrero de 2019, en un artículo publicado en una revista del PCCh, el presidente de China pidió además el fortalecimiento del "liderazgo del Partido sobre el estado de derecho" y prometió que China "nunca debe copiar los modelos o prácticas de otros países" y "nunca debemos seguir el camino del 'constitucionalismo', la 'separación de poderes' o la 'independencia judicial' occidentales".

Con respecto a la reforma de las empresas de propiedad estatal de China, un ejemplo de los esfuerzos de China incluyó el anuncio de que China clasificaría estas empresas en categorías comerciales, estratégicas o de interés público y exigiría a las empresas comerciales de propiedad y con inversión estatal que obtuvieran rendimientos razonables del capital. Sin embargo, este plan también permitió la divergencia de los resultados impulsados comercialmente para satisfacer los intereses de seguridad nacional ampliamente interpretados, incluidos los intereses energéticos y de recursos y los intereses de seguridad cibernética y de la información. Del mismo modo, en los últimos años, China ha llevado a cabo reformas a través de esfuerzos para lograr la propiedad mixta. Estos esfuerzos incluyeron presionar a las empresas privadas para que invirtieran o se fusionaran con empresas de propiedad o con inversiones estatales como una forma de inyectar prácticas innovadoras y crear nuevas oportunidades para las empresas ineficientes de propiedad estatal o con inversión estatal. Como debería ser evidente, estas diversas reformas no refuerzan el papel del mercado. Más bien, están destinados a fortalecer el papel de las empresas estatales en la economía y a dirigir el capital estatal hacia ciertas industrias, incluidas las especificadas en Hecho en China 2025, en aras de los objetivos de dominación industrial de China.



China también ha indicado anteriormente que consideraría la posibilidad de adoptar el principio de "neutralidad competitiva" para las empresas de propiedad estatal. Sin embargo, China ha seguido aplicando políticas que consagran aún más el papel dominante del Estado y sus planes industriales en lo que respecta al funcionamiento de las empresas de propiedad estatal y con inversión estatal. Por ejemplo, China ha adoptado normas que garantizan que el Gobierno chino siga teniendo plena autoridad sobre la forma en que las empresas de propiedad estatal y con inversión estatal utilizan las asignaciones de capital estatal y sobre los proyectos que llevan a cabo las empresas de propiedad estatal.

En general, si bien los esfuerzos de China en ocasiones han parecido indicar una determinación de alto nivel para acelerar las reformas económicas necesarias, esas reformas no se han materializado. De hecho, el papel del Gobierno chino en la economía ha aumentado en lugar de disminuir. También parece claro que las iniciativas políticas pasadas de China no fueron diseñadas para reducir la presencia de empresas de propiedad estatal y con inversión estatal en la economía de China ni para obligarlas a competir en las mismas condiciones que los operadores comerciales privados. Más bien, los objetivos de la reforma eran fortalecer las empresas de propiedad y con inversión estatal a través de la consolidación, un mayor acceso al capital estatal, un acceso preferencial a bienes y servicios, y el uso de otras políticas y prácticas no comerciales diseñadas para dar a estas empresas ventajas competitivas injustas, tanto en China como a nivel mundial.

Esta situación injusta se agrava para las empresas extranjeras. Al igual que las empresas estatales y con inversión estatal, las empresas privadas de China también se benefician de una amplia gama de intervenciones y apoyos estatales diseñados para promover el desarrollo de las industrias nacionales de China de acuerdo con los objetivos de dominación industrial de China. Estas intervenciones y apoyo se despliegan en conjunto con otras políticas y prácticas no comerciales que restringen, aprovechan, discriminan o crean desventajas para las empresas extranjeras y sus tecnologías, productos y servicios.

## **LABORAL**

El gobierno chino reprime los derechos laborales internacionalmente reconocidos y no hace cumplir adecuadamente las prohibiciones existentes sobre el trabajo forzado. China ha sido objeto de atención internacional por sus prácticas de trabajo forzado, especialmente en la Región Autónoma Uigur de Xinjiang (XUAR), donde China ha detenido arbitrariamente a más de un millón de uigures y otras minorías mayoritariamente musulmanas. Las víctimas, los medios de comunicación y los centros de pensamiento informan que las fábricas, incluidas las que producen productos de algodón y tomate, participan con frecuencia en el reclutamiento coercitivo, limitan la libertad de movimiento y comunicación de los trabajadores y los someten a una vigilancia constante, a represalias por sus creencias religiosas, a la exclusión de la vida comunitaria y social, y al aislamiento. Actualmente se estima que cientos de miles de uigures, kazajos étnicos y miembros de otros grupos minoritarios musulmanes están siendo sometidos a trabajos forzados en China después de su detención. Sobre la base del análisis independiente de estas fuentes hecho por el Gobierno de los Estados Unidos, el Gobierno de los Estados Unidos ha tomado varias medidas para abordar el trabajo forzado y otros abusos de los derechos humanos en XUAR.

El Departamento de Aduanas y Protección Fronteriza del Departamento de Seguridad Nacional de EE. UU. ha emitido varias órdenes de retención (WRO, por sus siglas en inglés) de conformidad con la sección 307 de la Ley Arancelaria de 1930 basadas en información que indica razonablemente el uso de mano de obra detenida o penitenciaria y situaciones de trabajo forzoso en XUAR, incluida una WRO a nivel regional sobre productos de algodón y tomate de XUAR en enero de 2021. El ámbito de aplicación de esta WRO incluye el algodón y el tomate y los productos derivados que incorporan estos productos como insumos.

En julio de 2020, Estados Unidos emitió un Aviso Comercial de la Cadena de Suministro de Xinjiang para



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las empresas estadounidenses cuyas cadenas de suministro atraviesan la XUAR. Estados Unidos actualizó este aviso en julio de 2021. Tal como se actualizó, el aviso llama la atención urgente sobre los riesgos de la cadena de suministro de las empresas de EE.UU. e identifica serias consideraciones de inversión y abastecimiento para empresas e individuos con exposición a entidades involucradas en trabajos forzados y otros abusos de derechos humanos relacionados con la XUAR. El aviso también describe las acciones tomadas por el Gobierno de los Estados Unidos para contrarrestar el uso del trabajo forzado en la XUAR y para prohibir la importación de bienes producidos en su totalidad o en parte con trabajo forzado o trabajo de convictos. En septiembre de 2023, Estados Unidos publicó una adenda al aviso actualizado para destacar aún más los informes sobre el trabajo forzado patrocinado por el Estado y los abusos a los derechos humanos en la XUAR, así como para subrayar la urgencia de que empresas adopten las medidas adecuadas de debida diligencia.

En diciembre de 2021, el presidente Biden promulgó la Ley de Prevención del Trabajo Forzoso Uigur (UFLPA por sus siglas en inglés), que, entre otras cosas, establece una presunción refutable de que la importación de mercancías procedentes de la Región Autónoma Uigur del Sin-kiang está prohibida en virtud del artículo 307 de la Ley Arancelaria de 1930. Esta presunción rebatible entró en efecto en junio de 2022.

Estados Unidos también publicó su Estrategia de Aplicación de la UFLPA en junio de 2022. Esta estrategia de aplicación tuvo en cuenta los aportes recibidos de particulares, asociaciones industriales, empresas de consultoría y gestión de riesgos, organizaciones de la sociedad civil, organizaciones no gubernamentales (ONG), sindicatos y otros que compartieron sus puntos de vista sobre posibles medidas para prevenir la importación a los Estados Unidos de bienes extraídos, producidos o manufacturados total o parcialmente con trabajo forzado en China. Los principales componentes de la Estrategia de Aplicación incluyen: (1) una evaluación del riesgo de importar bienes fabricados con trabajo forzado en China; (2) el desarrollo de la Lista de Entidades de UFLPA y descripciones de esquemas de trabajo forzado; (3) la consideración de esfuerzos, iniciativas e instrumentos para identificar y rastrear el origen de las mercancías; (4) una descripción de las autoridades legales pertinentes y las herramientas para prevenir la entrada de mercancías infractoras; (5) una descripción de los recursos; (6) el desarrollo de directrices para importadores; y 7) la elaboración de un plan de coordinación con las organizaciones no gubernamentales y el sector privado.

Varias agencias de los Estados Unidos ha estado trabajando para compilar y actualizar la Lista de Entidades de la UFLPA, un registro consolidado de cuatro listas distintas, que incluyen: (1) una lista de entidades en la XUAR que extraen, producen o fabrican total o parcialmente bienes, mercancías, artículos y mercancías con trabajo forzado; (2) una lista de entidades que trabajan con el gobierno de XUAR para reclutar, transportar, transferir, albergar o recibir trabajos forzados o a uigures, kazajos, kirguises o miembros de otros grupos perseguidos fuera de la XUAR; (3) una lista de entidades que exportan productos extraídos, producidos o fabricados por entidades de las listas 1 o 2 anteriores de China a los Estados Unidos; y, (4) una lista de instalaciones y entidades, incluido el Cuerpo de Producción y Construcción de Xinjiang, que obtienen material de la XUAR o de personas que trabajan con las autoridades gubernamentales en la XUAR o el Cuerpo de Producción y Construcción de Xinjiang para fines del programa de "alivio de la pobreza" o el programa de "asistencia de emparejamiento" o cualquier otro plan laboral gubernamental que utilice trabajo forzado. Al 31 de diciembre de 2023, el Gobierno de los EE. UU. ha agregado docenas de entidades a la Lista de Entidades de UFLPA.

Por otra parte, en junio de 2022, el presidente Biden emitió el Memorándum sobre la lucha contra la pesca ilegal, no declarada y no reglamentada y los abusos laborales conexos. Este Memorándum señala que, si no se controla, la pesca INDNR y los abusos laborales asociados amenazan el sustento y los derechos humanos de los pescadores de todo el mundo y socavarán la competitividad económica, la seguridad nacional y la sostenibilidad de la pesca de los Estados Unidos. También señala que este comportamiento exacerbará los



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efectos ambientales y socioeconómicos del cambio climático. En diciembre de 2022, el Departamento del Tesoro de EE. UU. sancionó a personas asociadas con los buques de pesca en aguas distantes de China por graves abusos contra los derechos humanos, incluido el trabajo forzado, de los trabajadores a bordo de estos buques.

También sigue siendo preocupante que China no se adhiera a otras normas laborales internacionalmente reconocidas, como la libertad de asociación y el reconocimiento efectivo del derecho a la negociación colectiva. La legislación china establece el derecho a asociarse y formar un sindicato, pero no permite a los trabajadores formar o afiliarse a un sindicato independiente de su elección. Los sindicatos deben afiliarse a la Federación de Sindicatos de China (ACFTU por sus siglas en inglés), que está bajo la dirección del PCC. Los trabajadores de las empresas en China están obligados a aceptar a la ACFTU como su representante. En su lugar, no pueden elegir otro sindicato o decidir no tener representación sindical. Sólo se permite la negociación colectiva a través de la ACFTU, y no existe ninguna obligación legal de que un empleador negocie de buena fe. También está prohibido hacer huelga.

## **MEDIO AMBIENTE**

### **Efecto de la prohibición de las importaciones de materiales de desecho, materiales reciclables y mercados de reciclaje**

Actualmente, China restringe casi todas las importaciones de chatarra sin procesar y materiales reciclables. China solo permite la importación de ciertos materiales procesados, incluidas las materias primas recicladas como el cobre, el acero, el aluminio y el latón que cumplen con los estándares de pureza, plástico de desecho granulado y papel de desecho en pulpa. Estas restricciones han aumentado los costos del reciclaje en los Estados Unidos, lo que ha llevado a algunas comunidades a poner fin a los programas de reciclaje. Debido a que China era anteriormente un mercado de destino tan grande, cantidades significativas de materiales de desecho de EE.UU. se está redirigiendo a vertederos o incineradores.

Desde 2017, China ha emitido numerosas medidas que limitan o prohíben las importaciones de la mayoría de la chatarra y los materiales recuperados, como ciertos tipos de plástico, papel y metales. China también ha aplicado medidas de concesión de licencias e inspección de importación para restringir las importaciones de materiales de desecho. En particular, China no aplica universalmente restricciones similares a los elaboradores nacionales de chatarra y materiales recuperados de origen nacional.

En 2020, China reformó la Ley de Prevención y Control de la Contaminación Ambiental por Residuos Sólidos. De acuerdo con esta ley reformada, la intención es reducir las importaciones de desechos sólidos esencialmente a cero.

Las exportaciones de Estados Unidos a China de chatarra sin procesar y materiales recuperados cubiertos por las medidas restrictivas de China totalizaron 479 millones de dólares en 2016, el año antes de que China comenzara a aplicar sus políticas más restrictivas. Desde entonces, las exportaciones estadounidenses de estos materiales a China se han reducido significativamente.

Además de afectar el mercado mundial de chatarra y materiales recuperados, el endurecimiento de las restricciones ha elevado los costos del reciclaje en los Estados Unidos, ya que los exportadores buscan instalaciones de procesamiento locales o compradores internacionales. Además, otros países, en particular en el sudeste asiático, han introducido sus propios cambios regulatorios que, en algunos aspectos, son paralelos a los cambios en el régimen de importación de China, como el establecimiento de estándares de pureza imposiblemente altos para los materiales reciclables, la imposición de nuevos requisitos de licencias



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de importación y la exigencia de inspecciones previas y posteriores al envío. Como resultado, cantidades significativas de materiales de desecho y materiales reciclables de EE. UU. no han encontrado nuevos compradores, lo que ha provocado un aumento de los vertederos, la incineración y la contaminación del aire, así como una mayor demanda de materiales vírgenes a nivel mundial.

### **Prohibición de las importaciones de productos remanufacturados**

China prohíbe la importación de productos remanufacturados, que normalmente clasifica como bienes usados. China también mantiene restricciones que impiden la importación de insumos del proceso de remanufactura (conocidos como núcleos) en el territorio aduanero de China, excepto en las zonas económicas especiales. Estas prohibiciones y restricciones a la importación socavan el desarrollo de las industrias en muchos sectores en China, como la minería, la agricultura, la atención médica, el transporte y las comunicaciones, porque las empresas de estas industrias no pueden comprar productos remanufacturados de alta calidad y menor costo producidos fuera de China. No obstante, parece que China está dispuesta a pagar este precio para limitar las importaciones de productos remanufacturados.

## **OTRAS BARRERAS**

### **Límites a las Exportaciones**

A lo largo de los años, China ha aplicado una combinación de restricciones a la exportación, como contingentes de exportación, licencias de exportación, precios mínimos de exportación, derechos de exportación y otras restricciones, en una serie de insumos de materias primas en los que tiene la ventaja de ser uno de los principales productores del mundo. En muchos casos, a través de estas limitaciones a la exportación, parece que China ha sido capaz de proporcionar ventajas económicas sustanciales a una amplia gama de productores en las fases finales del proceso de producción en China a expensas de los productores extranjeros en las fases finales del proceso de producción, al tiempo que ha creado presión sobre los productores extranjeros para que trasladen sus operaciones, tecnologías y puestos de trabajo a China.

En 2013, China eliminó sus cuotas y aranceles de exportación sobre varios insumos de materias primas de interés clave para las industrias estadounidenses del acero, el aluminio y los productos químicos después de que Estados Unidos ganara una disputa contra China en la OMC. En 2014, Estados Unidos ganó una segunda disputa en la OMC, centrada en las restricciones de China a la exportación de tierras raras, tungsteno y molibdeno, que son insumos clave para una multitud de productos fabricados en Estados Unidos, incluidas baterías de automóviles híbridos, turbinas eólicas, iluminación de bajo consumo, acero, electrónica avanzada, automóviles, petróleo y productos químicos. China eliminó esas limitaciones a la exportación en 2015. En 2016, Estados Unidos inició una tercera disputa en la OMC en la que se impugnaban las limitaciones a las exportaciones mantenidas por China. Las limitaciones a la exportación impugnadas incluyen contingentes y derechos de exportación mantenidos por China sobre diversas formas de 11 materias primas, entre ellas el antimonio, el cromo, el cobalto, el cobre, el grafito, el indio, el plomo, la magnesia, el talco, el tantalio y el estaño. Estas materias primas son insumos clave en importantes industrias manufactureras de EE. UU., incluidas la aeroespacial, automotriz, de construcción y electrónica. Si bien China parece haber eliminado las limitaciones a las exportaciones impugnadas, los Estados Unidos sigue vigilando la situación. A juicio de los Estados Unidos, es profundamente preocupante que los Estados Unidos se haya visto obligados a presentar múltiples casos para abordar las mismas cuestiones obvias de cumplimiento de normas de la OMC.

Una preocupación más reciente se refiere a la posible regulación de China de las exportaciones de tierras raras, en el marco de su régimen de controles de exportación. A este respecto, el Ministerio de Industria y



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Tecnología de la Información de China publicó el borrador de la Regulación sobre la Administración de Tierras Raras para comentarios públicos en enero de 2021, y una de las disposiciones del borrador de la medida establece que los exportadores de tierras raras deben cumplir con las leyes y regulaciones en el área de los controles de exportación. Más recientemente, en noviembre de 2023, China comenzó a exigir a los exportadores que proporcionaran informes detallados sobre las transacciones relacionadas con tierras raras.

En 2023, China también comenzó a aplicar su régimen de control de exportaciones a otros minerales críticos. A agosto de 2023, China exige licencias de exportación para productos que contienen galio o germanio. Del mismo modo, desde diciembre de 2023, China exige licencias de exportación para los productos que contienen grafito.

En noviembre de 2021, China anunció una prohibición de exportación de determinados fertilizantes. A pesar de las repetidas peticiones de sus socios comerciales para que se levante esta prohibición de exportación y se ayude a abordar la creciente preocupación internacional por el aumento de los precios de los productos básicos y la interrupción de las cadenas de suministro mundiales, China sigue imponiendo esta prohibición de las exportaciones.

Mientras tanto, las empresas estadounidenses informan que China también ha instituido restricciones a la exportación de almidón de maíz, aparentemente en un esfuerzo por estabilizar los precios internos. Sin embargo, a 31 de diciembre de 2023, el Gobierno chino aún no ha publicado un aviso oficial.

### **Reembolsos del Impuesto al Valor Agregado y Políticas Relacionadas**

Al igual que en años anteriores, en 2023, el Gobierno chino intentó gestionar la exportación de muchos productos primarios, intermedios, y productos transformados, aumentando o disminuyendo la desgravación del IVA disponible en el momento de la exportación. China a veces refuerza sus objetivos imponiendo o retirando derechos de exportación. Estas prácticas han causado enormes perturbaciones, incertidumbre e injusticia en los mercados mundiales de algunos productos, en particular los productos derivados de los que China es uno de los principales productores o exportadores mundiales, como los productos fabricados por las industrias del acero, el aluminio y el carbonato de sodio. Estas prácticas, junto con otras políticas, como los subsidios gubernamentales excesivos, también han contribuido a un grave exceso de capacidad en estas mismas industrias.

En la reunión del Grupo S&ED, de julio de 2014, se produjo un acontecimiento aparentemente positivo, en el que China se comprometió a mejorar su sistema de devolución del IVA, entre otras cosas mediante el estudio activo de las mejores prácticas internacionales, y a profundizar la comunicación con Estados Unidos sobre este asunto, incluso en lo que respecta a su impacto en el comercio. Una vez más, sin embargo, esta promesa sigue sin cumplirse. Al 31 de diciembre de 2023, China no ha hecho ningún movimiento hacia la adopción de las mejores prácticas internacionales.

### **Medidas comerciales correctivas**

Al 31 de diciembre de 2023, China tenía en efecto 117 medidas antidumping, que afectaban a las importaciones de 17 países o regiones, con dos nuevas investigaciones antidumping en curso. China también tenía en efecto cuatro medidas de derechos compensatorios que afectaban las importaciones procedentes de dos países o regiones. Las deficiencias sistémicas más importantes de la práctica de China en materia de derechos antidumping y compensatorios siguen estando en las áreas de la transparencia y las debidas garantías procesales. A lo largo de los años, China ha utilizado a menudo las investigaciones antidumping y en materia de derechos compensatorios más como un instrumento de represalia que como un mecanismo



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para anular los efectos del dumping o las subvenciones injustas en su mercado interno. En respuesta, los Estados Unidos ha presionado a China bilateralmente, en reuniones de la OMC y a través de observaciones escritas presentadas en relación con los procedimientos antidumping y en materia de derechos compensatorios pendientes para que se adhiera estrictamente a las normas de la OMC cuando hace investigaciones sobre medidas comerciales correctivas.

La realización de investigaciones antidumping por parte del Ministerio de Comercio de China (MOFCOM por sus siglas en inglés) sigue sin cumplir el pleno compromiso con los principios fundamentales de transparencia y equidad procesal consagrados en el Acuerdo de la OMC, relativo a la Aplicación del Artículo VI del Acuerdo General sobre Aranceles Aduaneros y Comercio de 1994, comúnmente conocido como el Acuerdo Antidumping. En consecuencia, los Estados Unidos y otros Miembros de la OMC han expresado su preocupación por las principales lapsus de transparencia y garantías procesales en la realización de investigaciones antidumping por parte de China. Entre las principales áreas de preocupación figuran las siguientes: la inadecuada divulgación por el MOFCOM de documentos clave consignados en el expediente por productores nacionales chinos; divulgación insuficiente de los hechos esenciales en que se basan las decisiones del MOFCOM, como los cálculos del margen de dumping y las pruebas que respaldan las conclusiones sobre el daño y el dumping; el hecho de que el MOFCOM no haya enviado cuestionarios suplementarios en los casos en que detecta deficiencias de información; el rechazo indebido de los datos de costos y ventas comunicados por los declarantes estadounidenses; el uso injustificado de los hechos de que se tenga conocimiento; y el hecho de que el MOFCOM no abordara adecuadamente los argumentos o pruebas fundamentales presentados por las partes interesadas. Estos aspectos de la práctica antidumping de China se han planteado al MOFCOM en numerosos procedimientos y reuniones de la OMC en los últimos años.

Un examen de la forma en que China lleva a cabo investigaciones en materia de derechos compensatorios pone de manifiesto que, al igual que en la área de las medidas antidumping, China no ha mejorado adecuadamente su transparencia y las debidas garantías procesales al hacer esas investigaciones. Además, los Estados Unidos ha señalado preocupaciones de procedimiento específicas en relación con la realización por China de las investigaciones en materia de derechos compensatorios. Por ejemplo, en los últimos años, China ha iniciado investigaciones de supuestas subvenciones que suscitaban inquietudes, habida cuenta de los requisitos relativos a la insuficiencia de pruebas establecidas en el Artículo 11.2 del Acuerdo sobre Subvenciones. A los Estados Unidos también le preocupa la aplicación por China de los hechos de que se tenía conocimiento de conformidad con el Artículo 12.7 del Acuerdo sobre Subvenciones de la OMC.

En varias ocasiones en el pasado, los Estados Unidos ha expresado serias preocupaciones acerca de la búsqueda por parte de China de medidas correctivas en materia de derechos antidumping y compensatorios que parecen ser medidas de represalia y tienen por objeto disuadir a Estados Unidos y a otros interlocutores comerciales del ejercicio legítimo de sus derechos en virtud de las normas de la OMC en materia de derechos antidumping y compensatorios y las disposiciones del Acuerdo de Adhesión de China en materia de medidas comerciales correctivas. También parece que China ha utilizado medidas económicas y comerciales arbitrarias, incluidas investigaciones antidumping y en materia de derechos compensatorios, como una forma de coerción económica diseñada para lograr los objetivos políticos de China. Los derechos antidumping y compensatorios que China impuso a las importaciones de cebada australiana en 2021 y los derechos antidumping que China impuso a las importaciones de vino australiano en 2021 son dos ejemplos evidentes de esta táctica.

En determinadas investigaciones recientes de importaciones estadounidenses, China también ha formulado determinaciones sin apoyo jurídico o fáctico. Por ejemplo, en la determinación definitiva en materia de derechos compensatorios sobre las importaciones de n-propanol procedente de Estados Unidos, China



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constató que las supuestas subvenciones al sector del petróleo y gas de los Estados Unidos se transferían automáticamente a los productos petroquímicos sin presentar el análisis exigido por el Acuerdo sobre Subvenciones.

### **Productos farmacéuticos**

Durante varios años, Estados Unidos ha presionado a China en una serie de temas farmacéuticos. Estos temas se han relacionado con cuestiones como las prácticas excesivamente restrictivas de examen de las solicitudes de patente; aprobaciones regulatorias que se retrasan o están vinculadas a criterios superfluos; protecciones débiles contra el uso comercial desleal y la divulgación no autorizada de datos regulatorios; problemas con la implementación de un mecanismo eficiente para resolver disputas por infracción de patentes; el requisito de compartir la titularidad con un socio chino de los derechos de patente derivados de la investigación generada mediante el uso de recursos genéticos humanos en China; y la aplicación de prórrogas de los plazos de las patentes en caso de retrasos irrazonables en la aprobación de la comercialización, incluidos límites al tipo de protección proporcionada. Si bien China ha implementado algunas reformas útiles, Estados Unidos todavía tiene muchas de las mismas preocupaciones con el mercado farmacéutico de China, especialmente en lo que respecta al tratamiento de las empresas extranjeras.

En su Acuerdo de Adhesión a la OMC, China se comprometió a proporcionar una protección eficaz contra el uso comercial desleal y la divulgación no autorizada de datos de pruebas u otros datos no divulgados generados para obtener la aprobación de comercialización de productos farmacéuticos. Para proporcionar esta protección, conocida como protección de datos regulatoria (RDP por sus siglas en inglés), China se comprometió a promulgar leyes y regulaciones para garantizar que ninguna persona, que no sea el remitente de los datos, pueda usar los datos presentados en una solicitud de aprobación de producto sin el permiso del remitente durante seis años a partir de la fecha en que China otorgó la aprobación de comercialización al remitente.

En 2017, el CFDA finalmente emitió varios borradores de avisos que abordaban el tema del RDP. Estos proyectos de aviso establecen un marco conceptual para proteger contra el uso comercial desleal y la divulgación no autorizada de datos de prueba u otros datos no divulgados generados para obtener la aprobación de comercialización de productos farmacéuticos, y también tratan de promover la resolución eficaz de controversias en materia de patentes entre los titulares de derechos y los productores de productos farmacéuticos genéricos. Sin embargo, el marco propuesto no preveía un período de seis años de RDP, a pesar del compromiso asumido por China en su Acuerdo de Adhesión a la OMC en 2001.

En 2018, la agencia sucesora del CFDA, la NMPA, emitió un borrador de Reglamento de Registro de Medicamentos y un borrador de medidas de implementación sobre los datos de los ensayos de medicamentos que excluirían o condicionarían la duración del RDP, a si los ensayos clínicos se realizan en China y si la aprobación de comercialización se busca primero en China. Posteriormente, China emitió una Ley de Administración de Medicamentos revisada en 2019, seguida del proyecto revisado de Reglamento de Registro de Medicamentos de la NMPA en 2020 y el proyecto revisado de Reglamento de Aplicación de la Ley de Administración de Medicamentos de la NMPA en 2021. A pesar de las oportunidades que estos proyectos de medidas revisados ofrecían a las autoridades regulatorias chinas, no se eliminaron las limitaciones preocupantes del RDP, y China todavía no ha creado un marco regulatorio que prevea el período de seis años del RDP, como se había comprometido a hacer en 2001.

Desde 2018, la adquisición basada en el volumen ha presentado una nueva complicación de acceso al mercado para los proveedores extranjeros de productos farmacéuticos, en gran parte debido a la naturaleza opaca e impredecible de los procesos de licitación. En noviembre de 2018, se puso en marcha un Plan Piloto



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Nacional de Contratación Centralizada de Medicamentos. Luego, en enero de 2019, el Consejo de Estado emitió un Plan Piloto para la Adquisición y el Uso Centralizado Nacional de Medicamentos. En enero de 2023, la Administración Nacional de Seguridad Sanitaria (NHSA por sus siglas en inglés) de China publicó la edición 2022 de su Lista Nacional de Medicamentos de Reembolso (NRDL por sus siglas en inglés) anual, que entró en efecto el 1 de marzo de 2023. La industria estadounidense también cita la necesidad de una mayor transparencia y armonía entre los procesos de licitación nacionales y provinciales, así como un mayor énfasis en un enfoque competitivo, basado en el mercado, para evaluar el valor de un producto y las ofertas pertinentes. En diciembre de 2022, la NHSA y la CNIPA emitieron conjuntamente los Conceptos sobre el fortalecimiento de la protección de los derechos de propiedad intelectual en el ámbito de la contratación farmacéutica centralizada, que se propone establecer un mecanismo de coordinación para eliminar los medicamentos infractores de patentes de la NRDL, con otras medidas de implementación a seguir.

Como parte del Acuerdo de la Fase Uno, las dos partes acordaron que China establecería un mecanismo nacional para la resolución temprana de posibles disputas de patentes farmacéuticas que cubra tanto medicamentos de moléculas pequeñas como productos biológicos, incluida una causa de acción para permitir que el titular de una patente busque soluciones expeditas antes de la comercialización de un producto presuntamente infractor. Los Estados Unidos ha estado trabajando en estrecha colaboración con la industria estadounidense para supervisar la evolución de la situación y garantizar que el nuevo sistema de China funcione de acuerdo con lo previsto. Por otra parte, el acuerdo también prevé prórrogas del plazo de las patentes para compensar los retrasos no razonables en la aprobación de patentes y comercialización que recortan el plazo efectivo de las patentes, así como el uso de datos complementarios para cumplir los criterios de patentabilidad pertinentes para las solicitudes de patentes farmacéuticas. Estados Unidos y China acordaron abordar la protección de datos para productos farmacéuticos en futuras negociaciones.

En octubre de 2020, China reformó la Ley de Patentes para establecer extensiones de la duración de las patentes en caso de retrasos no razonables en la aprobación de patentes y comercialización, y también agregó un mecanismo para la resolución temprana de posibles disputas de patentes, conocido como vinculación de patentes. En julio de 2021 se emitieron medidas de implementación para el mecanismo de vinculación de patentes, ya que la NMPA y la CNIPA emitieron conjuntamente Medidas de Implementación de Ensayos para el Mecanismo de Resolución Temprana de Disputas de patentes de medicamentos y el Tribunal Popular Supremo emitió el Reglamento sobre varias cuestiones relativas a la aplicación de la ley en el juicio de disputas civiles de patentes relacionadas con la solicitud de registro de medicamentos. En 2021 y 2022, la CNIPA publicó borradores de proyectos de normas de aplicación de la Ley de Patentes reformada y borradores de proyectos de enmiendas a las Directrices de Examen de Patentes. En diciembre de 2023, China publicó las normas finales de aplicación de la Ley de Patentes reformada.

Entre otras cosas, los Estados Unidos y las partes interesadas estadounidenses siguen preocupados por la aplicación por parte de China de prórrogas de los plazos de las patentes en caso de retrasos no razonables en la aprobación de patentes y comercialización, incluidos los límites al tipo de protección que ofrece el marco regulatorio de China. Los Estados Unidos y las partes interesadas estadounidenses también siguen preocupados por el mecanismo de vinculación de patentes de China.

### **Dispositivos médicos**

Durante muchos años, en estrecha colaboración con la industria estadounidense, los Estados Unidos ha expresado su preocupación por los procedimientos de fijación de precios y licitaciones de China para dispositivos médicos y su trato a los dispositivos médicos importados. En particular, en la reunión del JCCT de noviembre de 2015, China se comprometió a que, en términos de acceso al mercado, dará a los dispositivos médicos importados el mismo tratamiento que a los dispositivos médicos fabricados o

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desarrollados en el país. Desafortunadamente, a pesar de este compromiso, China continúa aplicando una amplia gama de políticas que ordenan a las autoridades de compras de China que prioricen la compra a fabricantes nacionales de dispositivos médicos por sobre los fabricantes de dispositivos médicos importados.

Por aparte, Estados Unidos ha presionado a las autoridades regulatorias chinas para que desarrollen sistemas de pago sólidos para los dispositivos médicos que sean transparentes, predecibles y competitivos. Estados Unidos también ha instado a China a reconocer adecuadamente la calidad, la seguridad y los costos de I&D en su enfoque de la política de adquisiciones.

En 2019, el Consejo de Estado de China lanzó un preocupante enfoque de adquisición basada en volumen (VBP por sus siglas en inglés) para dispositivos médicos en algunas provincias y municipios en un intento de reducir los costos de atención médica. Desde entonces, el enfoque de VBP se ha arraigado aún más en el sistema chino, con la formación de alianzas entre múltiples provincias y municipios para llevar a cabo adquisiciones conjuntas en el marco de VBP. En 2020, China implementó su primera licitación nacional de VBP, a la que siguieron otras licitaciones nacionales en 2021 y 2022. Sin embargo, la industria estadounidense informa que la gran mayoría de las actividades de licitación de VBP se realizan a nivel subnacional. En la práctica, además, la implementación del VBP de China prioriza el costo sobre el valor o la calidad del producto.

Según la industria estadounidense, si China continúa persiguiendo el VBP sin cambios significativos, podría conducir a la creación de un sector de dispositivos médicos de bajo costo y baja calidad en China, con empresas chinas de dispositivos médicos que desarrollan monopolios en la fabricación y venta de varios dispositivos médicos de baja calidad en el mercado chino. Este resultado sería perjudicial para las empresas innovadoras de dispositivos médicos, muchas de las cuales son empresas extranjeras, y para los pacientes que dependen de tecnologías médicas avanzadas. En la actualidad, las empresas de dispositivos médicos que logran ganar licitaciones suelen tener márgenes de beneficio muy reducidos o incluso perder dinero. Según se informa, algunas empresas de dispositivos médicos están reduciendo la capacitación de los proveedores de atención médica para ofrecer los recortes de precios esperados. Además, dado el tamaño del mercado de dispositivos médicos de China, los monopolios de China podrían expandirse y luego priorizar las exportaciones de sus dispositivos médicos de baja calidad a terceros países. Con la elección entre un producto de mayor costo pero más efectivo o un producto de menor costo y menor calidad, los países con mayores restricciones presupuestarias y mayor vulnerabilidad a la influencia china pueden estar más inclinados a adquirir las ofertas de China. En general, el enfoque VBP de China representa un riesgo para el sector de dispositivos médicos y la provisión de tratamiento médico de alta calidad en todo el mundo.

En julio de 2022, el Ministerio de Finanzas de China publicó una Ley de Contratación Pública revisada. Si bien China tiene un historial de distribución de directrices no oficiales y no públicas para dar preferencia a las empresas nacionales de dispositivos médicos sobre las extranjeras, las revisiones de China a la Ley de Contratación Pública también amplían oficialmente la cobertura de productos para los que se debe dar preferencia a las alternativas nacionales.

Mientras tanto, el plan industrial Hecho en China 2025 anunciado por el Consejo de Estado en 2015 busca apuntalar el sector nacional de dispositivos médicos de China a través de una serie de políticas de apoyo, incluidos fondos específicos y políticas de adquisición. El objetivo de estas políticas es aumentar significativamente la cuota de mercado de los dispositivos médicos de propiedad y fabricación nacionales y, en consecuencia, reducir la cuota de mercado de los productos sanitarios extranjeros para 2025. Al mismo tiempo, algunos gobiernos provinciales subsidian directamente la compra de dispositivos médicos de fabricación nacional. Además, algunos gobiernos provinciales han emitido directrices en las que instan a las instituciones médicas a dar prioridad a la adquisición de equipo médico local frente al equipo importado. En



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al menos una provincia, las directrices sugieren que sólo los dispositivos médicos importados para los que no exista un sustituto nacional podrán adquirirse.

En agosto de 2023, el Consejo de Estado de China emitió el Concepto sobre la Optimización Adicional del Entorno de Inversión Extranjera y la Mejora de la Atracción de Inversiones Extranjeras, conocidas como Documento 11. *(El Documento 11 también se examina en la sección de Contratación Pública de este capítulo del Informe de la NTE)*. En el artículo 6 del Documento 11 se ofrecen varias sugerencias sobre la forma en que los ministerios de nivel central y las autoridades gubernamentales subcentrales podrían trabajar para garantizar que las empresas con inversión extranjera puedan participar de manera justa en el mercado de contratación pública de China, de conformidad con la legislación china vigente. Una de las sugerencias es proporcionar una definición de "producido en China". Actualmente, la gran mayoría de los dispositivos médicos en China se compran a través de la contratación pública. En la medida en que China atienda las sugerencias del Consejo de Estado, los Estados Unidos insta a China a que haga públicos los proyectos de medidas de aplicación y a que conceda un plazo prudencial para que el público presente observaciones.

La industria estadounidense también informa de que, aunque los gobiernos subcentrales de China siempre han proporcionado algún apoyo financiero a las empresas nacionales de dispositivos médicos, su apoyo parece haber aumentado desde 2020. La industria estadounidense señala que esta tendencia podría atribuirse a la pandemia de COVID-19, el plan industrial quinquenal de China para equipos médicos que abarca los años 2021 a 2025, el Plan de Acción para Promover el Desarrollo de Alta Calidad de la Industria de Equipos Médicos (2023-2025), o quizás las tres medidas. Estados Unidos seguirá de cerca esta situación y motivará a China a ser transparente en su enfoque.

### **Sistema de Crédito Social**

Desde 2014, China ha estado trabajando para implementar un sistema nacional de "crédito social" tanto para individuos como para empresas. La implementación de este sistema se encuentra en una etapa más avanzada para las empresas que para los individuos, ya que se asignan "códigos de crédito social unificados" de 18 dígitos a todas las empresas nacionales y extranjeras en China. Estos códigos de 18 dígitos proporcionarán una forma para que el gobierno chino rastree el historial de cumplimiento administrativo y regulatorio de una empresa y genere información crediticia pública. En un informe al 20º Congreso Nacional del Partido en octubre de 2022, el presidente de China, en su calidad de secretario general del Partido Comunista Chino, hizo énfasis en la necesidad de perfeccionar el sistema de crédito social. Desde entonces, el Gobierno de China ha seguido adoptando medidas para que el sistema de crédito social sea plenamente operativo.

En el marco del sistema de crédito social corporativo, los registros gubernamentales y los datos de cumplimiento corporativo generados por el mercado se recopilan sobre todas las entidades legales de China. La información recopilada contiene registros regulatorios y administrativos aportados por al menos 44 agencias estatales y sus sucursales en todas las provincias de China. La información, previamente dispar, relacionada con los registros financieros de una empresa, cumplimiento regulatorio, resultados de la inspección y otras actividades de aplicación administrativa se está consolidando bajo el código de crédito social unificado de cada empresa. Todos estos datos se agregarán y compartirán entre las agencias regulatorias a través de la Plataforma Nacional de Intercambio de Información Crediticia. Según se informa, aproximadamente el 75 por ciento de los registros recopilados sobre las empresas están destinados a ser designados como abiertos al público, mientras que el 25 por ciento restante, que se pretende retener, incluirá información potencialmente confidencial, como registros de aprobación relacionados con proyectos de desarrollo nacional y detalles de cualquier caso penal.

La recopilación de datos a nivel nacional en el marco del sistema de crédito social corporativo proporciona



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Traductora Oficial Resolución 958 del Ministerio de Justicia de Colombia

Traducción Oficial No: 268/24 del inglés al español fechada el 22 de septiembre de 2024

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mecanismos para penalizar a las empresas con un historial deficiente de cumplimiento corporativo y legal, entre otras cosas, sometiénolas a la censura pública, al tiempo que recompensa a las empresas que cumplen con incentivos positivos. Las calificaciones negativas o la inclusión en la lista de censura de una agencia gubernamental pueden dar lugar a diversas restricciones en las actividades comerciales de una empresa. Una empresa podría enfrentarse a un aumento de las inspecciones, a un menor acceso a préstamos e incentivos fiscales, a restricciones a la contratación pública, a la reducción de los derechos de uso de la tierra, a multas monetarias o a la denegación de permisos, entre otras posibles sanciones.

Sin embargo, en la actualidad, no existe un sistema nacional plenamente integrado para asignar puntuaciones completas de crédito social a las empresas, y el sistema de crédito social sigue estando muy fragmentado. Ciertas agencias del gobierno central y las agencias del gobierno subcentral mantienen sus propios sistemas de calificación, y cada agencia toma sus propias decisiones sobre los tipos de incumplimientos que justifican calificaciones negativas o colocan a una empresa en una lista de censura.

En noviembre de 2022, la NDRC y el PBOC publicaron conjuntamente un proyecto de Ley de Construcción del Crédito Social que daría al sistema de crédito social una base jurídica, incorporándolo aún más a la red regulatoria china. El proyecto de ley tiene por objeto establecer a la NDRC y al PBOC como los principales organismos gubernamentales para la construcción del sistema de crédito social. Sus responsabilidades incluirían la coordinación, supervisión y orientación generales de la construcción del sistema de crédito social y tomar la iniciativa en la organización de la formulación y aplicación de las políticas y normas pertinentes. El proyecto de ley también busca proporcionar definiciones legales formales para ciertos términos utilizados en la implementación del sistema de crédito social, como "no confiable", "crédito en supervisión" e "información crediticia". Además, el proyecto de ley busca codificar la protección de ciertos derechos, ya que exige el establecimiento de un sistema de crédito social que mantenga la seguridad de la información de crédito social y proteja estrictamente los secretos de estado, los secretos comerciales y la privacidad personal, al tiempo que protege los derechos e intereses legítimos de los individuos, las personas jurídicas y las organizaciones no incorporadas. Al 31 de diciembre de 2023, el proyecto de ley no se ha emitido en su forma definitiva.

A principios de 2022, antes de la publicación del proyecto de ley, la NDRC emitió un borrador de actualización del Catálogo Básico Nacional de Información de Crédito Público de 2021 y un borrador de actualización de la Lista Básica Nacional de Medidas Disciplinarias contra Actos Dishonestos de 2021. El borrador del Catálogo de Información Crediticia Pública compila el alcance y los tipos de información crediticia que pueden recopilar las agencias gubernamentales. También estipula que ciertas categorías de información están exentas de recopilación, incluidos los secretos de Estado y los secretos comerciales. El borrador de la Lista de Medidas Disciplinarias incluye una serie de acciones punitivas que pueden aplicarse a los infractores de la confianza, como derechos, honorarios, restricciones a la actividad de mercado, prohibiciones o limitaciones a las ocupaciones y prohibiciones de participar en licitaciones de contratación pública. Al igual que el proyecto de ley, ni el proyecto de Catálogo de Información Crediticia Pública ni el proyecto de Lista de Medidas Disciplinarias han sido publicados de manera formal.

El sistema de crédito social también se ha vinculado a objetivos políticos más amplios. Por ejemplo, la Oficina General del Consejo de Estado y la Oficina General del Partido Comunista Chino emitieron una opinión conjunta sobre la promoción de un sistema de crédito de alta calidad con el fin de promover los objetivos de "doble circulación" de China. Además, en noviembre de 2022, el Ministerio de Ciencia y Tecnología de China (MOST por sus siglas en inglés) anunció un nuevo proyecto piloto para evaluar el talento en ciencia, tecnología, ingeniería y matemáticas. En el marco del nuevo proyecto piloto del MOST, la evaluación del desempeño de los científicos consiste en incorporar parámetros relacionados con su carácter moral, que incluye su historial de crédito social, con el fin de garantizar que los investigadores



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científicos no tengan antecedentes de plagio o fraude académico. Este proyecto piloto parece reflejar la lucha de China por mejorar la calidad de su talento en investigación científica.

Las empresas extranjeras también tienen numerosas preocupaciones con el sistema de crédito social de China, que se está volviendo cada vez más complejo y expansivo. Les preocupa que el Gobierno chino lo utilice para perjudicar o coaccionar a las empresas extranjeras o proporcionar un trato favorable a las empresas nacionales. Les preocupa que el Gobierno chino utilice el sistema de crédito social para presionarlos para que actúen en apoyo de las políticas industriales de China u otras prioridades estatales, o para que hagan inversiones o lleven a cabo sus operaciones comerciales de manera contraria a los principios de mercado o a sus propias estrategias comerciales. Además, las empresas extranjeras están preocupadas por la naturaleza opaca del sistema de crédito social. En la actualidad, por ejemplo, una empresa a veces sólo se entera de sus calificaciones negativas cuando, por ejemplo, solicita un permiso y recibe una negativa, a pesar de que las Medidas para la Administración de la Lista de Infractores Graves de la Confianza y la Ley incluyen el requisito de que las empresas sean informadas de su censura con antelación. Otras veces, una empresa se entera por primera vez de que ha sido censurada cuando una agencia del gobierno chino publica su nombre en el sitio web de la agencia, a pesar de que la censura de una empresa puede causar un daño grave a la reputación de la empresa y afectar negativamente sus esfuerzos para atraer clientes, asegurar la financiación necesaria o hacer nuevas inversiones. Cuando las agencias del gobierno chino comiencen a buscar un castigo conjunto de la manera que prevé la NDRC, significará que una infracción en un contexto regulatorio podría tener consecuencias más amplias en todas las operaciones comerciales de la empresa.

Las empresas extranjeras también están preocupadas por los vínculos entre el crédito social corporativo y el crédito social individual. Pueden prever que el gobierno chino utilizará el sistema de crédito social como otra herramienta para coaccionar a las empresas extranjeras y a quienes trabajan para ellas a no cruzar las líneas rojas políticas en asuntos delicados como la privación de los derechos humanos. Las empresas extranjeras también pueden prever que el gobierno chino podría utilizar el crédito social corporativo en el futuro para ejercer influencia extraterritorial amenazando la posición crediticia social de las empresas extranjeras o de sus funcionarios por su comportamiento o discurso fuera de China. Del mismo modo, a las empresas extranjeras les preocupa que China abuse de su legión de leyes que regulan cómo se almacenan y transfieren los datos para acceder a la información que se utilizará en su contra.

### **Licencias Administrativas**

Las empresas estadounidenses continúan encontrando problemas significativos con una variedad de procesos administrativos de licencias en China, incluidos los procesos para obtener aprobaciones de productos, aprobaciones de inversiones, aprobaciones de expansión comercial, renovaciones de licencias comerciales e incluso aprobaciones para actividades comerciales de rutina. Si bien ha habido una reducción general en los requisitos de aprobación de licencias y un enfoque en la descentralización de los procesos de aprobación de licencias, las empresas estadounidenses continúan informando que una de sus principales preocupaciones involucra los difíciles procesos de aprobación de licencias en China.

### **Transparencia**

Uno de los principios fundamentales reflejados en todo el Acuerdo de Adhesión de China a la OMC es el aumento de la transparencia. Desafortunadamente, después de más de 20 años de membresía en la OMC, China todavía tiene un historial deficiente en lo que respecta al cumplimiento de sus obligaciones de transparencia.

### **Publicación de Medidas Relacionadas con el Comercio**



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Resolución No. 958  
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En su Acuerdo de Adhesión a la OMC, China se comprometió a adoptar un Diario Oficial único para la publicación de todas las leyes, reglamentos y otras medidas relacionadas con el comercio. China adoptó un único Diario Oficial, en 2006, que sería administrado por el MOFCOM. Sin embargo, parece que China sólo publica en este Diario medidas relacionadas con el comercio de algunas entidades del gobierno central, pero no de todas. También parece que China rara vez publica en el Diario medidas relacionadas con el comercio de los gobiernos subcentrales.

Además, a nivel del gobierno central, China tiende a adoptar una visión estrecha de los tipos de medidas relacionadas con el comercio que deben publicarse en el Diario Oficial. En el caso de las entidades gubernamentales cuyas medidas relacionadas con el comercio se publican en el Diario Oficial, China publica con mayor frecuencia (aunque no periódicamente) reglamentos administrativos relacionados con el comercio y normas departamentales en el Diario, pero es raro que China publique otras medidas, como conceptos, circulares, órdenes, directivas y avisos, que en el ordenamiento jurídico de China se conocen como "documentos normativos". Los documentos normativos son documentos regulatorios que no entran en la categoría de regulaciones administrativas o normas departamentales, pero que imponen obligaciones vinculantes a las empresas y a los particulares. Aunque el Consejo de Estado introdujo una definición de "documentos normativos administrativos" en 2014, esta definición es limitada y no parece abarcar todos los documentos normativos, ni ha dado lugar a su publicación periódica, como exigen los compromisos de China en el marco de la OMC. Entre otras cosas, la publicación de todos los documentos normativos facilitaría el cumplimiento por parte de las empresas y los particulares de las obligaciones que se abordan en ellos.

Mientras tanto, China rara vez publica en el Diario Oficial determinados tipos de medidas relacionadas con el comercio, ya sea desde el nivel central o el nivel subcentral del gobierno; Un ejemplo importante se refiere a las medidas de subvención.

### **Procedimientos de Notificación y Comentarios**

En su Acuerdo de Adhesión a la OMC, China se comprometió a conceder un plazo prudencial para que se diera aviso público y se formularan observaciones antes de aplicar nuevas leyes, regulaciones y otras medidas relacionadas con el comercio. Si bien se ha avanzado poco en la aplicación de este compromiso a nivel de los gobiernos subcentrales, en 2008 la Asamblea Popular Nacional instituyó procedimientos de notificación y observación para los proyectos de ley, y poco después China indicó que también publicaría los proyectos de reglamentos administrativos y normas departamentales relacionados con el comercio y la economía para que el público formulara observaciones. Posteriormente, la Asamblea Popular Nacional comenzó a publicar periódicamente proyectos de ley para que el público formulara observaciones. El Consejo de Estado de China a menudo (pero no regularmente) publicaba proyectos de reglamentos administrativos para comentarios públicos, pero muchos de los ministerios de China no eran consistentes en la publicación de borradores de reglas departamentales o documentos normativos para comentarios públicos.

En la reunión del Grupo S&ED de mayo de 2011, China se comprometió a emitir una medida para implementar el requisito de publicar todas las propuestas de regulaciones administrativas y normas departamentales relacionadas con el comercio y la economía en el sitio web de la Oficina de Asuntos Legislativos del Consejo de Estado (SCLAO por sus siglas en inglés) durante un período de comentarios públicos de no menos de 30 días. En abril de 2012, la SCLAO emitió dos medidas que parecen abordar este requisito.

En el Acuerdo de la Fase Uno, China se comprometió a proporcionar no menos de 45 días para que el público formulara comentarios sobre todas las leyes, regulaciones y otras medidas propuestas para implementar el Acuerdo de la Fase Uno. Desde la entrada en efecto de este compromiso en febrero de 2020, China ha



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proporcionado en general el período requerido de 45 días para las observaciones públicas y ha colaborado de manera constructiva con los Estados Unidos cada vez que ha planteado preguntas o preocupaciones sobre las disposiciones de las medidas de aplicación propuestas.

En la actualidad, fuera del contexto de las medidas de aplicación del Acuerdo de la Fase Uno, el proceso de emisión de nuevas medidas en China puede ser opaco e imprevisible y aplicarse sin previo aviso. China todavía no ha mejorado adecuadamente sus prácticas relativas a la publicación de regulaciones administrativas y normas departamentales para la presentación de comentarios públicos. China tampoco ha formalizado aún el uso de los procedimientos de notificación y observación para todos los documentos normativos. Además, incluso cuando China prevé un período para la presentación de observaciones y notificaciones, con demasiada frecuencia emite la medida definitiva inmediatamente después del final del período para la presentación de observaciones, lo que sugiere que no examinó con seriedad las observaciones recibidas.

China tampoco ha aplicado todavía de manera sistemática las obligaciones en materia de notificación y observación aplicables a todos los Miembros de la OMC. En particular, China tiene que cumplir sistemáticamente los plazos de notificación y observación exigidos por el Acuerdo OTC y el Acuerdo MSF.

### **Traducciones**

En su Acuerdo de Adhesión a la OMC, China se comprometió a poner a disposición de todos los niveles de gobierno traducciones de todas sus leyes, reglamentos y otras medidas relacionadas con el comercio en uno o más de los idiomas de la OMC, es *decir*, el español, el francés y el inglés. Antes de 2014, China solo había compilado traducciones de leyes y reglamentos administrativos relacionados con el comercio (al inglés), pero no otro tipo de medidas, como reglas departamentales, documentos normativos y medidas del gobierno subcentral. Incluso en lo que respecta a las leyes relacionadas con el comercio y las regulaciones administrativas, China llevaba años de retraso en la publicación de estas traducciones. En la reunión del Grupo S&ED de julio de 2014, China se comprometió a ampliar sus esfuerzos de traducción para incluir no solo las leyes y reglamentos administrativos relacionados con el comercio, sino también las normas departamentales relacionadas con el comercio. Posteriormente, en marzo de 2015, China emitió una medida que exigía que las normas departamentales relacionadas con el comercio se tradujeran al inglés. Esta medida también establece que la traducción de una norma departamental normalmente debe publicarse antes de su implementación.

Sin embargo, cabe destacar que, incluso si China aplicara plenamente sus medidas vigentes que exigen traducciones, no serían suficientes para que China cumpliera plenamente las normas de la OMC en esta área. China no publica sistemáticamente traducciones de las leyes relacionadas con el comercio, las regulaciones administrativas y las normas departamentales a su debido tiempo (es *decir*, antes de su aplicación), ni publica ninguna traducción de documentos normativos relacionados con el comercio o medidas relacionadas con el comercio dictadas por los gobiernos subcentrales.

### **Punto de información**

En su Acuerdo de Adhesión a la OMC, China se comprometió a establecer un servicio de información que respondiera a las solicitudes de información relativas a las medidas jurídicas que debían publicarse en su Diario Oficial. Sin embargo, en ocasiones China se ha negado a proporcionar copias de las medidas jurídicas en respuesta a solicitudes legítimas dirigidas a su servicio de información.

En abril de 2020, por ejemplo, los Estados Unidos presentó una solicitud relativa a cinco medidas jurídicas



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chinas que abarcaban los programas de subvenciones a los semiconductores y a la pesca que no se habían publicado en el Diario Oficial de China y no estaban disponibles en línea, ni habían sido notificadas a la OMC. A pesar de la obligación establecida en su Acuerdo de Adhesión a la OMC de presentar los documentos o responder por escrito en un plazo de 45 días, China no cumplió este plazo. Los Estados Unidos formuló repetidas solicitudes de seguimiento, sin éxito. Cinco meses después de que los Estados Unidos presentara su solicitud al servicio de información de China, el MOFCOM informó oralmente a la Embajada de los Estados Unidos en Beijing de que no proporcionaría ninguna de las medidas jurídicas solicitadas porque dos de ellas serían sustituidas pronto y las otras tres, a juicio de China, no eran pertinentes para las obligaciones de China en el marco de la OMC. El USTR respondió sin demora al MOFCOM por escrito, refutando sus afirmaciones e instándolo a que facilitara los documentos solicitados. Desde entonces, China ha seguido negándose a dar una respuesta por escrito a la solicitud de los Estados Unidos o a proporcionar cualquiera de las medidas jurídicas solicitadas, a pesar de que Estados Unidos y otros Miembros de la OMC han planteado repetidamente este tema en el Comité de Subvenciones de la OMC y en el Consejo del Comercio de Mercancías de la OMC.

### **Otras medidas no arancelarias**

Varias otras medidas no arancelarias pueden afectar negativamente la capacidad de la industria estadounidense para acceder al mercado chino o invertir en él. Entre las principales áreas de preocupación figuran las leyes que rigen el uso de la tierra en China, la solución de controversias comerciales y el trato de las organizaciones no gubernamentales. La corrupción entre los funcionarios del Gobierno chino, facilitada en parte por la adopción incompleta del estado de derecho por parte de China, también es motivo de preocupación.



**NOTA DE LA TRADUCTORA:** María del Pilar Mejía de Restrepo, Traductora Oficial registrada ante el Ministerio de Relaciones Exteriores de Colombia, Resolución 958, que suscribe, declara que la presente Traducción Oficial, que consta de 56 página, es una versión fiel y correcta al español del documento adjunto, **Informe de Estimaciones Comerciales Domésticas**, escrito en idioma inglés y que se ha tenido a la vista. Se certifica la fidelidad de la traducción, más no se asume responsabilidad alguna por la autenticidad o el contenido del documento en su lengua de origen.

Firmado en Bogotá, D.C., a los 23 días del mes de septiembre de 2024.

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2024 National Trade Estimate Report on

# FOREIGN TRADE BARRIERS



UNITED STATES TRADE REPRESENTATIVE



# ACKNOWLEDGEMENTS

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report. U.S. Trade Representative Katherine C. Tai gratefully acknowledges the contributions of all USTR staff to the writing and production of this report and notes, in particular, the contributions of Brian Rose, Catherine White, Sean Murphy, and Sonia Franceski.

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



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



# LIST OF FREQUENTLY USED ACRONYMS

|             |                                                                            |
|-------------|----------------------------------------------------------------------------|
| APHIS ..... | Animal and Plant Health Inspection Service, U.S. Department of Agriculture |
| CET .....   | Common External Tariff                                                     |
| CVA .....   | WTO Customs Valuation Agreement                                            |
| DOL .....   | U.S. Department of Labor                                                   |
| EU .....    | European Union                                                             |
| FDA .....   | Food and Drug Administration, U.S. Department of Health and Human Services |
| FMVSS ..... | U.S. Federal Motor Vehicle Safety Standards                                |
| FTA .....   | Free Trade Agreement                                                       |
| GATS .....  | WTO General Agreement on Trade in Services                                 |
| GATT .....  | General Agreement on Tariffs and Trade                                     |
| GI .....    | Geographical Indication                                                    |
| GPA .....   | WTO Agreement on Government Procurement                                    |
| HS .....    | Harmonized System                                                          |
| HTS .....   | Harmonized Tariff Schedule                                                 |
| ICT .....   | Information and Communications Technology                                  |
| IP .....    | Intellectual Property                                                      |
| MFN .....   | Most-Favored-Nation                                                        |
| MRL .....   | Maximum Residue Limit                                                      |
| MSME .....  | Micro-, Small, and Medium-sized Enterprise                                 |
| OECD .....  | Organization for Economic Cooperation and Development                      |
| SME .....   | Small and Medium-Sized Enterprise                                          |
| SPS .....   | Sanitary and Phytosanitary                                                 |
| TBT .....   | Technical Barriers to Trade                                                |
| TFA .....   | WTO Trade Facilitation Agreement                                           |
| TIFA .....  | Trade and Investment Framework Agreement                                   |
| TRQ .....   | Tariff-Rate Quota                                                          |
| UNECE ..... | United Nations Economic Commission for Europe                              |
| USDA .....  | U.S. Department of Agriculture                                             |
| USTR .....  | United States Trade Representative                                         |
| VAT .....   | Value-Added Tax                                                            |
| VoIP .....  | Voice over Internet Protocol                                               |
| WOAH .....  | World Organisation for Animal Health                                       |
| WTO .....   | World Trade Organization                                                   |



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# FOREWORD

## SCOPE AND COVERAGE

The 2024 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 38th report in an annual series that highlights significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce. This document is a companion piece to the President's 2024 Trade Policy Agenda and 2023 Annual Report, published by the Office of the United States Trade Representative (USTR) on March 1, 2024.

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

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

This Report discusses key export markets for the United States. As always, omission of particular countries and barriers does not imply that they are not of concern to the United States.

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

Trade barriers elude fixed definitions, but may be considered government measures that unduly impede the international exchange of goods and services. It should be noted that the purpose of the NTE Report is to identify barriers the U.S. Government seeks to remove. Each trading partner has a sovereign right to adopt measures in furtherance of legitimate public purposes. However, in some cases a government might pretextually claim that a measure is in furtherance of a legitimate public purpose. In such circumstances, the facts surrounding the measure will be important in evaluating whether the measure is indeed in furtherance of a legitimate public purpose and not an unjustified barrier to trade.

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

- Import policies;
- Technical barriers to trade;
- Sanitary and phytosanitary measures;
- Government procurement;
- Intellectual property protection;
- Services;
- Digital trade;
- Investment;
- Subsidies, especially export subsidies;
- Anticompetitive practices;
- State-owned enterprises;
- Labor;
- Environment; and,
- Other barriers.

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

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

## TRADE IMPACT OF FOREIGN BARRIERS

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

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

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

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

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

March 2024



# ALGERIA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

Algeria is not a Member of the World Trade Organization (WTO) but is a WTO Observer. Goods imported into Algeria face a range of tariffs, from zero percent to 60 percent. Algeria's average Most-Favored-Nation (MFN) applied tariff rate was 18.9 percent in 2022 (latest data available). Algeria's average MFN applied tariff rate was 23.7 percent for agricultural products and 18.1 percent for non-agricultural products in 2022 (latest data available).

Goods facing the highest rates are those for which equivalents are manufactured in Algeria. Citing the need to encourage local production and ease pressure on the country's foreign exchange reserves, Algeria implemented temporary additional safeguard duties (DAPs) of 30 percent to 200 percent on a list of more than 1,000 manufactured and agricultural goods in April 2019, with the 200 percent rate applied to 10 tariff lines covering cement products under the Harmonized System heading 25.23. The items in Algeria's customs code that remain duty free are generally European Union-origin goods that are used in manufacturing and are exempt from tariffs under the 2006 European Union–Algeria Association Agreement.

### Non-Tariff Barriers

#### **Import Bans and Import Restrictions**

Since January 2009, Algeria's Ministry of Health has restricted the importation of a number of generic pharmaceutical products and medical devices. Since 2007, Algeria has banned the importation of used medical equipment unless the government grants a special exception. Algeria has applied the regulation broadly to block the reimportation of machinery sent abroad for maintenance under warranty, even for equipment owned by state-run hospitals.

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

In February 2021, the Ministry of Commerce issued a schedule establishing a seasonal ban for individual agricultural products. The schedule adjusted a year-round restriction on almond imports to a seasonal ban covering June through August. Since October 2021, Algeria has restricted the importation of additional products for which there is minimal demand and for agricultural products not elsewhere specified or indicated in Algeria's tariff schedule. Algeria justified these decisions as necessary to reduce the country's import bill and to combat fraud.

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

## **Quantitative Restrictions**

In August 2022, Algeria released a new Book of Specifications concerning the automotive industry. The Book of Specifications covers automobiles, buses, trucks, construction equipment, and motorcycles and eliminates previous import quotas but requires import authorization. Due to customs duties, the VAT, and other taxes, vehicles cost more than double the market rate when purchased by individuals overseas and imported into Algeria. In November 2023, Algeria authorized 38 automobile companies to import vehicles under the 2022 regime. A provision in the October 2022 Complementary Finance Law permits those residing in Algeria to import used cars that are three years old or less; however, purchasers are required to use their own foreign currency to do so.

In 2020, Algeria established a maximum annual import volume of 4 million metric tons of bread (common) wheat. The Algerian president announced in August 2021 that the state grains agency (OAIC) would be the country's exclusive wheat importer to counteract alleged "illicit practices" by private importers. In practice, the OAIC was already the sole buyer of wheat, reselling the commodity on the domestic market at subsidized prices. In 2022, the Algerian president announced that the OAIC would have the exclusive right to import rice and pulses as well. However, Algeria has not codified the OAIC's role as the sole buyer of wheat, rice, and pulses.

## **Customs Barriers and Trade Facilitation**

Many companies continue to face problems clearing goods through Algerian customs. Delays can take weeks or months, in many cases without explanation. In addition to a certificate of origin, the Algerian Government requires all importers to provide certificates of conformity and quality from an independent third party. Algerian customs requires that shipping documents be stamped with a "Visa Fraud" note from the Ministry of Commerce, indicating that the goods have passed a fraud inspection before the goods are cleared. Many importations also require authorizations from multiple ministries, which frequently cause additional delays, especially when the regulations do not clearly specify which ministry's authority is being exercised. Storage fees at Algerian ports of entry are high, and the fees double if goods are stored for longer than 10 days.

The 2022 Book of Specifications for the automotive industry removed the mandate that automotive importers must be 100 percent Algerian-owned. However, importers of vehicles for resale are required to partner with an Algerian company.

## **SANITARY AND PHYTOSANITARY BARRIERS**

Algeria bans the production, importation, distribution, or sale of seeds that are the products of biotechnology. Biotechnology seeds imported for research purposes are excepted.

Algeria maintains animal health certificate requirements for animals and animal products, dairy and dairy products, and processed products of animal origin. In September 2023, the U.S. Department of Agriculture

(USDA) Animal and Plant Health Inspection Service and the Algerian Ministry of Agriculture and Rural Development Services concluded a certificate for U.S. bovine semen exports to Algeria. However, challenges with the recognition and approval of other certificates remain. In 2021 and again in 2023, the USDA Food Safety and Inspection Service submitted a letter requesting that Algeria accept the USDA 9060-5 export certificate for U.S. meat and poultry products. The USDA has not received a response. As of December 31, 2023, U.S. and Algerian veterinary authorities were continuing to negotiate export certificates to allow importation of U.S. beef cattle, dairy breeding cattle, and beef and poultry meat and meat products.

## **GOVERNMENT PROCUREMENT**

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

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

## **INTELLECTUAL PROPERTY PROTECTION**

Algeria remained on the Watch List in USTR's [2023 Special 301 Report](#). Algeria has taken some positive steps to improve intellectual property protection and enforcement, including increasing coordination on enforcement and engaging in capacity-building and training efforts. However, concerns remain, including the lack of an effective mechanism for early resolution of potential pharmaceutical patent disputes, inadequate judicial remedies in cases of patent infringement, the lack of administrative opposition in Algeria's trademark system, and the need to increase enforcement efforts against counterfeiting and piracy. In addition, Algeria does not provide an effective system for protecting against the unfair commercial use or unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

## **BARRIERS TO DIGITAL TRADE**

Algeria imposes a maximum value per transaction of DZD 100,000 (approximately \$746) on citizens when using international credit cards to purchase goods from outside the country. In addition, Algerian foreign exchange regulations prohibit the use of online payment processors to transfer money from one account to another.

## **INVESTMENT BARRIERS**

In 2020, Algeria lifted its longstanding requirement that Algerian individuals or entities own at least 51 percent of all projects involving foreign investments (known as the 51/49 rule). However, the 2021 Finance Law re-imposed the 51 percent requirement. The requirement was applied retroactively to foreign companies already established in Algeria and owning more than 49 percent of operations in strategic sectors such as energy, mining, defense, transportation and infrastructure, and pharmaceuticals, as well as for activities involving raw materials and importers of goods for resale in Algeria. U.S. companies report that the 51/49 rule creates concerns related to their intellectual property rights and financial control of the local venture. In July 2022, the Algerian Government enacted an investment law that called for the creation of Invest Algeria, a one-stop shop for prospective investors to register in-country. However, as of 2023, Invest



Algeria has not been established, and the Algerian Government has not provided further details as to when the initiative will be developed.

## **STATE-OWNED ENTERPRISES**

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

# ANGOLA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

Angola's average Most-Favored-Nation (MFN) applied tariff rate for all products was 11 percent in 2022 (latest data available). Angola's average MFN applied tariff rate was 21.4 percent for agricultural products and 9.4 percent for non-agricultural products in 2022 (latest data available). Angola has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 59.1 percent and average bound rates of 52.7 percent for agricultural products and 60.1 percent for non-agricultural products.

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

### Non-Tariff Barriers

#### **Import Restrictions**

On October 30, 2023, Angola issued Presidential Decree No. 213/23, which focuses on restricting imports to promote domestic production. The decree replaces and expands the scope of products covered by the previous Presidential Decree No. 23/29 from 2019. As of January 31, 2024, Decree No. 213/23 has been minimally enforced. The United States continues to raise this issue with Angola bilaterally and in the WTO Committee on Market Access, the WTO Committee on Import Licensing, and the WTO Committee on Agriculture.

## SANITARY AND PHYTOSANITARY BARRIERS

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

### Agricultural Biotechnology

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

it arrives in Angola. The Ministry of Agriculture and Forestry allows biotechnology imports for scientific research, subject to regulation and controls.

## **GOVERNMENT PROCUREMENT**

Despite revisions to increase transparency in the Public Procurement Law that entered into force on January 22, 2021, simplified contracting or direct agreement have continued to be the primary mechanism for public procurement transactions. Civil society and businesses continue to note that the government's continued regular use of direct public contract awards through tenders by pre-qualification, closed bidding, or simplified contracting for a regular and select few companies without the use of public tenders in various sectors, is detrimental to competition for foreign companies. In some instances, companies have reported a lack of clarity in certain tender processes.

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

## **OTHER BARRIERS**

### **Bribery and Corruption**

Levels of corruption and bribery have declined, but corruption remains prevalent in Angola due to a lack of uniform implementation of anticorruption laws, an inadequately trained civil service, and other reasons.

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

Enforcement of anticorruption laws remains poor. The United States and the international community have engaged in anticorruption initiatives to help Angola attain its anticorruption objectives. For instance, the U.S. Department of State is funding the Financial Services Volunteer Corps (FSVC), a project that supports Angolan civil society and independent media to increase public awareness and support for anticorruption and transparency reform. The FSVC is also implementing a U.S. Agency for International Development regional program that provides technical assistance, training, and mentoring at key government institutions to improve public financial management; enhance oversight; and, reduce fraud, waste, and abuse of state resources. The U.S. Department of Treasury provided technical assistance to the National Bank of Angola to increase capacity to combat money laundering and terrorist financing.

In June 2023, the Financial Action Task Force regional body—the Eastern and Southern Africa Anti-Money Laundering Group—conducted an interim mutual evaluation report and identified fundamental weaknesses in Angola's anti-money laundering/countering the financing of terrorism/counter proliferation financing system. Deficiencies cited include a lack of capacity in medium and small banks to implement targeted financial sanctions, a lack of bank capacity to determine the identity of the beneficial owner of accounts, and limited prosecutions for money laundering offenses. Angola has until September 2024 to implement the recommendations.

### **Foreign Exchange**

Angola's dependence on oil and gas production means that activity in the sector heavily influences the availability of foreign exchange. Foreign exchange availability has improved in major economic sectors but remains inadequate for individuals and small and medium-sized businesses as a result of limited liquidity which creates delays and hurdles for the importation of goods and payment of services. As of December 2023, Angola's currency had depreciated nearly 40 percent since the beginning of the year due to a shortage of U.S. dollars in the foreign exchange market. The National Bank of Angola issued Notice 3/2023 on March 1, 2023, stipulating that individual Angolans may transfer up to \$250,000 abroad each year.

### **Business Licensing**

Law No. 26/21 of October 2021 transferred the authority to license business activity, from provincial governments and municipal administrations to the Angolan President. The law also expands business licensing eligibility. Commercial stakeholders have expressed concern that the transfer of authority could create dependence on higher governmental powers to authorize commercial activity.



# ARAB LEAGUE

The 22 Arab League members are the Palestinian Authority and the following countries: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Kuwait, Jordan, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. The effect of the Arab League's boycott of Israeli companies and Israeli-made goods (originally implemented in 1948) on U.S. trade and investment in the Middle East and North Africa varies from country to country. Efforts by various Arab League members to enforce the boycott have had an extremely limited practical effect overall on U.S. trade and investment ties with many key Arab League countries.

The U.S. Departments of Commerce and Treasury and the Office of the United States Trade Representative (USTR) monitor boycott policies and practices of Arab League members, and, aided by U.S. embassies, lend advocacy support to firms facing boycott-related pressures. On October 24, 2023, the U.S. Department of Treasury published the list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986). The list included Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and Yemen.

Arab League members that implement boycotts that pose a potential barrier to the United States include:

**IRAQ:** As a matter of policy, Iraq does not adhere to the Arab League boycott. Most Iraqi ministries and state-owned enterprises have agreed not to comply with or have rescinded regulations enforcing the boycott, following a 2009 Council of Ministers decision to cease boycott-related implementation practices. However, individual Iraqi Government officials and ministries continue to violate that policy. The Ministry of Health's procurement arm (Kimadia) was among the government entities that still issued boycott-related requests.

**QATAR:** Qatar has a boycott law, but the extent to which the government enforces it is unclear. Although Qatar renounced implementation of the boycott of U.S. firms that do business in Israel (the secondary and tertiary boycott) in 1994, U.S. firms and their subsidiaries continue to report receiving boycott-related requests from public Qatari companies. In those instances, U.S. companies have made efforts to substitute alternative language.

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



# ARGENTINA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Argentina's average Most-Favored-Nation (MFN) applied tariff rate was 13.3 percent in 2022 (latest data available). Argentina's average MFN applied tariff rate was 10.3 percent for agricultural products and 13.8 percent for non-agricultural products in 2022 (latest data available). Argentina has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.8 percent.

Argentina is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also comprises Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Argentina (not including free trade zones) is subject to the payment of the CET to Argentina's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not taken effect.

#### **Taxes**

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

Argentina's tax collection processes burden imports by effectively requiring advance payment of income taxes. When goods are imported, Argentina collects a percentage of the value of imports as income tax withholding to be applied to the importer's income taxes. The advance value-added tax (VAT), ranging from 10 percent to 20 percent, is paid by the importer, unless the goods are for personal use. In addition, the importer is responsible for an income tax withholding of 6 percent to 11 percent of the value of the imported goods. Furthermore, imports of consumer goods have an additional advance VAT rate of 20 percent and imports of capital goods have an additional 10 percent. Although some of these taxes on



importation are reconciled after importation, in practice that takes a significant amount of time. In Argentina's inflationary environment, this advance payment system disproportionately burdens imports.

## **Non-Tariff Barriers**

### **Import Bans**

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

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

### **Import Restrictions**

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

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

Under the Por una Argentina Inclusiva y Solidaria - PAIS tax regime, consumers purchasing goods and services billed in foreign currency or that involve international transportation by air, land (except to countries that border Argentina), or water and sold in Argentina (through a physical or online point of sale) are subject to a 30 percent tax. This affects services supplied by travel and tourism agencies for international travel, as well as the importation of products from online retailers. Decree 99/2019 also sets a lower rate of 8 percent for certain imported digital services that are already subject to the VAT. Since late 2022, pursuant to General Resolution 5272/2022, some purchases also are subject to a personal asset tax equal to 25 percent of the price of the good or service. In July 2023, Argentina issued Decree 377/2023 under the PAIS tax regime, which imposes additional taxes on transactions that require access to the foreign exchange market, charged directly to importing companies. As of December 2023, these rates are 17.5 percent on most goods and 25.0 percent on most services (education and health services are exempt, and freight services pay a reduced rate of 7.5 percent). These taxes are cumulative and make foreign goods and services significantly less competitive in the Argentine market.

## **Import Licensing**

Since 2020, Argentina had significantly expanded its regulation of imports using an extensive list of products subject to non-automatic import licensing. Argentina had focused these license requirements on import-sensitive goods and also used the process to manage its hard currency needs. Despite a nominally digitized process, in practice obtaining licenses for imports was nontransparent, which created significant uncertainty for all imports into Argentina. The United States had raised concerns with Argentina about non-automatic licensing and at the WTO Committee on Import Licensing in light of Argentina's commitments under the WTO Agreement on Import Licensing Procedures.

As a result, Argentina eliminated the non-automatic import licensing requirements and established in December 2023 a new Statistical System of Imports (SEDI), which serves as a platform to record trade data. The creation of SEDI maintains processes similar to non-automatic import licensing. According to the new requirements, Argentina's Federal Public Revenue Administration (AFIP) will verify the tax status of the applicant and whether it has the economic and financial capacity to carry out the import operation. If successfully verified, the SEDI declaration will proceed to "exit" status following the authorization from all relevant agencies within 30 days of the registration. The United States will continue to monitor Argentina's import requirements and encourage transparency and predictability in their administration.

## **Foreign Exchange Market Access For Imports**

As of December 22, 2023, importers of goods can access the foreign exchange market to pay new invoices in installments, with most goods subject to a schedule of four installments at 30 days, 60 days, 90 days, and 120 days. Importers of some goods have preferential access to foreign exchange. Prior to this measure, importers were assigned an estimated date after dispatch on which they would be permitted to access the foreign exchange market to pay for imports. The terms averaged 90 days as of September 2023, but in practice the payment date frequently changed or was not honored. This led to a dramatic increase in Argentina's commercial debt and frequently resulted in importers being delinquent on their payments for goods and services. This has also disrupted commercial relationships, interrupted supply chains, and made imported goods less competitive.

## **Customs Barriers and Trade Facilitation**

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

## **Consularization**

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

## SANITARY AND PHYTOSANITARY BARRIERS

### Live Cattle

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

### Poultry

Argentina has restricted imports of U.S. poultry (*e.g.*, day-old chicks and hatching eggs) and poultry products (fresh, frozen, or chilled meat), during periods of outbreaks of Highly Pathogenic Avian Influenza (HPAI) and virulent Newcastle Disease and due to unsubstantiated food safety concerns. Argentina experienced its first HPAI outbreak in February 2023; the World Organisation of Animal Health (WOAH) declared Argentina HPAI-free in August 2023. The United States continues to encourage Argentina to regionalize HPAI restrictions as recommended by the WOAH.

## INTELLECTUAL PROPERTY PROTECTION

Argentina remained on the Priority Watch List in the [2023 Special 301 Report](#). First, the scope of patentable subject matter remains significantly restricted under Argentine law. Patent examination guidelines automatically reject patent applications for categories of pharmaceutical inventions that are eligible for patentability in other jurisdictions, and there are requirements that processes for the manufacture of active compounds disclosed in a specification be reproducible and applicable on an industrial scale. Second, there is inadequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the Argentine Government in conjunction with its lengthy marketing approval process. The United States urges Argentina to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Argentina proceeds with the European Union–MERCOSUR Trade Agreement. In addition, the backlog continues for patent applications for pharmaceuticals and biosimilar products, resulting in unreasonable delays for these products.

Enforcing intellectual property rights in Argentina continues to prove challenging, as counterfeit and pirated goods remain widely available. The physical markets of La Salada and Barrio Once are both listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). For example, La Salada in Buenos Aires, one of the largest black markets for counterfeit and pirated goods in Argentina, continue to sell counterfeit products online. Furthermore, the existing legislative regime and weak enforcement hinder the ability of rights holders, law enforcement, and prosecutors to halt, through legal action, the growth of illegal markets, both online and physical.

## SERVICES BARRIERS

Similar to goods importers, services suppliers were subject to restrictions on their ability to access the foreign exchange market and were subject to approvals from the Secretary of Trade (within the Ministry of Economy) and AFIP system (Administración Federal de Ingresos Públicos) prior to receiving authorization to import. As of December 2023, Argentina no longer requires import authorization for imports of services and eliminated the electronic system for requesting such authorizations. The United States is monitoring implementation of these changes.

### **Audiovisual Services**

Argentina's Media Law imposes production requirements on advertising and publicity materials. The Media Law also establishes broadcast content requirements on companies with radio licenses (particularly for news and music) and on private television operators.

### **Telecommunications Services**

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



# AUSTRALIA

## TRADE AGREEMENTS

### The United States–Australia Free Trade Agreement

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

## SANITARY AND PHYTOSANITARY BARRIERS

### Animal Health

#### **Beef**

Australia requires completion of a complex approval process before it will permit the importation of bovine products from a country that has reported any indigenous cases of bovine spongiform encephalopathy (BSE). In 2003, Australia closed its market to U.S. beef after the detection of BSE in the United States. In May 2018, Australia lifted its ban on heat-treated, shelf-stable beef products from the United States. However, Australia's market remains closed to fresh U.S. beef and beef products. The United States continues to press the Australian Government to align its import requirements for U.S. fresh beef and beef product exports with World Organisation for Animal Health (WOAH) guidelines for countries with a negligible risk for BSE.

#### **Pork**

Pork and pork products are the third-leading U.S. agricultural export to Australia, valued at approximately \$131.3 million in 2022. However, due to Australia's stated concerns about porcine reproductive and respiratory syndrome (PRRS) and post-weaning multi-systemic wasting syndrome (PMWS), Australia does not permit imports of fresh/chilled pork and bone-in products from the United States. The United States has provided Australia with scientific evidence demonstrating the safety of U.S. pork products; however, the issue remains unresolved. Access to the Australian market for fresh/chilled/frozen pork, bone-in pork, and pork products remains a high priority for the United States.

#### **Poultry**

Australia prohibits imports of uncooked poultry meat from all countries except New Zealand. While cooked poultry meat products may be imported, current import requirements (as set out in an import risk analysis) mandate that imported poultry meat products be cooked to a minimum core temperature of 74 degrees Celsius for 165 minutes or the equivalent. This cooking temperature is not suitable for prepared deli meats, resulting in a significant barrier for cooked poultry products that would be suitable for sale in restaurants or delicatessens. Since 2012, the United States and Australia have exchanged technical information to attempt to resolve the issue. The United States has identified this issue as a high priority and will continue to work with Australia to gain meaningful commercial market access for cooked turkey meat.

## **Plant Health**

### **Apples and Pears**

Australia prohibits the importation of apples and pears from the United States based on concerns regarding several pests. In November 2018, Australia announced it was commencing a new risk analysis for fresh apples from U.S. Pacific Northwest states. In October 2020, Australia published the draft risk analysis for a 90-day comment period. The United States provided comments in response to Australia's draft risk analysis for U.S. apples in January 2021 and the final risk analysis for U.S. Pacific Northwest apples was published on October 31, 2022. The United States continues to work with Australia to secure market access for U.S. apples.

Australia currently prohibits the importation of pears from the United States due to the bacterial disease fire blight. Australia is concerned that the disease could be transmitted to its domestic apple and pear crops. However, the United States has provided evidence to Australia that demonstrates that mature, symptomless pears do not support populations of the fire blight bacteria and are not part of the disease pathway.

## **INTELLECTUAL PROPERTY PROTECTION**

Under the FTA, Australia must notify a pharmaceutical product patent owner of a request for marketing approval by a third party for a product claimed by that patent owner. Australia must also provide measures in its marketing approval process to prevent persons other than the patent owner from marketing a patented product during the patent term. U.S. and Australian pharmaceutical companies have expressed concerns about delays in this notification process. The United States has also raised concerns about certain provisions in Australian law regarding potential civil damages in cases where a patent owner seeks a preliminary injunction. The United States will continue to monitor these issues.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Australia is considering imposing Australian screen content requirements on streaming video services as part of its National Cultural Policy. The Policy, published in January 2023, recommends that the Australian Government introduce "requirements for Australian screen content on streaming platforms to ensure continued access to local stories." The Australian Government has consulted on potential models over the course of 2023 and intends to pass legislation codifying the preferred model following further consultations in 2024. The United States will continue to monitor this issue to ensure Australia's compliance with its FTA obligations.

## **INVESTMENT BARRIERS**

In October 2019, a parliamentary legislative committee of the New South Wales (NSW) government recommended that the NSW government address the issue of compensation for certain investors, including shareholders, in a mining project whose operating license was canceled in 2014. When canceling the license, the NSW government also passed legislation precluding the payment of compensation relating to such cancellation. To date, the NSW government has not acted on the parliamentary committee's recommendation to provide shareholders, including U.S. investors, with recourse to seek compensation.

# BANGLADESH

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

Bangladesh’s import policies are outlined in the Import Policy Order (IPO) 2015-18 issued by the Ministry of Commerce (MOC). The IPO has two lists: the “List of Controlled Goods” and the “List of Prohibited Goods.” The IPO for the years 2021 through 2024 is valid until June 30, 2024.

### Tariffs

Bangladesh’s average Most-Favored-Nation (MFN) applied tariff rate was 14.1 percent in 2022 (latest data available). Bangladesh’s average MFN applied tariff rate was 17.9 percent for agricultural products and 13.5 percent for non-agricultural products in 2022 (latest data available). Bangladesh has bound 17.9 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 156.3 percent.

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

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

## GOVERNMENT PROCUREMENT

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

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



## INTELLECTUAL PROPERTY PROTECTION

Bangladesh has taken some steps in recent years to improve intellectual property (IP) protection through legislative reforms. However, the effectiveness of these changes remains uncertain. For example, counterfeit and pirated goods are readily available across Bangladesh.

U.S. stakeholders have reported potential IP violations in various industries, such as fast-moving consumer goods, apparel, pharmaceutical, and software industries. Stakeholders also report a growing trend of Bangladesh serving as a source country for counterfeits distributed globally. The lack of investigative expertise of the police and reluctance of the to initiate independent investigations further exacerbates IP right holders' ability to enforce their rights. In addition, IP right holders have raised concerns about the courts' ability to adjudicate fairly IP cases.

Bangladesh has undertaken several legislative reforms related to IP, including the passing of a new patent law in April 2022, copyright amendments in October 2023, and the enactment of the Industrial Design Act in July 2023. However, the lack of stakeholder interaction and a public comment process in the development of these reforms remains a concern. Bangladesh needs transparent legislative and rulemaking processes that include seeking input from stakeholders in order to address the gaps in IP protection and make meaningful improvements to its IP regime.

To strengthen Bangladesh's IP regime, better coordination among enforcement authorities and other government institutions is crucial. These include Customs, the Office of the Attorney General, the Copyright Office, the Bangladesh Investment Development Authority, and the Department of Patents, Designs, and Trademarks. In addition, customs officials, police, and the judiciary would benefit from participating in available training opportunities as a means of improving Bangladesh's IP rights enforcement.

Recognizing the challenges faced by Bangladesh, the U.S. Department of Commerce Patent and Trademark Office and other U.S. Government agencies regularly provide technical assistance and capacity building programs.

## BARRIERS TO DIGITAL TRADE

The Information and Communication Technology Act of 2006, amended in 2013, authorizes the Government of Bangladesh to access any computer system for the purpose of obtaining any information or data, and to intercept information transmitted through any computer resource. Under this law, Bangladesh may also prohibit the transmission of any data or voice call and censor online communications. The Bangladesh Telecommunications Regulatory Commission (BTRC) ordered mobile operators to limit data transmissions for political reasons on several occasions in 2019, 2020, and 2023 ahead of politically sensitive events, including local and national-level elections. The BTRC ordered mobile operators to block all services in the Rohingya refugee camps in Cox's Bazar, except for voice calls, from September 2019 until August 2020.

The Information and Communication Technology Division (ICT Division) of the Ministry of Posts, Telecommunications and Information Technology has made significant updates to the Data Protection Act, now called the Personal Data Protection Act, which received approval in principle from the cabinet in November 2023. As of December 2023, the measure was under review by the Law Ministry. Once adopted in final form, the law will apply to the collection, processing, use, sharing, or other processing of data of individuals within Bangladesh, as well as data outside Bangladesh that is related to citizens of, or business carried out in, Bangladesh. Despite modifications to narrow the definition of the types of data to which the

law is applicable, concerns remain over provisions, particularly in the context of data localization requirements that could allow access to data by Bangladeshi law enforcement.

In February 2022, the BTRC published the Regulation for Digital, Social Media and Over the Top (OTT) Platforms, 2021. The regulations were presented in their final form to a subdivision of the Supreme Court of Bangladesh on October 19, 2022. The regulations are a content governance framework for digital, social media, and media platforms operating in the country. The framework seeks to introduce traceability within end-to-end encrypted services. Industry and civil society stakeholders have expressed concerns that the regulations will grant government authorities sweeping powers to dictate online content with the threat of criminal liability for firms and employees deemed noncompliant.

## **INVESTMENT BARRIERS**

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

## **SUBSIDIES**

Bangladesh maintains a range of agricultural subsidies but has not submitted an agricultural subsidies notification to the WTO Committee on Agriculture since 2011. These subsidies are provided as export cash incentives for a variety of agricultural products including vegetables, fruits, and processed agricultural products. Bangladesh also provides subsidies to keep the price of production inputs within the purchasing capacity of producers. Bangladesh provides non-product-specific support through subsidized fertilizers, diesel fuel, electricity, irrigation, and agricultural machinery. The subsidized fertilizer is distributed through a controlled channel, which keeps prices reasonably stable.

Bangladesh has never submitted a subsidies notification to the WTO Committee on Subsidies and Countervailing Measures. According to publicly available information from the Bangladesh Investment and Development Authority, industries exporting more than 80 percent of their goods, regardless of their locations (*i.e.*, within or outside of an export processing zone), can be exempted from income tax for 50 percent of their export earnings, provided that the industry is not already paying income tax at a reduced rate. Furthermore, exporters in certain sectors may be eligible for additional benefits in the form of a subsidy or cash incentive based on certain conditions. Other publicly available information indicates that exporters in 43 sectors receive cash incentives to export, ranging from 1 percent to 20 percent of the export value, as long as the product exported contains at least 30 percent domestic value added.

## **LABOR**

In 2013, the United States suspended all of Bangladesh's tariff benefits under the Generalized System of Preferences (GSP) program due to Bangladesh's failure to meet statutory eligibility requirements related to worker rights, particularly with regard to acceptable conditions of work in the ready-made garment sector, including fire and building safety, and freedom of association. As of December 2023, Bangladesh remained ineligible for duty-free treatment under GSP.

## OTHER BARRIERS

### **Bribery and Corruption**

Corruption is a pervasive and long-standing problem in Bangladesh, and anticorruption law is inadequately enforced. The Code of Criminal Procedure, the Prevention of Corruption Act, the Penal Code, and the Money Laundering Prevention Act criminalize attempted corruption, extortion, active and passive bribery, bribery of foreign public officials, money laundering, and use of public resources or non-public state information for private gain. However, bribery and extortion in commercial dealings are common features of business despite the illegality of facilitation payments and gifts. There have also been efforts to water down anti-corruption safeguards of government procurement rules. U.S. companies have complained about long delays in obtaining approval of licenses and bids as Bangladeshi Government officials seek bribes.

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

# BOLIVIA

## IMPORT POLICIES

### Tariffs

Bolivia's average Most-Favored-Nation (MFN) applied tariff rate was 11.7 percent in 2022 (latest data available). Bolivia's average MFN applied tariff rate for agricultural products was 13.5 percent and 11.4 percent for non-agricultural products in 2022 (latest data available). Bolivia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 40 percent.

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

### Non-Tariff Barriers

#### **Import Bans**

In 2023, Bolivia imposed import prohibitions on 33 tariff lines. Prohibited items include some types of vehicles and motor vehicles, in particular, vehicles using liquefied gas, used motor vehicles more than one year old, motor vehicles more than three years old used for the transport of more than 10 persons, and special-purpose motor vehicles more than five years old.

#### **Customs Barriers and Trade Facilitation**

Bolivia ratified the WTO Trade Facilitation Agreement (TFA) in January 2018. Bolivia has not yet submitted transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and (3) customs contact points for the exchange of information. Those notifications had been due to the WTO on February 22, 2017, according to Bolivia's self-designated TFA implementation schedule.

## SANITARY AND PHYTOSANITARY BARRIERS

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

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

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

## GOVERNMENT PROCUREMENT

The Buy Bolivian (Compro Boliviano) program supports domestic production by giving preference margins to domestic goods or suppliers in government procurement.

Importers of foreign products can participate in procurements valued between \$142,000 and \$5.7 million only in cases where domestically-manufactured products and domestic service providers are unavailable or when the Bolivian Government does not initially select a domestic supplier. Foreign companies submitting tenders for government consultancy contracts are required to do so in association with a Bolivian company, although the Bolivian Government occasionally makes exceptions in strategic sectors. For national and international tenders, preference margins are from 10 percent to 25 percent for Bolivian inputs.

As a general matter, the tendering process is nontransparent and acts as a barrier to participation. Government requirements and the details of the tender are not always defined, and procurement notices are not always made public. For example, many of the state-owned companies, including the state-owned oil and gas company, Yacimientos Petrolíferos Fiscales Bolivianos (YPFB); the state-owned electricity company, Empresa Nacional de Electricidad (ENDE); and, the state lithium company, Yacimientos de Litio Bolivianos (YLB), are not required to publish tenders through the official procurement website, Sistema de Contrataciones Estatales (SICOES). U.S. stakeholders have raised concerns that these state-owned companies are not required to follow the procedures established in the national procurement law. One U.S. company noted a Bolivian Government tender was prepared in such a way that only one specific company would be able to qualify.

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

## INTELLECTUAL PROPERTY PROTECTION

Bolivia remained on the Watch List in the [2023 Special 301 Report](#). The report noted that significant challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement. While certain Bolivian laws provide for the protection of copyrights, patents, and trademarks, they do not address trade secret protection. Significant challenges also persist with respect to widespread piracy and counterfeiting. The Special 301 Report again encouraged Bolivia to improve its weak protection and enforcement of IP. Bolivia's IP agency, Servicio Nacional de Propiedad Intelectual (SENAPI), signed a memorandum of understanding (MOU) with the United States Patent and Trademark Office in 2020 to help address Bolivia's challenges. However, the Bolivian administration that took office at the end of 2020 does not recognize the MOU.

## STATE-OWNED ENTERPRISES

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

The Bolivian Government owns the second-largest bank in Bolivia, Union Bank, which is competitive with U.S. banking providers. Other SOEs include: the Sugar Cane Company of San Buena Aventura; Bolivia's Industrialization Company of Gas and Oil; computer technology company QUIPUS; dairy processing company Lácteosbol; recycled paper company PAPELBOL; Brazil nut export company Empresa Boliviana de Alimentos; Bolivian national airline Boliviana de Aviación, the main operator in Bolivia; oil and gas company YPFB; electricity company ENDE; and, lithium company YLB. Large SOEs such as these can acquire credit from the Central Bank at very low interest rates and on more convenient terms, resulting in an unfair financial subsidy. In many cases, government entities are directed to do business with SOEs. The United States is monitoring these companies for possible impacts on U.S. exports of goods and services.

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



# BRAZIL

## TRADE AGREEMENTS

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

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

On November 17, 2021, the Brazilian Congress ratified the 2020 United States–Brazil Protocol Regarding Trade Rules and Transparency, which entered into force on February 2, 2022. The Protocol updated the ATEC in the areas of anticorruption, good regulatory practices, and trade facilitation and customs administration. Implementation of the Protocol will foster a more transparent economic environment, reduce red tape, and improve regulatory processes, as well as serve as a foundation for future bilateral engagement.

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Brazil's average Most-Favored-Nation (MFN) applied tariff rate was 11.1 percent in 2022 (latest data available). Brazil's average MFN applied tariff rate was 8.0 percent for agricultural products and 11.6 percent for non-agricultural products in 2022 (latest data available). Brazil has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.4 percent. Brazil's maximum bound tariff rate for non-agricultural products is 35 percent, and its maximum bound tariff rate for most agricultural products is 55 percent.

Brazil is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also includes Argentina, Paraguay, and Uruguay. The MERCOSUR Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Brazil (not including from free trade zones) is subject to payment of the CET to Brazil's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC and it has not taken effect. Although the Brazilian Congress approved the agreement in 2018, it has not been promulgated by the executive branch, which is necessary for ratification.

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



## ***Ethanol Tariff***

Between 2011 and 2017, bilateral trade of ethanol between the United States and Brazil, the world's two largest producers and consumers of ethanol, was virtually duty free. However, between September 2017 and January 2022, Brazil imposed first a tariff-rate quota (TRQ) and then the MERCOSUR CET of 20 percent on all imports of ethanol, the vast majority of which are supplied by the United States. Although the tariff was below Brazil's WTO bound tariff rate of 35 percent, the TRQ and the CET have reduced previously robust bilateral trade of ethanol. Brazil temporarily suspended the tariff, effective March 23, 2022, but that suspension expired on January 31, 2023, when the tariff was reimposed at 16 percent. The tariff then increased to 18 percent in 2024. The United States continues to engage with Brazil to lower its ethanol tariff to provide reciprocal treatment for trade in ethanol between the United States and Brazil.

## **Taxes**

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

In audiovisual services, Brazil imposes several taxes on foreign products that it does not apply equally to domestic products.

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

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. As an alternative to paying the full tax, producers can elect to invest 70 percent of the tax value in local independent productions. In addition, local distributors of foreign films are subject to a tax equal to 11 percent of remittances to the foreign producer or, alternatively, the distributor may invest an amount equal to 3 percent of the total remittances in local independent productions. This levy is also assessed on foreign-produced video and audio advertising.

## **Non-Tariff Barriers**

### **Import Bans**

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

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

### **Import Licensing**

Brazil has both automatic and non-automatic import licensing requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies,

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

### **Customs Barriers and Trade Facilitation**

U.S. companies continue to complain of inconsistent documentation requirements for the importation of certain types of goods, such as heavy equipment. These documentation requirements apply even if imports are on a temporary basis and are destined for use in other countries. Brazil terminated the use of ATA Carnet for temporary admission of products in January 2022, making it difficult to bring samples, equipment, or displays for exhibitions into Brazil without paying significant customs duties.

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

### **Technical Barriers to Trade**

#### **Wine Regulations**

Brazil requires duplicative documentation for imports of wine. Technical Regulation No. 75 of December 31, 2019, requires both a certificate of analysis and an import inspection pre-certification report generated by a Brazilian laboratory upon importation. The United States continues to monitor Brazil's pending updates to its wine regulations, specifically regarding export certification and laboratory testing requirements for wine products. In 2023, the United States continued to raise these issues and seek updates from Brazil on the margins of WTO Committee on Technical Barriers to Trade meetings.

#### **Telecommunications Products**

Effective December 2021, Brazil's telecommunications agency (ANATEL) established approval requirements as a prerequisite for importing telecommunications products for usage and sale, with exceptions for products entering the country for demonstration, self-use, scientific purposes, or manufacturing of exports. Approval must be obtained prior to the product's entry into the country.

### **Sanitary and Phytosanitary Barriers**

#### **Pork**

In a Joint Statement issued by the White House on March 19, 2019, the United States and Brazil agreed to science-based conditions to open Brazil's market to U.S. pork. However, Brazil's market is still closed to U.S. fresh and frozen pork due to Brazil's concerns, which Brazil has not substantiated with scientific evidence and are inconsistent with World Organisation for Animal Health (WOAH) international standards, that pork products imported into the United States from the European Union increase risks associated with African Swine Fever. Discussions between the U.S. Department of Agriculture and MAPA have been ongoing but have yet to establish access for U.S. pork exports to Brazil.

## GOVERNMENT PROCUREMENT

Although Brazil has taken steps to make its procurement market more transparent, restrictions remain. For example, Brazilian state enterprises may only subcontract services to a foreign firm if domestic expertise is unavailable and foreign firms may only bid to provide technical services if there are no qualified Brazilian firms. Brazil also requires some procurement contracts to contain offset requirements, such as providing technology transfer.

Brazil is not a Party to the WTO Government Procurement Agreement (GPA), but has been an observer to the WTO Committee on Government Procurement since October 2017. Although Brazil applied for accession to the GPA in May 2020, the Brazilian Government withdrew its market access offer for accession on May 30, 2023.

## INTELLECTUAL PROPERTY PROTECTION

Brazil remained on the Watch List in the [2023 Special 301 Report](#). Despite improvements in recent years, as outlined in that report, enforcement challenges continue, including the absence of deterrent-level penalties and high levels of counterfeiting and piracy online and in physical markets. The Rua 25 de Março area in São Paulo is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) for selling counterfeit and pirated goods. Deterrent-level penalties and increased emphasis on enforcement at the tri-border region between Argentina, Brazil, and Paraguay are critical to make sustained progress on these intellectual property concerns. Patent pendency has been reduced over the past several years, although it remains closer to 10 years for biopharmaceutical patents applications. Other concerns include the pendency of patent applications and the impact on the effective patent term. Also, pharmaceutical stakeholders remain concerned that Brazilian law and regulations do not provide for protection against unfair commercial use of undisclosed test results and other data generated to obtain marketing approval for pharmaceutical products for human use although such protection is provided for veterinary and agricultural chemical products. The United States urges Brazil to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Brazil proceeds with the European Union–Mercosur Trade Agreement.

## SERVICES BARRIERS

### Audiovisual Services

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

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

### Express Delivery

The Brazilian Government charges a flat 60 percent duty for all express shipments imported through the Simplified Customs Clearance process. The Simplified Customs Clearance process limits commercial

shipments to \$100,000 per importer per year. Moreover, Brazilian Customs has established express delivery maximum per-shipment value limits of \$10,000 for exports and \$3,000 for imports.

### **Financial Services**

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

### **Telecommunications Services**

#### **Satellites**

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

#### **Roaming**

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



# BRUNEI DARUSSALAM

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

Brunei's average Most-Favored-Nation (MFN) applied tariff rate was 0.2 percent in 2022 (latest data available). Brunei's average MFN applied tariff rate was zero percent for agricultural products and 0.3 percent for non-agricultural products in 2022 (latest data available). Brunei has bound 95.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 25.3 percent. Brunei's highest WTO bound tariff rate for non-tobacco products is 50 percent.

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

Brunei ratified the World Trade Organization Trade Facilitation Agreement (TFA) in December 2015, and the TFA entered into force in February 2017. Brunei submitted four transparency notifications related to: (1) import, export, and transit regulations; (2) the operation of the single window; (3) the use of customs brokers; and (4) customs contact points for the exchange of information on May 1, 2023. These notifications had been due to the WTO on February 22, 2017, according to Brunei's self-designated TFA implementation schedule.

## TECHNICAL BARRIERS TO TRADE

### Halal Import Requirements

Brunei's Halal Certificate and Halal Label Order Amendment, enacted in May 2017, requires all businesses that produce, import, distribute, or serve food and beverages to obtain a halal certificate from the Islamic Religious Council of Brunei (MUIB) and to renew this certificate annually.

Under Brunei's Halal Meat Act, halal meat can be imported only by a person holding a halal import permit issued by the MUIB and an export permit issued by the exporting country. Prior to export, Bruneian Government inspectors must travel to slaughter facilities in the home country of the exporter to inspect the slaughter and processing operations. The Bruneian Government maintains a list of the foreign and local slaughtering centers (abattoirs) that have been inspected and declared fit for supplying meat that can be certified as halal. None of the 40 foreign slaughterhouses currently approved by the MUIB are located in the United States.

## **OTHER BARRIERS**

### **Residency Requirement**

Under the Companies Act, 100 percent foreign-owned companies cannot locally incorporate in Brunei unless at least one of two directors of that locally incorporated company is a resident of Brunei. If a 100 percent foreign-owned company has more than two directors, then at least two must be residents of Brunei. The government may grant an exemption from this requirement, although it has granted none to date.

### **Transparency**

In Brunei, the decision-making process regarding economic policies and regulations is centralized, including with respect to critical sectors like oil and gas, telecommunications, transportation, and energy generation and distribution. Brunei's centralized decision-making lacks public consultation mechanisms. As a result, there is a lack of transparency with respect to state-owned enterprises.

# CAMBODIA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

Cambodia's average Most-Favored-Nation (MFN) applied tariff rate was 10.2 percent in 2022 (latest data available). Cambodia's average MFN applied tariff rate was 12.5 percent for agricultural products and 9.8 percent for non-agricultural products in 2022 (latest data available). Cambodia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 19.3 percent. Cambodia's highest applied tariff rate is 35 percent, which is imposed on several product categories, including a wide variety of prepared food products, bottled and canned beverages, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, and video games.

On June 6, 2023, Cambodia issued Sub-Decree 122 on the Adjustment of Customs Tariffs and Special Tax Rates on Certain Goods, applicable to sectors such as agriculture, transportation, healthcare, industry, and mining. The Sub-Decree went into effect July 1, 2023. Businesses and importers may check the new tariff rates on the Cambodian General Department of Customs and Excise website by using the relevant Harmonized System (HS) code.

The lack of detailed guidance about HS classification of products by customs officials remains a concern for U.S. stakeholders. Some importers claimed that, due to a lack of clear guidance, if a product could fall under multiple HS codes, Cambodian customs and excise officials will typically classify the product as falling within the HS code with a higher tariff rate.

## GOVERNMENT PROCUREMENT

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

Irregularities in the government procurement process are common, despite a strict legal requirement for audits and inspections. Despite allegations of malfeasance at several ministries, the Cambodian Government has taken little action to investigate irregularities. In May 2023, the new Law on Public Procurement was promulgated to replace the 2012 law, introducing additional provisions to further regulate the management and implementation of all public procurements. U.S. stakeholders have not reported any noticeable changes to government procurement processes.



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

## **INTELLECTUAL PROPERTY PROTECTION**

Despite efforts to raise intellectual property (IP) awareness, the sale of counterfeit and pirated goods remains commonplace in Cambodian markets, especially those frequented by tourists. The Central Market in Phnom Penh is included in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). The rates of signal and cable piracy also remain high, and online sites purveying pirated music, films, electronic books, software, and television shows remain popular. In addition, sales of legitimate films have been negatively affected as a result of the popularity of illegal cinemas that show pirated material.

Various Cambodian authorities that work on IP-related issues include the Interior Ministry's Economic Crime Police unit, the General Department of Customs and Excise of Cambodia (GDCE), the Cambodia Import-Export Inspection and Fraud Repression Directorate General, the National Committee for Intellectual Property Rights, the Institute of Standards of Cambodia, the Ministry of Culture and Fine Arts, and the Ministry of Commerce. Some of these institutions have overlapping responsibilities with respect to IP-related issues. The Interior Ministry's Cambodia Counter Counterfeit Committee, which previously cracked down on counterfeit products, transferred that responsibility to the Economic Crime Police and now focuses on raising awareness only. Draft legislation to address the protection of trade secrets is under review at the Ministry of Commerce but has not been passed.

## **BARRIERS TO DIGITAL TRADE**

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

## **INVESTMENT BARRIERS**

Cambodia's constitution restricts foreign ownership of land. A 2010 law allows foreign ownership of property above the ground floor of a structure but stipulates that no more than 70 percent of a building may be foreign-owned and that foreigners may not own property within 30 kilometers of the national border. Land may be owned by foreign investors, but the title must also be held by at least one Cambodian citizen or entity.

While Cambodia has made significant progress in formalizing its tax regime and increasing tax revenues, some question the General Department of Taxation's tax collection methods, including assessing some organizations with unexplained tax bills and freezing assets for failure to pay purported back taxes. Additional concerns range from surprise tax audits to a lack of stakeholder consultation when implementing new tax codes.

## OTHER BARRIERS

### **Transparency**

Despite the Cambodian Government's calls for public consultation on new draft regulations in recent years, some businesses have raised concerns with the lack of opportunity for meaningful stakeholder engagement. Some stakeholders have also expressed concerns regarding the short notice and lack of detailed public comment procedures for proposed laws and regulations.

Foods and health-related products are commonly regulated by multi-ministerial regulations called Joint-Prakas and are subject to review and approval by all ministries listed in the Joint-Prakas for aspects ranging from a product's registration to its sale. U.S. businesses have voiced concerns about a lack of clarity on each ministry's authority under the Joint-Prakas.

### **Bribery and Corruption**

Both foreign and local businesses have identified corruption in Cambodia as a major obstacle and a deterrent to investment. Cambodia's judiciary is viewed as one of the country's most corrupt institutions. In 2010, Cambodia adopted anticorruption legislation and established a national Anti-Corruption Unit (ACU) to undertake investigations, implement law enforcement measures, and conduct public outreach. Enforcement, however, remains inconsistent. U.S. businesses have noted that signing an anticorruption memorandum of understanding with the ACU has helped them to avoid paying "facilitation payments." However, businesses have noted that they still encounter red tape in obtaining licenses and permits.

Cambodia published official fees for all public services in 2012 in an effort to combat "facilitation payments;" however, that publication has not been updated, making it difficult to determine current public service fees. Some ministries publish service fees on their official websites, and others do not. In June 2023, Cambodia rolled out the third phase of an online, single-portal business registration platform aimed to eliminate the need for cash payments and to reduce overall fees for public services. Despite covering a total of 22 ministries and state-run institutions, the platform still does not cover all ministries and relevant agencies.



# CANADA

## TRADE AGREEMENTS

### The United States–Mexico–Canada Agreement

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

## IMPORT POLICIES

### Non-Tariff Barriers

#### **Agricultural Supply Management**

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

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

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

Canada made changes to its dairy TRQ allocation measures following the release of the panel report, but the United States rejected those changes as a basis to resolve the dispute. On May 25, 2022, the United States—for the second time—requested dispute settlement consultations with Canada under the USMCA to address Canadian allocation measures that impose new conditions on the allocation and use of the TRQs and prohibit eligible applicants, including retailers, food service operators, and other types of importers, from accessing TRQ allocations. On December 20, 2022, the United States requested new dispute settlement consultations, expanding its challenge of Canada's dairy TRQ allocation measures to include Canada's use of a market-share approach for determining TRQ allocations, which applies different criteria for different segments of applicants, and Canada's failure to allow importers the opportunity to fully utilize TRQ quantities. On January 31, 2023, the United States requested and established a second dispute

settlement panel under the USMCA to address Canada's continued failure to abide by its USMCA commitments with its dairy TRQ allocation measures. The final panel report was released to the public on November 24, 2023. The panel found that Canada's measures are not inconsistent with the USMCA provisions cited by the United States. The panel split on the U.S. claims that Canada's exclusion from eligibility of retailers, food service operators, and other entities and Canada's historical market share approach to allocate its USMCA dairy TRQs breach Canada's USMCA obligations. A dissenting panelist agreed with the United States that by excluding retailers and others, Canada was breaching its commitment to make its dairy TRQs available to all applicants active in the Canadian food or agriculture sector. The United States remains committed to securing the full benefit of the market access that Canada committed to under the USMCA and full compliance with Canada's USMCA obligations.

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

### **Milk Classes**

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

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

### **Ministerial Exemptions**

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

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

## **Wine, Beer, and Spirits**

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

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

### **Technical Barriers to Trade**

#### **Compositional Standards for Cheese**

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

### **Sanitary and Phytosanitary Barriers**

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

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

## **INTELLECTUAL PROPERTY PROTECTION**

Canada remained on the Watch List in the [2023 Special 301 Report](#). Canada's commitments under the USMCA are designed to significantly improve Canada's intellectual property (IP) environment, addressing areas of longstanding concern, including enforcement against counterfeits, inspection of goods in-transit, transparency with respect to new geographical indications (GIs), and application of full national treatment for copyright. With respect to GIs, the United States remains highly concerned about countries' negotiating product-specific IP outcomes as a condition of market access from the European Union and reiterates the importance of each individual IP right being independently evaluated on its individual merits. Poor

enforcement with respect to counterfeit or pirated goods at the border and within Canada remains a concern. The Pacific Mall in Toronto is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) for selling pirated and counterfeit goods.

## **SERVICES BARRIERS**

### **Audiovisual Services**

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

In an annex to the USMCA Cross-Border Trade in Services Chapter, Canada committed to “ensure that U.S. programming services specializing in home shopping, including modified versions . . . are authorized for distribution in Canada.” Since entry into force, the United States has engaged with Canada to ensure its compliance with this commitment, which led Canada to introduce new rules in August 2023. The United States continues to monitor Canada’s implementation to ensure full compliance with the commitment.

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

### **Online Streaming**

The Canadian Government passed the Online Streaming Act on April 27, 2023, and has instructed the CRTC to create a new methodology for financial contributions and obligations on streaming platforms to support and promote Canadian programming, as well as review how it defines Canadian programs. The United States will closely monitor the implementation of the Act and any USCMA implications.

## **BARRIERS TO DIGITAL TRADE**

### **Digital Services Taxation**

On August 4, 2023, the Canadian Government published its latest draft legislation for a digital services tax (DST). Canada’s proposed DST could be imposed any time after January 1, 2024, and could be retroactive to January 1, 2022. Canada has taken this step, despite joining the October 8, 2021 OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy](#), which called for all Parties to commit not to introduce DSTs in the future. As the United States noted in comments to Canada in 2021 and 2023, most DSTs have been designed in ways that discriminate against U.S. companies, as they single out U.S. firms for taxation while effectively excluding national firms engaged in similar lines of business. Furthermore, Canada’s proposed DST would create the possibility of significant retroactive tax liabilities with immediate consequences for U.S. companies. The United States has expressed serious concerns that Canada continues to pursue a DST and has urged Canada to join the 140 other members of the OECD negotiations who have

agreed not to impose new DSTs or similar measures through the end of 2024. As of December 31, 2023, Canada and the United States were in ongoing discussions on this issue.





# CHINA

## TRADE AGREEMENTS

In January 2020, the United States and China signed the Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China, commonly referred to as the (Phase One Agreement). This agreement included commitments by China to improve market access for the United States in the agriculture and financial services sectors, refrain from problematic policies and practices related to intellectual property (IP) and technology transfer, and increase its purchases of certain U.S. goods and services.

While China followed through in implementing some provisions of the Phase One Agreement, it has not yet implemented some of the more important commitments. With regard to agriculture trade, for example, the Phase One Agreement addresses many non-tariff barriers and has expanded market access for a variety of U.S. food, agriculture, and seafood product exports. In particular, China implemented significant reforms in some agricultural sub-sectors, such as meat and poultry products, and in facility registration. However, China has not yet implemented some of its more significant agriculture commitments, such as commitments on agricultural biotechnology and the commitment to conduct a risk assessment relating to the use of ractopamine in cattle and swine. Moreover, China fell far short of implementing its commitments to purchase certain amounts of specific U.S. goods and services in 2020 and 2021.

Importantly, it is clear that the Phase One Agreement has not led to fundamental changes to China's state-led, non-market trade regime or its harmful impact on the U.S. economy and U.S. farmers, ranchers, workers, and businesses. Indeed, many of the commitments in the Phase One Agreement reflected changes that China had already been planning or pursuing for its own benefit or that otherwise served China's interests, such as the changes involving IP protection and the opening up of more financial services sectors. Other commitments to which China agreed reflected a calculation, as it saw them as appeasing U.S. priorities of the prior Administration, as evidenced by the attention paid to the agriculture sector in the Phase One Agreement and the novel commitments relating to China's purchases of U.S. goods and services ostensibly as a means to reduce the bilateral trade deficit.

## STATE-LED, NON-MARKET TRADE REGIME

### Industrial Plans

China continues to pursue an extensive number of industrial plans and supporting policies and practices that target industries for domination by Chinese companies, both in China and globally. Pursuant to these industrial plans, the Chinese Government offers substantial government guidance, resources, and regulatory support to Chinese companies while actively seeking to limit access to the China market for imported goods, foreign manufacturers, and foreign services suppliers. The beneficiaries of these non-market policies and practices, which are constantly evolving, include not only China's state-owned enterprises but also other domestic Chinese companies.

One of the more far-reaching and harmful industrial plans is Made in China 2025. China's State Council released this industrial plan in May 2015. It is a 10-year plan targeting 10 strategic sectors, including advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-technology vessels, advanced rail transit equipment, new energy vehicles (NEVs), power equipment, farm machinery, new materials, biopharmaceuticals, and advanced medical device products. While purportedly intended simply to raise industrial productivity

through more advanced and flexible manufacturing techniques, Made in China 2025 is emblematic of China's evolving and increasingly sophisticated approach to "indigenous innovation," which is evident in numerous supporting and related industrial plans. Under China's harmful and anticompetitive approach to indigenous innovation, the common, overriding aim is to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to enable Chinese companies first to dominate the China market and then to use that dominance as a springboard to taking on international markets.

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

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

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

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

themselves experienced deindustrialization, are especially at risk of severe harm from industrial plans like Made in China 2025.

While public references to Made in China 2025 subsided after June 2018 reportedly in response to an order from the central government, it is clear that China remains committed to achieving the underlying goals of Made in China 2025 and continues to seek dominance for Chinese firms in the sectors that it views as strategic, both in China's market and globally. For example, in September 2020, the central government issued a guiding opinion encouraging investment in "strategic emerging industries," a term used to describe an earlier initiative from which Made in China 2025 evolved. Among other things, the guiding opinion called for the support and creation of industrial clusters for strategic emerging industries, along with the use of various types of government support and funding. The guiding opinion specifically encouraged provincial and local governments to support industries such as advanced information technology, NEVs, and biopharmaceuticals. More recently, the October 2022 Report to the 20th Party Congress also underscored the continuing importance of China's industrial policy objectives, calling for efforts to promote the development of strategic emerging industries and to "cultivate new growth engines such as next-generation information technology, artificial intelligence, biotechnology, new energy, new materials, high-end equipment, and green industry."

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

### **Technology Transfer**

For years, longstanding and serious U.S. concerns regarding forced or pressured technology transfer remained unresolved, despite repeated, high-level bilateral commitments by China to remove or no longer pursue problematic policies and practices. In August 2017, the Office of the United States Trade Representative (USTR) sought to address these concerns by initiating an investigation under Section 301 of the Trade Act of 1974 (Section 301) focused on policies and practices of the Government of China related to technology transfer, intellectual property, and innovation. Specifically, in its initiation notice, USTR identified four categories of reported Chinese Government conduct that would be the subject of its inquiry: (1) the use of a variety of tools to require or pressure the transfer of technologies and intellectual property to Chinese companies; (2) depriving U.S. companies of the ability to set market-based terms in technology licensing negotiations with Chinese companies; (3) intervention in markets by directing or unfairly facilitating the acquisition of U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property; and (4) conducting or supporting cyber-enabled theft and unauthorized intrusions into U.S. commercial computer networks for commercial gains. In March 2018, USTR issued a report supporting findings that the four categories of acts, policies, and practices covered in the investigation are unreasonable or discriminatory and burden and/or restrict U.S. commerce. In November 2018, USTR issued an updated report that found that China had not taken any steps to change its problematic policies and practices. Based on the findings in USTR's Section 301 investigation, the United States took a range of responsive actions, including the pursuit of a successful WTO dispute

challenging certain discriminatory technology licensing measures maintained by China in addition to the imposition of substantial additional tariffs on Chinese imports.

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

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

Throughout 2023, USTR led a statutorily-mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies, and practices related to technology transfer, intellectual property, and innovation. As part of this review, USTR has been examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken, and the effects of those actions on the United States economy, including consumers.

## **IMPORT POLICIES**

### **Tariffs and Taxes**

#### **Tariffs**

China's average Most-Favored-Nation (MFN) applied tariff rate was 7.5 percent in 2022 (latest data available). China's average MFN applied tariff rate was 13.9 percent for agricultural products and 6.4 percent for non-agricultural products in 2022 (latest data available). China has bound 100 percent of its tariff lines in the WTO, with a simple average WTO bound tariff rate of 10.0 percent.

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

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

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

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized as of December 2023. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations, and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide face reduced market access opportunities. As a result, China's TRQs for wheat, corn, and rice seldom fill even when they are oversubscribed. For example, from 2020 to 2023, China's corn imports exceeded TRQ levels, but the TRQ issuance, application, and allocation processes lacked transparency, and large state-owned enterprises in China appear to have been the primary beneficiaries of the increased imports.

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

As part of the Phase One Agreement, China agreed that, from December 31, 2019, its administration of TRQs for wheat, corn, and rice would conform to its WTO obligations. In addition, China agreed to make specific improvements to its administration of the wheat, corn, and rice TRQs, including with regard to the allocation methodology, and to the treatment of non-state trading quota applicants. China also committed to greater transparency. As of December 31, 2023, however, China has not demonstrated full implementation of these commitments.

### **Taxes**

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

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

### **Food Safety**

China's ongoing implementation of its 2015 Food Safety Law has led to the introduction of myriad new measures. These measures include exporter facility and product registration requirements for almost all

food and agricultural products. Overall, China's notification of these measures to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) and the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) has been uneven.

In November 2019, China's regulatory authorities issued draft measures for public comment that would require the registration of all foreign food manufacturers. The United States submitted comprehensive written comments on the draft measures to China's regulatory authorities. The United States also raised concerns about them before the WTO TBT Committee and the WTO SPS Committee. More than 15 WTO Members supported the concerns raised by the United States.

In April 2021, China's regulatory authorities issued final versions of these measures, now known as Decrees 248 and 249, with an implementation date of January 1, 2022. In correspondence delivered to foreign missions in Beijing in September 2021, China's regulatory authorities laid out a non-transparent, multi-tier system where producers of certain products are required to be registered by foreign regulatory authorities, while producers of other products are eligible to self-register. Decrees 248 and 249 also establish new labeling and conformity assessment requirements. In July 2023, China implemented additional registration requirements for certain products under Decree 248, expanding the burden on foreign food safety regulators. Moreover, the tasks being required of foreign food safety regulators are fundamentally beyond the traditional roles of regulatory authorities. These various additional requirements have already disrupted trade, especially for new U.S. food manufacturers unable to meet the requirements for first-time registration.

Decree 248 and similar prior measures continue to place excessive strain on food producers, traders, and exporting countries' regulatory authorities, with no apparent added benefit to food safety. They instead provide China with a tool to control food imports in accordance with the dictates of China's state planners and to retaliate against food producers from countries whose governments challenge Chinese Government policies or practices in non-trade areas.

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

## **Technical Barriers to Trade**

### **Standards**

The Chinese Government continues to pursue changes to its standards system, including by moving from a government-led system to one that incorporates both government guidance and stakeholder input. At times, Chinese Government officials have also indicated they provide equal treatment to foreign companies in connection with China's standardization work. However, in practice, the Chinese Government continues to limit foreign participation in standards setting and, at times, still pursues unique national standards for strategic reasons.

In January 2018, China's revised Standardization Law entered into force. Since then, China has issued numerous implementing measures, some of which contain positive references to the ability of foreign-invested enterprises to participate in China's standardization activities and purport to recognize the value of international standards. Unfortunately, many of these implementing measures cause concern for U.S. industry as they appear to focus on the development of Chinese standards without sufficient consideration

being given to existing standards. In addition, they do not explicitly provide that all foreign stakeholders may participate on equal terms with domestic competitors in all aspects of the standardization process.

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

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

Notably, U.S. concerns about China's standards regime are not limited to the implications for U.S. companies' access to China's market. China's ongoing efforts to develop unique national standards aims eventually to serve the interests of Chinese companies seeking to compete globally, as the Chinese Government's vision is to use the power of its large domestic market to influence the development of international standards. The United States remains very concerned about China's policies with regard to standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised Standardization Law.

In October 2021, the Central Committee of the Chinese Communist Party and the State Council issued the Outline for the Development of National Standardization, which set targets for China's standardization system. It reiterates the desire for China's standardization system to be both guided by the government and driven by the market. It also calls for China's standardization system to refocus from quantity to quality and to shift from a domestic focus to an equal domestic and international focus.

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

## **Cosmetics**

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



The CSAR implementing measures contain provisions that would require companies to disclose full product formulations, ingredient suppliers, manufacturing methods, claims and safety data to both NMPA and local agents in China when products are registered or notified. In addition, these measures require companies to publish claims abstracts that may contain trade secrets and confidential business information on NMPA's website. The United States has expressed concern to China that its regulators are applying an approach that treats cosmetics as having much higher safety risks than is warranted. China's filing and registration requirements for cosmetics also significantly diverge from those in other major markets without a valid regulatory reason, making compliance very burdensome for exporters.

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

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

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

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

## **Sanitary and Phytosanitary Barriers**

### **Overview**

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

## **Agricultural Biotechnology Approvals**

The Chinese regulatory approval process for agricultural biotechnology products creates significant uncertainty among developers and traders, slowing commercialization of products and creating adverse trade impacts, particularly for U.S. exports of corn, soy, canola, and alfalfa. Despite some recent product approvals, the process remains lengthy and opaque and continues to reflect significant asynchrony relative to approvals issued by regulatory authorities in many other countries.

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

Since 2021, China's National Biosafety Committee (NBC) has issued biosafety certificates to foreign developers for several new GE products for import as feed or for processing, including alfalfa, canola, corn, cotton, soybean, and sugarcane products. Some of these approved products had been under review for more than 10 years. During the same time period, China has issued biosafety certificates to Chinese developers for well over 100 new corn, cotton, and soybean products for domestic cultivation. These approvals continue the recent trend of expanding domestic approvals for GE crops beyond cotton.

China's approach to agricultural biotechnology remains among the most significant commitments under the Phase One Agreement for which China has not demonstrated full implementation. Despite the commitments that China made, there remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these meetings and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months, as it had committed to do in the Phase One Agreement, even when taking into account approvals made in 2023.

## **Poultry**

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

Starting in February 2022, the United States notified China of detections of HPAI in multiple U.S. states. In the ensuing months, several states recovered from these detections, and they were deemed HPAI-free by the United States. The United States submitted reports to China for these states and requested approval to resume exporting poultry from these states to China. As of the end of 2023, China had yet to confirm the restoration of market access.

## **Pork**

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

As part of the Phase One Agreement, China agreed to broaden the list of pork products that are eligible for importation, including processed products such as ham and certain types of offal that are inspected by the U.S. Department of Agriculture Food Safety and Inspection Service for both domestic and international trade. China also agreed to conduct a risk assessment for ractopamine in swine and cattle as soon as possible and to establish a joint working group with the United States to discuss next steps based on the risk assessment. As of December 31, 2023, China has not completed the risk assessment and therefore has not yet made any progress on next steps based on the risk assessment, which will need to include the establishment of MRLs or import tolerances.

## **Beef**

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

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

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

## GOVERNMENT PROCUREMENT

In its WTO accession agreement, China made a commitment to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA Parties. More than two decades later, this commitment remains unfulfilled, while China's government procurement has continued to grow. Indeed, government procurement at the central level of government alone as of December 31, 2023, totals approximately \$500 billion, even without considering procurement by state-owned enterprises.

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

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

China's Foreign Investment Law, which entered into force in January 2020, and the related October 2021 Ministry of Finance Notice 35 state that China will provide equal treatment to foreign companies invested in China and to domestic Chinese companies with regard to government procurement opportunities. However, foreign companies report a marked increase in preference for domestic Chinese companies over foreign companies invested in China.

In July 2022, the Ministry of Finance issued draft amendments to the Government Procurement Law. Among other changes, these draft amendments would codify the requirement that officials at all levels of government refrain from purchasing non-domestic products whenever domestic products are available. The draft amendments, which have not yet been finalized, do not define the term "domestic product."

In August 2023, China's State Council issued the Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment, known as Document 11. One of the 24 topics addressed in Document 11 is government procurement. Specifically, Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises can participate in China's government procurement market, consistent with existing Chinese law. In Article 6, the State Council recommends clarifying the meaning of "produced in China" as it relates to China's government procurement laws and regulations and providing unspecified support for foreign-invested enterprises to encourage them to develop their cutting-edge

products in China. It also recommends accelerating amendments to the Government Procurement Law. While China's leadership has been touting Document 11 to the foreign business community as a demonstration of China's sincerity about fostering a more welcoming environment for foreign companies in China, Document 11 provides little clarity as to how its suggestions would be implemented, nor does it identify timelines for acting on them. Moreover, many of the suggestions fail to demonstrate a willingness to make meaningful changes, as they either restate outcomes that China previously achieved or offer outcomes that would fall short of China's WTO commitments. Going forward, the United States expects China to make any forthcoming draft implementing measures accessible to the public, including the foreign business community, and to provide a reasonable period of time to submit comments on them.

Under both its government procurement regime and its tendering and bidding regime, China continues to implement policies favoring products, services, and technologies made or developed by Chinese-owned and Chinese-controlled companies through explicit and implicit requirements that hamper foreign companies from fairly competing in China. For example, notwithstanding China's commitment to equal treatment, foreign companies continue to report cases in which "domestic brands" and "indigenous designs" are required in tendering documents. Since China has not yet adopted clear rules on what constitutes a "domestic product," procurement officials often prefer to err on the side of caution and purchase products from domestic Chinese companies.

## INTELLECTUAL PROPERTY PROTECTION

### Overview

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

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

China has published a number of draft measures for comment and issued some final measures relating to implementation of the intellectual property chapter of the Phase One Agreement. Notably, China amended the Patent Law, the Copyright Law, and the Criminal Law. China has also reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. At the same time, China has outstanding work to finalize the draft measures that it has published and to publish other draft measures, such as certain patent, geographical indications, and trade secret measures, in accordance with the Intellectual Property Action Plan that it released in April 2020. In addition, China has yet to demonstrate that it has: (1) published data online on a quarterly basis regarding enforcement actions

against counterfeit goods with health and safety risks, enforcement actions at physical markets, and enforcement actions at the border; (2) increased enforcement actions against counterfeits with health and safety risks and at physical markets; (3) increased training of customs personnel; or (4) ensured the use of only licensed software in government agencies and state-owned enterprises. The United States continues to monitor China's implementation of the intellectual property chapter of the Phase One Agreement, including the impact of the final measures that have been issued.

## **Trade Secrets**

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

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

At the November 2016 U.S.–China Joint Commission on Commerce and Trade (JCCT) meeting, China claimed that it was strengthening its trade secrets regime and bolstering several areas of importance, including the availability of evidence preservation orders and damages based on market value, as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. China amended the Anti-Unfair Competition Law, effective January 2018 and April 2019, as well as the Administrative Licensing Law, effective April 2019, and the Foreign Investment Law, effective January 2020. Nevertheless, the amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement. In 2022, China published additional draft amendments to the Anti-Unfair Competition Law, but they contain few changes to the law's trade secrets provisions.

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

In 2020, China published various measures relating to civil, criminal, and administrative enforcement of trade secrets. In September 2020, the Supreme People's Court issued the Provisions on Several Issues Concerning the Application of Law in Civil Cases of Trade Secret Infringement and the Interpretation III on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of

Intellectual Property Rights. In September 2020, the Supreme People's Procuratorate and the Ministry of Public Security also issued the Decision on Amendment of Docketing for Prosecution of Criminal Trade Secrets Infringement Cases Standards. These measures relate to issues such as the scope of liability for trade secret misappropriation, prohibited acts of trade secret theft, preliminary injunctions, and thresholds for initiations of criminal investigations for trade secret theft. In December 2020, the National People's Congress passed amendments to the Criminal Law that included changes to the thresholds for criminal investigation and prosecution and the scope of criminal acts of trade secret theft. The Criminal Law amendments require revisions to certain previously issued judicial interpretations and prosecution standards. However, three years after the passage of the Criminal Law amendments, these other measures remain unchanged, and implementation of the Criminal Law amendments therefore remains incomplete. Indeed, China has only published a draft judicial interpretation. The United States will continue to monitor the effectiveness of all of these measures.

### **Bad Faith Trademark Registration**

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

At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad faith trademarks and asserted that it was taking further steps to combat bad faith trademark filings. Amendments to the Trademark Law made in 2019 and subsequent implementing measures, including the State Administration for Market Regulation's (SAMR) Provisions on Standardizing Applications for Registrations of Trademarks issued in 2019 and the Trademark Examination and Review Guidelines updated in 2021 by the China National Intellectual Property Administration (CNIPA), require the disallowance of bad faith trademark applications. In January 2023, China proposed further amendments to the Trademark Law regarding bad faith trademarks.

However, implementation in this area by China as of December 31, 2023, suggests that right holders remain insufficiently protected, as bad faith trademarks remain widespread and problems persist with the large number of inconsistent decisions, low rate of success for oppositions, lack of transparency in opposition proceedings, and unavailability of default judgments against applicants who fail to appear in proceedings. Onerous documentation requirements are also an ongoing concern for right holders. China acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention), effective November 2023. The United States will monitor China's implementation of the obligations under the Apostille Convention and whether it addresses right holders' concerns regarding foreign government document legalization requirements.

As a result of these deficiencies, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off of U.S. companies' global reputations. The Phase One Agreement requires China to ensure adequate and effective protection and enforcement of trademark rights, particularly against bad faith trademark registrations. The United States will continue to monitor closely developments in this area of long-standing concern.

### **Online Infringement**

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software, and video games.

While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a meaningful difference for content creators and right holders, particularly small and medium-sized enterprises. In response to the COVID-19 pandemic, reports indicate that many infringers have moved online to distribute their pirated and counterfeit goods, which further increases the need for targeted and sustained enforcement measures in the online environment.

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

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

The Phase One Agreement requires China to provide enforcement procedures that permit effective and expeditious action against infringement in the online environment and to require expeditious takedowns and to ensure the validity of takedown notices and counter-notifications. It also requires China to take effective action against electronic commerce platforms that fail to take necessary measures against infringement.

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

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

### **Counterfeit Goods**

Counterfeiting in China remains widespread and affects a wide range of goods. In April 2019, China amended its Trademark Law, effective November 2019, to require civil courts to order the destruction of counterfeit goods, but these amendments still do not provide the full scope of civil remedies for right



holders. One of many areas of particular U.S. concern involves medications. Despite years of sustained engagement by the United States, China has failed to adequately improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 United States–China Strategic and Economic Dialogue (S&ED) meeting, China committed to develop and seriously consider amendments to the Drug Administration Law that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further committed to publish revisions to the Drug Administration Law in draft form for public comment and to consider the views of the United States and other relevant stakeholders. In October 2017, China published limited draft revisions to the Drug Administration Law and stated that future proposed revisions to the remainder of this law would be forthcoming. Although the final Drug Administration Law, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, it remains unclear how these requirements will be implemented or enforced.

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

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

### **Indigenous Innovation**

Policies aimed at promoting China’s “indigenous innovation” continue to represent an important component of China’s industrialization efforts. Through intensive, high-level bilateral engagement with China since 2009, the United States has attempted to address these policies, which provide various preferences when intellectual property is owned or developed in China, both broadly across sectors of China’s economy and specifically in the government procurement context. For example, at the May 2012 meeting of the S&ED, China committed to treat intellectual property owned or developed in other countries the same as intellectual property owned or developed in China. The United States also used the JCCT process in 2012 and subsequent discussions to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. At the December 2014 JCCT meeting, China clarified and underscored that it will treat intellectual property owned or developed in other countries in the same manner as domestically owned or developed intellectual property. Once again, however, these commitments were not fulfilled. China continues to pursue myriad policies that require or favor the ownership or development of intellectual property in China.

The United States secured a series of similar commitments from China in the government procurement context, where China agreed to de-link indigenous innovation policies at all levels of the Chinese

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

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

## **SERVICES BARRIERS**

### **Overview**

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

In 2023, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery, and legal services. In addition, China’s Cybersecurity Law and related implementing measures include mandates to purchase domestic information and communications technology (ICT) products and services, while China’s Cybersecurity Law, Data Security Law and Personal Information Protection Law and related implementing measures include excessive restrictions on cross-border data flows, and excessive requirements to store and process data locally. These types of data measures undermine U.S. services suppliers’ ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China’s data localization requirements also raise concerns about state surveillance. In addition, China has failed to fully address U.S. concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

The Phase One Agreement addresses a number of longstanding trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, asset management, credit rating, and electronic payment services, among others. The barriers addressed in the agreement include joint venture requirements, foreign equity limitations, and various discriminatory regulatory requirements. Removal of these barriers is designed to allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market. Nevertheless,

China's excessive restrictions on cross-border data flows could continue to create significant challenges for U.S. financial service providers in China.

### **Banking Services**

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

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

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

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

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

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

### **Insurance Services**

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

Consistent with China's commitments in the Phase One Agreement, the China Banking and Insurance Regulatory Commission (CBIRC) announced that China would allow wholly foreign-owned companies for the life, pension, and health insurance sectors as of January 1, 2020. Prior to this announcement, China had

maintained foreign equity caps and only permitted foreign companies to establish as Chinese-foreign joint ventures in these sectors. In December 2020, the CBIRC issued a measure that provided further transparency regarding its intention to allow foreign-invested companies to take advantage of this opening.

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

Finally, some U.S. insurance companies established in China have encountered difficulties in getting the CBIRC, replaced by the National Administration of Financial Regulation (NAFR) in March 2023, to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge NAFR to issue timely approvals when U.S. insurance companies seek to expand their branch networks in China.

### **Electronic Payment Services**

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

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

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market. In June 2020, four months after the entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license from PBOC to operate in China's market. In November 2023, after years of delays, Mastercard was finally able to secure a license to operate in the China market. Meanwhile, PBOC has been delaying action for even longer periods of time on the licensing application submitted by another U.S. supplier, Visa. The United States continues to closely monitor this situation with concern.

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

PBOC first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a U.S.

industry report, of more than 200 licenses issued as of June 2014, only two had been issued to foreign-invested suppliers, and those two were for very limited services. This report provided clear evidence supporting stakeholder concerns about the difficulties they faced entering China's market and the slow process foreign firms face in getting licensed. In 2018, PBOC announced that it would allow foreign suppliers, on a nondiscriminatory basis, to supply Internet-enabled payment services. At the same time, as in many other sectors, PBOC requires suppliers to localize their data and facilities in China. In January 2021, PayPal became the first foreign company to obtain full ownership of a payment platform in China, along with a license to supply payment services. The United States will continue to closely monitor developments in this area.

### **Telecommunications Services**

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

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

### **Internet Regulatory Regime**

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

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

### **Voice over Internet Protocol Services**

While computer-to-computer Voice over Internet Protocol (VoIP) services are permitted in China, China's regulatory authorities have restricted the ability to offer VoIP services interconnected to the public switched telecommunications network (*i.e.*, to call a traditional phone number) to basic telecommunications service

licensees. There is no obvious rationale for such a restriction, which deprives consumers of a useful communication option, and the United States continues to advocate for eliminating it.

### **Cloud Computing Services**

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

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

### **Audiovisual and Related Services**

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

China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, foreign investment in TV production, and foreign investment in TV stations and channels. China also imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in each of several categories, including foreign movies, TV shows, cartoons, documentaries, and other foreign TV programs, made available for display via broadcasting institutions and online audiovisual content platforms. It also would prohibit foreign TV shows in prime time. Although this measure has not yet been issued in final form, it continues to raise serious concerns, as it appears that, as a matter of practice, it has been implemented in China since 2021, including by online audiovisual content platforms.

### **Theatrical Films**

In February 2012, the United States and China reached an alternative resolution with regard to certain rulings relating to the importation and distribution of theatrical films in a WTO dispute that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial

additional revenue for U.S. film producers. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU.

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, before stalling when China embarked on a major government reorganization that involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.-China trade negotiations that began following a meeting between the two countries' Presidents on the margins of the Group of 20 Heads of State and Government Summit in Buenos Aires in December 2018. As of December 31, 2023, no agreement has been reached on the further meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

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

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

### **Legal Services**

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

### **Express Delivery Services**

The United States continues to have concerns regarding China's implementation of the 2009 Postal Law and related regulations through which China prevents foreign service suppliers from participating in the document segment of its domestic express delivery market. Meanwhile, in the package segment, China applies overly burdensome and inconsistent regulatory approaches and reportedly has provided more favorable treatment to Chinese service suppliers when awarding business permits. China also does not always allow foreign service suppliers to participate on an equal basis in the development of laws, regulations, and other measures, including standards, for the express delivery services sector, nor does China always publicly announce the requirements for obtaining a business license.

## **BARRIERS TO DIGITAL TRADE**

### **Data Restrictions**

In 2023, China continued to build out its expansive state control over the collection, storage, processing, and sharing of data. China's Data Security Law entered into force in September 2021, and China's Personal Information Protection Law entered into force in November 2021. These laws operate together with the Cybersecurity Law, which took effect in June 2017, the National Security Law, which has been in effect since 2015, and various implementing measures, including the Security Assessment Measures for Outbound Transfers of Data, which took effect in September 2022, to prohibit or severely restrict cross-border transfers of important data, a broadly and vaguely defined term, and, in certain cases, personal information collected by companies through their operations in China. These laws and implementing measures also impose local data storage and processing requirements on companies operating in China that collect important data and, in certain cases, personal information. China's data localization requirements also raise concerns about state surveillance.

It has been reported that, as a result of China's implementation of the Security Assessment Measures for Outbound Transfers of Data, China has a backlog of thousands of applications from companies seeking to export data. In addition, in September 2023, China released a draft of revisions to the Security Assessment Measures for Outbound Transfers of Data, while allowing only a two-week public comment period. Many aspects of the draft revisions appear troubling.

Cross-border transfers of data are routine in the ordinary course of business in many sectors and are fundamental to business activity in those sectors. Given the wide range of businesses and business activities that are dependent on cross-border transfers of data and flexible access to global computing facilities, these developments continue to generate serious concerns in the United States and many other countries.

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

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

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



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

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

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

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

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

### **Encryption**

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

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

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

## **INVESTMENT BARRIERS**

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

There has also been a lack of substantial liberalization of China’s investment regime, evidenced by the continued application of prohibitions, foreign equity caps, and joint venture requirements and other restrictions in certain sectors. China’s most recent version of its Foreign Investment Negative List, which entered into force in January 2022, leaves in place significant investment restrictions in a number of areas important to foreign investors, such as key services sectors, certain types of agriculture, and several extractive industries. With regard to services sectors, China maintains prohibitions or restrictions in key sectors such as cloud computing services and other Internet-related services, telecommunications services, film production and film distribution services, and video and entertainment software services. With regard to agriculture, China maintains prohibitions on the development of agricultural biotechnologies and restrictions on the development of new varieties of corn and wheat. Similarly, China maintains prohibitions on the exploration, mining, and processing of all of the 17 types of rare earth minerals as well as tungsten.

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

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

In the past several years, the investment climate has turned unusually challenging, in large part because of actions taken by the Chinese Government. For example, over the past year, purportedly in implementing amendments to China's Counterespionage Law that broaden the definition of espionage, Chinese security officials raided and detained staff at several multinational companies operating in China that help investors perform due diligence regarding existing or potential new investments in China. With no effective judicial oversight or other means of challenging these actions, investors have reported that their confidence in China has been severely damaged.

In August 2023, China's State Council issued the Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment, in the apparent hope of attracting increased levels of foreign investment. Known as Document 11, this measure sets forth general guidance to central level ministries and sub-central government authorities on 24 topics related to foreign investment. China has issued similar guidance in the past without meaningfully following through.

## **SUBSIDIES**

### **Industrial Subsidies**

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

The United States and other WTO Members also have continued to press China to notify all of its subsidies to the WTO, in accordance with its WTO obligations while also submitting counter notifications listing hundreds of subsidy programs that China has failed to notify. Over the years, China's required WTO subsidy notifications have marginally improved at times in terms of timeliness and completeness, but not consistently. Nevertheless, since joining the WTO more than 20 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central government subsidy until July 2016, when it provided information largely only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO dispute. While China has continued to notify some sub-central government subsidies in its more recent subsidy notifications, these notifications are woefully inadequate and do not address the most distortionary sub-central government subsidies, such as the increasingly prolific, and very large, "government guidance funds" that can be found at all levels of government in China.

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

Separately, the United States has continued to pursue a series of proposals to reform the functioning of the WTO Committee on Subsidies and Countervailing Measures. These proposals have focused on ensuring that Members timely provide written responses to written questions regarding their subsidy programs.

### **Agricultural Domestic Support**

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

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

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

### **Fisheries Subsidies**

It is estimated that China is the world's largest provider of harmful fisheries subsidies, with support exceeding \$4.2 billion annually. These subsidies contribute to overfishing and overcapacity that threatens global fish stocks. Indeed, China is the world's largest producer of marine capture fisheries and, in the years since its WTO accession, has continued to support its fishing fleet through subsidies and other market-distorting means. China's annual fisheries harvest is nearly double that of the next largest producer in the world in terms of marine capture and triple that of other top producers, like the United States, India, and Japan. At the same time, reports continue to emerge about Chinese-flagged fishing vessels engaging in

illegal, unreported, and unregulated (IUU) fishing in distant waters, including in areas under the jurisdiction of other WTO Members. While China has made some progress in reducing subsidies to domestic fisheries, it continues to shift its overcapacity to international fisheries by providing a much higher rate of subsidy support to Chinese distant water fishery enterprises.

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

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

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

### **Excess Capacity**

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

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

From 2000 to 2022, China accounted for 72 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States, Canada, Mexico, and Brazil.

At the same time, China's steel production is continually reaching new highs, eclipsing demand. In 2020, China's steel production climbed above one billion metric tons for the first time, reaching 1,065 million metric tons, a seven percent increase from 2019, and remained high at 1,018 million metric tons in 2022, despite a significant contraction in domestic steel demand. This sustained ballooning of greenhouse gas (GHG) emissions-intensive steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, has flooded the global market with excess steel and steel-intensive products at a time when steel and other manufacturing sectors outside of China are facing renewed weakness in market conditions, growing global excess capacity, a slowdown in world economic growth, and continued disruptions in supply chains. In 2022, China exported more steel than the world's second, third, and fourth largest steel producers (India, Japan, and the United States) combined. Furthermore, China's exports from January through September 2023 were 36 percent higher than during the same period in 2022. Today, China remains by far the world's largest exporter of steel and steel-intensive products. China's steel production also remains far dirtier in terms of GHG emissions than the steel production that it displaces in the United States and most other countries, thereby undermining global efforts to transition to a clean-energy economy.

Similarly, primary aluminum production capacity in China increased by more than 1,400 percent between 2000 and 2022, with China accounting for 80 percent of global capacity growth during that period. China's expansion of production capacity has driven price declines globally, but even with these low prices, China has continued to expand its production capacity. Much of this additional capacity has been built with government support and relies on GHG emissions-intensive sources of electricity. China's primary aluminum capacity accounts for 57 percent of global capacity and is more than double the capacity of the next eight aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, as China's aluminum production has continued to increase despite global demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. aluminum producers and workers.

Excess capacity in China hurts various U.S. industries and workers not only through direct exports from China to the United States, but also through its impact on global prices and supply and through indirect trade of steel and aluminum-intensive products, which makes it difficult for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their respective governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has acted under Section 232 of the Trade Expansion Act of 1962 to impose additional duties on steel and aluminum products after finding that steel and aluminum products are being imported into the United States in such quantities and under such circumstances as to threaten to impair U.S. national security. In the United States' view, in the absence of efforts to redress China's anticompetitive behavior, the risk is that steel and aluminum producers in the United States and many other countries with market-oriented economies will be forced to close, which would, among other things, create even greater dependencies on China.

## **ANTICOMPETITIVE PRACTICES**

As previously reported, China's implementation of the Anti-Monopoly Law has generated various concerns. A key concern is the extent to which the Anti-Monopoly Law is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the Anti-Monopoly Law does apply to

state-owned enterprises, as of December 31, 2023, they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of the State-owned Asset Supervision and Administration Commission (SASAC). In addition, provisions in the Anti-Monopoly Law protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Another key concern relates to how the Anti-Monopoly Law is applied to foreign companies. Many U.S. companies have cited selective enforcement of the Anti-Monopoly Law against foreign companies seeking to do business in China as a major concern, and they have highlighted in particular the comparatively limited enforcement of this law against state-owned enterprises. In recent years, China has begun to increase the number of actions taken against private Chinese companies and wholly domestic transactions.

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

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

Given the state-led nature of China's economy, the need for careful scrutiny of anticompetitive government restraints and regulation is high. The Anti-Monopoly Law's provisions on the abuse of administrative (*i.e.*, government) power are potentially important instruments for reducing the government's interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council's adoption of the Opinions on Establishing a Fair Competition Review System in 2016 reflected a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anticompetitive regulation of competition. Increased oversight in this area was also reflected in the amendments to the Anti-Monopoly Law in 2022, which included a new chapter regarding the abuse of administrative monopoly. SAMR has since issued draft rules regarding the abuse of administrative monopoly, and SAMR has also identified the elimination of administrative monopolies as an enforcement priority. It remains to be seen whether SAMR will have sufficient authority and resources to implement this enforcement priority robustly.

## STATE-OWNED ENTERPRISES

While many provisions in China's WTO accession agreement indirectly discipline the activities of state-owned and state-invested enterprises, China also agreed to some specific disciplines. In particular, it agreed that laws, regulations, and other measures relating to the purchase of goods or services for commercial sale by state-owned and state-invested enterprises, or relating to the production of goods or supply of services for commercial sale or for non-governmental purposes by state-owned and state-invested enterprises, would be subject to certain specified WTO rules. China also affirmatively agreed that state-owned and state-invested enterprises would have to make purchases and sales based solely on commercial considerations,

such as price, quality, marketability, and availability, and that the Chinese Government would not directly or indirectly influence the commercial decisions of state-owned and state-invested enterprises. In addition, China agreed that enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from state-owned and state-invested enterprises on non-discriminatory terms and conditions.

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

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

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

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

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

With regard to the reform of China's state-owned enterprises, one example of China's efforts included an announcement that China would classify these enterprises into commercial, strategic, or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. However, this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy and resource interests and cyber and



information security interests. Similarly, in recent years, China has pursued reforms through efforts to realize mixed ownership. These efforts included pressuring private companies to invest in, or merge with, state-owned and state-invested enterprises as a way to inject innovative practices into and create new opportunities for inefficient state-owned and state-invested enterprises. As should be evident, these various reforms do not strengthen the role of the market. Rather, they are intended to strengthen the role of state-owned enterprises in the economy and to direct state capital toward certain industries, including those specified in Made in China 2025, in pursuit of China's industrial domination objectives.

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

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

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

## **LABOR**

The Chinese Government represses internationally recognized labor rights and fails to adequately enforce existing prohibitions on forced labor. China has been the subject of international attention for its forced labor practices, especially in the Xinjiang Uyghur Autonomous Region (XUAR), where China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities. Victims, news media, and think tanks report that factories, including factories producing cotton and tomato products, frequently engage in coercive recruitment, limit workers' freedom of movement and communication, and subject workers to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and isolation. It is currently estimated that hundreds of thousands of Uyghurs, ethnic Kazakhs, and members of other Muslim minority groups are being subjected to forced labor in China following detention. Based on the U.S. Government's independent analysis of these sources, the U.S. Government has taken several actions to address forced labor and other human rights abuses in the XUAR.

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

of this WRO includes cotton and tomatoes and downstream products that incorporate these products as inputs.

In July 2020, the United States issued a Xinjiang Supply Chain Business Advisory for U.S. businesses whose supply chains run through the XUAR. The United States updated this advisory in July 2021. As updated, the advisory calls urgent attention to U.S. businesses' supply chain risks and identifies serious investing and sourcing considerations for businesses and individuals with exposure to entities engaged in forced labor and other human rights abuses linked to the XUAR. The advisory also describes U.S. Government actions taken to counter the use of forced labor in the XUAR and to prohibit the importation of goods produced in whole or in part with forced labor or convict labor. In September 2023, the United States issued an addendum to the updated advisory to further highlight reports on state-sponsored forced labor and human rights abuses in the XUAR as well as to stress the urgency for businesses to undertake appropriate due diligence measures.

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

The United States also published its UFLPA Enforcement Strategy in June 2022. This Enforcement Strategy took into account input received from private individuals, industry associations, consultancy and risk-management companies, civil society organizations, non-governmental organizations (NGOs), labor unions, and others who shared their views on potential measures to prevent the importation of goods mined, produced or manufactured wholly or in part with forced labor in China into the United States. The main components of the Enforcement Strategy include: (1) an assessment of the risk of importing goods made with forced labor in China; (2) the development of the UFLPA Entity List and descriptions of forced-labor schemes; (3) the consideration of efforts, initiatives and tools to identify and trace the origin of goods; (4) a description of relevant legal authorities and tools to prevent entry of violative goods; (5) a description of resources; (6) the development of importer guidance; and (7) the development of a coordination plan with NGOs and the private sector.

Various U.S. agencies have been working to compile and update the UFLPA Entity List, a consolidated register of four distinct lists, including: (1) a list of entities in the XUAR that mine, produce or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor; (2) a list of entities that work with the government of the XUAR to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the XUAR; (3) a list of entities that export products mined, produced or manufactured by entities in lists 1 or 2 above from China into the United States; and, (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the XUAR or from persons working with the government authorities in the XUAR or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing assistance" program or any other government labor scheme that uses forced labor. As of December 31, 2023, dozens of entities have been added by the U.S. Government on the UFLPA Entity List.

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

water fishing vessels for serious human rights abuse, including forced labor, of workers aboard these vessels.

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

## **ENVIRONMENT**

### **Effect of Import Ban on Scrap Materials, Recyclable Materials, and Recycling Markets**

Currently, China restricts almost all imports of unprocessed scrap and recyclable materials. China only allows imports of certain processed materials, including recycled raw materials such as copper, steel, aluminum, and brass that meet purity standards, pelletized scrap plastic and pulped scrap paper. These restrictions have raised the costs of recycling in the United States, leading some communities to end recycling programs. Because China was previously such a large destination market, significant amounts of U.S. scrap materials are being redirected to landfills or incinerators.

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

In 2020, China amended the Law on the Prevention and Control of Environmental Pollution by Solid Waste. According to this amended law, the intent is to reduce imports of solid waste essentially to zero.

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

In addition to impacting the global market for scrap and recovered materials, the tightened restrictions have raised the costs of recycling in the United States, as exporters seek domestic processing facilities or international buyers. Additionally, other countries, particularly in Southeast Asia, have introduced their own regulatory changes that in some ways parallel the changes in China's import regime, such as by setting impossibly high purity standards for recyclable materials, imposing new import licensing requirements, and requiring preshipment and post-shipment inspections. As a result, significant amounts of U.S. scrap materials and recyclable materials have not found new buyers, leading to increased landfilling, incineration, and air pollution and increased demand for virgin materials globally.

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

China prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains restrictions that prevent remanufacturing process inputs (known as cores) from being imported into China's customs territory, except special economic zones. These import prohibitions and restrictions undermine the development of industries in many sectors in China, including mining,

agriculture, healthcare, transportation, and communications, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China. Nevertheless, China is apparently prepared to pay this price in order to limit imports of remanufactured goods.

## **OTHER BARRIERS**

### **Export Restraints**

Over the years, China has deployed a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties, and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. In many instances, through these export restraints, it appears that China has been able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies, and jobs to China.

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

A more recent concern involves China's potential regulation of rare earth exports under its export controls regime. In this regard, China's Ministry of Industry and Information Technology issued the draft Regulations on the Administration of Rare Earths for public comment in January 2021, and one of the provisions in the draft measure provides that rare earth exporters need to abide by laws and regulations in the area of export controls. More recently, in November 2023, China began requiring exporters to provide detailed reporting on transactions involving rare earths.

In 2023, China also began applying its export control regime to other critical minerals. As of August 2023, China is requiring export licenses for products containing gallium or germanium. Similarly, as of December 2023, China is requiring export licenses for products containing graphite.

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

Meanwhile, U.S. companies report that China has also instituted export restrictions on corn starch, apparently in an effort to stabilize domestic prices. As of December 31, 2023, however, the Chinese Government still has not published an official notice.

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

As in prior years, in 2023, the Chinese Government attempted to manage the export of many primary, intermediate, and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty, and unfairness in the global markets for some products, particularly downstream products for which China is a leading world producer or exporter, such as products made by the steel, aluminum, and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also contributed to severe excess capacity in these same industries.

An apparently positive development took place at the July 2014 S&ED meeting, when China committed to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. As of December 31, 2023, China has not made any movement toward the adoption of international best practices.

## **Trade Remedies**

As of December 31, 2023, China had in place 117 antidumping measures, affecting imports from 17 countries or regions, with two new antidumping investigations underway. China also had in place four countervailing duty measures, affecting imports from two countries or regions. The most significant systemic shortcomings in China's antidumping and countervailing duty practice continue to be in the areas of transparency and due process. Over the years, China has often utilized antidumping and countervailing duty investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending antidumping and countervailing duty proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

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

A review of China's conduct of countervailing duty investigations makes clear that, as in the antidumping area, China has failed to adequately improve its transparency and due process when conducting these investigations. In addition, the United States has noted procedural concerns specific to China's conduct of countervailing duty investigations. For example, in recent years, China has initiated investigations of alleged subsidies that raised concerns, given the requirements regarding sufficient evidence in Article 11.2

of the Subsidies Agreement. The United States is also concerned about China's application of facts available under Article 12.7 of the WTO Subsidies Agreement.

On several occasions in the past, the United States has expressed serious concerns about China's pursuit of antidumping and countervailing duty remedies that appear to be retaliatory and intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO antidumping and countervailing duty rules and the trade remedy provisions of China's accession agreement. It also appears that China has used arbitrary economic and trade measures, including antidumping and countervailing duty investigations, as a form of economic coercion designed to achieve China's political goals. The antidumping and countervailing duties that China imposed on imports of Australian barley in 2021 and the antidumping duties that China imposed on imports of Australian wine in 2021 are two obvious examples of this tactic.

In certain recent investigations of U.S. imports, China has also made determinations without legal or factual support. For example, in the final countervailing duty determination on imports of n-propanol from the United States, China found that alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required by the Subsidies Agreement.

### **Pharmaceuticals**

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices; regulatory approvals that are delayed or linked to extraneous criteria; weak protections against the unfair commercial use and unauthorized disclosure of regulatory data; issues with the implementation of an efficient mechanism to resolve patent infringement disputes; requirements to share ownership with a Chinese partner of patent rights arising from research generated by using human genetic resources in China; and, implementation of patent term extensions for unreasonable marketing approval delays, including limits on the type of protection provided. While China has implemented some helpful reforms, the United States still has many of the same concerns with China's pharmaceutical market, especially as it pertains to treatment of foreign companies.

In its WTO accession agreement, China committed to provide effective protection against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. To provide this protection, known as regulatory data protection (RDP), China committed to enact laws and regulations to ensure that no person, other than the submitter of the data, could rely on the submitted data in a product approval application without permission from the submitter for six years from the date on which China granted marketing approval to the submitter.

In 2017, CFDA finally issued several draft notices addressing the issue of RDP. These draft notices set out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products and also sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, the proposed framework did not provide for a six-year period of RDP despite the commitment that China had made in its WTO accession agreement in 2001.

In 2018, CFDA's successor agency, NMPA, issued draft Drug Registration Regulations and draft implementing measures on drug trial data that would preclude or condition the duration of RDP on whether clinical trials occur in China and whether marketing approval is sought first in China. Subsequently, China issued a revised Drug Administration Law in 2019, followed by NMPA's revised draft Drug Registration Regulations in 2020 and NMPA's revised draft Drug Administration Law Implementing Regulations in 2021. Despite the opportunities that these revised draft measures afforded China's regulatory authorities,

the concerning limitations on RDP were not removed, and China still has not created a regulatory framework providing for the six-year period of RDP as it had committed to do in 2001.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals, largely because of the opaque and unpredictable nature of the bidding processes. In November 2018, a National Drug Centralized Procurement Pilot Scheme was launched. Then, in January 2019, the State Council issued a Pilot Plan for National Centralized Drug Procurement and Use. In January 2023, China's National Healthcare Security Administration (NHSA) published the 2022 edition of its annual National Reimbursement Drug List (NRDL), which became effective on March 1, 2023. U.S. industry also cites the need for increased transparency and greater harmony between national and provincial bidding processes as well as a greater emphasis on a competitive, market-based approach to evaluating a product's value and relevant bids. In December 2022, NHSA and CNIPA jointly issued the Opinions on Strengthening the Protection of Intellectual Property Rights in the Field of Centralized Pharmaceutical Procurement, which sets out to establish a coordination mechanism to remove patent-infringing drugs from the NRDL, with further implementing measures to follow.

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

In October 2020, China amended the Patent Law to provide for patent term extensions for unreasonable patent and marketing approval delays, and it also added a mechanism for the early resolution of potential patent disputes, known as patent linkage. Implementing measures for the patent linkage mechanism were issued in July 2021, as NMPA and CNIPA jointly issued the Trial Implementation Measures for the Mechanism for Early Resolution of Drug Patent Disputes and the Supreme People's Court issued the Regulations on Several Issues Concerning the Application of Law in the Trial of Civil Patent Disputes Related to Drug Registration Application. In 2021 and 2022, CNIPA issued draft implementing rules for the amended Patent Law and drafts of amendments to the Patent Examination Guidelines. In December 2023, China released the final implementing rules for the amended Patent Law.

Among other things, the United States and U.S. stakeholders remain concerned about China's implementation of patent term extensions for unreasonable patent and marketing approval delays, including the limits on the type of protection provided by China's regulatory framework. The United States and U.S. stakeholders also remain concerned about China's patent linkage mechanism.

### **Medical Devices**

For many years, working closely with U.S. industry, the United States has raised concerns about China's pricing and tendering procedures for medical devices and its treatment of imported medical devices. Notably, at the November 2015 JCCT meeting, China committed that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, despite this commitment, China continues to pursue a wide range of policies that direct China's purchasing authorities to prioritize the procurement of domestic medical device manufacturers over imported medical device manufacturers.

Separately, the United States has pressed China's regulatory authorities to develop sound payment systems for medical devices that are transparent, predictable, and competitive. The United States has also urged China to adequately recognize quality, safety, and the costs of R&D in its approach to procurement policy.

In 2019, China's State Council launched a concerning volume-based procurement (VBP) approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. Since then, the VBP approach has become further engrained in China's system, with the formation of multi-province and municipal alliances to conduct joint procurements under VBP. In 2020, China implemented its first national VBP tender, which has been followed by additional national tenders in 2021 and 2022. However, U.S. industry reports that the vast majority of VBP tendering activities are occurring at the sub-national level. In practice, moreover, implementation of China's VBP prioritizes cost over the product's value or quality.

According to U.S. industry, if China continues to pursue VBP without significant changes, it could lead to the creation of a low-cost, low-quality medical devices sector in China, with Chinese medical device companies developing monopolies in the manufacture and sale of various low-quality medical devices in the China market. This outcome would operate to the disadvantage of innovative medical device companies, many of which are foreign companies, and the patients who rely on advanced medical technologies. Currently, medical device companies that are successful at winning bids often have very thin profit margins or even lose money. Reportedly, some medical device companies are reducing training to healthcare providers in order to offer the expected price cuts. In addition, given the size of China's medical device market, monopolies from China could expand and then prioritize exports of their low-quality medical devices to third countries. With the choice between a higher cost but more effective product or a lower cost, lower quality product, countries with greater budget constraints, and greater vulnerability to Chinese influence, may be more inclined to procure China's offerings. Overall, China's VBP approach poses a risk to the medical device sector and the provision of high-quality medical treatment worldwide.

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

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

In August 2023, China's State Council issued the Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment, known as Document 11. (*Document 11 is also discussed in the Government Procurement section of this NTE Report chapter*). Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises are able to participate fairly in China's government procurement market, consistent with existing Chinese law. One of the suggestions is to provide a definition for "produced in China." Currently, the vast majority of medical devices in China are purchased through government procurement. To the extent that China follows through on the State Council's suggestions, the United States urges China to make any draft implementing measures public and to provide a reasonable period for the public to submit comments.



U.S. industry also reports that while sub-central governments in China have always provided some financial support to domestic medical devices companies, their support appears to have increased since 2020. U.S. industry notes that this trend could be attributed to the COVID-19 pandemic, China's five-year industrial plan for medical equipment covering the years 2021 to 2025, the Action Plan to Promote the High-Quality Development of the Medical Equipment Industry (2023-2025), or perhaps all three measures. The United States will monitor this situation closely and will encourage China to be transparent in its approach.

### **Social Credit System**

Since 2014, China has been working to implement a national "social credit" system for both individuals and companies. The implementation of this system is at a more advanced stage for companies versus individuals, as 18-digit "unified social credit codes" are assigned to every domestic and foreign company in China. These 18-digit codes will provide a way for the Chinese Government to track a company's record of administrative and regulatory compliance and generate public credit information. In a report to the 20th National Party Congress in October 2022, China's President, in the capacity as the General Secretary of the Chinese Communist Party, emphasized the need to refine the social credit system. Since then, the Chinese Government has continued to take steps to make the social credit system fully operational.

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

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

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

In November 2022, the NDRC and the PBOC jointly published a draft Social Credit Construction Law that would give the social credit system a legal basis, further embedding it into China's regulatory network. The draft law seeks to establish the NDRC and the PBOC as the main government agencies for construction of the social credit system. Their responsibilities would include overall coordination, supervision and guidance of the construction of the social credit system and taking the lead in organizing the formulation and implementation of relevant policies and standards. The draft law also seeks to provide formal legal definitions for certain terms used in implementing the social credit system, such as "untrustworthy," "credit

supervision” and “credit information.” In addition, the draft law seeks to codify the protection of certain rights, as it calls for the establishment of a social credit system that maintains the security of social credit information and strictly protects state secrets, business secrets, and personal privacy, while also protecting the lawful rights and interests of natural persons, legal persons, and unincorporated organizations. As of December 31, 2023, the draft law has not been issued in final form.

Earlier in 2022, prior to the publication of the draft law, the NDRC issued a draft update of the 2021 National Basic Catalogue of Public Credit Information and a draft update of the 2021 National Basic List of Disciplinary Measures against Dishonest Acts. The draft Catalogue of Public Credit Information compiles the scope and types of credit information that can be collected by government agencies. It also stipulates that certain categories of information are exempt from collection, including state secrets and trade secrets. The draft List of Disciplinary Measures includes a range of punitive actions that may be applied to violators of trust, such as duties, fees, restrictions on market activity, prohibitions, or limitations on occupations and bans from government procurement bidding. Like the draft law, neither the draft Catalogue of Public Credit Information nor the draft List of Disciplinary Measures has been issued in formal form.

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

Foreign companies also have numerous concerns with China’s social credit system, which is becoming increasingly complex and expansive. They are concerned that the Chinese Government will use it to disadvantage or coerce foreign companies or provide favorable treatment to domestic companies. They are concerned that the Chinese Government will use the social credit system to pressure them to act in furtherance of China’s industrial policies or other state priorities or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. In addition, foreign companies are concerned about the opaque nature of the social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the Measures for Administration of the List of Serious Violators of Trust and Law includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first time that it has been censured when a Chinese Government agency posts its name on the agency’s website, even though the censuring of a company can cause severe harm to the company’s reputation and adversely impact its efforts to attract customers, secure needed financing, or make new investments. When Chinese Government agencies begin to pursue joint punishment in the way that the NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company’s entire business operations.

Foreign companies are also concerned about the links between corporate social credit and individual social credit. They can foresee the Chinese Government using the social credit system as another tool to coerce foreign companies and those who work for them not to cross political redlines on sensitive matters like deprivation of human rights. Foreign companies can also foresee the Chinese Government potentially using corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign companies or their officials for behavior or speech outside of China. Similarly, foreign companies are concerned that China will abuse its legion of laws regulating how data is stored and transferred to access information to use against them.

## **Administrative Licensing**

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

## **Transparency**

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

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

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

At the central government level, moreover, China tends to take a narrow view of the types of trade-related measures that need to be published in the official journal. For those government entities whose trade-related measures are published in the official journal, China more commonly (but still not regularly) publishes trade-related administrative regulations and departmental rules in the journal, but it is rare for China to publish other measures such as opinions, circulars, orders, directives and notices, which are known as "normative documents" in China's legal system. Normative documents are regulatory documents that do not fall into the category of administrative regulations or departmental rules, but still impose binding obligations on enterprises and individuals. Although the State Council introduced a definition for "administrative normative documents" in 2014, this definition is narrow and does not appear to encompass all normative documents, nor has it resulted in their regular publication as required by China's WTO commitments. Among other things, publication of all normative documents would facilitate compliance by enterprises and individuals with the obligations addressed in them.

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

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

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

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

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

Currently, outside the context of Phase One Agreement implementing measures, the process for issuing new measures in China can be opaque and unpredictable and implemented without adequate notice. China has yet to adequately improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also has yet to formalize its use of notice-and-comment procedures for all normative documents. In addition, even when China provides for a notice-and-comment period, too often it issues the final measure immediately after the end of the comment period, suggesting that it did not give serious consideration to the comments received.

China also has yet to consistently implement the notice-and-comment obligations applicable to all WTO Members. Most notably, China needs to adhere consistently to the notice-and-comment periods required by the TBT Agreement and the SPS Agreement.

## **Translations**

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

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

## **Enquiry Point**

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

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

### **Other Non-Tariff Measures**

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

# COLOMBIA

## TRADE AGREEMENTS

### The United States–Colombia Trade Promotion Agreement

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

## IMPORT POLICIES

### Tariffs

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

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

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

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

#### **Automobile Conformity Assessment**

Colombia's requirement for third-party safety certification for several components of imported vehicles will go into effect August 2024. U.S. manufacturers already test their products for compliance with U.S. Federal Motor Vehicle Safety Standards. Furthermore, there are no conformity demonstration laboratories and organizations for carrying out technical tests in Colombia. After consultation and the receipt of U.S. Government and other stakeholder comments, Colombia amended its regulations to state that U.S. manufacturers can satisfy the legal requirement for third-party certification by providing documentation issued by the U.S. National Highway Traffic Safety Administration (NHTSA). The U.S. Government and stakeholders remain concerned with this approach, given that NHTSA does not issue such documentation. U.S. industry states that Colombia's burdensome and duplicative requirement will significantly impact exports of U.S.-manufactured vehicles and parts to Colombia. In August 2023, the Colombian Government announced its intention to impose similar requirements on other automobile components but has delayed

implementation of these requirements until September 2024 to allow additional time for discussion. The United States will continue working with the Colombian Government and stakeholders to seek workable alternatives.

### **Sanitary and Phytosanitary Barriers**

#### **Lactic Acid and Bulk Dried Milk**

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

#### **Cessation of Issuance of Import Permits for U.S. Poultry**

Since 2012, Colombia had allowed the United States to export poultry products coming from U.S. zones (or counties) free of highly pathogenic avian influenza (HPAI), a procedure recognized in a 2012 regionalization agreement that was signed by the U.S. Trade Representative and the Colombian Ministers of Agriculture and Trade. On August 7, 2023, Colombia's national animal health authority (ICA) stopped issuing import permits for certain U.S. poultry products, pursuant to Resolution 2478 of 2023. This resolution puts in place sanitary restrictions on the importation of poultry products from countries with the presence of HPAI. U.S. regulators have provided extensive technical information regarding U.S. disease control measures and facilitated a number of site visits by ICA officials in December 2023. On February 13, 2024, ICA officially reopened the market to U.S. day-old chicks and hatching eggs. On February 26, 2024, ICA officially reopened the market to U.S. poultry meat.

## **INTELLECTUAL PROPERTY PROTECTION**

Colombia remained on the Watch List in the [2023 Special 301 Report](#). Colombia has not yet implemented the provisions of the CTPA regarding enforcement against online copyright infringement and has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants. During 2023, the United States continued to engage with Colombia on these outstanding CTPA commitments.

With respect to concerns raised about Article 72 of the 2015 National Development Plan, Colombia issued Decree 433 in March 2018 and Decree 710 of April 2018 to clarify that Colombia would not condition regulatory approvals for pharmaceuticals on factors other than the safety and efficacy of the underlying compound. An action challenging both these decrees led Colombia's Council of State to provisionally suspend the decrees in September 2019.

Colombia continues to face a large number of pirated and counterfeit goods crossing the border or sold at markets, on the street, and at other distribution hubs around the country. High levels of digital piracy

persist, and Colombia has not curtailed the number of free-to-air devices, community antennas, and unlicensed Internet Protocol Television services that permit the retransmission of otherwise-licensed content to a large number of nonsubscribers.

## **SERVICES BARRIERS**

### **Distribution Services**

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

## **LABOR**

The United States and Colombia continue to consult on labor issues pursuant to Article 17.5.5 of the CTPA. This engagement includes discussing Colombia's progress on implementing specific recommendations contained in a U.S. Department of Labor (DOL) report. The [DOL report](#), published in 2017, raises significant concerns regarding labor law enforcement throughout Colombia, especially with respect to the right to freedom of association, the right to organize and bargain collectively, violence against unionists, and impunity for the perpetrators of the violence.





# COSTA RICA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

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

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

#### **Taxes**

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

## SANITARY AND PHYTOSANITARY BARRIERS

The Costa Rican Ministry of Agriculture occasionally delays the issuance of phytosanitary import permits for sensitive products during specific periods, such as harvest time (usually from April to June for onions), creating difficulties for U.S. exporters of those products. The table-stock potato market is closed pending completion of a pest risk assessment. The United States exported approximately \$1.9 million and \$1.7

million of chipping potatoes to Costa Rica in 2021 and 2022, respectively, and an estimated \$2.2 million in 2023. However, industry estimates that exports could increase to over \$5 million if phytosanitary issues are addressed and the table-stock potato market is reopened. The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service and the Costa Rican Ministry of Agriculture conduct frequent bilateral meetings to discuss regulatory procedures for the import and export of new products, promoting market access for new U.S. products.

A 2016 Costa Rican regulation requires completion of extensive questionnaires for certain animal product facilities that export products to Costa Rica, including dairy, seafood, lamb, and egg product facilities. Most U.S. exporting facilities have complained that the questionnaire requests require disclosure of irrelevant and business proprietary information. As a result, U.S. exports of these products face delays of several months or longer when introducing new products to the Costa Rican market. The USDA and the U.S. Department of Health and Human Services Food and Drug Administration have engaged Costa Rica's National Animal Health Service to consider a less burdensome alternative to the questionnaire for U.S. exporters.

## GOVERNMENT PROCUREMENT

U.S. companies have indicated that the private sector is sometimes disadvantaged in public bids when competing against Costa Rican state-owned enterprises in both the information and communications technology and insurance sectors. Article 2 of the Public Contracting Law allows for the noncompetitive awarding of contracts to public entities if officials of the awarding entity certify the award to be an efficient use of public funds. The United States has engaged with Costa Rica on these issues.

Costa Rica is not a Party to the World Trade Organization (WTO) Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2015. Costa Rica applied for membership in the WTO Committee on Government Procurement on September 28, 2023. However, the CAFTA–DR contains disciplines on government procurement.

## INTELLECTUAL PROPERTY PROTECTION

Costa Rica was removed from the Watch List in the [2020 Special 301 Report](#) due to the concrete steps it took to improve its intellectual property (IP) regime, including initiating new programs within the government to track licenses to address unlicensed software use in the central government, and to implement an online recordation system to improve border enforcement. While the United States recognizes the progress Costa Rica has made, and the potential of these positive developments, their effectiveness remains to be demonstrated through enforcement and outcomes on the ground. Costa Rica's IP Registry issued its second report on government usage of unlicensed software in July 2022, with results of the use of legal software at 95 government institutions. The decree that calls for these reports does not mandate they be published, and neither the first nor the second report has been published. The Ministry of Science, Innovation, Technology and Telecommunications and the Ministry of Foreign Trade authorities are working to accelerate the analyses and delivery of the reports to the president to coordinate actions needed in the event of noncompliance. The United States continues to request that Costa Rica publish the results of the reports.

The United States also continues to urge Costa Rica to bolster IP enforcement to curb online piracy, address cumbersome border measure processes to deter counterfeit and pirated goods, and effectively utilize *ex officio* authority for border enforcement against counterfeit and pirated goods. Costa Rica has implemented an online recordation system that provides information to improve border enforcement but is not as robust as the U.S. Department of Homeland Security Customs and Border Protection e-Recordation Program. The

Ministry of Foreign Trade is working with IP Registry and private sector representatives to strengthen Costa Rica's recordation system and learn from best practices in this area. The United States continues to encourage Costa Rica to build on initial positive steps to protect and enforce IP and to continue bilateral discussions of these issues.



# COTE D'IVOIRE

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Cote d'Ivoire's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2022 (latest data available). Cote d'Ivoire's average MFN applied tariff rate remained 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2022 (latest data available). Cote d'Ivoire has bound 33.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.2 percent.

Consistent with the Economic Community of West African States (ECOWAS) Common External Tariff (CET), Cote d'Ivoire applies: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on final consumer goods; and (5) 35 percent duty on certain goods that the Ivoirian Government elected to afford greater protection. After a three-year delay in harmonizing the CET, as of 2023, it is based on the 2022 Harmonized System nomenclature developed by the World Customs Organization.

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

#### **Taxes**

Imports from countries that are not members of the West African Economic and Monetary Union (WAEMU) are subject to an additional 2.5 percent tax on the cost, insurance, and freight (CIF) value of imports, which consists of the solidarity tax (0.8 percent), African Union import tax (0.2 percent), ECOWAS community levy (0.5 percent), and statistical charge (1.0 percent), all of which are used for financing WAEMU commissions and assisting landlocked WAEMU members Niger, Burkina Faso, and Mali. Like all ECOWAS countries, Cote d'Ivoire imposes a 1 percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions. Cote d'Ivoire levies an additional 1 percent charge on the CIF value of imports, except those destined for re-export, transit, or donations for humanitarian purposes under international agreements.

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

Excise duties apply to certain imports, including alcoholic or nonalcoholic beverages and oil products. The tax on cosmetic products containing hydroquinone decreased from 50 percent to 15 percent.

## **Non-Tariff Barriers**

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

### **Import Bans**

Cote d'Ivoire has prohibited wheat flour imports without iron and acid folic fortification since 2008. In January 2020, Cote d'Ivoire banned the importation of sugar for five years. By doing so, Cote d'Ivoire ensures the consumption of domestically-produced sugar and protects a well-known national company in this sector. Two local companies are authorized to import sugar in case of a national shortage.

### **Import Restrictions**

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

### **Customs Barriers and Trade Facilitation**

All goods imported into Cote d'Ivoire must first be examined by a pre-shipment inspection company for compliance with relevant requirements. U.S. exporters find the process often increases the time and cost to export without providing assurance of a more streamlined clearance process at the border. Four European companies—BIVAC (affiliated with the French group Bureau Veritas), Swiss-based firms COTECNA and SGS, and British company Intertek—are contracted to carry out pre-shipment inspections of goods exported to Cote d'Ivoire with a value exceeding 1 million CFA (approximately \$1,750). A certificate of compliance from one of these firms is required to clear customs. In 2023, customs authorities enforced a rule mandating that all imported containers must undergo a verification scan before being allowed to enter the country.

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

### **Minimum Import Prices**

The Ivoirian Government imposes minimum import prices on products including cooking oil, sugar, used clothing, concentrated tomato paste, broken rice, matches, notebooks, tissues, polypropylene sacks, alcohol, and milk.

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

Cote d'Ivoire has not consistently notified draft measures to the WTO Committee on Technical Barriers to Trade nor the WTO Committee on the Application of Sanitary and Phytosanitary Measures since becoming a WTO Member on January 1, 1995. Transparency of the regulatory system in Cote d'Ivoire is a concern, as companies complain that regulations are issued only as final measures without a clear process or a period for public comment on draft regulations.

## GOVERNMENT PROCUREMENT

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

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

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

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

## INTELLECTUAL PROPERTY PROTECTION

Inadequate enforcement of intellectual property (IP) rights remains a serious concern. The Ivoirian Copyright Office (BURIDA) uses a labeling system to combat counterfeiting and piracy in audio, video, literary, and artistic works. BURIDA has also facilitated stakeholder engagement to promote IP, and its police unit still conducts some raids to confiscate pirated CDs and DVDs; however, due to recent streaming alternatives, CDs and DVDs are circulated less and less in the market. In 2023, Cote d'Ivoire made efforts to operationalize the National Committee for the Fight against Counterfeiting (CNLC), which was created by decree in 2014, accepts IP enforcement complaints from stakeholders, and reportedly will conduct seizures on right holders' behalf. However, detailed information about the CNLC's activities is not publicly available. IP enforcement continues to suffer in Cote d'Ivoire due to limited resources and a lack of customs checks at the country's porous borders.

## SERVICES BARRIERS

The chartered accountants' association of Cote d'Ivoire restricts registration to foreign nationals, with the exception of those who have practiced in Cote d'Ivoire for several years under the license of an Ivoirian practitioner.

## INVESTMENT BARRIERS

Cote d'Ivoire has restrictions on and requires prior approval for foreign investment in the health sector, law and accounting firms, petroleum and gas, and travel agencies. Majority foreign ownership of companies in



these sectors is not permitted, and all foreign companies currently operating in these sectors do so in partnership with local firms.

## **SUBSIDIES**

In 2023, the Ivorian Government granted cotton producers a subsidy of 29 billion CFA (approximately \$45 million) to offset significant increases in the cost of fertilizer (*e.g.*, an increase of 84 percent for nitrogen, phosphorus, and potassium and 114 percent for urea) and other inputs.

## **OTHER BARRIERS**

### **Bribery and Corruption**

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

### **Export Policies**

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

# DOMINICAN REPUBLIC

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

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

#### **Taxes**

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

Cheese importers face unequal treatment with regard to taxation; imported cheese is subject to the ITBIS of 18 percent, while locally produced cheese is not. This puts U.S. exports of these products at a competitive disadvantage. In meetings conducted in 2020, 2021 and 2022, the Dominican Republic Government advised that the General Directorate of Internal Taxes (DGII) had discussed implementing the ITBIS on local cheese producers through a schedule. The DGII has not made any progress on this proposed implementation. The U.S. Government will continue to work with the DGII to seek a resolution of this issue.

### Non-Tariff Barriers

#### **Import Licensing**

The Dominican Republic’s Ministry of Agriculture continues to administer import licenses as a means to manage trade in sensitive commodities such as rice, beans, dairy, sugar, poultry, beef, pork, onions, and garlic and intermittently with respect to other products. In August 2004, a side letter was signed under the

CAFTA–DR by the United States and the Dominican Republic affirming that the Dominican Republic would not grant or deny import licenses on the basis of unjustified sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. However, the need to obtain an import license from the Ministry of Agriculture and the way in which the licensing process is handled can lead to inconsistent application of the law and uneven treatment. In 2022, the Dominican Republic proposed a new system to issue import licenses for agricultural products, led by the Ministry of Agriculture. In April 2022, the United States submitted comments on the new regulations. The Dominican Republic Government had not responded to the U.S. comments or implemented the new system as of December 2023. The United States will continue to work with the Ministry of Agriculture to ensure that this new system responds to U.S. concerns.

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

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

### **Technical Barriers to Trade**

#### **Regulation of Steel Rebar**

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

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

### **Sanitary and Phytosanitary Barriers**

Delays in the process for obtaining sanitary registrations from the Dominican Republic for foods, medicines, and health products have resulted in higher operating costs and delays moving products to market, according to industry representatives. Since April 2018, the General Directorate of Medicines, Food, and Health Products (DIGEMAPS), which oversees the registration process, has requested declarations of product additives, which are not required under Dominican Republic health law. Improvements have been made in expediting new registrations and renewals through the implementation of a simplified procedure, including accepting a sworn statement on why confidential additives are not provided. The functioning of the sanitary registration process remains inconsistent, with certain products taking up to a year to be registered by DIGEMAPS, often resulting in importers choosing not to import the product. On June 5, 2023, the Dominican Republic issued Decree 231-23 decentralizing DIGEMAPS from

the Ministry of Public Health and Social Welfare. The Directorate will now exercise operational and administrative autonomy.

## INTELLECTUAL PROPERTY PROTECTION

The Dominican Republic remained on the Watch List in the [2023 Special 301 Report](#). The Dominican Republic continues to demonstrate political will to improve intellectual property (IP) protection and enforcement, including the creation in December 2022 of the National Inter-Ministerial Council of Intellectual Property, intended to coordinate the agencies involved in IP protection and enforcement and ensure better cooperation and information sharing. Despite this progress, the United States remains concerned with prevalent online and signal piracy, the widespread sale of counterfeit goods, and the inconsistent quality of patent examinations. The United States also continues to urge the Dominican Republic to improve coordination among enforcement agencies and to ensure that such agencies are adequately funded and staffed.

## GOVERNMENT PROCUREMENT

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

On September 14, 2023, the new Regulation for the Application of Law No. 340-06 on Procurement and Contracting of Goods, Services and Works and its amendments was approved by Decree 416-23 of the Executive Branch of the Dominican Republic. This regulation repeals the previous Regulation on Procurement and Contracting of Goods, Services and Works No. 543-12 of September 6, 2012. Several elements included are transparency and electronic procurement portals, micro-purchases methodology, streamlining participation for foreign companies in government tenders, integrity and mitigation risks for vendors, value for money, transparency of government procurement committees, exception rules, and sustainability in the valuation criteria for government tenders.

The Dominican Republic is not a Party to the World Trade Organization (WTO) Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since September 2022. However, the CAFTA–DR contains disciplines on government procurement.

## LABOR

A review of the Dominican Republic’s progress on implementing specific recommendations from the United States to improve worker rights practices in the Dominican Republic sugar sector has been ongoing since the issuance of a U.S. Department of Labor (DOL) report in 2013. The DOL report, published in

response to a submission from the public under the CAFTA–DR, raised concerns regarding labor law enforcement in the sugar sector related to acceptable conditions of work, the minimum age for work and the worst forms of child labor, and forced labor. In its [seventh report of review](#), published in September 2022, the DOL detailed ongoing concerns and challenges in the Dominican Republic’s sugar industry. Although the country’s Ministry of Labor and sugar companies have made progress in some areas, the country still faces challenges related to labor law enforcement. Concerns remain about dangerous working conditions, verification of pay and hours, unsuitable living conditions, workers’ precarious legal status, and other potential labor rights abuses. The United States has also established a bilateral technical working group with the Dominican Republic under the CAFTA–DR to help improve labor law enforcement in the Dominican Republic sugar sector.

# ECUADOR

## TRADE AGREEMENTS

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

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

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

## IMPORT POLICIES

### Tariffs

Ecuador's average Most-Favored-Nation (MFN) applied tariff rate was 11.2 percent in 2022 (latest data available). Ecuador's average MFN applied tariff rate was 17.4 percent for agricultural products and 10.2 percent for non-agricultural products in 2022 (latest data available). Ecuador has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 21.9 percent.

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at or below 30 percent *ad valorem*; most products bound at higher rates are agricultural products covered by the Andean Price Band System (APBS). Ecuador agreed to phase out its participation in the APBS when it joined the WTO; however, as of December 2023 Ecuador had taken no steps to phase out use of the APBS. As a member of the Andean Community of Nations (CAN), Ecuador grants and receives exemptions from tariffs (*i.e.*, reduced *ad valorem* tariffs and no application of the APBS) for products from the other CAN countries.

Through Comex Resolution 009-2023, Comex (Ecuador's Foreign Trade Committee) granted a 50 percent reduction of the import tariff rate for 5,801 vehicles to the affiliates of Ecuador's transportation federations for three years.

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

### **Agricultural Products**

Ecuador's continued use of the APBS affects many U.S. agricultural exports by subjecting them to a variable levy or surcharge (on top of an *ad valorem* tariff) that increases as world prices decrease. Comex Resolution 008-2023 temporarily reduced tariffs applied to rice products for human consumption to zero

percent and suspended the application of the APBS, up to a total quota of 63,246 tons, until December 31, 2023.

## **Non-Tariff Barriers**

### **Preshipment Inspection and Import Bans**

Comex Resolution 009-2022 has been amended several times. The resolution included a revised list of products that require preshipment control documentation, a list of prohibited imports, and a list of subheadings subject to prior control documentation for products imported under quota within the framework of current trade agreements. The resolution also eliminated preshipment control documents for 601 tariff lines.

### **Import Licensing**

Products subject to a non-automatic import license requirement include certain polymers.

Products subject to an automatic import license requirement include remanufactured parts of aviation engines; blocks and cylinder heads; cylinder liners, connecting rods, pistons, rings, carburetors, and their parts; valves, crankcases, injectors and other parts for fuel systems; and piston pins, among others.

### **Import Licensing for Agriculture Products**

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

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

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

## TECHNICAL BARRIERS TO TRADE

### Medical Devices

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

## GOVERNMENT PROCUREMENT

Government procurement in Ecuador can be cumbersome and nontransparent. Government institutions reportedly delay payments without explanation despite adequate provision of goods and services and proper work orders and receipts. The lack of transparency poses a risk that procuring entities will administer a procurement to the advantage of a preferred supplier. Ecuador's Public Procurement Law establishes exceptions for procurements made according to special rules established by presidential decrees, such as those for exploration and exploitation of hydrocarbons, for emergency situations, and for national security contracts. Article 34 of the Public Procurement Law also allows public enterprises to follow special procurement rules, provided the National Public Procurement Service issues an open-ended authorization for purchases considered within "the nature of the enterprise."

Ecuador is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

### **Government-to-Government Contracts with the Ministry of Defense**

The Ecuadorian Ministry of Defense (MOD) invites foreign companies to participate in military purchasing processes through their respective countries' embassies in Quito. According to Article 50 of the Regulation for the Procurement of Goods for National Defense, foreign embassies must submit a letter to MOD that authorizes technology transfer for these contracts. Currently, U.S. companies are unable to compete for these government-to-government contracts due to an inability to comply with Article 50 of the Regulation for the Procurement of Goods for National Defense.

## INTELLECTUAL PROPERTY PROTECTION

Ecuador remained on the Watch List in the [2023 Special 301 Report](#). Among other issues, enforcement of intellectual property (IP) rights against widespread counterfeiting and piracy remains weak, including online and in physical markets.

In addition, the 2016 Code of the Social Economy of Knowledge, Creativity, and Innovation (COESCCI), also known as the Ingenuity Code, contains legislation covering multiple IP matters. In December 2020, Ecuador published the final regulations implementing the COESCCI. The regulations, however, do not fully address concerns raised by the United States and stakeholders on issues related to copyright exceptions and limitations, patentable subject matter, and geographical indications. Ecuador's National Intellectual Property Service continues to consider amendments to the COESCCI and to review feedback from stakeholders, though it has not communicated a timeframe for revisions.



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

## **SERVICES BARRIERS**

### **Advertising**

Ecuador's Organic Communications Law (LOC) and its implementing regulations have traditionally banned all foreign-produced advertisements in Ecuador. Advertisements were only considered "national" if a majority of the production company's shareholders were citizens or legal residents of Ecuador and if at least 80 percent of those contributing to an advertisement's production were Ecuadorian citizens or legal residents. In August 2023, the Ecuadorian Government published a new regulation that clarifies that the LOC considers "national" advertisements to include those produced in a country with which Ecuador has signed an integration treaty. The definition of an integration treaty is not spelled out in the regulation, but private sector companies have interpreted the change to be a relaxation of LOC rules on advertisements. The requirement that 80 percent of those contributing to an advertisement's production be Ecuadorian citizens or legal residents remains in place.

## **INVESTMENT BARRIERS**

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

### **Capital Exit Tax**

The Ecuadorian Government levies a capital exit tax (ISD) on any form of currency outflow in cash, debit and credit cards, checks, and Internet payment methods. In 2021, the Ecuadorian Government committed to the gradual phaseout of the 5 percent ISD over four years. The President issued Executive Decree 182 in August 2021, eliminating the ISD for the aviation industry as a first step. In January 2023, the President issued Executive Decree 643, which committed to gradually reducing the ISD to 2 percent by December 2023. Subsequently, the government paused ISD reduction at 3.5 percent in 2023 due to fiscal challenges. As a result of the National Assembly's February 2024 approval of the Organic Law to Confront the Internal Armed Conflict, the ISD returns to 5 percent as of April 1, 2024.

### **Other Investment Barriers**

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

Since 2018, Ecuador's mining cadastre (registry of mining concessions) has been closed, creating a barrier for new mining investments. However, even with a closed cadastre, the national mining company, ENAMI EP, can still request mining concessions from MEM. MEM aims to update its mining tender process and model agreements, together with U.S. Government technical assistance, to meet international standards of transparency and bankability.

## **SUBSIDIES**

The Ecuadorian Government offers tax benefits to some exporters through the 2019 Law on Tax Simplification and Progressivity. These include benefits for income taxes, value-added taxes, and excise taxes dependent on the sector and size of the exporter.



# EGYPT

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

Egypt's average Most-Favored-Nation (MFN) applied tariff rate was 19 percent in 2023. Egypt's average MFN applied tariff rate was 65.1 percent for agricultural products and 11.6 percent for non-agricultural products in 2023. Egypt has bound 99.4 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 36.9 percent.

On June 9, 2022, Egypt lowered tariffs under Decree No. 218/2022 on over 150 categories of imported products, including pharmaceuticals and natural gas-powered automobiles, with most reductions aimed at capital goods and inputs for agriculture and industry. These lowered tariff levels remained in place in 2023. Tariffs on agricultural equipment, fertilizer, and seeds have dropped from 5 percent to 2 percent. Tariffs on industrial vehicles, such as aircraft, tractors, railcars, and ships, have fallen from 40 percent to 2 percent, and the duty on natural gas-powered automobiles has fallen from 30 percent to 2 percent.

Egypt's tariff on passenger cars with engines of 1600 cubic centimeters (cc) or less is 40 percent, and its tariff on cars with engines of greater than 1600 cc is 135 percent. Tariffs on a number of processed and high-value food products, including poultry, meat, apples, pears, cherries, and almonds, range from 20 percent to 30 percent. Alcoholic beverages for use in the tourism sector have a 300 percent tariff plus a 40 percent sales tax. The tariffs on alcoholic beverages for use outside the tourism sector range from 1,200 percent on beer and 1,800 percent on wine to 3,000 percent on sparkling wine and spirits.

On October 11, 2023, Prime Minister Decree No. 3912/2023 exempted 12 basic food commodities from customs tariffs for a period of six months to combat high consumer prices. The list includes poultry products (chicken, ducks, geese, and turkey); dairy products (milk, butter, and cheese); tea; fats; oils; sugar; and pasta. The decree also applies to any fodder or active pharmaceutical ingredients of the above-mentioned items.

On June 3, 2023, the Egyptian Ministry of Finance issued a statement indicating that importers are now required to make an advance payment of 1 percent of the estimated taxes and fees due on imported goods, instead of the 30 percent payment previously required. Importers will pay the balance in addition to the customs tariffs when the goods arrive in Egypt.

## **Non-Tariff Barriers**

### **Import Restrictions**

In 2003, Egypt imposed restrictions on poultry, limiting imports to whole and frozen poultry. The executive regulations to Egypt's Import and Export Law (Ministry of Trade and Industry Decree 770/2005) suspended the importation of chicken limbs and offal, which acted as a *de facto* ban on U.S. chicken leg quarter exports to Egypt. In 2022, Egypt began allowing shipments of chicken leg quarters from the United States on a limited basis. The United States pushed to expand access for poultry at the December 2022 TIFA meeting in Cairo and continues to make this request.

### **Import Licensing**

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

### **Customs Barriers and Trade Facilitation**

Egypt's Customs Authority continues to employ reference pricing when assessing duties. Egypt's Customs Valuation Committee often engages in lengthy deliberations without coming to a final decision on customs valuation appeals filed by U.S. businesses. Egyptian Ministerial Decree No. 86/2023 established a committee to plan for and implement an advance ruling system, following significant engagement by the U.S. Government through the TIFA dialogue and in other bilateral and multilateral fora. The U.S. Government is working closely with Egypt's Customs Authority on the implementation of an advance ruling system, including on the draft regulation.

Egyptian Ministerial Decrees No. 283/2023 and No. 284/2023 implemented a new integrated risk management system for inspecting imported non-food industrial goods. Egyptian Ministerial Decree No. 347/2023 introduced amended customs procedures to facilitate transit trade.

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

### **Technical Barriers to Trade**

#### **Vehicles**

U.S. vehicle and automotive parts exports face significant barriers in Egypt. In 2012, Egypt became a Contracting Party to the United Nations Economic Commission for Europe (UNECE) 1958 Agreement. As of June 2014, Egypt has applied European Union regional emissions and UNECE safety standards for vehicles and automotive parts, thereby blocking imports of U.S. vehicles that meet comparable U.S. regulatory emissions and safety standards. Egyptian law also prohibits the importation of used vehicles for commercial purposes, pursuant to Ministerial Decree No. 580/1998 and Annex 2 to Ministerial Decree No. 770/2005.

Egypt does not recognize U.S. Federal Motor Vehicle Safety Standards (FMVSS), even though U.S. standards achieve comparable regulatory goals. As a result, exports of these goods to Egypt have declined significantly since 2015. The United States has raised this issue in TIFA Council meetings. The U.S. Agency for International Development, in collaboration with the U.S. Department of Commerce, conducted a regulatory environmental assessment in June 2022 and is communicating with U.S. and Egyptian stakeholders to come up with a recommended approach to address these issues that could be accepted by both the United States and Egypt. At the most recent TIFA Council meeting in December 2022, Egypt indicated its willingness to consider recognition of the FMVSS. The United States and Egypt held technical consultations and discussions in May 2023 and February 2024 to assist Egypt in working through its standards concerns.

## **Halal Import Requirements**

In August 2021, the Government of Egypt announced that it would extend the scope of its halal certification requirements to include dairy and other agricultural products in addition to the existing requirement for imports of poultry and meat products. It also announced that IS EG Halal, a private U.S. company, would be the sole certifying body approved to certify imports into Egypt as halal. In December 2021, Egypt notified this measure to the WTO Committee on Technical Barriers to Trade (TBT Committee) with an implementation date of January 29, 2022; however, following U.S. and other WTO Members' requests, Egypt has postponed implementation multiple times, most recently until January 1, 2025. The lack of transparency and the uncertainty created by these new requirements has contributed to a drop in U.S. dairy exports to Egypt. In 2022, the volume of U.S. dairy exports dropped 54 percent to 16 million tons. In 2023, it dropped another 25 percent. The U.S. Government has engaged in bilateral and multilateral fora with Egypt to request that Egypt publish an implementing regulation for these new requirements, allow U.S. and other halal certification bodies (HCBs) to continue certifying product destined for Egypt, and to suspend any new requirements until additional transparency and flexibility are in place.

The United States continues to assess the situation and actively engage with Egypt regarding these matters, including through the TIFA dialogue and in other bilateral and multilateral fora.

## **SANITARY AND PHYTOSANITARY BARRIERS**

### **Seed Potatoes**

The U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) has submitted four market access requests for U.S. seed potato importation to Egypt since 2008. The United States remains unable to export seed potatoes to Egypt because the Central Administration for Plant Quarantine (CAPQ) at the Ministry of Agriculture and APHIS have not been able to come to an agreement on the results and mitigation measures of a pest risk assessment completed by the CAPQ. The CAPQ requirements are based on Egyptian Ministerial Decree No. 562/2019, which does not allow measures equivalent to those proposed by APHIS. According to APHIS, several of the proposed mitigation measures are not science- or risk-based. Despite several rounds of bilateral technical meetings and exchanges of correspondence in 2019 and 2021, U.S. seed potatoes remain barred from Egypt. Egypt has been importing in vitro micro tubers from the United States, potentially signaling an interest in growing U.S. seed potato varieties.

## **INTELLECTUAL PROPERTY PROTECTION**

Egypt remained on the Watch List in the [2023 Special 301 Report](#). Egypt has made some efforts to strengthen intellectual property (IP) protection and enforcement, including by adopting a new national IP strategy, passing Law No. 163/2023 in August 2023 to establish the Egyptian Agency for Intellectual

Property, and adopting a new system that facilitates information sharing among customs offices on potential counterfeiting. Despite these improvements, concerns remain. Egypt continues to lack deterrent-level penalties for IP violations and *ex officio* authority for customs officials to seize counterfeit and pirated goods at the border. Egypt's lack of up-to-date, publicly available general patent and trademark examination guides online remains an obstacle for the growth of U.S. IP exports to Egypt. Stakeholders have raised concerns regarding the lack of an effective mechanism for the early resolution of potential patent disputes and the mandatory requirement to record trademark licenses. Additionally, Egypt is not currently a member of the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty or the WIPO Copyright Treaty.

## **SERVICES BARRIERS**

### **Express Delivery Services**

The Egyptian National Post Organization (ENPO) must grant special authorization to foreign-owned private courier and express delivery service suppliers seeking to operate in Egypt. Although express delivery services constitute a separate market, the ENPO requires private foreign express delivery operators to pay a postal agency fee of 10 percent of annual revenue on shipments of less than 20 kilograms (approximately 44 pounds.). The ENPO imposes an additional fee of 5 Egyptian pounds (approximately \$0.16) on private couriers and express delivery services for all shipments under 5 kilograms (approximately 11 pounds.). Civil Aviation Decree 607/2015 requires all courier and express delivery services to have at least 51 percent Egyptian ownership.

### **Financial Services**

No legal barriers prohibit foreign banks from establishing branches in Egypt. In May 2023, the Central Bank of Egypt granted a license under the Central Bank and Banking Act (Law 194/2020) to London-based Standard Chartered Bank to establish a branch in Egypt, the first new commercial banking license issued to a foreign bank since 1979. Three state-owned banks (Banque Misr, Banque du Caire, and the National Bank of Egypt) control approximately 60 percent of the banking sector's total assets.

## **BARRIERS TO DIGITAL TRADE**

Egypt's Personal Data Protection Act, Law No. 151/2020, requires licenses for cross-border data transfers. The United States is monitoring the implementation of this law and its draft regulations, which are expected to be implemented by the Data Protection Authority. The Data Protection Authority had not been established as of December 2023. The United States will continue to engage with Egypt regarding best practices for privacy and data security through various bilateral and multilateral fora.

## **INVESTMENT BARRIERS**

Egypt implemented investment Law No. 72/2017 in 2017 to address longstanding complaints of foreign investors. Although the law allows foreign investors to operate sole proprietorships and partnerships, it continues to limit the number of non-nationals working at any business to 10 percent of the workforce, or up to 20 percent of the workforce if it is not possible to find Egyptian citizens with the necessary qualifications. Egypt restricts foreign equity in construction and transport services to 49 percent.

On October 29, 2023, Egypt issued Law No. 173/2023 in 2023 amending the Importers Registry Law No. 121/1982 of 1982, lifting the existing 51 percent minimum Egyptian ownership requirement for importers of record. It also made Egyptian companies with foreign ownership eligible to receive an importation

license for a 10-year term, subject to meeting other qualifying conditions for the license such as minimum capital reserves or sales revenue.

On April 11, 2023, Egyptian Ministerial Decree No. 141/2023 established the Supreme Council for Investment, replacing the Investment Council established in 2016. On July 25, 2023, Egypt passed Law No. 160/2023, which amends Law No. 72/2017. Law No. 160/2023 introduced new investment incentives and expanded the Golden License program—a platform that streamlines permits and approvals required to establish a business.





# EL SALVADOR

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

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

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

#### **Taxes**

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

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

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

applying for an advance ruling are difficult to find online, making it hard to get advance assurance of how Salvadoran customs will treat a good upon importation. Additionally, the customs valuation process for imports of express shipments is not clear.

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

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

### **Technical Barriers to Trade**

El Salvador requires a Certificate of Free Sale to register food products. The Ministry of Health agreed in 2019 to accept the U.S. Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) Form 9060-5 Meat and Poultry Export Certificate of Wholesomeness for meat and meat products in lieu of the Certificate of Free-Sale. However, the Ministry of Agriculture (MAG) requires an original FSIS 9060-5 certificate. Obtaining the original health certificate for the purpose of food product registration is problematic because this document only accompanies actual shipments of meat or processed meat products. Since these shipments cannot occur until the food product is registered, exporters cannot obtain certificates for the purpose of product registration. Additionally, under the CAFTA–DR, El Salvador granted equivalence to the U.S. sanitary inspection system for beef, pork, and poultry and poultry products, which may make the health certificate requirement unnecessary or duplicative for U.S. exports. Unnecessary and duplicative import requirements provide no discernable food safety benefits and, if the duplicative requirements result in higher prices, also can make U.S. products less competitive in the local marketplace. The United States continues to monitor these import requirements. The United States has begun offering comprehensive technical assistance to support El Salvador’s efforts to streamline its border processes.

### **Sanitary and Phytosanitary Barriers**

Animal product exporting facilities are subject to MAG inspection and certification every three years. Because the CAFTA–DR provides equivalence for the U.S. beef, pork, and poultry inspection systems, the inspection and certification requirements apply to only U.S. animal products not covered by the CAFTA–DR, such as pet food and pet food additives or probiotics.

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

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

## GOVERNMENT PROCUREMENT

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

On March 23, 2023, the Public Procurement Law for government entities and municipalities took effect, replacing the Public Administration and Procurement Contracting Law that had been in force since 2000. The new legislation establishes the National Directorate of Public Procurement, an autonomous entity charged with dictating policies and regulations for government purchases and overseeing contract execution. The legislation has a framework for new purchasing methods, such as competitive bidding for contracts over \$87,600, price comparison for contracts under \$87,600, and electronic product catalogues for framework agreements for purchases under \$87,600, among others. However, strategic infrastructure projects, municipal projects executed under the Directorate of Municipal Works, and purchases of subsidiaries of state-owned companies are exempt. Some implementing regulations remained pending as of December 2023.

El Salvador has been operating under a State of Emergency since March 2022. Initially intended to be in effect for 30 days, the State of Emergency has been extended every month since April 2022. One consequence of the State of Emergency is that it allows the Executive branch to enter negotiations and make direct purchases of goods and services without adhering to the Public Procurement Law. Legal experts and businesses have expressed concerns that excluding purchases from bidding procedures for as long as the State of Emergency is in place will further undermine transparency.

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

## INTELLECTUAL PROPERTY PROTECTION

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

## BARRIERS TO DIGITAL TRADE

### Data Localization Requirements

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

expressed concerns that these requirements could compromise consumer data privacy and protection. The United States continues to engage El Salvador on this issue.

# ETHIOPIA

## IMPORT POLICIES

### Tariffs and Taxes

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

### **Tariffs**

Ethiopia's average Most-Favored-Nation (MFN) applied tariff rate was 17 percent in 2021 (latest data available). Ethiopia's MFN applied tariff rate averaged 22.5 percent for agricultural products and 16.1 percent for non-agricultural products in 2021 (latest data available). Ethiopia implemented tariff reductions for certain raw materials, intermediate goods, and capital goods to promote the growth of the manufacturing sector in 2021. Ethiopia is not a member of the World Trade Organization (WTO) and so has no bound tariff rates.

### Non-Tariff Barriers

#### **Import Bans and Import Restrictions**

Ethiopia prohibits imports of used clothing and used or refurbished medical equipment intended for resale. Imports of other goods intended for resale or commercial purposes are permitted, provided payment transactions are carried out through Ethiopian banks.

#### **Import Licensing**

In July 2022, the Government of Ethiopia decentralized the import licensing process and delegated the authority to issue import licenses to regional state trade bureaus. Most regions have operationalized the new online import licensing process, although the new process remains unavailable in some regions because of structural issues such as poor Internet access. In addition to obtaining an import business license, importers must obtain an import registration number before bringing products into the country. Imports of food or drug items must receive additional certification from the Ethiopian Food and Drug Administration without regard to the risk posed by the food or drug product. Trading companies must submit a proposal to the Ministry of Trade and Regional Integration or regional authorities to obtain a currency exchange permit certificate, which includes obtaining a letter of credit for the total value of an import transaction and applying for an import permit, before placing an order. Even with a letter of credit, import permits are not always granted and several months—up to a year or longer—can pass before an importer is allocated foreign exchange.

## SANITARY AND PHYTOSANITARY BARRIERS

In preparation for the African Continental Free Trade Area, the Government of Ethiopia is exerting considerable effort to harmonize its national sanitary and phytosanitary (SPS) standards with standards used in African Regional Economic Communities, such as the Common Market for Eastern and Southern Africa (COMESA) and the Intergovernmental Authority on Development (IGAD). When a national standard is not available for a specific product, Ethiopia defers to the Codex Alimentarius Commission standards. Furthermore, Ethiopia is investing in the expansion of national and regional laboratories, quarantine

stations, and standards for quality assurance. SPS-related barriers that impede international trade in Ethiopia are associated with cumbersome requirements for registration and approval of imported products, such as processed foods, planting seeds, fertilizer, and plant protection products.

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

## **GOVERNMENT PROCUREMENT**

Some Ethiopian Government tenders are open to foreign participation and tender announcements are usually public, but many major procurements do not go through a transparent tendering process. Obstacles to foreign participation in government procurement tenders include complicated and inadequately established procedures, repeated cancellation of published requests for proposals, capacity gaps on the part of procurement agencies, delays in decision-making, lack of public information, and the need for personal connections to compete effectively. Furthermore, since 2018, several dozen government procurement officials across a variety of Ethiopian Government agencies have been arrested for corruption as part of a broader reform effort.

On February 16, 2022, four Ethiopian federal institutions started to process their procurement electronically—the first step by Ethiopia to institute electronic government procurement aimed at increased transparency. In 2023, the system expanded to 74 federal agencies, including those responsible for agriculture, technology, health, and education.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Inadequate intellectual property (IP) protection and enforcement remain a serious concern in Ethiopia. Ethiopia is a member of the World Intellectual Property Organization (WIPO) and has demonstrated an interest in strengthening its IP regime. Ethiopia is not a member of most major international IP treaties, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Trademark infringement, especially in the hospitality and retail sectors, continues to be an issue. Because enforcement capacity and coordination among Ethiopian Government agencies is lacking, IP enforcement is inconsistent. The Ethiopian Intellectual Property Authority is responsible for the administration and arbitration of IP cases, but actions to combat the sale of pirated goods remain inadequate.

## **SERVICES BARRIERS**

### **Financial Services**

Ethiopia prohibits foreign investment in the financial services industry, including banking and insurance, with an exception for foreign nationals of Ethiopian origin. Few international banks maintain representative offices, and all trade financing is required by law to go through an Ethiopian bank. This creates significant challenges for foreign investors with accounts outside Ethiopia. In September 2023, the National Bank of Ethiopia (NBE) for the first time allowed some foreign direct investors to open accounts not in Ethiopia that can be used to service external debts, pay for foreign insurance and warranty claims, meet financial

obligations to foreign contractors, and cover other foreign capital and operational expenses. In November 2023, a U.S.-backed leasing company, which was the only foreign-owned financial services company operating in Ethiopia, closed in response to a multiyear dispute with the Government of Ethiopia over its prohibitions in 2021 of U.S. dollar-dominated lease agreements. As of December 31, 2023, the NBE continued work on draft legislation that, once approved by the legislature, would open the financial sector to foreign investment.

## **INVESTMENT BARRIERS**

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

## **STATE-OWNED ENTERPRISES**

Although the Government of Ethiopia has launched processes to fully or partially privatize some SOEs—most notably under the Homegrown Economic Reform Plan—SOEs continue to dominate major sectors of the economy. These include the telecommunications, power, banking, insurance, air transport, certain agricultural processing, industrial parks, and shipping industries. Many SOEs maintain a monopoly over their respective sectors, which allows the Government of Ethiopia to dictate prevailing rates for many goods and services. U.S. investors complain of the lack of a level playing field when it comes to SOEs. The Government of Ethiopia passed a law in 2019 that prohibits SOEs from accessing new loans and instructs them to focus on completing outstanding projects. SOEs, however, have considerable advantages over private firms, such as expedited customs clearance processing, priority access to financing and foreign currency from the Commercial Bank of Ethiopia, preferences in government tenders and land acquisition, and marketing assistance. In December 2021, the Government of Ethiopia established Ethiopian Investment Holdings, a sovereign wealth fund, to prepare over 40 SOEs for full or partial privatization. The Government of Ethiopia has offered to sell eight state-owned sugar enterprises and a 45 percent stake in Ethio Telecom.

Transport and logistics are predominantly conducted by SOEs in Ethiopia, and monopolistic market conditions in multimodal transport operations and inadequate infrastructure inhibit private sector logistics companies. Consequently, logistics costs comprise approximately 22 percent to 27 percent of final costs for many products and shipping and freight costs are approximately 60 percent higher than in neighboring countries. Under the framework of a comprehensive logistics strategy, the Government of Ethiopia has slated the logistics sector for liberalization and Ethiopian Railways officials report the border crossing process between Ethiopia and Djibouti by train has been streamlined.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Ethiopian and foreign businesses routinely encounter corruption in tax collection, customs clearance, and land administration. Some U.S. businesses operating in Ethiopia reported that they were frequently solicited for bribes to secure business contracts. Tax administration in Ethiopia is corrupt and inefficient,



and the Ethiopian Government supplements revenues by levying higher taxes on foreign investors and businesses and limiting their ability to appeal tax levies. U.S. and other foreign companies complain they are unfairly targeted for tax collection compared with local companies and are presented with spurious tax bills. In November 2022, the Government of Ethiopia recognized corruption as a threat to national security and an obstacle to doing business and formed a new National Anti-Corruption Committee led by the head of the National Intelligence and Security Service. Between June 2022 and June 2023, the Ministry of Justice Anti-Corruption Directorate heard 628 corruption cases.

### **Commercial Code Enforcement**

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

### **Foreign Currency Controls**

The NBE administers a strict foreign currency control regime. Ethiopia's foreign currency shortage and the extreme difficulty in obtaining foreign currency from legal sources hamper the ability of manufacturers to import raw materials and semifinished goods and restricts the repatriation of profits, despite laws allowing foreign investors to remit profits and dividends. All imports, exports, and outgoing foreign payments require a foreign exchange permit. In August 2023, the NBE imposed regulations requiring exporters and commercial banks to surrender 50 percent of foreign currency obtained from export transactions to the NBE. Exporters, however, may retain 40 percent in foreign currency and 10 percent must be exchanged at a commercial bank to the equivalent amount in Ethiopian birr, the national currency.

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

A critical shortage of foreign currency caused the Government of Ethiopia on April 8, 2022, to issue a directive allowing franco-valuta imports, a scheme that facilitates the importation of essential food commodities—wheat, rice, sugar, edible oils, and instant baby milk—by permitting the use of foreign currency from official sources, including personal foreign currency supplies and foreign accounts. In November 2022, the NBE imposed a requirement that importers use franco-valuta provisions to provide information about the source of their foreign currency.

# EUROPEAN UNION

## OVERVIEW

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

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

## IMPORT POLICIES

### Tariffs

The EU's average Most-Favored-Nation (MFN) applied tariff rate was 5.1 percent in 2022 (latest data available). The EU's average MFN applied tariff rate was 11.4 percent for agricultural products and 4.1 percent for non-agricultural products in 2022 (latest data available). The EU has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 5.1 percent.

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

### **Meursing Table Tariff Codes**

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

### Non-Tariff Barriers

#### **Import Licensing – Bananas**

Following years of disputes, beginning under the General Agreement on Tariffs and Trade (GATT) and later involving litigation under WTO dispute settlement proceedings, the United States and other countries in 2010 reached agreements with the EU to resolve complaints about successive EU banana import regimes. Beginning in 2013, a U.S. stakeholder expressed concerns to the U.S. Government about actions taken since 2010 by Italian customs authorities to collect retroactive payment of customs duties due to the authorities' unilateral re-interpretation of the validity of certain EU banana import licenses under pre-2006 EU

regulations. In 2013, the Italian Supreme Court, on jurisdictional grounds, ruled against the Italian Government and ordered authorities to repay the collected duties to the U.S. stakeholder. However, as of December 31, 2023, the duties had not been completely repaid, and Italian customs authorities, claiming to have resolved the jurisdictional issues cited by the Italian Supreme Court, continue to re-issue some of the previous retroactive duty assessments against the stakeholder.

### **Customs Barriers and Trade Facilitation**

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

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

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

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

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

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

# TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

## Technical Barriers to Trade

### Transparency and Notification

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

For example, under the EU's regulatory processes for Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH, Regulation (EC) 1907/2006) and Classification, Labeling, and Packaging (CLP, Regulation (EC) 1272/2008), proposed restrictions are typically notified to the WTO only after scientific review and regulatory impact committees have convened and the European Commission's domestic consultations have concluded. These domestic consultations are not always transparent to non-EU stakeholders, which can limit their ability to provide comment and for those comments to be taken into consideration. In other cases, measures undergo significant changes during the negotiations among the Council of the European Union (European Council), European Commission, and European Parliament, absent additional consultations with stakeholders, notifications, or impact assessments. Finally, failure to notify measures with adequate comment periods is also observed at the Member State level, including in the case of recent Irish alcohol labeling regulations. Improvement and greater consistency in EU and Member State notification of measures could have a significant effect on trade contributing to a more predictable market environment.

### European Standardization and Conformity Assessment Procedures

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

ENs can only be developed through three European Standards Organizations (ESOs), as directed by the European Commission through a standardization request. The three ESOs are the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). Within these designated ESOs, the CEN

and CENELEC technical committees draft harmonized ENs. Both generally exclude non-EU nationals from participating in their standard-drafting process. In the limited instances where non-EU nationals do participate, they are not allowed to vote.

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

As part of its free trade agreements, the EU seeks commitments affirming that only a standard issued by a subset of specific standards-developing organizations, none of which are domiciled in the United States, be considered an international standard (e.g., the EU–Japan Economic Partnership Agreement, Article 7.6). This practice accords preferential treatment to organizations in which the EU carries an outsized influence (e.g., the World Forum for Harmonization of Vehicle Regulations within the framework of the United Nations Economic Commission for Europe) or with which the ESOs have existing cooperation agreements (e.g., the International Organization for Standardization (ISO) and the International Electrotechnical Commission). This approach is narrower than what is provided for under the WTO TBT Agreement and related decisions of the WTO TBT Committee, which recognize international standards as those developed in accordance with certain principles, and without reference to particular institutions or methods of organization.

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

## **Chemical Regulations**

The EU’s proposed Chemicals Strategy for Sustainability and the planned updates to the REACH and CLP present a number of significant barriers for U.S. exporters. Stakeholders have raised concerns that, as part of the registration process under REACH, they must provide data that is not relevant to the specific hazards and proposed uses of a registered substance. Amendments to the classification of chemicals under the CLP often appear arbitrary, driven by a process that does not allow adequate time for stakeholder comment, even when the proposed changes differ significantly from the globally harmonized classifications followed by

industry and other economies. As with other sectors, the United States is also concerned that the EU's reliance on a "precautionary" or "hazard-based" approach to regulation of products can result in severe limitations on the use of products without reference to scientific assessment of the actual risks of exposure in a specific use. Additionally, Member States' application of REACH appears to be inconsistent and lacks transparency, which can result in requirements that are more onerous for U.S. exporters than they are for EU businesses and products that are already in the EU market.

### **Classification, Labeling, and Packaging Hazard Classes**

The United States has voiced concerns regarding the draft European Commission Delegated Regulation (EU) 2023/707 of December 19, 2022 (amending Regulation (EC) 1272/2008) regarding hazard classes and criteria for the classification, labeling and packaging of substances and mixtures, noting that the new CLP classification and labeling requirements will diverge from the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The United States has encouraged the EU not to preempt a scientific review by the Organization for Economic Cooperation and Development (OECD) of new labeling requirements and to remain harmonized with the GHS. The EU is expected to issue guidance on these new classification and labeling requirements in 2024, with the new requirements going into effect in May 2025 for new substances and November 2026 for substances already on the market.

### **Per- and Polyfluoroalkyl Substances**

In 2023, the European Chemicals Agency published a proposed restriction that would largely eliminate the production and use of per- and polyfluoroalkyl substances (PFAS). The United States is concerned that the EU did not consider the implications of the ban for several critical uses, such as in the production of some renewable energy products, for which there are, as yet, no feasible alternatives to PFAS. Additionally, the proposal could impact the implementation of global treaties to reduce ozone depletion and global warming, such as the Kigali Amendment to the Montreal Protocol, by restricting climate friendly alternatives to existing substances.

### **Fluorinated Greenhouse Gases**

An update to the 2014 Fluorinated Greenhouse Gas (F-Gas) Regulation (EU) 2024/573, which was adopted in February 2024, would accelerate implementation of a blanket ban on all fluorinated gases. The decision on a blanket ban was taken before determining if there are viable alternatives for these gases, which were created as substitutes for ozone-depleting substances. The United States is concerned that the F-gas policies overlook the contributions of these gases to the avoidance of global warming. The United States continued to raise concerns regarding the EU's approach both bilaterally and at the WTO TBT Committee, particularly in light of the negative impact on global climate targets.

*(Additional concerns with the EU policies in regard to F-Gas are discussed in the Other Barriers section of this NTE Report chapter.)*

### **Packaging and Packing Waste Regulation**

On November 30, 2022, the European Commission published its proposal for a Packaging and Packaging Waste Regulation to replace an existing directive in an effort to harmonize Member State packaging and packaging waste regulations. The update is a part of the Green Deal's Circular Economy Action Plan announced in 2020 and is intended to reduce overpackaging, promote the reusability and recyclability of packaging, and reduce the complexity of packaging materials. Trilogue negotiations on the regulation are expected to start in early 2024. The United States continues to engage the EU as the legislation progresses

to ensure that the final version adopted does indeed promote harmonized rules across Member States and continues to seek additional clarification necessary to help stakeholders comply with the requirements.

### **Deforestation-Free Supply Chain Regulation**

On June 29, 2023, the EU issued a deforestation-free supply chain regulation (Regulation (EU) 2023/1115), which has an 18-month transition period until it enters into application on December 30, 2024. Several U.S. stakeholders have argued this is insufficient time for compliance. The regulation aims to curb deforestation and forest degradation linked to European consumption and production of beef, coffee, cocoa, palm oil, soy, wood, rubber, and their derived products (e.g., charcoal, furniture, tires, paper, leather), with potential expansion to other products and ecosystems. U.S. stakeholders have raised concerns that due diligence and traceability requirements in the regulation may not be possible for companies to meet. To date, the EU has refused to notify the regulation to WTO Members or to provide an opportunity for WTO Members and other stakeholders to comment on the regulation. Fourteen WTO Members (the United States, Argentina, Australia, Brazil, Canada, Colombia, Guatemala, India, Indonesia, New Zealand, Panama, Paraguay, Peru, and the Russian Federation) raised concerns with the regulation at the November 2023 WTO TBT Committee meeting. The United States continues to seek WTO notification of the measure and to engage the EU on its implementation. In 2023, U.S. exports of products covered by the EU's deforestation-free regulation exceeded \$8 billion.

### **Eco-design for Sustainable Products Regulation and the Digital Product Passport**

On December 5, 2023, EU institutions reached agreement on a regulation to establish an eco-design framework for sustainable products that will require industry to meet new sustainability requirements. Articles 7 through 14 of the regulation require industry to develop and implement a new digital label (known as a Digital Product Passport, or DPP) to track lifecycle information and other aspects of a product in order to inform consumers and help public authorities to better perform checks and controls. Some U.S. stakeholders are concerned that the DPP requirements set unrealistic implementation timelines and do not include sufficient safeguards to prevent the unauthorized disclosure of confidential business information. The United States made multiple requests to the EU during 2023 to notify the measure to the WTO to allow trading partners the opportunity to provide feedback. To date, the EU has refused to notify the measure.

### **Green Claims Directive**

In March 2023, the EU released the proposal for a directive on substantiation and communication of explicit environmental claims ("Green Claims Directive," notified to the WTO in May 2023) to combat misleading environmental claims ("greenwashing"). The United States has been engaging with the European Commission to ensure that the directive is clear and specific as to the elements needed to substantiate environmental claims, including documentation requirements and implementation periods for the measure's conformity assessment procedures and labeling requirements related to product characteristics. The United States is also seeking to collaborate with the EU to achieve greater alignment on the recognition of eco-label schemes and measures to combat greenwashing.

*(Sanitary and phytosanitary concerns with the European Green Deal are discussed in the Sanitary and Phytosanitary Barriers section of this NTE Report chapter.)*

### **Renewable Energy Directive**

The EU Renewable Energy Directive (RED) ((EC) 2009/28) requires that biofuels and biofuel feedstocks obtain a "Proof of Sustainability" certification to qualify for tax incentives and national use targets. RED

also establishes a methodology and accounting system by which Member States may record and calculate required greenhouse gas emission savings as compared to a baseline for fossil fuels.

In 2018, the European Commission adopted a new renewable energy directive (RED II) for the period 2021 to 2030. RED II entered into force on January 1, 2021 and introduces sustainability requirements for forestry biomass (wood pellets). As part of the Fit for 55 package, the European Commission began revisions of RED II in 2022, and the final revisions were published on October 31, 2023. The revisions to RED II increased the EU's binding renewable target for 2030 to a minimum of 42.5 percent, up from the current 32 percent target. However, the sustainability criteria for biofuels and biomass was not fundamentally changed, which may limit U.S. exports of biofuels and biomass that would otherwise provide viable renewable sources for the EU's renewable energy targets. The United States exported approximately \$443 million in wood pellets to the EU in 2022 (latest data available).

### **Pesticide Maximum Residue Limits for Environmental Objectives**

On February 15, 2023, the EU published Commission Regulation (EU) 2023/334 to reduce maximum residue limits (MRLs) for clothianidin and thiamethoxam to the limit of determination, in an effort to protect pollinators, particularly bees, in countries outside of the EU. The measure would effectively bar all imports of products to the EU that contain any detectable residue of the two widely used pesticides after March 7, 2026.

The United States shares the EU's concerns about pollinator health and is actively working to protect bees and other pollinators in the United States. However, the global scientific and regulatory community has found that complex interactions among multiple factors affect pollinator health, including the health of bees, and that the safe use of the two pesticides may be determined based on local, national, or regional contexts by the appropriate competent authorities. The United States has also raised concerns with the EU that the use of MRLs as an environmental safety management tool could undermine the development and use of international standards for food safety. Given the critical importance of the pesticides identified in the regulation, the measure appears to pose a significant obstacle to international trade and production of agricultural products. The European Commission intends to consider additional substances under a similar approach. In 2022 and 2023, the United States raised this issue with the EU at the WTO TBT Committee, WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee), and WTO Council for Trade in Goods. The United States continues to encourage the EU to pursue a collaborative approach to protect pollinators worldwide.

*(Other MRL concerns with the European Union are discussed in the Sanitary and Phytosanitary Barriers section of this NTE Report chapter.)*

### **Medical Devices and In-Vitro Diagnostics Regulation**

The United States continues to be concerned about the implementation of the Medical Device Regulation (MDR) and the In-Vitro Medical Device Regulation (IVDR), especially the shortage of notified bodies available to assess medical devices and in-vitro medical devices. The ongoing lack of capacity to conduct conformity assessment has led to longer review times, and it is still difficult for some companies to obtain access to reviews. The lengthy review times and lack of access impact the ability of companies to keep legacy devices on the EU market and to bring new devices to healthcare providers and patients.

The United States engaged the EU in 2022 through the WTO TBT Committee and bilateral discussions around those meetings to seek updates on the implementation of the MDR and IVDR, including the number of qualified notified bodies to perform conformity assessment requirements. On January 6, 2023, the European Commission published a proposal to amend the MDR and allow for staggered and conditional



extension of a transition period to the new rules until 2027 or 2028, according to the risk class of the devices. In addition, the proposal will extend validity of certificates and cancel the “sell-off” date, which will allow devices placed on the market before or during the transition period to continue to be made available absent time limitations. On March 20, 2023, Regulation (EU) 2023/607 amending the MDR and IVDR was published in the EU Official Journal with immediate effect.

### **Wine Labeling**

In January 2023, the EU issued a draft European Commission Delegated Regulation (EU) 2019/33 outlining new rules for the indication and designation of ingredients for wine. The regulation was adopted in May 2023 and introduced a compulsory nutrition declaration and list of ingredients to be displayed on the label of wine products sold on the EU market beginning December 8, 2023. The regulation permits producers to provide mandatory lists of ingredients and nutritional information, excluding allergens and energy content, via an electronic label accessed through a quick-response (QR) code on the physical label. In November 2023, the EU issued guidance, which added the requirement for QR codes to be accompanied by a textual heading (*e.g.*, ingredients). U.S. industry supports the use of electronic labels to provide additional information for consumers; however, industry has raised concerns that textual headings may require them to develop country-specific headings for various Member States, contrary to the nature of the EU as a single market. U.S. industry has requested that the EU consider an alternative modality in place of a textual heading for QR codes. In 2023, the United States raised this issue with the EU bilaterally as part of the United States–European Union Wine Dialogue and on the margins of the WTO TBT Committee. In 2023, the United States exported more than \$186 million in wine to the EU.

### **Traditional Terms on Wine**

The EU continues to restrict the use of “traditional terms,” such as “tawny,” “ruby,” and “chateau,” on labels on imported wine. This impedes U.S. wine exports to the EU, including U.S. wines that include these traditional terms as part of their trademarks. U.S. wines sold under a trademark that includes one of the traditional terms can only be marketed in the EU if the trademark was registered before May 2002.

The EU has not taken any visible steps to address the concerns of the United States and has consistently refused to provide a timeline for review of the applications for the use of terms submitted by U.S. industry.

### **Alcohol Labeling**

In May 2023, Ireland introduced a Public Health (Alcohol) (Labelling) regulation, which sets unique health labeling requirements for alcohol being sold in the Irish market. The regulation mandates that all alcohol beverages display warnings on product packaging informing consumers about the risk of consuming alcohol when pregnant and the risk of liver disease and fatal cancers from alcohol consumption. While supportive of the goals of the regulation, in June and November 2023, the United States raised procedural concerns about the regulation in the WTO TBT Committee. Ireland responded extending the transition period and by permitting importers to affix stickers with the required information to imported products.

### **Sanitary and Phytosanitary Barriers**

The United States remains concerned about a number of measures the EU maintains ostensibly for the purposes of food safety and protecting human, animal, or plant life or health. Specifically, the United States is concerned that these measures may unnecessarily restrict trade without furthering safety objectives, because they appear to be applied beyond the extent necessary to protect human, animal, or plant life or health, not based on science, or maintained without sufficient scientific evidence.

## **Farm to Fork Strategy**

As part of the European Green Deal, described in the Technical Barriers to Trade section of this Chapter, the European Commission published its Farm to Fork (F2F) Strategy in May 2020 that included targets and policy proposals for enhancing food and agricultural sustainability by 2030. Among other things, these targets aim to reduce pesticide and fertilizer use by farmers and antimicrobial use in livestock, and to change land use in agriculture by transitioning farmland into organic production or taking other farmland out of production.

The EU has stated it will seek to “obtain ambitious commitments from third countries in key areas,” and is increasingly attempting to expand the reach of this policy beyond the EU. The targets must be converted into legislative proposals, and the European Parliament and European Council have begun to shape and amend these proposals as part of the EU legislative process between 2021 and 2024. The EU Ministers of Agriculture adopted conclusions on the F2F Strategy in October 2020, endorsing goals while registering a request that farming models other than organics be considered and that any new legislation be based on “scientifically-sound ex-ante impact assessments.”

The United States shares the EU’s goals for more sustainable food systems and recognizes the importance of considering the economic, social, and environmental dimensions of sustainability. However, it remains to be seen how the EU will implement the broader objectives of the F2F through these interrelated initiatives, which appear to blend SPS issues with potential TBT requirements like labeling or certification schemes. U.S. stakeholders are concerned that EU implementing regulations may focus on promoting EU production practices that are not appropriate, effective, or efficient in other parts of the world and, if required, could unnecessarily restrict trade or require farmers in the United States and other countries outside the EU to produce crops in less sustainable ways than they otherwise would have, as a precondition for gaining access to the EU market.

## **Hormones and Beta-Agonists**

The EU maintains various measures that impose bans and restrictions on meat produced using hormones, beta-agonists, and other growth promotants, despite scientific evidence that such meat is safe for consumers. U.S. producers cannot export meat or meat products to the EU unless they participate in a costly and burdensome verification program to ensure that hormones, beta-agonists, or other growth promotants have not been used in their production.

For example, the EU continues to ban the use of the beta-agonist ractopamine, which promotes leanness in animals raised for meat. The EU maintains this ban even though international standards promulgated by Codex Alimentarius Commission (Codex) have established an MRL for the safe trade in products produced with ractopamine. The Codex MRL was established following a scientific study by the United Nations Food and Agriculture Organization/World Health Organization Joint Expert Committee on Food Additives that found ractopamine at the specified MRL does not have an adverse impact on human health.

In 2019, as part of a compromise solution to the U.S.–EU hormone beef dispute, the United States and the EU concluded an agreement that established a duty-free tariff-rate quota (TRQ) for the United States. The agreement went into effect on January 1, 2020, and provided American ranchers an initial TRQ of 18,500 metric tons annually, valued at approximately \$220 million. Over seven years, the TRQ will grow to 35,000 metric tons annually, valued at approximately \$420 million.

## **Antimicrobial Resistance and the Restrictions on the Use of Veterinary Medicinal Products**

In December 2018, the EU published Regulation (EU) 2019/6 on veterinary medicinal products that seeks to address antimicrobial resistance by more strictly defining the criteria for use of antimicrobial products in animal medicine. Regulation (EU) 2019/6 also identifies a list of products that will be exclusively reserved for human medicine and no longer permitted in agricultural production. Article 118 of the regulation expands these restrictions to operators in third countries, who will be required to ensure that animal products exported to the EU and intended for human consumption do not originate from animals that have been treated with specified antimicrobial medicines reserved for human use or utilized for growth promotion. To date, the EU has failed to provide a scientific justification for these restrictions.

The official implementation date for Regulation (EU) 2019/6 was set for January 28, 2022, but the EU is still finalizing the legislation necessary to implement the regulation. In March 2021, the EU published an amendment to the official controls Regulation (EU) 2017/625 that clarified the legal mechanism for verification of compliance with Article 118 of the regulation. In October 2021, the EU published European Commission Delegated Regulation (EU) 2021/1760 that fixed the criteria used to establish the list of antibiotics exclusively preserved for human medicine. The European Commission adopted the European Medicines Agency's (EMA) advice as European Commission Implementing Regulation (EU) 2022/1255, which was published in the EU Official Journal on July 20, 2022. In May 2023, the EU published Commission Delegated Regulation (EU) 2023/905, which formalizes the prohibition foreseen in Regulation (EU) 2019/6 on the use of certain antimicrobials to food-producing animals and derivative products imported from non-EU countries. The European Commission is drafting two implementing regulations to enforce Regulation (EU) 2023/905, which will include a list of approved third countries and the requirement of an official health certificate attestation for the export of covered products. U.S. stakeholders are concerned about the potential impacts of the as yet unfinalized implementing regulation's attestation requirements on U.S. exports of animal products to the EU once it enters into force. Stakeholders have raised concerns about other provisions that are not based on science or risk and instead promote the adoption of EU practices by third countries rather than recognizing the alternative ways that different authorities can arrive at the same level of product safety. U.S. stakeholders are also concerned about the EU's prohibition on the use of non-medically important antimicrobials to promote growth and increase yield, as this prohibition does not appear to have a scientific justification and specific food safety concerns have not been identified. The United States continues to engage the EU regarding management of antimicrobial resistance and encourage science-based approaches.

## **Agricultural Biotechnology**

Decades of data and experience demonstrate the safety of genetically engineered (GE) crops, in addition to the benefits of their use in reducing carbon emissions, pesticide use, and impact on non-target organisms, while increasing soil health, crop yields, and farmers' incomes. Despite these benefits, the lack of predictability, excessive data requirements, and delays in the EU's approval process for GE crops have prevented products from being exported to the EU, even though these products have been approved and grown safely in the United States for many years.

The United States continues to reiterate concerns with delays in the EU's biotechnology approval procedures and to engage the EU in efforts to normalize trade in these products, including through semiannual consultations in accordance with the 2008 decision by the United States and the EU to suspend Article 22.6 arbitration proceedings associated with the WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) regarding the approval of biotechnology products. In 2023, the EU issued eight approvals and five renewals for GE crops, compared to six approvals and one renewal in 2022. While these new authorizations are welcomed, the EU's average approval time for new GE crops in 2023 was approximately six years. In contrast, the EU's own legally prescribed approval time

for such products is 12 months (6 months for the review with the European Food Safety Authority (EFSA) and 6 months for the political committee process known as comitology).

As of December 31, 2023, the United States was tracking approximately 30 agricultural biotechnology product applications (including renewals) submitted to the EU, including with respect to corn, soybean, rapeseed, and cotton. Of those applications, 29 were under scientific review by the EFSA and 6 await action by the European Commission through comitology. Delays in both of these stages contribute to increasingly lengthy EU approval timelines. For example, EFSA continues to demand unnecessary studies while conducting risk assessments, which result in unpredictable delays in issuing final opinions. In comitology, repeated findings of “no opinion” by the relevant Standing Committee on Plants, Animals, Food and Feed also delay the EU from making decisions on GE approvals, by requiring products to go through an additional assessment by an Appeal Committee before receiving a final approval. The United States continues to engage the EU on delays of this nature and urge the EU to address other barriers to trade in biotechnology products. For example, the EU has yet to establish a practical low-level presence policy and instead maintains a 0.1 percent limit for unapproved biotechnology traits in feed shipments, which is not commercially feasible and disrupts trade in products that have otherwise passed U.S. safety assessments.

### ***Member State Measures on Agriculture Biotechnology***

In March 2015, the EU adopted a directive allowing Member States to ban the cultivation of GE plants in their respective territories for non-scientific reasons (Directive (EU) 2015/412). Under the transitional measures, Member States had until October 2015 to request exemption from the geographical scope of the authorizations already granted or that were under regulatory review for EU cultivation approval. Eighteen Member States “opted-out” of GE crop cultivation for all or part of their territories, and none of the five Member States (the Czech Republic, Portugal, Romania, Slovakia, and Spain) that grew GE corn opted out. However, as of 2023, only Portugal and Spain commercially cultivated GE corn.

Seventeen Member States have opted out of cultivation using biotechnology seeds. The 17 Member States that requested exclusion of their entire territory from the geographical scope of biotechnology applications are Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, and Slovenia. Additionally, one region in Belgium, Wallonia, has also opted out of cultivation. All of these Member States and regions have decided to ban the cultivation of Monsanto 810 corn (MON810) and the seven varieties of corn that were submitted for EU-wide approval in 2015 (apart from Denmark and Luxembourg, which have only banned MON810 and three of the seven varieties of corn that were submitted for EU-wide approval).

### **EU Fumigation Requirements for Hardwood Lumber and Logs**

The EU previously banned the use of methyl bromide to fumigate logs and wood chips imports. Fumigation with sulfuryl fluoride is considered an equally effective substitute and is used throughout the EU, including for EU log exports. While the EU approved the use of sulfuryl fluoride for certain U.S. log exports in 2023, the decision on its use for U.S. pine wood chips remains pending scientific review, which leaves U.S. exporters of pine wood chips without a commercially viable fumigation option. Heat treatment, which is the EU alternative to fumigation, is not scalable in many instances. The United States will continue to engage with the EU on this issue to identify a path forward.

### **Pathogen Reduction Treatments**

The EU maintains measures that prohibit the use of any substance other than water to remove contamination from animal products unless the substance has been approved by the European Commission. These measures significantly affect U.S. exports of beef, pork, and poultry to the EU because the European

Commission has failed to approve several pathogen reduction treatments (PRTs) that have been approved for use in the United States. PRTs are rinses used to kill microbial pathogens that commonly exist on meat after slaughter. The PRTs at issue have been approved by U.S. Department of Agriculture (USDA) after establishing their safety on the basis of scientific evidence.

In March 2017, the National Pork Producers Council submitted an application to the European Commission for the approval of two organic acids, lactic and acetic, for use on pork. The application was submitted to EFSA by the European Commission in September 2017. EFSA published its evaluation in December 2018, confirming the safety of the use of acetic acid and lactic acid in pork processing. As of December 31, 2023, the European Commission has taken no action for the approval of pork PRTs.

The United States maintains that the use of PRTs is a critical tool during meat processing that helps further the safety of products being placed on the market. The United States has engaged the EU to share scientific data regarding the safe use of PRTs and will continue to engage the EU regarding the approval of PRTs for beef, pork, and poultry as an effective tool to improve food safety.

### **Certification Requirements**

Since January 2022, the EU has published at least seven versions of the health certificate it requires for U.S. agricultural exports of fish, meat, dairy, eggs, processed products, and animal byproducts. U.S. exporters are concerned about exporting products of animal and animal origin to the EU market and to third-country markets that require transit through the EU because of the unpredictability of health certificate requirements. Differing interpretations of requirements among Member States adds to this uncertainty. The EU is currently contemplating the addition of attestations related to use of antimicrobials and animal welfare, which may further complicate this issue.

It appears that EU health certification requirements and subsequent modifications are not necessary for the protection of human or animal health and burden to the movement of goods. The certification requirements also are enforced irrespective of whether these goods are destined for commercial sale in the EU or transiting through the EU. The EU's requirements often appear to have been established without scientific evidence, a risk assessment, or consideration of Codex guidance on certifications, the latter of which recommend that official certificates require only the minimum amount of information necessary to meet the objectives of the country's food safety system. Moreover, the EU's changes to certificates are increasingly frequent, complex, and instituted through updates to multiple EU implementing or delegated regulations, making compliance difficult for manufacturers, exporters, foreign competent authorities, and EU importers. Certificates based on the standardized templates published in EU regulations are a condition for trade, but it is increasingly difficult for U.S. regulators to issue the required EU certificates. Differences in interpretation of EU legislation by Member State authorities also create legal instability and often result in trade disruptions, creating additional burden for U.S. exporters.

The United States continues to engage the EU bilaterally to resolve concerns regarding the EU's certification requirements.

### **Titanium Dioxide**

In November 2021, the European Commission published European Commission Implementing Regulation (EU) 2021/2090 in the EU Official Journal denying the authorization of titanium dioxide (E171) as a feed additive for all animal species. Following this action, Regulation (EU) 2022/63 banned titanium dioxide (E171) as a food additive in the EU as of August 7, 2022. The regulation includes a commitment to review the necessity to maintain or delete titanium dioxide from the EU list of food additives for exclusive use as a color in medicinal products. The European Commission has tasked the EMA with reviewing the situation

by April 2024. The regulation calls on the pharmaceutical industry to accelerate research and development for alternatives to titanium dioxide in both new and previously authorized products. The EMA has published information for pharmaceutical companies and is monitoring industry efforts.

### **Animal Byproducts, Including Tallow**

The EU considers all animal byproducts sourced from animals raised under conditions not essentially identical to those in the EU to be hazardous materials. Since 2002, the EU has made modifications to its regulations and implementation practices governing animal byproducts that have resulted in the treatment of U.S. products being considered hazardous. The current EU interpretation of the animal byproducts regulations could potentially prevent most exports of U.S. animal byproducts. Several Member State border inspection posts have already blocked consignments of various technical blood products.

The United States has requested that tallow be allowed entry into the EU for any purpose without verification other than that the tallow and derivatives made from the tallow contain no more than a maximum level of insoluble impurities consistent with the internationally recognized standard for trade in tallow and with World Organisation for Animal Health (WOAH) recommendations.

### **Live Cattle**

Live cattle from the United States are not authorized to be exported to the EU, or transited through the EU en route to third countries, due to EU certification requirements for several bovine diseases. U.S. exports remain blocked because the United States and EU have not agreed on the conditions and format for an export certificate. The EU implemented new animal health laws in 2021, and the USDA Animal and Plant Health Inspection Service (APHIS) continues to explore alternative solutions, particularly with regard to a mutually acceptable animal health certificate, to resolve the issue of market access to the EU for live cattle.

### **Trade in Raw and Processed Shellfish**

In February 2022, the EU determined the U.S. food safety system for raw bivalve mollusks (shellfish) to be equivalent to the EU's food safety system for these products. At the same time, the U.S. Department of Health and Human Services Food and Drug Administration (FDA) found two EU Member States to be operating a food safety system for shellfish to be equivalent to the U.S. food safety system. Trade was reopened for two U.S. states (Massachusetts and Washington) and opened for two EU Member States (Spain and the Netherlands), with an agreed mechanism for expediting the consideration of additional U.S. states and EU Member States. In April 2022, the United States sent dossiers for Connecticut, Maine, and Rhode Island seeking to export raw product to the EU. Although the EU committed to expedited reviews of U.S. state dossiers, as of December 31, 2023, the EU had only considered Connecticut's dossier and has not completed its review. The EU has not begun its review of the other two dossiers.

Processed shellfish from the United States is not currently authorized to be exported to the EU. The EU requires a determination of equivalence for processed and raw shellfish, a level of control for a processed product that has not been supported by science-based risk assessment. The European Directorate-General for Health and Food Safety (DG SANTE) conducted an audit in November 2022, which evaluated whether U.S. controls to deliver and certify processed bivalve shellfish were compliant with U.S. food safety requirements and regulations. Following the audit, the U.S. FDA and U.S. Department of Commerce National Oceanic and Atmospheric Administration (NOAA) identified sections of the audit report that were incorrect or inaccurate and required editing to reflect a correct understanding of the U.S. national control system for processed bivalve shellfish. Technical discussions between FDA, NOAA, and DG SANTE are ongoing.

## **Specified Risk Materials Certification Requirement**

The EU has a different definition of specified risk materials (SRM) from the United States for the animal tissues most at risk of harboring the transmissible spongiform encephalopathies (BSE). The EU requires that materials exported to the EU meet the EU's SRM definition and be derived from carcasses of animals that can be confirmed as never having been outside of regions that the EU considers to be of negligible risk for BSE. Although WOAHA has recognized the United States as having negligible risk, the source cattle for U.S. ruminant origin animal byproduct exports may not necessarily come from negligible risk countries. The EU SRM requirement unnecessarily impedes U.S. exports of ruminant origin animal byproducts considered safe in the United States and would potentially limit the market for ovine/caprine byproducts were other market impediments removed.

The SRM requirement otherwise has not been an issue for bovine meat for human consumption, because the special EU-required production controls in the non-hormone-treated cattle program already provide the necessary verifications regarding the history of the animal. The EU's "born and raised" BSE requirement is based on its non-recognition of WOAHA animal disease status for the United States and is related to animal health versus the origin of the products. Consistent with the recommendations of WOAHA, it is the BSE status of the country of export that should determine whether SRMs have to be removed. The United States continues to raise this issue in appropriate fora, including bilateral technical working groups, and has requested the removal of the EU's requirement for all relevant U.S. commodities.

## **Hazard-based Cutoff Criteria for Agricultural Chemicals**

Active substances can only be approved for use in crop protection products in the EU if they fulfill the approval criteria established in Regulation (EC) 1107/2009. Under this regulation, the EU's determination includes hazard-based "cutoff" criteria that exclude certain categories of products from consideration for normal authorization for use in the EU. In instances where an active substance triggers the cut-off criteria, the EU regulatory process allows for an active substance to remain unapproved, regardless of risk of exposure. For such products, the EU does not complete a risk assessment. Rather, the EU discontinues authorization for a particular product at the time of re-approval, as has happened for an increasing number of substances. The EU has also been taking a "hazard-based approach" to new products, declaring them to be ineligible for authorization based solely on the intrinsic properties of the product, without taking important risk factors such as level of exposure or dosage into account. The United States is concerned that an increasing number of safe and widely-used substances are not being reapproved or having reasonable import tolerances set for their use, due to these arbitrary cut-off criteria when current registrations expire.

## ***Categorization of Compounds as Endocrine Disruptors***

One category of crop protection products subject to the hazard-based approach set out in Regulation (EC) 1107/2009 are substances classified as endocrine disruptors (EDs). EDs are naturally occurring or man-made substances that may mimic or interfere with hormone functions. The United States evaluates possible endocrine effects associated with the use of certain chemicals to ensure protection of public health and the environment. In contrast, the EU established an approach to regulating these compounds that appears not to be based on scientific principles or is maintained without scientific evidence, thereby restricting trade without improving public health.

The scope of trade effects of Regulation (EC) 1107/2009 is broad and overlaps with that of the other hazard criteria and environmental criteria the EU uses in regulating pesticides. The EU obscures its hazard-based decisions with onerous data requirements that allow the European Commission to claim an inability to measure risk. The United States continues to monitor this issue and raise concerns in international and bilateral fora.

### ***Pesticide Maximum Residue Limits***

Maximum residue limits and import tolerances are established under legislation, Regulation (EC) 396/2005, which, unlike Regulation (EC) 1107/2009, is risk-based rather than hazard-based. However, for active substances that are not approved due to the EU's cut-off criteria under Regulation (EC) 1107/2009, the EU may withdraw MRLs established under Regulation (EC) 396/2005, and reduce import tolerances to the default level of 0.01 mg/kg. The EU conducted an evaluation of existing legislation on plant protection products and pesticide residues through the Regulatory Fitness and Performance process. At this time, the EU has no intention to further align Regulation (EC) 396/2005 with the hazard-based principles of Regulation (EC) 1107/2009. As the number of substances ineligible for reauthorization by the EU increases, and as the EU reduces the corresponding MRLs and import tolerances to the default level, the significant negative effect on agricultural production and trade is likely to increase.

The EU regulations also establish transitional periods to allow producers to adjust to changes in EU MRLs, although the transition periods established by the EU are generally not long enough to avoid trade disruption. For many products, there may be a gap of several years between pesticide application and when a final product is offered for sale, creating a situation where products that are compliant with EU MRLs at the time of production do not have time to clear the channels of trade. EU products, on the other hand, appear to remain available for sale as long as they are produced prior to MRLs changing.

The United States has raised concerns over the EU's policy approaches for years and continues to engage on these issues in the WTO SPS Committee. The United States is also monitoring the EU's actions with regard to evaluating and establishing import tolerances for active substances, which have the potential to create further trade disruptions when MRLs are set at levels that are lower than necessary to protect human health and are not viable. According to U.S. industry estimates, U.S. exports valued at over \$5 billion and global trade amounting to \$75 billion are at risk of significant harm. Discontinuing the use of critical substances without a proper science-based risk assessment, and withdrawing or lowering MRLs to levels that are not commensurate with the findings of risk assessments, would have serious adverse effects on agricultural productivity and global markets.

### **Glyphosate Renewal**

The EU requires that the approval of the active substance of a pesticide (*i.e.*, the substance that works against pests or plant diseases) be periodically renewed. Glyphosate, the herbicide used in certain plant protection products, had been approved by the EU as an active substance until December 15, 2023. In July 2023, the EFSA found no critical areas of concern for human, animal, and environmental health from the use of glyphosate in agriculture. Based on the EFSA assessment, on November 28, 2023, the European Commission adopted Implementing Regulation (EU) 2023/2660 to renew the approval of glyphosate for 10 years, until December 15, 2033, following the absence of a qualified majority vote required to approve or reject the renewal from Member States in the Standing Committee on Plants, Animals, Food and Feed and the Appeals Committee.

Following approval of an active substance in the EU, Member States control the authorization of formulated products containing that substance. Member States have various regulations limiting the use of products containing glyphosate. Despite the recent EU renewal of approval of glyphosate in November 2023, some Member States continue to ban glyphosate partially or entirely, including Austria, Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. Member State bans affect the use of the substance within that country's national borders but do not affect any glyphosate MRLs, as all pesticide MRLs are determined at the EU level.



## GOVERNMENT PROCUREMENT

Government procurement is governed by the EU public procurement directives. The directive on procurement in the utilities sector covers purchases in the water, transportation, energy, and postal sectors. The EU content requirement applies to foreign suppliers of goods and services in water (the production, transport, and distribution of drinking water), energy (gas and heat), urban transport (urban rail, automated systems, trams, buses), and postal services.

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

### **Member State Measures on Public Procurement**

Lack of transparency in certain Member State public procurement processes continues to be a barrier to the participation of U.S. firms. U.S. firms have also voiced concerns over onerous documentation requirements and implicit biases in favor of local vendors and other suppliers based on lowest cost instead of the full lifecycle of the procurement. Additional Member State-specific trade barriers to U.S. stakeholder participation in public procurement processes are discussed below.

- *Croatia*: U.S. companies have complained about instances in which technical specifications and scoring in public procurement tenders appear to favor a specific bidder, typically a local or other Member State supplier, thus impacting the participation of competitive U.S. firms.
- *Greece*: U.S. firms have complained that Greece often requires suppliers to source services and production locally or partner with Greek manufacturers as a condition for the awarding of some defense contracts. Additional complaints center on onerous certification and documentation requirements for foreign firms.
- *Hungary*: In April 2022, the European Commission launched a budget conditionality mechanism against Hungary over the “systemic irregularities, deficiencies and weaknesses” in its public procurement procedures. U.S. companies express serious concerns that public procurements in Hungary are not transparent and tend to favor either local or other non-EU countries, including China.
- *Lithuania and Portugal*: U.S. firms have raised concerns over Lithuania’s and Portugal’s use of “lowest cost” criteria as the primary determination for awarding contracts. Although EU law allows for consideration of factors such as quality, company reputation, and prior experience in the decision-making criteria, “lowest cost” bidding continues to be a common practice in these two countries.
- *Slovakia*: The excessive length and complexity of tender verification and appeal procedures remains an impediment to the widest possible participation of potential bidders. Lock-in contracts, in which the Slovakian Government commits to procure a basic service and subsequently expands the contract to include additional services, continue to hamper the access of U.S. firms to public procurement, especially with regard to information technology services.
- *Slovenia*: U.S. firms report instances of tendering documentation that provide unfair advantages to favored vendors, typically an EU Member State company, and opacity in the bid evaluation process as major impediments. Slovenia’s quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases, has received multiple complaints. The NRC has the authority to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal.

In the instances where U.S. companies alleged improprieties in the procurement process, Slovenian authorities directed them to the NRC, which is not required to justify its decisions.

## **Cybersecurity**

### **Proposed EU Cybersecurity Certification Scheme for Cloud Services**

The EU is considering a new certification scheme for cloud services (EUCS). Once finalized, the EUCS is expected to be mandatory for certain public sector and possibly select private sector cloud services. The EU covers cloud services in their GPA schedule and is required to offer non-discriminatory access to U.S. and other GPA suppliers for covered procurements. The United States has presented its concerns about these policies in the WTO Committee on Government Procurement.

#### ***Member State Measures on Cloud Services***

- *France:* France's national digital security agency, Agence Nationale de la Securite des Systemes d'Information (ANSSI), maintains a security certification scheme for cloud services, commonly referred to as SecNumCloud. In May 2021, the French Government issued a strategy for the use of cloud computing by the state (Trusted Cloud strategy), requiring that government agencies and commercial entities considered "critical" must select only cloud services vendors with a SecNumCloud certification to handle their highly sensitive data. As part of this strategy, ANSSI published in March 2022 a revision to the SecNumCloud certification requirements. This revision requires that any cloud provider that handles "highly sensitive" data must be at least 61 percent EU-owned and "immune" from non-EU laws. France's Prime Minister signed an official circular on May 31, 2023, defining "sensitive data" to which SecNumCloud certification requirements apply. The vague definition of "sensitive data" could lead foreign cloud services suppliers to be increasingly precluded from providing cloud services to French public authorities. There are also concerns that in the future the French private sector would adopt a SecNumCloud certification requirement, which could further hamper foreign cloud service providers from providing services in France.
- *Czech Republic:* The Czech Cyber and Information Security Agency (NUKIB) published a "Strategic Analysis of Cloud Services" in December 2022, which advised Czech public and private sector organizations on security considerations related to selecting a cloud service provider. The analysis, which consists of non-binding recommendations rather than directives, acknowledged that U.S. cloud service companies are preferable to China-based competitors from a security perspective. However, U.S. stakeholders have expressed concern that the analysis refers to the potential transfer of data to the U.S. Government but omits key information (e.g., the analysis fails to mention that the controls in the United States over government access to data are more stringent than the controls in many EU Member States). As a result, it could mislead readers with regard to the risk of their data being handed over to the U.S. Government.
- *Hungary:* State and local government bodies and organizations are only allowed to process data in systems operated in the territory of Hungary. Electronic information systems can only be hosted in EU Member States for organizations providing services deemed as critical, which include energy, transportation, agriculture, and health industries.

## INTELLECTUAL PROPERTY PROTECTION

As part of the European Commission's Digital Single Market Strategy, the Directive on Copyright in the Digital Single Market (Copyright Directive) went into effect in June 2019, with the stated goal of addressing legal uncertainty for both rights holders and users with regard to certain uses of copyright-protected works and other subject matter in the digital environment. Member States were required to transpose it by June 7, 2021, but as of December 31, 2023, Poland and Portugal still had not transposed the Copyright Directive in full. The United States continues to follow copyright issues in the EU and its Member States, including legislative developments relating to the transposition of the Copyright Directive into national laws, and will continue to engage with various EU entities as appropriate to address U.S. stakeholder equities.

The Digital Services Act (DSA) initially went into effect on November 16, 2022, and is intended to regulate certain online services, including through rules for how content is shared online. U.S. stakeholders have expressed concerns that the DSA's adoption of a framework for limitations of liability included modifications to the eligibility threshold and conditions that had been set in the E-Commerce Directive, which may adversely impact their intellectual property (IP) rights, in particular for copyright and trademarks.

The European Commission proposed a Data Act in February 2022 with the goal of maximizing the value of data and promoting innovation by increasing the transfer of data that is stored within devices and applications. The Data Act requires the disclosure and making available of data that may be protected by the data holder's or a third party's trade secrets, copyright, or other IP. The final text of the Data Act was published in the EU Official Journal on December 22, 2023, and it entered into force on January 11, 2024.

The European Commission proposed an Artificial Intelligence (AI) Act in April 2021 with the aim of providing a risk-based approach to regulating the development, deployment, and use of AI-driven products, services, and systems. Drafts of the AI Act neglect to provide strong, consistent, and transparent protection schemes for innovative and proprietary information embedded in the source code when the source code is required to be disclosed to the authorities.

In response to the CJEU's judgment in Recorded Artists Actors Performers (RAPP), the European Commission is exploring the possibility of publishing a draft amendment to the Rental and Lending Directive to require or permit material reciprocity for equitable remuneration collected for the performance and communication of sound recordings. The CJEU held that all sound recording producers and performers from contracting parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) are entitled to equitable remuneration. U.S. stakeholders are concerned that such a legislative change reversing the CJEU holding will result in EU Member States withholding full payment of royalties to U.S. producers and performers.

The United States remains very concerned by the EU's overbroad protection of geographical indications (GIs), which adversely impacts both protection of U.S. trademarks and market access for U.S. products that use common names in the EU and third country markets. For example, Regulation (EU) 1151/2012 contains numerous problematic provisions governing the scope of protection and enforcement of Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs), including expansive rules about evocation, extension, co-existence, and translation, among others. These troubling provisions not only adversely affect trademark rights and the ability to use common names, but also undermine access to the EU market for U.S. rights holders and producers. In addition, the EU has granted GI protection to thousands of terms that limits use in the EU market to only certain EU producers, and the use of any term that even "evokes" a GI is also blocked. Despite this level of protection afforded to products sold within the EU, it appears that some producers in Member States continue to produce products featuring terms that

are protected as GIs in other Member States and then export these products outside the EU. The EU has also granted GI protection to the cheese names danbo and havarti, widely traded cheeses that are covered by international standards under Codex. Several countries, including the United States, opposed GI protection of these common names both during the EU's opposition period and at the WTO, but the European Commission granted the protection over that opposition and without sufficient explanation to interested parties.

Regulation (EU) 1151/2012 also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce specific EU GIs in their markets, often with only limited due process requirements to safeguard existing producers, right holders, consumers, importers, and other interested parties. Regulation (EU) 1151/2012 replaced the former GI regulation for food products, Council Regulation (EC) 510/2006, which was adopted in response to WTO DSB findings in a successful challenge brought by the United States (and a related case brought by Australia) that asserted that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB findings also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the Agreement on Trade-Related Aspects of International Property Rights (TRIPS). Regulation 1151/2012 sped up the registration procedure for registering GIs, reduced the opposition period from six to three months, and expanded the types of products capable of being registered as a GI.

The United States continues to have concerns about the EU's GI regulations and proposals, and monitors carefully their implementation and effects on bilateral trade. As to new GI proposals in 2023, the United States is concerned about the proposed revision of the GI system for agricultural products, foodstuffs, wines, and spirit drinks. The United States is also concerned about Regulation (EU) 2023/2411, which goes into effect from December 1, 2025, and expands the scope of GI protection to craft and industrial products. The United States also does not believe that the EU should bargain for specific GI recognition in its bilateral trade agreements in return for market access, because such IP rights should be evaluated independently on their merits, based on the unique circumstances of each jurisdiction. Similarly, the United States is concerned by the EU's attempts to restrict common terms for wine in third country markets. The United States is carefully monitoring the EU's GI regulations and proposals as well as the implementation and effects of these regulations and proposals on bilateral trade.

The United States remains very concerned by the conduct and outcome of the 2015 WIPO negotiations to expand the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs. Of particular concern to the United States was the manner of engagement in these negotiations by the European Commission and by several Member States, including the Czech Republic, France, Greece, Italy, and Portugal, which took precedent-setting steps to deny the United States and the vast majority of WIPO countries full negotiating rights and depart from longstanding WIPO practice regarding consensus-based decision-making. Likewise, the resulting text—the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications—raises numerous and serious legal and commercial concerns, including with respect to the degree of inconsistency with the trademark systems of many WIPO countries, and could have significant negative commercial consequences for trademark holders and U.S. exporters that use common terms. The EU became a party to this Agreement in November 2019. The Agreement entered into force in February 2020.

### **Member State Measures on Intellectual Property**

Although Member States generally maintain high levels of IP protection and enforcement, the United States remains concerned about the IP practices of several countries. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IP protection and enforcement, including through the annual Special 301 review process. The United States is particularly concerned about counterfeit pharmaceuticals and personal protective equipment.

- *Austria:* With regard to trade secrets, U.S. companies reported gaps in criminal liability, insufficient specialization of judges, low criminal penalties, and procedural obstacles that limit the Austrian Government's efforts to effectively combat trade secret theft and misappropriation. In July 2023, Austria took steps to address these concerns, and amended its Unfair Competition Statutes and its Criminal Code to establish higher criminal penalties for trade secret theft and strengthen its criminal procedures as they relate to such theft.
- *Bulgaria:* Enforcement concerns in Bulgaria include inadequate prosecution efforts, lengthy procedures, and insufficient criminal penalties, particularly in the area of online piracy. Stakeholders have raised concerns as to notorious online pirate sites reportedly hosted in Bulgaria. As a result, USTR listed Bulgaria in the [2023 Special 301 Report](#) Watch List. As part of this process, USTR has been conducting an [Out-of-Cycle Review](#) of Bulgaria to assess progress in IP enforcement. In August 2023, Bulgaria amended its Criminal Code in an effort to enhance its ability to investigate and prosecute digital piracy cases. The United States will monitor whether implementation of this legislation results in an improved rate of criminal prosecutions in Bulgaria.
- *Germany:* When Germany implemented the Copyright Directive in 2021, it introduced new requirements for online platforms regarding the filtering of user uploads to prevent the automatic blocking of potentially copyright-protected content for uses that are presumably authorized by law. Some U.S. stakeholders are concerned that Germany also introduced an overly broad copyright presumption that makes it difficult for creators to enforce their copyrights in music and videos that are used in the background of short-form content that is often posted on social media. U.S. stakeholders also voiced concerns that Germany's legal framework for technological protection measures remain inadequate and that Germany's private copy exception is too broad. The United States will monitor how implementation impacts U.S. stakeholders.
- *Poland:* Stakeholders continue to identify copyright piracy online as a significant concern in Poland and noted inconsistent enforcement on the part of law enforcement and backlogs in the Polish courts. Stakeholders also are concerned about illegal camcording and easy access to counterfeit products.
- *Romania:* Online piracy remains a concern with some notorious online pirate sites reportedly hosted or registered in Romania. Low penalties for IP violations impede investigations and do not offer any meaningful deterrent to further IP crimes, so law enforcement choose to bundle significant cases under tax evasion penal files. Romania lacks an effective and timely mechanism for rights holders to submit takedown requests against online markets and hosting platforms for infringing material. Adequate resources, including additional training for law enforcement, are needed to enhance enforcement quality. Although Romania has made progress on addressing long-standing IP protection and enforcement concerns, the United States continues to closely follow IP-related developments in the country.

## SERVICES BARRIERS

### Telecommunications Services

#### Regulation on Privacy and Electronic Communications

In January 2017, the European Commission proposed a new Regulation on Privacy and Electronic Communications, which would replace the e-Privacy Directive of 2002. The proposed regulation would

expand the scope of the existing directive, which applies to traditional telecommunications services providers, to include over-the-top Internet-enabled services. U.S. suppliers have expressed concerns that, although the proposed regulation is supposed to align the specific rules for telecommunications services with the General Data Protection Regulation (GDPR), it may actually lead to additional and potentially conflicting requirements. In late 2017, the European Parliament adopted its final amendments to the proposed regulation, and in February 2021, the European Council announced that it had finalized its version, clearing the way for trilogue negotiations to begin. Those negotiations have proceeded slowly and are ongoing.

### **Audiovisual Services**

In November 2018, amendments to the 2007 Audiovisual Media Services Directive (AVMSD) were adopted to reflect developments in the audiovisual and video-on-demand markets. Member States were given 21 months to transpose the amendments into national legislation. On November 23, 2021, the European Commission launched proceedings against 23 Member States for failure to transpose the AVMSD into national law. As of December 31, 2023, proceedings were still ongoing for Ireland, which has a case before the CJEU. The European Commission also has open proceedings against Slovenia, Croatia, France, and Estonia.

The original AVMSD established minimum content quotas for broadcasting that had to be enforced by all Member States. Member State requirements were permitted to exceed this minimum quota for EU content, and several have done so. However, the original AVMSD did not set any strict content quotas for on-demand services, although it still required Member States to ensure that on-demand services encourage production of, and access to, “EU works.”

The 2018 amendments include provisions that impose on Internet-based video-on-demand providers a minimum 30 percent threshold for EU content in their catalogs and require that they give prominence to EU content in their offerings. The new AVMSD also provides Member States the option of requiring on-demand service providers not based in their territory, but whose targeted audience is in their territory, to contribute financially to EU works, based on revenues generated in that Member State. In addition, the new rules extend the scope of the AVMSD to video-sharing platforms that tag and organize content.

### **Member State Measures on Audiovisual Services**

A number of Member States maintain measures that affect trade in audiovisual services. A summary of some of the more significant national practices follows.

- *Austria:* Austria transposed the AVMSD into federal law in January 2021. Austria has a 30 percent quota for European works, as defined in the measure, in Video-on-Demand (VOD) catalogues and requires European works to be highlighted and labelled as such. At least 10 percent of transmission time, or 10 percent of the programming budget is to be dedicated to independent work.
- *Belgium:* In the Wallonia-Brussels Federation, video-on-demand services must invest a percentage of revenue into regional audiovisual works or pay a levy to the region’s Cinema and Audiovisual Centre. In March 2023, the Belgian French Community notified a draft decree to the European Commission that would increase the mandatory contribution for the largest service suppliers from the current 2.2 percent of revenue to 9.5 percent.
- *France:* France’s implementing legislation, approved by the European Commission in 1992, requires that 60 percent of television programming in France be of EU origin, thus exceeding the AVMSD threshold. In addition, 40 percent of the programming devoted to EU origin must include

original French-language content. These quotas apply to both regular and prime-time programming slots, and the definition of prime time differs from network to network. The French Government issued an order in December 2020, and an additional six decrees in December 2021, transposing the AVMSD into French law.

Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMSD minimum) and 30 percent to 35 percent French-language content, but channels and services are required to increase their investment in the production of French-language content. France's Audiovisual and Digital Communication Regulatory Authority oversees implementation of the quotas.

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film in such a way as to account for more than 30 percent of the multiplex's weekly shows.

- *Italy:* The Italian Consolidated Audiovisual Media Services Act requires that 50 percent of eligible broadcast hours be European works, as defined in the measure, and that commercial television channel devote 16.6 percent of eligible hours to Italian works and public broadcasters devote 25 percent of eligible hours to Italian works. In addition, domestic video-on-demand services must ensure that 30 percent of their catalogues are for European works produced within the past five years. Fifteen percent of a subscription video-on demand service's catalogue must be dedicated to Italian works produced by independent producers within the past five years. Non-linear video-on-demand providers subject to Italian jurisdiction must also give prominence to EU works.

Under the Italian law, commercial broadcasters must annually invest 12.5 percent of their revenues in the production of independent European works. Half of this money is reserved for Italian works. Foreign and domestic video-in-demand providers must devote 17 percent of their annual net revenues generated in Italy to the production of European independent works. This quota increased to 18 percent in 2023 and will increase to 20 percent in 2024. Fifty percent of the investment obligation must be reserved for Italian works produced by independent Italian producers.

- *Poland:* Television broadcasters must dedicate at least 33 percent of their broadcasting time (excluding time allocated to information services, advertisements, telemarketing, sports broadcasts, and game shows) to programs originally produced in the Polish language, at least 50 percent of their broadcasting time to programs of EU origin, and at least 10 percent of their broadcasting time to programs by EU independent producers. On-demand services must promote content of EU origin, especially content originally produced in Polish, and dedicate at least 20 percent of their catalog to EU content.
- *Spain:* For every three days that a film from a non-EU country is screened, one EU film must be shown in movie theaters. This ratio is reduced to every four days if the cinema screens a film in an official language of Spain other than Spanish and keeps showing the film in that language throughout the day. In addition, broadcasters and on-demand services must invest 5 percent of their revenues in the production of EU and Spanish works, and 60 percent of this allocation should be directed towards productions in any of Spain's official languages. This also applies to digital terrestrial television.

## **Professional Services**

Austria, Belgium, Bulgaria, Croatia, Cyprus, Greece, Hungary, Latvia, Lithuania, and Malta require EU or European Economic Area (EEA) nationality or citizenship for full admission to the bar, which is necessary for the practice of EU and Member State law. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

## **Financial Services**

The European Commission has taken the position that its directive on statutory auditing prohibits Member States from considering professional experience of foreign auditors acquired outside of the EU when considering whether to grant statutory auditing rights. The United States will continue to advocate for Member States to take into account the experience of U.S. certified public accountants acquired outside of the EU.

# **BARRIERS TO DIGITAL TRADE**

## **Digital Services Taxation**

The United States and EU Member States are among the 137 member jurisdictions to have joined the 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 digital services taxes (DSTs) in the future. On October 21, 2021, the United States, Austria, France, Italy, Spain, and the United Kingdom issued a [joint statement](#) “on a transitional approach to existing Unilateral Measures while implementing Pillar 1.” According to the statement, DST liability that accrues to Austria, France, Italy, Spain, or the United Kingdom during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods with respect to each country and committed not to take further trade actions against each country with respect to existing DSTs, provided that the country follows through on the agreement described in the joint statement, until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. The arrangement set out in the October 21 joint statement was extended to June 30, 2024, according to a [joint statement](#) issued on February 15, 2024. In coordination with the U.S. Department of Treasury, USTR continues to monitor the implementation of the political agreement and the transitional approach as provided in the joint statement.

## **Network Usage Fees**

On May 2, 2022, the European Telecommunications Network Operators Association (ETNO) released a report urging the European Commission to adopt new regulation that would require large Internet-enabled service suppliers to pay network usage fees to European telecommunications network operators in order to recoup costs they claim telecommunications network operators bear due to carrying high-bandwidth content. Both the European Commission’s Executive Vice President for A Europe Fit for the Digital Age and the European Commissioner for Internal Market have expressed some support for ETNO’s concerns and have indicated that they want to examine how content providers could help finance telecommunications infrastructure. However, a number of other stakeholders, including some Member States, have raised concerns with the ETNO proposal. On October 7, 2022, the Body of European Regulators for Electronic Communications (BEREC) adopted a report that concluded the ETNO proposal was unnecessary and “could be of significant harm to the Internet ecosystem.”



On February 23, 2023, the European Commission launched a public consultation on the EU's connectivity sector and telecommunications infrastructure. On May 19, 2023, U.S. Department of Commerce submitted formal comments raising concerns with mandating direct payments from content and application suppliers to telecommunications network operators. The U.S. filing also explains the U.S. approach to financing the deployment of high-speed broadband service and closing the digital divide including expanding connectivity to rural and other underserved areas. On October 10, 2023, the European Commission published the results of this consultation, concluding that no plan for network usage fees would proceed given the feedback from stakeholders. Instead, the European Commission announced they would undertake a broader approach, aiming to develop a white paper on a broader scoped "Digital Networks Act" in the first quarter of 2024 and file a proposal before the summer of 2025.

## INVESTMENT BARRIERS

With few exceptions, EU law generally requires that any company established under the law of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. Laws and regulations pertaining to the initial entry of foreign (*i.e.*, non-EU) investors, however, are largely still in the purview of individual Member States. As discussed below, the policies and practices of Member States can have a significant impact on U.S. investment.

### **Member State Measures on Investment**

- *Croatia*: While Croatia generally affords foreign investors the same treatment as domestic investors, Croatian law restricts non-EU foreign ownership and control in certain sectors, such as inland waterways transport, maritime transport, rail transport, air to ground handling, freight-forwarding, publishing, ski instruction, and primary mandated healthcare.
- *Cyprus*: Cypriot law imposes restrictions on non-EU foreign ownership in certain sectors and activities. For example, only EU citizens have the right to register as construction contractors in Cyprus, and non-EU investors are not allowed to own a majority stake in a local construction company.
- *Hungary*: In 2020, the Hungarian Parliament passed a law requiring the reporting of foreign investments to the government in certain sectors, including transportation, healthcare, energy, tourism, defense, finance, and information technology. The Hungarian Government will grant approvals on the basis of the impact of the notified investment on the public interest, public safety, or public order, among other factors. This process is separate from Hungary's national security-based investment screening mechanism, which was established in 2018. Although this legislation was originally set to expire on December 31, 2022, it was extended in December 2021 without a date of expiry. Stakeholders report that there are key differences between the two investment screening mechanisms, including their scopes, definitions, implementing ministries, and review procedures, which lead to complexities and delays with investing in Hungary.
- *Italy*: U.S. companies have complained that unclear processes and lengthy delays have hindered their ability to apply for and obtain licenses for energy exploration and satellite services. Once licenses have been obtained, U.S. companies have faced legal and bureaucratic hurdles that have hindered their ability to get concessions.
- *Latvia*: U.S. investors have reported that the judicial system in Latvia can present significant challenges, particularly in regard to insolvency proceedings that often take several years to resolve.

There also have been reports of abuse by both insolvency administrators and bad-faith creditors who have used insolvency proceedings to seize control of assets and companies and to extract unwarranted settlements and fees. U.S. stakeholders also continue to voice similar concerns about civil cases.

In 2017, Latvia enacted amendments to its Law on Land Privatization in Rural Areas that, among other things, prohibit foreigners who do not possess a working knowledge of the Latvian language from purchasing agricultural land. In June 2020, the CJEU found that the law violated European law. Despite the CJEU decision, Latvia has taken no action to change the law.

- *Poland:* U.S. investors report that the Polish tax system continues to be a problem because of its complexity, unpredictability, and generally short time periods between the announcement and entry into force of legislation.

Polish law limits non-EU citizens to 49 percent ownership of companies operating in air transport, radio and television broadcasting, and airport and seaport operations. In addition, the Polish Government has expressed a desire to increase the percentage of domestic ownership in some industries such as media, banking, and retail, which have large holdings by foreign companies, and has employed sectoral taxes and other measures to advance this aim.

- *Portugal:* While Portugal generally affords foreign investors the same treatment as domestic investors, Portuguese law limits foreign ownership of companies engaged in the production, transmission, and distribution of electricity; the production of gas; the pipeline transportation of fuels; wholesale services of electricity; retailing services of electricity and non-bottled gas; and, services incidental to electricity and natural gas distribution. Concessions in the electricity and gas sectors are assigned only to companies with their headquarters and effective management in Portugal.

## SUBSIDIES

Various financial transactions and equity arrangements in the EU raise questions about the role of state funding in supporting or subsidizing private or quasi-private organizations, including in the manufacture of civil aircraft.

### Government Support for Airbus

In October 2019, after 15 years of litigation, the WTO authorized the United States to take \$7.5 billion in trade countermeasures in the dispute against the EU, France, Germany, Spain, and the United Kingdom regarding their illegal subsidies for the Airbus consortium.

On June 15, 2021, the United States and the EU announced a cooperative framework to address the large civil aircraft disputes. The cooperative framework suspended each side's tariffs related to this dispute for five years. The United States and the EU also agreed to principles for government support in this sector, including their shared intent that any financing for the production or development of large civil aircraft be on market terms. The United States and EU further agreed to collaborate on jointly analyzing and addressing non-market practices of third countries that may harm our large civil aircraft industries.

Over many years, France, Germany, Spain, and, to a much lesser extent, Belgium, have provided subsidies to Airbus-affiliated national companies to aid in the development, production, and marketing of Airbus's large civil aircraft. These governments have financed from 33 percent to 100 percent of the development

costs (launch aid) for all Airbus aircraft models. They have also provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, marketing assistance, and research and development funding, and have applied political and economic pressure on purchasing governments. The cooperative framework affirms the EU's intent to provide future funding only on market terms.

In addition to these subsidies, the EU maintains aeronautics research programs that are driven significantly by a policy intended to enhance the international competitiveness of the EU civil aeronautics industry. EU Member State governments have spent hundreds of millions of euros to create infrastructure for Airbus programs.

The United States will monitor any government financing of Airbus closely.

### **Subsidies for Fruit and Vegetables**

The EU Common Market Organization (CMO) provides a framework for market measures under the EU's Common Agricultural Policy, including for measures related to the promotion of fruit and vegetables. Implementing rules covering fresh and processed products are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to POs for dozens of products, including peaches, citrus fruits, and olives.

In 2015, a new basic payment scheme and greening payments were introduced, replacing the single payment scheme. Direct payments also are paid to support certain processing sectors, including, for example, peaches for juicing in Greece. The general lack of transparency around the distribution of EU subsidies at the Member State level in the fruit and vegetable industry raises questions about whether the payments are decoupled from production, and U.S. producers remain concerned about potential hidden subsidies. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

## **OTHER BARRIERS**

### **Pharmaceutical Products**

On April 26, 2023, the European Commission published a proposal to revise the EU's general pharmaceutical legislation. The proposal included a new directive and a new regulation relating to medicinal products for human use intended to address, in part, regulatory protection for innovative medicines and create more favorable procedures for marketing authorization. This would provide incentives for companies to launch simultaneously across the EU. However, the conditions attached to the incentives include factors that may not be fully within outside the control of companies, such as processing times for marketing authorization and reimbursement determinations in each EU Member State. The European Commission also published on October 24, 2023, a "Communication on Addressing medicine shortages in the EU," which adopted a set of actions to address critical shortages of medicines and enhance the security of their supply in the EU. The United States is monitoring both developments.

### **Member State Measures on Pharmaceutical Products**

U.S. pharmaceutical stakeholders have expressed concerns about several EU Member State policies affecting market access for pharmaceutical products, including non-transparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement. These policies have been identified in several Member States as described below. Stakeholders have also expressed concerns over inconsistent and lengthy time periods for pricing and reimbursement decisions. U.S. industry stakeholders

have grown increasingly concerned about policies that are being formulated with little opportunity for engagement. In addition, changes to EMA policy regarding disclosures of clinical trial data, including potential disclosure of confidential commercial information submitted to EMA by pharmaceutical firms seeking marketing authorization, are also of concern to stakeholders. The United States continues to engage with the EU and individual Member States on these matters.

- *Austria:* U.S. pharmaceutical companies continue to express concerns about reimbursement pricing decisions by the statutory insurance providers association that are non-transparent and not preceded by a meaningful opportunity for stakeholder engagement.
- *Belgium:* U.S. industry stakeholders report that domestically manufactured medicines are permitted a price premium of up to 10 percent on the manufacturing cost component when calculating their manufacturer's selling price. Imported products are only eligible for up to a five percent price premium. Meanwhile, initiatives intended to lead to faster market access for new innovative drugs have been slowly, and incompletely, implemented.
- *Czech Republic:* Although the Czech Republic's system for determining pharmaceutical pricing and reimbursement for innovation remains challenging for U.S. companies, many report the situation has improved after new legislation came into effect in early 2022. Still, U.S. companies continue to express concerns regarding non-transparent and lengthy reimbursement processes.
- *France:* U.S. stakeholders have expressed concerns that the process of gaining market access for drugs in France is slower than elsewhere in the EU, resulting from delays in reimbursement approvals of as much as 19 months after marketing authorization, compared to the no more than 16 months required by EU law. A drug is effectively not on the market until it receives reimbursement approval.
- *Greece:* U.S. pharmaceutical industry stakeholders have continued to raise major concerns about the lack of transparency or opportunities for meaningful stakeholder input into the application of policies. Stakeholders have also raised concerns about lengthy reimbursement timelines and inconsistent application of pricing and reimbursement processes.
- *Hungary:* U.S. pharmaceutical industry stakeholders express concerns regarding delays in decision-making and reimbursement and lengthy processes for making changes to the list of drugs approved for reimbursement. U.S. pharmaceutical industry stakeholders note the lack of opportunity to provide input into these pricing and reimbursement processes.
- *Ireland:* Pharmaceutical industry stakeholders, including many U.S. firms, continue to express concerns over the Irish Government's delays in reimbursement decisions. Access to new drugs and innovative medicines are subject to a lengthy decision process.
- *Italy:* U.S. healthcare industry stakeholders face an unpredictable business environment in Italy, which includes the Italian Government's highly variable implementation of complex pricing and reimbursement policies, and have raised concerns about reimbursement delays for pharmaceutical products and delayed payments for medical devices. Moreover, the average time Italian public hospitals take to pay medical device suppliers continues to exceed the maximum period permitted by EU law. U.S. industry stakeholders continue to request that the Italian Government address these issues.

- *Poland:* U.S. stakeholders have expressed concerns over the lack of opportunity for meaningful stakeholder input into Poland's rulemaking and tendering processes, as well as the transparency of reimbursement rules for pharmaceutical products. U.S. industry stakeholders report that Poland's pricing and reimbursement system is backlogged, taking more than 844 days on average from regulatory approval to patient access. The United States will continue to urge Poland to engage meaningfully with stakeholders with respect to their concerns.
- *Romania:* Innovative pharmaceutical producers have identified several significant challenges resulting from the Romanian Government's failure to update, despite repeated requests, the lists of innovative pharmaceuticals that are eligible for reimbursement under the national health system, with numerous applications pending. In addition, both innovative and generic pharmaceutical companies have withdrawn drugs from the Romanian market, as the official prices set in Romania can fall below production costs.
- *Slovakia:* Notwithstanding the Slovakian Government's adoption in 2022 of legislation designed to streamline and accelerate the approval and reimbursement of innovative medicines, U.S. pharmaceutical stakeholders report that the processes for such approval and reimbursement continue to suffer from a lack of transparency and excessive delays.
- *Spain:* U.S. pharmaceutical industry stakeholders continue to note concerns as to cost containment measures affecting the industry, including lack of clarity around criteria for reimbursement, substantial delays in reimbursement processes, and uneven patient access across autonomous regions.
- *Sweden:* U.S. pharmaceutical industry stakeholders have raised concerns about Sweden's increasingly challenging and nontransparent environment with regard to pricing and reimbursement.

### **EU Fluorinated Greenhouse Gas Regulation**

The F-Gas policies initially discussed in the Technical Barriers to Trade section of this NTE Report chapter place restrictions on the sale of certain refrigeration and air conditioning equipment, foams, and propellants that use fluorinated gases. In particular, using a quota system, the F-Gas policies limit and, over time, progressively restricts the quantity of hydrofluorocarbons (HFCs) available for use in the EU.

The European Union's update to its F-Gas policies, Regulation (EU) 2024/573, went into force in March 2024 with additional restrictions relative to current 2030 targets. U.S. stakeholders have expressed concerns that the regulation's reductions in HFC quotas and imposition of an unrealistic timeline to introduce lower Global Warming Potential (GWP) alternatives risks increasing illegal trade in HFCs. U.S. stakeholders also have expressed concerns that insufficient oversight and enforcement by the EU and many Member States of F-Gas Regulation (EU) 2024/573 will allow for widespread importation of HFCs that exceed, and otherwise are not accounted for under, the EU's quota system. Such imports negatively affect U.S. exporters of environmentally friendly alternative refrigerants and undermine stated EU environmental objectives. U.S. stakeholders have further expressed concerns that the potentially different approaches between F-Gas Regulation (EU) 2024/573 and REACH's forthcoming definition of PFAS could pose a compliance challenge.

The United States and stakeholders are also concerned that HFCs are trafficked without the knowledge of customs officials, either hidden or falsely declared on customs forms, or they are imported unaccounted for when already integrated in equipment containing HFCs.

### **EU Carbon Border Adjustment Mechanism**

On October 1, 2023, the EU began implementing the transitional period for its Carbon Border Adjustment Mechanism (CBAM) regulation. Beginning in 2026, CBAM will impose a fee on embedded emissions of imports. The fee will be linked to the carbon price in the EU Emissions Trading System (ETS). While the EU's CBAM will credit imports for explicit carbon prices paid by foreign producers in their home market, U.S. exports may not be eligible for such credits since CBAM does not offer credits for regulatory and other non-price mechanisms for reducing carbon emissions.



# GHANA

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Ghana's average Most-Favored-Nation (MFN) applied tariff rate was 12 percent in 2022 (latest data available). Ghana's average MFN applied tariff rate was 15.9 percent for agricultural products and 11.4 percent for nonagricultural products in 2022 (latest data available). Ghana has bound 15.1 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 92.0 percent. Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.6 percent—more than six times the average level of its MFN applied rates on agricultural goods. Ghana has bound some selected agricultural goods, including milk and cream, eggs, tea, wheat, and oil cake at 15 percent. Nearly 99 percent of Ghana's tariffs on industrial goods are unbound at the WTO.

Consistent with the Economic Community of West African States (ECOWAS) Common External Tariff (CET), Ghana applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and (5) 35 percent duty on certain goods that the Ghanaian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but, in practice, some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline. Ghana was still in the process of adopting the Harmonized Schedule 2022 changes to the CET tariff schedule as of December 2023.

The Customs (Amendment) Act, 2020 (Act 1014) increased the import duty on vehicles and parts from between 5 percent and 20 percent to 35 percent on some specified vehicles such as passenger cars, sport utility vehicles, and light commercial vehicles. Ghana applied the 35 percent tariff rate to vehicles that are less than five years old, retaining the current lower tariffs on older vehicles. Ghana has not notified this proposed tariff change to the WTO.

#### **Taxes**

Imports are subject to a variety of fees and charges in addition to tariffs. Ghana's standard value-added tax (VAT) rate of 15 percent is applied to imports. Ghana is not currently imposing its 15 percent VAT on domestically assembled automobiles, although it is applying it to imports of automobiles. The Ghana Revenue Authority announced in April 2022 that, effective immediately, it will begin collecting the 15 percent VAT from nonresident companies or persons that conduct business transactions in Ghana via the electronic transmission of data over communications networks like the Internet. It will also apply a series of other charges to those transactions, with an effective tax rate of more than 22 percent.

Like all ECOWAS countries, Ghana imposes a 1 percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions. Ghana also imposes a 0.2 percent levy on imports from outside African Union (AU) Member States to fund its contribution to the AU.

Other taxes and charges have proliferated in recent years. Under the Ghana Export-Import Bank Act, 2017, Ghana imposes a 0.75 percent levy on all nonpetroleum products imported in commercial quantities.



Effective through 2024, Ghana imposes a special levy of 2 percent on all imports, except for machinery and equipment listed under Chapters 84 and 85 of the Harmonized System and some petroleum products and fertilizers.

Ghana imposes taxes on imported items such as rice, poultry, printed materials, and electricity—a 15.0 percent VAT, a 2.5 percent Ghana Education Trust Fund levy, a 2.5 percent National Health Insurance levy, and a 1.0 percent COVID-19 Health Recovery levy. In principle, these taxes are chargeable on the value of goods and services produced or provided in Ghana, but the government is largely unable to exact the taxes from domestic retailers, who rarely comply. All four of these charges are imposed on most other imported items as well as their domestically produced equivalents.

## **Non-Tariff Barriers**

### **Import Bans and Import Restrictions**

Ghana requires registration certificates for imports of food, cosmetics, pharmaceuticals, and agricultural goods. Since 2014, Ghana has banned the importation of tilapia and has limited the issuance of import permits for corn, poultry, and poultry products, although the government no longer enforces a domestic purchase requirement as a condition for import.

Since 2019, the Ministry of Agriculture has issued and renewed poultry import permits on an *ad hoc* basis, and the issuance and renewal application and approval processes lack transparency, leading to uncertainty for traders.

Under the Customs (Amendment) Act, 2020 (Act 1014), imports of vehicles older than 10 years are prohibited. The implementation continues to be delayed.

Ghana imposed a temporary ban on the importation of excavators to regulate their use in illegal mining, effective May 2019. Import exemptions are granted on an exceptional basis, but the issuance is often delayed.

### **Foreign Exchange Restrictions**

On November 17, 2022, the Bank of Ghana announced the temporary withdrawal of foreign exchange support for the importation of goods classified as “non-critical” or “non-essential.” Affected goods include rice, poultry, vegetable oils, pasta, and fruit juice, as well as ceramic tiles and toothpicks. This restriction was expected to remain in place until May 2023, but as of December 2023, there had been no review and the restriction remained in place.

Ghana defends its action as part of efforts to ensure the country’s foreign exchange reserves while encouraging domestic production and consumption of import substitutes; however, Ghana is unable to meet domestic demand for poultry meat and rice with domestic production. U.S. rice and poultry exports are down significantly since Ghana first implemented its foreign exchange restrictions in 2021. In 2023, U.S. rice exports were significantly lower, under \$400,000, down from \$3.9 million during 2021. In 2023, U.S. poultry meat exports were \$57.2 million, down from \$92.6 million during 2021.

### **Customs Barriers and Trade Facilitation**

Ghanaian customs practices and port infrastructure continue to present major obstacles to trade. Officials have introduced risk management approaches; however, the majority of imports are still subject to inspection on arrival. Anecdotal reports suggest between 60 percent and 80 percent of imports are still

subject to physical inspection or scanning, causing delays. This is well beyond Ghana's announced goal of reducing inspections to roughly 10 percent of imports, based on risk for agricultural products. Importers report erratic application of customs and other import regulations, lengthy clearance procedures, and corruption. The resulting delays can contribute to unnecessary demurrage charges and product deterioration, resulting in significant losses for importers of perishable goods.

The Customs Division of the Ghana Revenue Authority (GRA) has taken on the inspection and valuation role once occupied by five licensed destination inspection companies. This has slightly reduced delays, although the high rate of physical inspections noted above remains an impediment. Ghana has launched several initiatives since 2017 to support online information and processing of trade transactions, including the development of a National Single Window. In September 2017, Ghana introduced electronic ("paperless") cargo clearance at ports to reduce clearance times.

Although Ghana's Customs Act of 2015 (section 67) indicates that customs valuation should primarily be based on transaction value or the price actually paid or payable for goods imported into the country, in practice, stakeholders indicate that the GRA often applies a benchmark to determine customs valuation for every imported product or uses the higher of the benchmark or the transaction value. The GRA Customs Technical Services Bureau (CTSB) uses a customs valuation database that includes data from customs valuation databases of various tax authorities from other countries. The GRA CTSB subscribes to these data on an annual basis. Data from these entities, together with the GRA's own data, are then used to determine the benchmark values. Although the GRA CTSB's customs valuation may address the concern about under-invoicing goods and under-collecting duties, a system of risk management to assess transaction value trends of imported goods can identify real under-invoicing, without imposing potential inaccurate benchmarking on all goods.

Imported vehicles in Ghana are subject to a customs examination fee of 1 percent. Section 60 of the Customs Act of 2015 indicates that valuation for purposes of the tariff and other duties and charges should be based on the first purchase price, then discounted by fixed amount by age. In practice, to establish the customs value of imported vehicles, the GRA Customs Division uses a system of online vehicle identification number information and age-based value benchmarking for each vehicle. This system tends to overvalue used vehicles, in particular. Imported used vehicles more than 10 years old incur an additional charge ranging from 12.5 percent to 20.0 percent of the cost, insurance, and freight value.

Ghana ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Ghana has not yet submitted notifications related to: import, export, and transit regulations. This notification had been due to the WTO on July 22, 2022, according to Ghana's self-designated TFA implementation schedule.

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

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

### **Technical Barriers to Trade**

#### **Standards**

The Ghana Standards Authority (GSA) develops Ghanaian national standards and adopts international standards for most products. The GSA has over 3,356 national standards on, *inter alia*, building materials, food and agricultural products, household products, electrical goods, and pharmaceuticals. Ghana has

adopted 29 ECOWAS standards. The Ghanaian Food and Drugs Authority (FDA Ghana) is responsible for enforcing standards for food, drugs, cosmetics, and health items.

### **High Risk Goods**

Ghana classifies some imports as “high risk goods” (HRGs) that must be inspected to ensure they meet Ghanaian or international standards. Since January 2019, the GSA ceded its responsibility of verifying a certificate of analysis or a certificate of conformance at Ghanaian ports to Bureau Veritas and Intertek. Under a process called the EasyPASS Program, either Bureau Veritas or Intertek, after satisfactory verification, issues an EasyPASS Certificate (certificate of conformity), which is used to facilitate customs clearance. While exporters pay fees ranging from 0.35 percent to 0.50 percent of the FOB to Bureau Veritas or Intertek; importers in Ghana are required to register with the GSA and pay an annual registration fee, ranging from \$20 to \$4,000, depending on the type of products they import. Upon arrival of goods at a port in Ghana, the GSA checks the validity of the EasyPASS Certificate before releasing a consignment for clearance.

The GSA classifies these HRGs into 11 broad groups (reduced from 20 in 2019 after ceding the inspection of food, cosmetics, and pharmaceutical and household chemical products to FDA Ghana), including toys, sports equipment, electrical appliances, and chemical products. Stakeholders have found this classification system vague and confusing. According to GSA officials, they classify these imports as high risk because they pose “potential hazards,” although that phrase remains undefined in law or regulation.

### **Food Products**

FDA Ghana ensures that all food products comply with the GSA General Labelling Rules, which include food expiration and shelf-life dates. Prepackaged foods to be imported for distribution or sale for local consumption must have at least two-thirds of their shelf-life intact at the time of clearance from the port of entry. Goods that do not meet shelf-life requirements are rejected and must be re-exported or destroyed under the supervision of FDA Ghana at the expense of the importer. The United States has asked for clarification regarding the requirement’s legitimate objective.

### **Automobile Policy and Standards**

Ghana’s Automotive Development Policy of 2019 aimed at creating a domestic automotive industry as part of Ghana’s industrialization plans. It is targeted at attracting automotive assembly manufacturers to invest in Ghana through tax incentives and other facilitation measures such as import incentives. The government was unable to implement the policy by its target deadline of May 2023 and did not propose a new timeline for implementation. The automotive policy could have a significant impact on U.S. exports to Ghana. In 2023, the United States exported \$185 million in new and used automobiles and vehicle parts to Ghana, representing 21.7 percent of U.S. total exports to Ghana.

In December 2019, Ghana also established compulsory vehicle safety and emissions standards for both imported and locally produced vehicles. Ghana’s standards were modeled broadly on the United Nations Economic Commission for Europe (UNECE) 1958 Agreement automobile standards. The GSA noted in the issued standards that it would accept and publish other applicable standards not listed as an amendment or revision after the establishment of their equivalence to the Ghana standards. Following U.S. advocacy with Ghana, the Ministry of Trade and Industry and the GSA incorporated amendments to include U.S. Federal Motor Vehicle Safety Standards self-certification and documentation from the U.S. Environmental Protection Agency. Effective January 2021, all vehicle importers are required to register with the GSA and present a motor vehicle emissions report, a road worthiness test report from an agency approved by the GSA, and a certificate of conformity. In early 2022, Ghana notified the WTO of a new set of standards, a

required vehicle safety inspection upon arrival, and other requirements specifically for used vehicles. As of December 2023, Ghana had not published a list of the accredited bodies and vehicle dealerships for certification to these new requirements.

### **Sanitary and Phytosanitary Barriers**

Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 25 percent for mutton, and 15 percent for poultry. Imported turkeys must have their oil glands removed. The United States continues to engage with Ghana on these import requirements and to urge Ghana to use science- and risk-based approaches to regulate these products.

## **GOVERNMENT PROCUREMENT**

U.S. suppliers of goods and services face difficulties accessing the Ghanaian procurement market. Ghana's procurements are often awarded on a sole-source basis and lack clear timeframes and procedures. Guidelines that apply to current tenders open to international competitive bidding give a margin of preference of 7.5 percent to 20.0 percent to domestic suppliers of goods and services. In July 2020, the Ghanaian Government issued a directive to public institutions for preferential procurement of locally assembled vehicles. Despite the public procurement law, companies report that locally funded contracts lack full transparency. Supplier or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption persist in the tender processes across ministries.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Ghana is a member of many intellectual property (IP) treaties. Ghana has taken steps to update its IP laws, including by depositing its Instrument of Ratification of the Arusha Protocol for the Protection of New Varieties of Plants in 2023. Government officials periodically inspect import shipments and conduct raids on physical markets for counterfeit and pirated goods. However, concerns remain that IP enforcement activity is weak, and unreasonable delays in infringement proceedings discourage right holders from filing new claims in local courts. Small and medium-sized enterprises, including financial technology and payment companies, have expressed frustration with Ghana's IP environment, especially IP theft. In addition, more public education on IP is needed.

## **INVESTMENT BARRIERS**

Ghana limits foreign participation in several sectors, including telecommunications, banking, fishing, mining, petroleum, and real estate. Foreign investors have expressed concerns about respect for contract sanctity in Ghana, including threats to abrogate contracts, unilateral changes to contract terms, and forced contract renegotiations with the government and its state-owned enterprises. The concerns have undermined confidence in Ghana's investment climate.

### **Mining**

Pursuant to the Minerals and Mining Act, 2006, foreign investors are restricted from obtaining a small-scale mining license for mining operations of an area less than or equal to 25 acres (10 hectares). Non-

Ghanaians may apply for industrial mineral rights only for projects involving an investment of at least \$10 million.

The Minerals and Mining Act mandates compulsory local participation, through which the government acquires a 10 percent equity stake in ventures at no cost. In order to qualify for a mineral license, a non-Ghanaian company must be registered in Ghana, either as a branch office or a subsidiary incorporated under the Companies Act, 2019, or the Private Partnership Act, 2020.

## **Oil and Gas**

The oil and gas sector is subject to a variety of state ownership and local content requirements. The 2016 Petroleum (Exploration and Production) Act mandates local participation. All entities seeking petroleum exploration and development licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Corporation (GNPC) holds a minimum 15 percent participating carried interest and a local Ghanaian firm or individual holds a minimum 5 percent interest. The GNPC has the option to acquire an additional participating interest as determined in the petroleum agreement. The interest of the local Ghanaian firm is not transferable to a foreign company.

The Petroleum Commission issues all licenses, but exploration licenses require additional approval by Parliament. Regulations specify in-country sourcing requirements with respect to goods, services, hiring, and training associated with petroleum operations—standards that many international companies describe as unattainable. These regulations also require mandatory local equity participation for all suppliers and contractors. The Minister of Energy must approve all contracts, subcontracts, and purchase orders above \$100,000 and has the authority to alter the requirements set by law for any specific contract. The criteria for the Minister’s approval of local equity partners in commercial transactions remain unclear, which raises concerns of potential corruption and favoritism in the selection of local equity partners in government-approved concessions or contracts. Noncompliance with these regulations may result in a criminal penalty, including imprisonment for up to five years.

The Petroleum Commission applies registration fees and annual renewal fees on foreign oil and gas service providers, which, depending on a company’s annual revenue, range from \$70,000 to \$150,000, compared to fees of \$5,000 to \$30,000 for local companies.

## **OTHER BARRIERS**

### **Export Ban**

Since 2013, Ghana has banned the exportation of ferrous scrap metals.

In 2021, the government placed a temporary ban on the export of rice, corn, and soybeans. This ban was expected to expire on September 30, 2022; however, as of December 2023, no announcement had been made.

In May 2023, the Ghanaian Government, through the Minister of Lands and Natural Resources, announced a ban on the export of raw critical minerals ore. However, the ban had not been moved to the Parliament for a required vote as of December 2023.

# 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, non-agricultural 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 phaseout 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 imported 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. Furthermore, when SAT performs investigations of declared values, the review process often results in the detention of the imported product for 20 days or more. 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 submitted its transparency notification related to providing contact information regarding enquiry points on June 20, 2023. This notification had been 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 and receive approval before products are sold into the market, even if another importer has already registered that product. Stakeholders have raised concerns that the process is burdensome and can delay the importation process by months.

### **Sanitary and Phytosanitary Barriers**

In response to a U.S. Government request for more transparent quarantine protocols at ports, in 2021 the Ministry of Agriculture, Livestock and Food (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 the MAGA delegates quarantine inspection and fumigation services, now also conducts inspections within refrigerated spaces at Quetzal Port. OIRSA also authorized construction of a cold room within Santo Tomas Port, which became operational in 2023. OIRSA's continued inspection of all imported fresh produce causes delays, and the U.S. Department of Agriculture has asked the MAGA to establish a risk-based inspection system.

## **GOVERNMENT PROCUREMENT**

Government institutions have been required to use the online government procurement system, GUATECOMPRAS, to track Government of Guatemala procurement processes since March 2004. Although GUATECOMPRAS initially improved the efficiency and transparency of government tendering processes, U.S. suppliers have expressed reluctance to bid on Guatemalan public procurement tenders because of corruption in procurement. As of December 2023, the Guatemalan Congress was considering a new government procurement law that would create 24 different procurement modalities, of which only 5 appear to be competitive. The proposed new law 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 proposal would weaken the use of GUATECOMPRAS as a transparency tool.

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 [2023 Special 301 Report](#). Although the country generally has a strong legal framework, and intellectual property (IP) protection appears to have improved, 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.

## LABOR

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

## 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 inspections. 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.

# GULF COOPERATION COUNCIL

The Gulf Cooperation Council (GCC) is comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).

## TRADE AGREEMENTS

### **The United States–Bahrain Free Trade Agreement**

The United States–Bahrain Free Trade Agreement (FTA) entered into force on August 1, 2006. Under the FTA, as of January 1, 2015, Bahrain provides duty-free access to all U.S. exports.

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

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Kuwait.

### **The United States–Oman Free Trade Agreement**

The United States–Oman FTA entered into force on January 1, 2009. Under this Agreement, as of January 1, 2019, Oman provides duty-free access to all U.S. exports.

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

The United States and Qatar signed a TIFA in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Qatar.

### **The United States–Saudi Arabia Trade and Investment Framework Agreement**

The United States and Saudi Arabia signed a TIFA in July 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Saudi Arabia.

### **The United States–United Arab Emirates Trade and Investment Framework Agreement**

The United States and the UAE signed a TIFA in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the UAE.

## IMPORT POLICIES

### **Tariffs and Taxes**

#### **Tariffs**

GCC Member States apply an *ad valorem* Common External Tariff (CET) of five percent on the value of most imported products, with several commodity-specific exceptions.

Kuwait's exceptions include 417 basic foodstuffs, agricultural, medical, and pharmaceutical items that are exempt from customs duties.

Qatar's exceptions include more than 600 goods, wheat, flour, rice, feed grains, and powdered milk that are exempt from customs duties. Certain products, including alcohol, are subject to a 100 percent tariff. Urea and ammonia are subject to a 30 percent tariff, and steel to a 20 percent tariff.

Saudi Arabia's applied tariff rates range from 6.5 percent to 40.0 percent on goods that compete with domestic industries. In June 2022, the Zakat, Saudi Arabia's tax and customs authority, increased customs duties on 99 products, primarily foodstuffs, beverages, and industrial and agricultural products. The increased tariff rates range from 5.5 percent to 25.0 percent. Since July 2021, preferential market access under the GCC tariff agreements no longer applies to goods made in free trade zones or using Israeli inputs.

The UAE's exceptions include 811 items that are exempt from customs duties, including imports by philanthropic societies and the diplomatic corps, military goods, personal goods, used household items, gifts, and returned goods.

## **Taxes**

In 2016, GCC Member States agreed to introduce common GCC excise taxes on products including carbonated drinks (50 percent). U.S. beverage producers report that the excise tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages but exempts GCC manufactured sugary juices, disadvantages U.S. products, and fails to address public health concerns.

Kuwait introduced legislation to implement the common GCC excise taxes in the National Assembly in 2018. It remains under debate.

Qatar implemented the common GCC excise taxes in January 2019, as well as an excise tax for "special purpose goods," which includes alcohol and pork (100 percent).

The UAE implemented the common GCC excise taxes in October 2017.

U.S. industry continues to seek reimbursement for claims related to the UAE's value-added tax (VAT) on goods and services dating back to January 2019. U.S. defense contractors are exempt from the five percent VAT on goods and services provided to the U.S. military in the UAE, as stipulated in the bilateral Defense Cooperation Agreement. The UAE has stated it will provide a one-time retroactive reimbursement once all U.S. defense contractors have provided their comprehensive updates to the UAE Federal Tax Authority database. Per the Federal Tax Authority database, all future reimbursements will be made quarterly according to a bilaterally approved list that will be updated annually.

## **Non-Tariff Barriers**

### **Import Bans and Restrictions**

Kuwait prohibits the importation of a range of goods, including used medical equipment and automobiles that are more than ten years old.

Saudi Arabia prohibits the importation of 37 categories of products, including alcohol and pork products.

The UAE restricts the importation of a number of products including alcoholic beverages and products, industrial methyl alcohol, methylated and medicated spirits, pork products, medicinal substances, and agricultural pesticides. The UAE bans the importation of all waste-derived fuel.

## Import Licensing

Kuwait maintains an import licensing regime for a wide variety of products. Importers of products subject to import licensing must be citizens of Kuwait or be Kuwait-based brokers and are required to register with the Ministry of Commerce and Industry.

In Oman, importers of food and agricultural commodities are required to obtain an import permit prior to shipping the product from the country of origin. Companies must obtain a special license for the importation of certain products, including alcohol, livestock, and poultry. The process of obtaining a license can be complicated, significantly adding to the time it takes to import goods.

Qatar requires an import license for the importation of most products. The Qatari Government issues import licenses to Qatari citizens, Qatari partners in limited liability companies, and to foreign-owned entities operating in Qatar that are registered with the Ministry of Commerce and Industry. On occasion, Qatar has established special import procedures through government-owned companies to address increases in demand. Only authorized local agents of foreign firms are allowed to import goods produced by the firms they represent. In the telecommunications sector, commercially registered companies in Qatar can import telecommunications equipment by obtaining an Import Authorization License from the Communications Regulatory Authority. The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork and alcohol.

Saudi Arabia requires special approval for the importation of 23 categories of restricted products, including agricultural seeds and wireless equipment.

In the UAE, only UAE-registered companies can obtain licenses to import goods. This licensing requirement does not apply to goods imported into free trade zones. Importation of certain goods for personal consumption also does not require an import license.

## Import Documentation Requirements

Kuwait requires a health certificate from the country of origin for imported cosmetics and pharmaceuticals that is certified by the Kuwaiti Public Authority for Food and Nutrition or the Ministry of Health. Some customs officials have refused to accept certificates of free sale from U.S. state governments, increasing delays in obtaining document approvals.

In order to clear goods from customs zones at air and seaports in Qatar, importers must submit a detailed customs declaration, a bill of lading, a certificate of origin, a *pro forma* invoice, and an import license. The Qatari Embassy, a Qatari consulate, or the Qatari Chamber of Commerce in the United States must authenticate import documentation for U.S.-origin imports. This “consularization” process, or authentication requirement, is the kind of unnecessary burden that the United States seeks to eliminate. Industry representatives have complained about the limited transparency of changes to Qatar’s customs procedures. Qatar’s customs authority charges a fine of one percent on the shipment value if the invoice is not legalized by the Qatari chamber of commerce in the country of origin of the exported products. Imported agricultural products require different certificates depending on the category of the product. Meat, fish, eggs, livestock, live poultry, grains, animal feed, and planting seeds require an original health certificate. All processed or shelf-stable foods exported from the United States to Qatar require a U.S. Department of Health and Human Services Food and Drug Administration (FDA) Certificate to a Foreign Government: Food for Human Consumption.

The UAE requires that documentation for all non-agricultural products imported from the United States be authenticated by the Embassy of the UAE in the United States, including delivery orders from the shipping

or line agents, original supplier commercial invoices, certificates of origin, and packing lists. Stakeholders report that this “consularization” requirement is burdensome and costly.

### **Customs Barriers and Trade Facilitation**

Kuwait notified its customs valuation legislation to the World Trade Organization (WTO) in December 2017, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Kuwait ratified the WTO Trade Facilitation Agreement (TFA) in April 2018. Kuwait notified the self-designation of its implementation dates for each TFA commitment on September 25, 2023. These definitive dates for implementation had been due to the WTO on August 19, 2028. Kuwait has not yet submitted 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. The first two notifications had been due to the WTO on February 22, 2017 and the remaining two notifications had been due to the WTO on June 30, 2022, according to Kuwait’s self-designated TFA implementation schedule.

Kuwait does not use a risk management system for clearing food shipments for import, instead requiring customs authorities to inspect every food shipment into Kuwait before it is cleared for entry. This process can add several days to the delivery time, reduce the longevity of the food, and increase costs.

Companies importing U.S. goods into Oman occasionally report difficulties in demonstrating eligibility for preferential tariff treatment under the FTA for goods that enter Oman over land via the UAE. The Royal Oman Police Customs Directorate inconsistently applies requirements for origin marking, segregation of FTA cargo, and other documentation.

Qatar ratified the WTO TFA in June 2017. Qatar has not yet submitted four transparency notifications required by the TFA related to: (1) import, export, and transit regulations; (2) details on the operation of the single window; (3) the use of customs brokers; and, (4) customs contact points for the exchange of information. These notifications had been due to the WTO on February 22, 2017, according to Qatar’s self-designated TFA implementation schedule.

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

### **Technical Barriers to Trade**

Over the years, Saudi Arabia has revised technical regulations for a variety of products to reflect a preference for standards developed by the International Organization for Standardization and the International Electrotechnical Commission. Saudi Arabia has been increasingly reluctant to accept other international standards that may meet or exceed Saudi Arabia’s regulatory objectives, including those developed by U.S.-domiciled organizations through open, transparent, and consensus-based processes. Saudi Arabia’s refusal to accept these other international standards, which are often used by U.S. manufacturers, creates significant market access restrictions for certain industrial and consumer products exported from the United States, including protective footwear, automobiles, electrical equipment, and appliances.

The United States continues to encourage Saudi Arabia to develop and implement effective mechanisms for stakeholder consultation in regulatory decision-making to help ensure that interested parties have

opportunities to provide comments on draft regulations and to provide reasonable time for those comments to be considered. U.S. manufacturers have noted the importance of such consultations as Saudi Arabia develops and implements Corporate Average Fuel Economy (CAFE) regulations, as well as new energy efficiency regulations for a variety of consumer and industrial products, including air conditioners, electrical appliances, lighting, electrical motors, energy usage intensity, tires, and insulation.

## **Automobiles**

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the Gulf Standardization Organization (GSO) is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC automobile standards. The United States will be monitoring this issue across GCC Member States going forward.

While Saudi Arabia has historically accepted automobiles built to conform to either U.S. Federal Motor Vehicle Safety Standards or United Nations Economic Commission for Europe (UNECE) 1958 Agreement regulations, Saudi Arabia has taken steps toward solely adopting UNECE regulations. For example, Saudi Arabia adopted a UNECE low rolling resistance tire regulation that effectively excludes tires needed for certain U.S. sport utility vehicles (SUVs) and pickup trucks sold in the Middle East. Saudi Arabia's new electric vehicle certification likewise is based only on UNECE regulations. While Saudi Arabia has largely adopted U.S. CAFE standards, the country's draft CAFE regulation does not contain certain flexibilities used in the U.S. program, which may ultimately lead to reduced sales of certain vehicle types in Saudi Arabia, one of the largest export markets for U.S. automakers.

U.S. automakers also raised concerns about implementation challenges of the UAE Emergency Call (eCall) and Digital Audio Broadcasting (DAB+) requirements. The UAE requires full integration of DAB+ radio, an expensive feature, but the UAE does not have any active DAB+ broadcast stations. The UAE also has its own electric vehicle regulations, which are not consistent with regulations developed by the GSO.

## **Conformity Assessment Procedures for Hazardous Substances – Electrical Goods**

In March 2018, GCC Member States notified the WTO of a draft GSO technical regulation that would establish the rules for the conformity assessment of certain hazardous substances in electrical goods. The measure deviates significantly from common international practice, which typically requires a supplier's declaration of conformity requiring pre-market third-party conformity assessment, and certification from a list of approved accredited bodies. The draft regulation also requires each type of good to be registered annually with the GSO. The United States raised concerns that the proposed GCC regulatory requirements establish procedural requirements that are far more burdensome and costly than other markets regulating the same goods and may dissuade U.S. producers of these products from exporting to the region. The draft regulation has not yet entered into force, and does not make clear whether all of the GCC Member States would accept a single test result or how the measure would be transposed and applied across all Member States.

Saudi Arabia notified to the WTO its draft Technical Regulation for the Restrictions of Hazardous Substances (RoHS) in December 2020, and subsequently published a revised version in the Official Gazette in July 2021. The regulation took effect for small household electrical items on July 4, 2022; implementation for other covered products will follow at scheduled intervals. A revised version of the regulation, published on July 29, 2022, offered additional flexibilities but does not fully address concerns outlined in detailed comments from the U.S. Government and U.S. industry, or similar comments from other trading partners and global industry.

In 2023, the United States sought additional information from Saudi Arabia regarding the precise scope of the regulation, guidance on the process for testing whole equipment and critical components of a product, and clarity on the requirement for suppliers to attach information that may include sensitive intellectual property as a part of their technical file of supporting documentation. Subsequent guidance issued for the regulation has provided some flexibility in the ability of producers to satisfy certification requirements by submitting an SDoC, though it remains unclear whether these flexibilities will be afforded to all importers or only to manufacturers and their legal representatives.

### **Conformity Assessment and Marking Requirements**

The Emirates Conformity Assessment Scheme (ECAS) monitors industry compliance with UAE standards for goods to be sold in the country. The ECAS, initially notified to the WTO in 2004, applies to items such as textiles, building materials, energy drinks, dairy, juice, honey, and organic products. In addition, obtaining the Emirates Quality Mark (EQM) is mandatory for bottled drinking water, natural mineral water, and ice for human consumption. The application of ECAS and EQM to these items duplicates the regulatory system overseen by the MOCCA.

In 2018, Saudi Arabia implemented the Saudi Product Safety Program and launched an online certification and conformity assessment process (Saber) for all imported goods entering Saudi Arabia. Saber covers both regulated and unregulated products. Importers of regulated products must use Saber to initiate a certification request. If the product receives a Product Certificate of Conformity (PCoC), the importer is then issued a Shipment Certificate of Conformity (SCoC). Products requiring PCoCs include, but are not limited to: detergents, building materials, paints, vehicle spare parts, lubricant oils, toys, and textiles. For unregulated products, the importer must use Saber to self-declare whether the product meets a voluntary standard and that the good can be imported into the Saudi market. Following this self-declaration, the importer will be issued a Requester Declaration (S-DoC). An increasing number of U.S. companies have expressed concerns with the new Saber platform, including undue delays, and inconsistencies in product testing fees and clearance processes. The United States has also asked for clarification from Saudi Arabia how the program relates to GCC conformity assessment requirements.

### **Halal Regulations**

In 2020, GCC Member States notified the WTO of a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have raised concerns that the technical regulation places additional requirements on U.S. suppliers without offering additional assurance of compliance. The United States has raised concerns with GCC Member States, noting the unprecedented and potentially trade restrictive nature of the measure.

In October 2022, Qatar expanded application of its halal certification requirement to animal feed, slaughterhouses, handling, packaging, storing, and food additives.

Saudi Arabia suspended imports of U.S. poultry in June 2018 after enforcing halal regulations that ban stunning of poultry prior to slaughter. U.S. officials have informed the Saudi Food and Drug Authority (SFDA) that the U.S. production system and government regulations ensure that poultry is alive prior to the slaughter process and explained the scientific basis how the stunning process immobilizes birds to ensure that the slaughtering process is humane and effective. In 2019, several other trading partners with similar production practices resumed exports to Saudi Arabia, while imports from the United States remain prohibited. Saudi Arabia also maintains halal feed restrictions for imports of meat products from the United States, including a ban on animal protein in cattle feed and restrictions on the feeding of beef tallow to cattle, which limit U.S. beef exports to Saudi Arabia.

In November 2022, the UAE updated halal slaughtering requirements to allow for poultry stunning that does not directly result in death of the animal.

## **Energy Drinks**

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

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

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

## **Dairy Regulations**

In June 2019, Qatar's Ministry of Public Health released a Council of Ministers' circular on both imported and domestically-produced dairy products that implemented limited shelf-life requirements on long life milk and white cheeses. Qatar did not notify the WTO of this regulation prior to implementation. The U.S. Government pressed Qatar on concerning aspects of its regulation in bilateral discussions and at meetings of the WTO Committee on Technical Barriers to Trade. On August 22, 2021, the Ministry issued an update to the June 2019 regulation that expanded its scope, increasing the concerns of the U.S. dairy industry. Qatar again failed to notify the WTO of the new regulation prior to its implementation. The U.S. Government and private sector stakeholders continue to raise concerns with Qatar on this regulation, including the transparency of its implementation and the food safety and food quality rationale of the measure.

## **Sanitary and Phytosanitary Barriers**

### **Zoning and Compartmentalization**

The World Organisation for Animal Health (WOAH) standards on zoning and compartmentalization provide recommendations for safe international trade between countries. Despite following WOAH



guidelines for zoning or compartmentalization in most cases, Saudi Arabia does not recognize the existence of United States zones or compartments in the event that highly pathogenic avian influenza occurs within the United States. The United States continues to press Saudi Arabia to act consistently with WOA guidelines.

### **MRL Approximation**

Saudi Arabia generally follows the Codex Alimentarius Commission (Codex) for maximum residue limits (MRL) for pesticides applicable to grains and horticultural products. However, in the absence of a Codex MRL limit, Saudi Arabia applies MRLs based on EU regulations that are not necessarily based on science-based decision-making and, as a result, could impede U.S. trade.

### **Facility Listing Requirements**

In 2021, Saudi Arabia notified the WTO of new requirements related to pre-export approval for multiple products, including animal and dairy products, grains, and processed vegetables. Saudi Arabia implemented the requirements for honey and seafood products on November 20, 2021, but has not indicated a concrete timeline for implementing facility requirements for other products. This regulation requires an overseas audit, and Saudi Arabia expects the interested establishments and countries to potentially pay related travel expenses. The U.S. competent authorities, which include the U.S. FDA and the U.S. Department of Agriculture Food Safety and Inspection Service, have worked with SFDA to confirm approved U.S. facilities. Discussions between SFDA and the U.S. competent authorities are ongoing.

### **Agricultural Biotechnology**

In May 2020, the UAE issued Federal Law No. 9 regarding the biosafety of agricultural biotechnology products. The law prohibits the import, export, re-export, transit, production, and circulation of any agricultural products with biotechnology content of equal to or higher than 0.9 percent. For agricultural products with biotechnology content less than this threshold, a permit is required. UAE Resolution No. 84 of 2022 regarding the executive bylaws for Federal Law No. 9 of 2020 regarding the biological safety of genetically engineered commodities and their products places several restrictions, requirements, and specifications for the import, transport, circulation, and re-export of such products.

### **Certification**

In 2021, Saudi Arabia began implementation of new regulations that require trading partners to adopt model certificates. The United States has requested Saudi authorities to accept comparable certifications currently issued by the U.S. competent authorities but as of December 2023 they had not yet done so.

### **Titanium Dioxide**

In May 2022, GCC Member States notified to the WTO an amendment to the GSO technical regulations on Additives Permitted for Use in Foodstuffs that bans the use of titanium dioxide as a food additive, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The FDA continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. In November 2023, the Joint FAO/WHO Expert Committee on Food Additives (JECFA), administered jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), confirmed a reevaluation of titanium dioxide and concluded that there is no safety concern or risk associated

with the use of the substance as food additive. The United States has requested that the GCC Member States allow the use of titanium dioxide based on Codex, justified by science and consistent with the recent JECFA conclusion.

## GOVERNMENT PROCUREMENT

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

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

Kuwait's Public Tenders Law No. 49 of 2016 regulates government procurement and requires that any procurement with a value greater than KD 75,000 (approximately \$250,000) be conducted through the Central Agency for Public Tenders. Certain contracts from the Kuwait Petroleum Corporation that exceed KD 5 million (approximately \$16.5 million) are exempt. Ministry of Interior, Defense, National Guard, and core (*i.e.*, drilling and extraction) Kuwait Petroleum Corporation contracts are also exempted. Kuwait provides a 15 percent price preference for domestic and GCC goods, and requires foreign contractors to purchase at least 30 percent of their inputs domestically and to subcontract at least 30 percent of the work to domestic contractors where available.

Kuwait is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

The United States–Oman FTA requires covered government entities in Oman to conduct procurements covered by the Agreement in a fair, transparent, and nondiscriminatory manner. Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals, as per its in-country value requirements. However, Oman may not apply such price preferences to bids offering goods and services from the United States in procurements covered by the United States–Oman FTA.

For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants, but stakeholders report that in recent years Oman has favored local community contractors and Omani small and medium-sized enterprises (SMEs). Suppliers are requested to be physically present at the opening of tenders and interested persons may view the process on Oman's Tender Board website. Some U.S. companies report that award decisions are delayed, sometimes for years, or that the tendering is reopened with modified specifications and short deadlines.

Oman is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2001.

Qatar's Cabinet Decision 16/2019 stipulates that non-Qatari companies participating in tenders must utilize local goods and services for at least 30 percent of a tender's value, including local raw materials, locally-manufactured goods, transportation services, security, guarding and catering services, or any other local services provided. Cabinet Decision 11/2022 additionally favors local SMEs, by exempting them from providing bonds when bidding for government tenders, and incentivizing greater support for the local economy, by encouraging government clients to consider bidders' in-country value ratios when evaluating bid prices. Participation in government tenders with a value of QAR 5,000,000 or less (equivalent to

approximately \$1.37 million) is limited to local SME contractors, suppliers, and merchants registered with the Qatar Chamber of Commerce.

Qatar is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

Saudi Arabia requires foreign contractors to subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. The Saudi Government is in the process of reforming its procurement processes and policies. In addition to offsets, the Saudi Government promotes purchases of goods and services in Saudi Arabia and increasing the percentage of Saudi nationals employed by foreign firms—a policy known as “Saudization.” The Saudi Government currently requires offsets in investments of up to 40 percent of a program’s value for defense contracts, depending on the value of the contract. Saudi Arabia provides a 10 percent price preference for GCC goods used in procurements in which foreign suppliers participate.

Saudi Arabia revised its Government Tenders and Procurement Law in April 2020. The law regulates the contractual relationship between a public or government entity and contractors. U.S. companies have reported that the procurement systems lack transparency. In 2018, the Ministry of Finance launched the Electronic Government Procurement System (Etimad Portal) to consolidate and facilitate the procurement process for the public sector. The General Authority for Military Industries manages Saudi Arabia’s armaments procurement activities.

U.S. companies have reported long delays and difficulties in Saudi Arabia in receiving payments for procurement contracts with national and regional government entities, with some delays lasting more than two years. Delays increased significantly in late 2015, when declining oil revenues prompted the Saudi Government to freeze payments to major contractors, accruing tens of billions of dollars in arrears and leading some companies to lay off workers. Since late 2020, Saudi Arabia has prioritized timelier payments to contractors and uses the Etimad Portal to facilitate payments. U.S. companies continue to report significant payment delays but report that the overall amounts owed to them in 2023 are less than what was owed in 2022.

In November 2022, Saudi Arabia announced its Economic Participation Policy, which requires foreign companies participating in local tenders above SAR100 million to demonstrate an economic contribution to the Kingdom of at least 35 percent of the tender’s total value.

In 2021, Saudi Arabia announced that by January 1, 2024 all international companies must establish a regional headquarters (RHQ) in Saudi Arabia or be barred from bidding on government contracts. Companies bidding on contracts with a cumulative annual value of less than \$266,000 are exempt from this requirement. Key concerns for U.S. companies regarding the RHQ policy include: the absence of a regulatory/legislative text outlining the policy parameters; a lack of clarity on the rights and obligations associated with the RHQ; and a lack of clarity or predictability on the tax regime for RHQs. International companies can obtain RHQ licenses through the Ministry of Investment’s (MISA) “Invest Saudi” website. To be considered an RHQ, a company’s Saudi branch must conduct strategic and management functions including budgeting, business planning, regional strategy reviews, regional market monitoring and operational and financial reporting. An RHQ must have a minimum of 15 full-time employees within its first year of operation, including at least three senior executives. The Saudi Government may award contracts to sole-source technology or intellectual property providers without RHQs. A non-RHQ company can also be awarded a tender if its bid is at least 25 percent less than an RHQ company’s proposal. Contracts for projects outside of Saudi Arabia are not subject to the RHQ policy. It remains unclear whether other

Saudi government entities that do not utilize the Etimad Portal, such as the General Authority for Military Industries, will apply the RHQ policy to their contracting decisions. According to the MISA, the RHQ policy will apply to a company that submits a bid but had not signed a procurement contract by January 1, 2024. The United States has been actively engaged on this issue and continues to press for more clarity regarding this regulation.

In September 2019, the Saudi Government issued a royal decree prohibiting government agencies from granting contracts to foreign consultancy firms, except in circumstances where there are no qualified Saudi alternatives. However, because the royal decree does not define the criteria for exemptions, and does not clarify whether local branches of foreign-owned firms are covered by the prohibition, it remains subject to interpretation. As of 2023, MISA will issue consultancy licenses on a case-by-case basis.

Saudi Arabia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since December 2007.

U.S. companies have raised concerns regarding a lack of transparency in the UAE's government procurement processes, in addition to lengthy delays and burdensome procedures to receive payment.

In March 2022, the UAE Ministry of Economy announced a revised UAE National Program for Emirati SMEs, which gives an advantage to Emirati-owned SMEs by providing them with several new incentives and preferential services, including: registration for federal government procurement tenders, provision of a range of business services from telecommunications to internal audits, and easier access to funding.

Foreign defense contractors active in the UAE market continue to raise concerns about satisfying contractual obligations to enter into an agreement under the Tawazun Economic Program—referred to as an offset agreement by defense contractors. Despite recent reforms to the program, satisfying offset requirements in the UAE remains a challenge for U.S. defense contractors.

In July 2020, the UAE established a national In Country Value (ICV) Program to expand local procurement preferences. In March 2021, the UAE revised the ICV Program as part of its ten-year comprehensive strategy, “Operation 300 Billion,” to promote UAE products. U.S. firms have raised concerns that the ICV Program is not transparent and that criteria change frequently. The UAE has expanded the ICV program to all seven emirates and several other government entities, bringing the total number of participants to 28 federal and local government entities. In February 2023, the Abu Dhabi National Oil Company signed agreements worth \$4.63 billion with 23 companies to locally manufacture materials and supplies for its operations.

The UAE is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

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

In 2021, the UAE was removed from the Special 301 Watch List after resolving concerns with IP protection of pharmaceutical products, making progress on long-standing IP enforcement issues, and increasing transparency with stakeholders. In 2023, the UAE adopted legislation to combat commercial fraud with significant penalties, and enforcement authorities launched several inspection campaigns targeting counterfeit goods. However, the Deira District markets in Dubai remain in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). In addition, entertainment industry stakeholders continue to press for the establishment of a collective management organization to enable the collection of music royalty payments. Right holders also continue to ask the UAE Telecommunication and Digital Regulatory Authority to engage with domain name registrars and other intermediaries to facilitate effective enforcement actions against copyright infringement, encourage customs authorities to ban the importation of illegal set-top boxes, and put more restrictions on free or paid subscription-based services that unlawfully retransmit TV channels broadcasting copyrighted content.

## **SERVICES BARRIERS**

Oman limits customs brokerage activities to Omani nationals. The United States has raised concerns about the consistency of this limitation with provisions of the FTA.

### **Financial Services**

Foreign bank members of the Kuwait Banking Association may operate in Kuwait. However, foreign banks are subject to a maximum credit concentration limit equivalent to less than half of the largest local bank. Foreign banks may open representative offices but are prohibited from directing clients to borrow from external branches of their bank.

Oman does not permit representative banking offices or offshore banking.

Foreign banks established in Qatar are licensed by the Qatar Central Bank (QCB) or the Qatar Financial Centre Regulatory Authority (QFCRA). The Qatari Government permits foreign banks licensed by QFCRA to establish a physical presence and conduct most types of banking business, including provision of shariah-compliant banking services, in the Qatar Financial Centre (QFC). These banks are not allowed to offer stand-alone retail banking services outside the QFC.

Saudi Arabia limits foreign ownership in commercial banks to 60 percent of any individual bank operation, but investment banks and brokerages can be 100 percent foreign-owned.

Although the UAE Central Bank allows foreign ownership up to 40 percent in national banks, the actual foreign ownership share is far lower. Foreign banks operating onshore are not allowed to open more than eight branches. Foreign banks are subject to a unique corporate income tax at the sub-federal emirate level.

### **Insurance Services**

The UAE only allows foreign insurance companies to operate independently as branches. Foreign equity in domestic insurance companies is limited to 49 percent.

A May 2019 resolution on regulations for reinsurance businesses requires that at least 51 percent of the capital of any insurance company incorporated in the UAE be owned by natural persons who are UAE or GCC nationals, or by legal persons fully owned by UAE or GCC nationals. However, a foreign reinsurance company may seek a license from the regulator to operate as a branch.

In September 2020, the UAE Cabinet amended Council of Ministers Resolution No. 31 of 2019 to include onerous reporting requirements for foreign-owned financial firms, including banks, insurers, and purveyors of other financial products. Companies that are majority-owned by UAE nationals are exempt from these requirements.

### **Telecommunications Services**

Although Kuwait's telecommunications industry is technically open to private investment, in practice, the Kuwaiti Government maintains extensive ownership in the sector, and controls licensing and infrastructure development. Kuwait's telecommunications law gives authorities sweeping power to revoke licenses and block content with little judicial oversight.

Qatar restricts the provision of telecommunications services to locally-licensed entities. Ooredoo and Vodafone Qatar are Qatar's only licensed telecommunications service providers.

The UAE Government maintains majority ownership in Etisalat (e&) and du, which are the only telecommunications service suppliers, Internet service providers, and mobile phone operators in the UAE. In January 2021, both telecommunications providers raised their foreign investment cap to 49 percent, though actual foreign ownership is 8.4 percent for Etisalat and less than one percent for du.

### **Professional Services**

Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. The United States has raised concerns about the consistency of this limitation with provisions of the FTA. In January 2021, Oman barred non-Omani attorneys from appearing or pleading in higher courts in Oman.

Saudi Arabia requires that entities providing certain professional services, including engineering, legal services, accounting, architecture, healthcare, dental, and veterinary services have a Saudi partner. In general, the foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment. In order to avoid the equity cap, a 2017 measure requires foreign engineering consulting firms that are seeking to register a local branch or subsidiary to demonstrate that they have been incorporated for at least ten years and have operations in at least four different countries.

### **Distribution Services**

Only Qatari individuals and domestically-licensed entities are allowed to serve as local commercial agents for foreign firms distributing products or services, except in certain sectors. The Minister of Commerce and Industry can waive the nationality requirement for commercial agents of foreign companies that have direct contracts with the Qatari Government.

UAE's Federal Law No. 11 of 2020 amended the Commercial Agency Law No. 18 of 1981 to require that all commercial agents within the UAE must be UAE nationals, a UAE public joint stock company (PJSC) that is owned at least 51 percent by UAE nationals, a UAE private entity owned by a PJSC meeting the previous requirements, or a UAE private entity that is 100 percent owned by UAE nationals. In December 2022, the UAE authorized foreign entities to sell their products directly in the UAE without an agent, if there is no agent already appointed in the UAE and the principal has not previously had any agreement registered with a commercial agent in the UAE.

## **BARRIERS TO DIGITAL TRADE**

Oman, operating through its government majority-owned telecommunications service providers and through its Telecommunications Regulatory Authority (TRA), periodically slows or blocks access to certain over-the-top services such as Voice over Internet Protocol (VoIP) services. Oman has temporarily lifted a ban on most VoIP services since the start of the COVID-19 pandemic.

The TRA announced in September 2022 a new regulation limiting the provision of Internet voice and video internet protocol services only to companies in the educational, commercial, or medical sectors. The regulation requires service providers to obtain TRA permits and house data servers and equipment in Oman, and it limits the provision of services to corporate customers only (not individuals). The Omani Government has yet to issue clarifying details on the regulation or its implementation. In December 2019, the TRA announced a new regulation limiting the use of international roaming Subscriber Identity Module (SIM) cards for Internet of Things (IoT) devices to a maximum use period of 90 days.

The Qatari Government requires a license for telecommunications and VoIP services providers; however, it grants licenses only to companies intending to charter in Qatar. This requirement serves as a barrier for foreign or Internet-based communications service providers. Ooredoo and Vodafone Qatar are Qatar's only VoIP and telecommunications service providers, and both are majority-owned by state-controlled entities.

In March 2018, Saudi Arabia's Communications and Information Technology Commission (CITC) issued the Cloud Computing Regulatory Framework. This measure granted the CITC broad powers to require cloud and other information and communications technology service providers to install and maintain governmental filtering software on their networks, restricting Internet-based services.

In September 2021, Saudi Arabia enacted the Personal Data Protection Law (PDPL). Stakeholders have noted concerns that the PDPL includes unnecessary data transfer restrictions. The Saudi Arabian Data and Artificial Intelligence Authority (SDAIA) published an amended draft of the PDPL in December 2022 but postponed full enforcement to address feedback received during the public comment period. The SDAIA published additional draft implementing regulations in June 2023, and published the final regulations in September 2023. U.S. companies remain concerned that the PDPL did not clearly include the United States as an approved jurisdiction for data transfers; that the guidelines for compliance and harmonization of sector-specific regulations and the rules for application of "legitimate interest" in transferring data in the healthcare sector are unclear; and that Saudi Arabia did not provide a sufficient implementation period for compliance.

In January 2022, the UAE's Federal Decree No. 45 of 2021 regarding personal data protection (the Data Protection Law) came into effect. Details on implementation of the Decree will be further clarified in the executive regulations for implementing the Data Protection Law, which were still under draft as of December 2023.

### **Internet Services**

The UAE's nationally-controlled telecommunications service suppliers, Etisalat and du, block access to many over-the-top Internet-based communications services, such as VoIP services, video communication services, and messaging services. UAE regulators have declined to intervene, effectively prohibiting market access for foreign suppliers of such services. In March 2020, UAE regulators announced the temporary availability of five applications to support distance learning and remote working amid the COVID-19 pandemic. In 2021 and 2022, UAE regulators continued allowing these applications on a temporary basis. Stakeholders raised concern that Etisalat and du consistently control access to, and quality

of, foreign Internet-based communications services, creating significant market access barriers for U.S.-based Internet services and apps. UAE regulators continue to insist that only national providers can provide these forms of communications services.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

Existing law generally mandates that businesses established in Kuwait must be majority-owned (at least 51 percent) by Kuwaiti or other GCC nationals. However, Kuwait's Foreign Direct Investment Law of 2013 permits the Kuwait Direct Investment Promotion Authority (KDIPA) to authorize, on a case-by-case basis, up to 100 percent foreign ownership in the following industries: infrastructure (water, power, wastewater treatment, and communications); insurance; information technology and software development; hospitals and pharmaceuticals; air, land, and sea freight; tourism, hotels, and entertainment; housing projects and urban development; and investment management. The KDIPA approved the first wholly-owned U.S. business in 2015, and since then has approved 37 additional U.S. companies for up to 100 percent ownership. Notwithstanding these efforts, significant barriers to foreign investment persist, including regulations prohibiting foreigners from investing in real estate, extraction of crude petroleum and natural gas, manufacture of coke oven products and fertilizers, and publishing; long delays associated with establishing new enterprises, which can take as long as 12 months; and difficulty identifying a required local sponsor and agent.

Omani Royal Decree 29/2018 of 2019 banned foreign ownership of real estate and land in certain governorates and areas that the government deems necessary to restrict. However, non-Omanis may purchase residential units in multi-storied commercial and residential buildings in certain areas of the Muscat governorate under usufruct rights (*i.e.*, the right to lease one's property to another person), with certain restrictions. Oman has allowed the establishment of real estate investment funds (REIF) to encourage new inflows of capital into Oman's property sector. The regulations permit foreign investors, as well as expatriates in Oman, to own shares in REIFs.

Qatar's Law 1/2019 on Regulating the Investment of Non-Qatari Capital in Economic Activity generally limits foreign ownership to 49 percent of an enterprise and requires majority ownership by one or more local Qatari investors. However, foreign investors may apply to the Ministry of Commerce and Industry for up to 100 percent foreign ownership. Full foreign ownership in the banking and insurance sectors and commercial agencies is prohibited unless the Qatari Cabinet grants special approval. In April 2021, the Qatari Government permitted foreign investors up to 100 percent ownership of companies listed on the Qatar Stock Exchange, including in the banking and insurance sectors, subject to compliance with the Qatar Central Bank. Foreign investment in national oil and gas companies, or companies with the right of exploration of national resources, cannot exceed 49 percent.

Saudi Arabia generally permits up to 100 percent foreign ownership in most sectors, but foreign investment is prohibited in 10 sectors, including oil exploration, drilling, and production; security and detective services; fisheries; tourist guidance services related to religious pilgrimage; and food catering services to the military. For sectors in which foreign ownership is permitted, foreign investors are generally required to satisfy several conditions, including investing more than \$50 million in the Saudi economy over five years and meeting sector-specific localization requirements. These conditions have limited the ability of foreign investors to exercise full ownership in these sectors.

Only "qualified foreign investors" (QFI) designated by Saudi Arabia's Capital Market Authority are permitted to buy directly the shares or convertible debt of an issuer listed on the local Tadawul stock



exchange, with their investments capped at 10 percent of any individual company. Cumulative foreign ownership cannot exceed 10 percent of the total Tadawul market capitalization or 49 percent of any individual company. Entities eligible for QFI status include banks, brokerages and securities firms, insurance companies, investment funds, and government and government-related entities with at least \$500 million in assets under management.

Pursuant to amendments to the UAE Commercial Companies Law in 2020, there is no longer a requirement that UAE or GCC nationals own at least 51 percent of the shares of a UAE company. In 2021, the UAE began to implement these legislative changes that allow up to 100 percent foreign ownership in more than 1,100 listed commercial and industrial business activities. However, foreign investment remains restricted for commercial agencies or companies engaged in strategic activities, including the military, banking, insurance and re-insurance, and telecommunication sectors, or certain professional activities such as consultancies.

## **LABOR**

The United States and Bahrain have been engaged in labor consultations under Article 15.6 of the FTA since 2013 regarding Bahrain's obligations under Article 15.1. The United States formally requested consultations after the U.S. Department of Labor released a report in response to a submission from the public. The consultations concern employment discrimination and freedom of association. During 2023, the Office of the United States Trade Representative and the U.S. Department of Labor continued to engage with the Government of Bahrain in an effort to address these and related issues.

# 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 and Taxes

#### **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, non-agricultural goods enter Honduras duty free.

In addition, nearly all U.S. agricultural exports enter Honduras duty free under the CAFTA–DR. 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 phaseout 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.

#### **Taxes**

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, according to 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 labeled in English the same as those labeled in Spanish for dutiability purposes.

#### **Import Licensing – Poultry and Rice**

In 2023, Honduras implemented a new series of complicated licensing systems for the importation of poultry and rice. The new system includes requirements that do not explicitly limit the importation of these products but create reporting requirements to obtain the required import licenses that have created challenges for U.S. exporters. For example, U.S. exporters are required to engage with multiple Honduran Government agencies to apply for a license. After the United States repeatedly raised these concerns, Honduras made some changes to streamline and improve the process. However, importers of rice and poultry still face challenges complying with the requirements. Each administrative agency of the

Government of Honduras—Honduras Ministry of Agriculture, Animal Health and Food Safety Service (SENASA), Ministry of Economic Development, and Customs Office—has approximately eight additional steps necessary for approval. A lack of digitalization requires paper applications and physical signatures where only one Official/Minister can authorize, causing a significant bottleneck for approvals.

The new requirements for poultry are contained in Ministerial Agreement 021-2023, published in the Official Gazette on February 16, 2023, as amended in June 17, 2023, through decree modification 055-2023. The new requirements for rice are contained in Ministerial Agreement 020-2023, also published in the Official Gazette on February 16, 2023, as amended through Ministerial Agreement 104-2023, published on October 31, 2023.

## **SANITARY AND PHYTOSANITARY BARRIERS**

### **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 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.

## **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 continues to urge Honduras to fully enforce its IP laws. 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 CAFTA–DR. However, U.S. firms raised concerns during 2022, under the CAFTA–DR, 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 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.

## **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 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 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China 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 (EO) 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, EO 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 (the Madrid Protocol) in Hong Kong. As of December 2023, the ordinance had not yet been implemented.

Hong Kong's failure to modernize its copyright system had allowed it to become vulnerable to digital copyright piracy, particularly from streaming websites and illicit streaming devices (ISDs), with negative ramifications for businesses and innovators. In December 2022, Hong Kong adopted the final Copyright (Amendment) Ordinance 2022, which came into operation on May 1, 2023. The updated law introduces a new exclusive right for copyright owners to communicate their works to the public through any mode of electronic transmission, including streaming, and makes a violation of that right subject to criminal sanctions. At the same time, the updated law did not introduce specific provisions to combat ISDs. U.S. stakeholders stated that copyright holders still face uncertainty obtaining effective civil relief against illegal video streaming and that ISDs continue to be a concern in Hong Kong, noting the lack of criminal enforcement against sales of ISDs and the availability of ISDs on electronic-commerce platforms and in independent electronics stores in Hong Kong.

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 (MOCI) met in New Delhi, India for the fourteenth TPF Ministerial in January 2024.

## IMPORT POLICIES

### Tariffs and Taxes

#### Tariffs

India's average Most-Favored-Nation (MFN) applied tariff rate was 18.1 percent in 2022 (latest data available), which was the highest of any major world economy, with an average applied tariff rate of 14.7 percent for non-agricultural goods and 39.6 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 World Trade Organization (WTO) 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 WTO bound and applied rates, India has considerable flexibility to change tariff rates for both agricultural and non-agricultural products at any time, creating tremendous uncertainty for U.S. workers, farmers, ranchers, and 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 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 addition, starting in 2014, India has repeatedly raised tariffs on certain telecommunications equipment, including network switches.

In June 2019, following the U.S. withdrawal of India's preferential tariff benefits under the unilateral Generalized System of Preferences (GSP) program due to India's failure to comply with the program's eligibility criteria, India implemented retaliatory tariffs ranging from 1.7 percent to 20 percent on 28 different products imported from the United States, including almonds, apples, walnuts, chickpeas, lentils, phosphoric acid, boric acid, diagnostic reagents, binders for foundry molds, select steel and aluminum



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). In July 2019, the United States launched a WTO dispute settlement proceeding against India challenging the retaliatory tariffs. In June 2023, in the course of discussions related to the termination of outstanding dispute settlement proceedings between the United States and India under the WTO Agreement, India agreed to rescind certain retaliatory tariffs on the following U.S. origin products: chickpeas, lentils, almonds, walnuts, apples, boric acid, and diagnostic reagents. The dispute related to India's retaliatory tariffs was terminated in July 2023. India's Ministry of Finance published a customs notification rescinding the duties effective September 2023. The United States continues to urge India to participate in multilateral efforts to address the problem of global non-market excess capacity in the steel and aluminum sectors.

## **Taxes**

Since 2018, India has applied a 10 percent 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 that are denied entry into India (*e.g.*, tallow, fat, and oils of animal origin); items that require an import license (*e.g.*, certain livestock products, certain chemicals, certain information technology products); and items that are importable only by government trading monopolies and are subject to cabinet approval regarding import timing and quantity (*e.g.*, pharmaceuticals, corn under a tariff-rate quota).

While the MOCI's Directorate General of Foreign Trade (DGFT) maintains a list of all three categories of prohibited or 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 quantitative restrictions on imports of various pulses in 2017, based on local supply and demand conditions. In February 2022, India issued a notification to restrict the import of mung beans until March 31, 2023, but imports are now allowed without any quantitative restrictions. However, the opaque and unpredictable nature of India's application of quantitative restrictions has affected the ability of U.S. exporters to access the market. The United States continues to raise this issue, along with other trading partners, at the WTO.

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**

When assessing whether import licenses are required, India distinguishes between goods that are new and those that are secondhand, remanufactured, refurbished, or reconditioned. India allows imports of secondhand capital goods by end users without an import license if 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. 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 the submission of an application and the grant of a license. A Chartered Engineer's Certificate is also required to import both refurbished goods and used manufactured goods.

On August 3, 2023, the Indian Government announced the immediate restriction of imports of certain information and communications technology products, including laptops, tablets, and servers classified under the Harmonized System (HS) heading 8471. Under the new requirements, which went into effect in November 2023, imports would be allowed only with a valid import license for each product. U.S. exporters have raised concerns over the lack of prior stakeholder consultations. The United States continues to monitor implementation and to raise concerns with India.

## **Customs Barriers and Trade Facilitation**

India's tariff rates are announced with the annual budget and are modified on an *ad hoc* basis through notifications in the Gazette of India. The tariff rates 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. U.S. companies have reported being subject to extensive searches and seizures of imports that do not appear to be risk-based. India's customs authority generally requires extensive clearance documentation, which often leads to lengthy processing delays.

## **Medical Device Price Controls**

India's National Pharmaceutical Pricing Authority (NPPA) caps prices of coronary stents. U.S. companies have raised concerns noting that price controls for cardiac stents 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, the DGFT restricts biofuel imports (HS 2207.20, HS 2710.20, and HS 3826) for non-fuel use to actual users. Since May 2019, the MOCI requires an import license for importing biofuels (HS

2207.20, HS 2710.20, and HS 3826). The MOCI also requires that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

### **Agriculture Subsidies**

India provides a broad range of subsidies 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 utilizes one of the most production- and trade-distorting types of support, market-price support. Rice and wheat account for the largest share of products procured under the MSP program and are stockpiled and distributed through India's public stockpiling system. India's announcement of MSPs can have the effect of providing a subsidy to the entire crop by setting a price floor for India's farmers. The prices are announced before the planting season. Therefore, the MSP bolsters 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's public food stockholding program is a large and complex series of programs designed to carry out multiple objectives. India's public stockholding programs are controversial because the government procures food grains and other commodities at guaranteed supported prices through MSP programs rather than at market prices. In the case of rice, in particular, India's excessive subsidization through market-price support has gone far beyond its domestic food security needs and has helped India secure its place as the top global exporter of rice, accounting for more than 40 percent of global rice exports in recent years. India has notified the World Trade Organization (WTO) that it is exceeding its WTO agricultural subsidy limits for rice for the last four years, but it claims the breach is covered under the 2013 interim WTO Ministerial Decision on Public Stockholding for Food Security Purposes. India is leading efforts at the WTO for an expanded permanent solution on public stockholding, which would allow all WTO developing country Members to use unlimited market-price support for purchases of any products associated with a public stockholding program. While WTO Members can procure unlimited quantities of food for public stockholding at market prices and the number of WTO Members utilizing market-price support for procurement is limited, India and others have framed the issue as a food security issue. In addition, in the past, India has used export subsidies to reduce government-held stocks and 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**

The United States has discussed technical barriers to trade (TBT) matters with India through the TPF as well as at, and on the margins of, meetings of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

### **Quality Control Orders for Chemicals and Other Materials**

Since 2019, India has made a number of Bureau of India Standards (BIS) standards mandatory for chemicals and petrochemicals, for quality control purposes. India requires that these products have BIS marks before

importation, which can only be issued following a site visit by an Indian inspector to the manufacturing facility. The United States has concerns that stakeholders were not consulted during the development of many of these standards, and has also asked India to clarify timelines for transition periods and license validity. For example, in January 2020, India notified the WTO about the Polyethylene Material for Moulding and Extrusion Quality Control Order (QCO). In April 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 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. The Ministry of Chemicals and Fertilizers implemented the QCO on January 4, 2024 and announced on January 5 that many of the products covered by the QCOs would be exempted. For those products still subject to the QCOs, U.S. industry has asked the Indian Department of Chemicals and Petrochemicals to issue clear guidelines and instructions to the Indian customs authority for both the QCO exemptions and QCO implementation so that imports are not unnecessarily delayed.

### **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, but 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.

### **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 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. stakeholders report MEITY plans to continue to expand the CRO coverage. U.S. stakeholders have 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 U.S. Government 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.

### **Sanitary and Phytosanitary Barriers**

The United States has raised concerns about the science and risk basis for India's sanitary and phytosanitary-related trade barriers to food and agricultural imports 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) into the Indian market.

### **Agricultural Biotechnology**

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 slow, opaque, and subject to political influences and do not appear to take into account science-based approval processes for GE products in exporting countries. GEAC's uncertain approval process continues to hamper GE product registrations needed to facilitate trade in food and feed products.

### **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.

### **Certificate Requirements**

In September 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 new health certificate for the import of milk and milk products, pork and pork products, and fish and fish products. The certificate contains a number of duplicate 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 indicated that it will continue to add additional commodities to the list of products that require the new certificate. The United States continues to engage with India on this issue.

### **Foreign Facilities Registration**

As of February 2023, the FSSAI 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.

### **Dairy Products**

India imposes onerous requirements on dairy imports. India requires dairy products intended for food be derived from animals that have not consumed feeds containing internal organs, blood meal, or tissues of ruminant origin and that exporting countries certify to these conditions. This requirement, along with the recent 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 U.S. Government continues to press the Indian Government, including through the TPF, to provide greater access to the Indian dairy market.

### **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 the January 2024 TPF Ministerial meeting, 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. India may issue an administrative order to clarify the formal regulatory authority of animal feed in 2024.

### **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 import 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, including alfalfa hay, impeding additional progress on this issue. The United States raised the issue at the 14th TPF Ministerial meeting in January 2024, and India indicated its intention to address import approvals of alfalfa hay and other feeds later in the year.

## **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 its WTO obligations. In September 2023, the United States and India announced an agreement to settle this dispute. As part of the agreement, India agreed to reduce tariffs on certain U.S. products, including frozen turkey, frozen duck, fresh blueberries and cranberries, frozen blueberries and cranberries, dried blueberries and cranberries, and processed blueberries and cranberries. On March 15, 2024, the parties notified a mutually agreed solution to the WTO.

## **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 acquiesced. 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 understanding 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 different ministries within the central government. India provides procurement 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, which continues to be 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, and permitting ministries and departments to mandate percentages that could be used to benefit Indian 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 requirements related to domestic production cannot be implemented without permission of an appropriate authority. Furthermore, companies must use a third-party or internal auditor to certify the amount of domestic production that will be used if the value is equal to or greater than 10 crore or 100 million rupees (approximately \$1.22 million).

In September 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 Indian content, irrespective of the purchase value. The Ministry of Power also reserved 78 products for local procurement through a similar order published in June 2021.

In April 2020, MEITY issued a notification that entities must procure cellular mobile phones only from local suppliers meeting the domestic production requirement of 50 percent, irrespective of purchase value. A September 2020 MEITY notification specified the mechanism for calculation of domestic production 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 [2023 Special 301 Report](#) due to inconsistent progress on long-standing intellectual property (IP) concerns raised in prior Special 301 Reports. The [2023 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 in 2021, would have severe implications for copyright holders who make their content available online. The breadth of some licenses available 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. As of December 2023, patent applicants continue to face 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 required to disclose on the current "Statement of Working of Patents" (Form 27). Among other concerns, the potential threat of patent revocations and the procedural and discretionary invocation of 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. U.S. 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**

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 secondary 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 some limits on foreign ownership in the audiovisual and media sectors, namely FM radio (49 percent), newspapers (26 percent), and digital media firms that upload and stream news and current affairs (26 percent).

### **Distribution Services**

India imposes certain restrictions on foreign direct investment (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. India has modified the requirements in recent years, including by allowing firms to offset the 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 a subset of Indian enterprises. These conditions on foreign investment diminish the commercial incentive for multi-brand retailers seeking to invest in India’s retail sector.

India 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 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.

## **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 60 percent of total market share and 67 percent of all Indian bank branches. Most privately owned banks are Indian owned, with foreign banks constituting less than 0.6 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. India caps foreign ownership of private banks at 74 percent and public banks at 20 percent. Foreign ownership of infrastructure companies in the securities markets (such as stock exchanges, commodity exchanges, depositories, and clearing corporations) is limited to 49 percent.

### **Insurance Services**

India maintains an unlevel playing field in the insurance market. State-owned companies are not subject to the same law and prudential supervision as private firms and enjoy various guarantees from the government. Currently, the Indian Government maintains an explicit sovereign guarantee on every Life Insurance Corporation (LIC) policy. As a result, many customers choose to buy LIC policies over those offered by private insurers, giving LIC an unfair competitive advantage.

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 limitations, such as calling for a majority of board members to be Indian residents and, if an insurer is incorporated or domiciled outside of India, to maintain a higher solvency requirement for foreign-invested insurers. These requirements also apply to any insurer incorporated in India that has at least 33 percent of its capital owned by investors domiciled outside India or 33 percent of the members of the governing body domiciled outside India.

In 2015, the Insurance Regulatory and Development Authority of India (IRDAI) issued a revision to its regulations governing the provision of reinsurance services in India. The regulations afforded Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. In 2017, the Reinsurance Experts Committee unanimously recommended that IRDAI implement a waiver process for life insurance products, which it did in 2019. Non-life reinsurance remains subject to a two-step procedure where foreign firms can offer terms to cedents, but every cedent must then first offer the best terms obtained to Indian reinsurers. This results in unequal treatment for foreign reinsurers and

consolidates risk in a small number of Indian reinsurers, which is counter to global best practices of global diversification of risk.

### **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. Foreign digital payment companies were given until January 2023 to ensure their market shares met the 30 percent limit. The United States also has expressed concern over plans to expand the adoption of a National Common Mobility Card (NCMC) that only uses a domestic proprietary QR code standard, which disadvantages foreign suppliers. India has 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. In 2023, the BCI notified "Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022" in the Gazette of India, creating the first step toward allowing foreign law firms to open offices in India for the practice of international and foreign-country law. Stakeholders have commented that the rules are limited in scope and ambiguous—including a clarification issued by the BCI shortly after the notification that appears to restrict international law firms to advising non-Indian clients only—which has limited the impact of the new rules on foreign firms' ability to operate in India.

#### **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 direct-to-home (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. 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

## **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 the data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their global networks.

## **Internet Services**

In February 2021, the Indian Government published 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. The IT Rules impose a number of requirements that U.S. stakeholders 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 imposition of impractical compliance deadlines and take-down protocols. Since 2021, U.S. firms have been subject to an increasing number of takedown requests for content and user accounts related to issues that appear politically motivated.

## **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 Fiscal Year 2020-2021 budget included an expansion of the equalization levy, adding a two percent digital services tax (DST) on foreign electronic commerce and digital services providers.

The United States and India, along with 137 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 U.S. companies accrue in India during the interim period will be creditable against future taxes due under Pillar 1 of the OECD agreement. The period during which the credit accrues is from April 1, 2022, until the earlier of either the implementation of Pillar 1 or March 31, 2024. 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. In coordination with the U.S. Department of the Treasury, USTR continued to monitor the implementation of the political agreement and the transitional approach agreed to by India.

## OTHER BARRIERS

### Transparency

A lack of transparency continues to affect new and proposed laws and regulations, as well as a lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of domestic and foreign stakeholders 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. 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 percent in 2022 (latest data available). Indonesia's average MFN applied tariff rate was 8.6 percent for agricultural products and 7.9 percent for non-agricultural products in 2022 (latest data available). Indonesia has bound 96.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 37.1 percent.

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

In 2020, Indonesia issued Minister of Finance (MOF) Regulation No. 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 products. For example, despite having a WTO bound rate of zero percent for Harmonized System (HS) code subheading 8517, which includes switching and routing equipment, Indonesia appears to be applying a 10 percent duty for these products.

MOF Regulation No. 96/2023, effective on October 17, 2023, imposed new tariff rates on cosmetics, bicycles, watches, and other iron and steel goods. The new rates followed related regulations issued earlier in 2023. Currently, the types of products subject to Indonesia's new tariff rates are bags (15 percent to 20 percent), textile products (5 percent to 25 percent), footwear/shoes (5 percent to 30 percent), cosmetics (10 percent to 15 percent), iron and steel goods (zero percent to 20 percent), bicycles (25 percent to 40 percent), and watches (10 percent).

#### **Taxes**

U.S. stakeholders continue to express concerns about the MOF's Directorate General of Taxes' tax assessment process. Such concerns include: a non-transparent and cumbersome auditing process; heavy

finances for administrative mistakes; lengthy dispute mechanisms; and, a lack of legal precedent within the Tax Court.

MOF Regulation No. 110/2018 increased withholding tax rates for 1,147 imported products, including consumer and luxury goods. The stated objective for this policy is to decrease Indonesia's current account deficit by reducing imports of these goods.

Indonesia's 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 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 at a rate of 7.5 percent and seven HS codes with an income tax at a rate of 0.5 percent. Stakeholders have 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.

## **Non-Tariff Barriers**

### **Import Licensing**

Indonesian importers must comply with numerous, 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); 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", if the goods are new, consistent with the company's business license, and meet import requirements. Under Government Regulation (GR) No. 29/2021, importers must also obtain a business identification number (NIB) through the new Online Single Submission processing system intended to streamline business license issuance. An NIB can also serve as a valid import license.

MOT Regulation No. 20/2021, amended by MOT Regulation No. 25/2022, 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.

Presidential Regulation No. 32/2022 further provides for a commodity balance policy. The commodity balance policy makes the issuance of import licenses subject to an Indonesian Government assessment of supply and demand for a commodity. The policy 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 19 additional commodities in 2023. Stakeholders have expressed concern regarding the Indonesian Government's lack of stakeholder consultation on this policy.

MOT Regulation No. 20/2021, amended by Regulation No. 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 No. 68/2020, and its amendment, Regulation No. 78/2020, Indonesia requires import approvals 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**

Despite amending its import licensing regimes several times, Indonesia continues to maintain unjustified licensing regimes for the importation of horticultural products, animals, and animal products. In 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures because Indonesia repeatedly failed to address U.S. Government 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 was applying import restrictions and prohibitions that were inconsistent with WTO rules. The WTO Appellate Body subsequently upheld the panel's findings.

Since the Appellate Body report, Indonesia has amended its import licensing requirements several times. Through the issuance of Minister of Agriculture (MOA) Regulation No. 2/2020, imports of horticultural products from countries with a food safety system recognized by the MOA are exempt from the requirement to provide certain quality and safety certificates. This regulation also extends the validity of horticultural product import licenses for 60 days into the following calendar year. MOA Regulation No. 5/2022 affirms the requirement for imported horticultural products to have an import recommendation (RIPH). However, MOT Regulation No. 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, imported agricultural products subject to licensing requirements 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 in the future. U.S. stakeholders report that they need to adapt constantly to changing, and often conflicting, implementing regulations from numerous ministries. The United States remains concerned about the lack of transparency in Indonesia's import licensing system for agricultural products and the repeated delays in importers receiving licenses, especially at the start of each calendar year.

### **Pharmaceutical Market Access**

The U.S. 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.

MOH Regulation No. 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.

Presidential Regulation No. 10/2021 limits traditional medicine to domestic ownership only. MOH Regulations No. 1010/2008 and No. 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.

In January 2023, the Indonesian Government issued Presidential Decree No. 6/2023, requiring medicines, biological products, and medical devices sold in Indonesia and their manufacturing methods (including associated materials, manufacturing processes, storage, and packaging) to be halal certified. The regulation



requires Class D medical devices to be halal certified by October 2039. Stakeholders have expressed concern over the administration of the system, which they contend has lacked adequate consultative processes and does not follow internationally negotiated halal systems.

### **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. As noted in the import licensing section above, sugar is one of the five commodities subject to the commodity balance policy initially implemented in 2022 per Presidential Regulation No. 32/2022.

### **State Trading**

Presidential Regulation No. 66/2021 established Indonesia's National Food Agency (BAPANAS). BAPANAS is a minister-level institution that directly reports to the Indonesian President and has the authority to coordinate all food- and agriculture-related ministries and agencies, such as the MOA, MOT, Ministry of Industry (MOI), and the state-owned procurement body the Bureau of Logistics (BULOG).

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, MOA has refused to issue import recommendations for japonica rice to private traders.

Presidential Regulation No. 125/2022 on Government Food Reserves states that BULOG is appointed as Indonesia's sole importer of rice, feed corn, and soybean for government food reserves. Additionally, through MOT Regulations No. 57/2017 and No. 7/2020, and BAPANAS Regulation No. 5/2022, 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 can intervene in the market when prices are above or below threshold targets. In 2023, BAPANAS tasked BULOG with importing 500,000 metric tons (MT) of feed corn, of which 20,000 MT arrived mid-November 2023. BAPANAS also tasked BULOG to import soybeans for 2024 government soybean reserves.

### **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 officials rely 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 the same or a similar product imported during the previous 90 days, rather than based on the transaction value of the good.

MOT Regulation No. 20/2021, amended by MOT Regulation No. 25/2022, requires preshipment verification by designated companies (known in Indonesia as surveyors) for a broad range of products. These include: electronics; textiles and footwear; toys; food and beverage products; and, cosmetics. As of December 31, 2023, Indonesia had yet to notify these measures to the WTO pursuant to the WTO Agreement on Preshipment Inspection.

On December 14, 2022, Indonesia published MOF Regulation No. 190/PMK.04/2022, The Transfer of Self-Consumed Goods, which establishes customs operations for intangible goods, including procedural requirements and classification under Chapter 99 of the Indonesian tariff schedule. The regulation has been in force since January 14, 2023. Stakeholders report that the regulation creates significant administrative burdens on U.S. industries by imposing a new paperwork retention requirement that is undefined and uncertain. The United States raised its concerns about this measure at the WTO Committee on Trade Facilitation in June and October 2023.

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

### **Technical Barriers to Trade**

#### **Standards and Testing Requirements**

MOI Regulation No. 24/2013, as amended by MOI Regulations No. 55/2013 and No. 29/2018, requires that imported toys be tested by a laboratory with a mutual recognition agreement (MRA) with one of Indonesia's product certification bodies. The United States is not aware of any existing MRAs, leaving imported toys subject to mandatory testing in Indonesia in order 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. MOI Regulation No. 29/2018 introduced 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 about how products can enter the market under the alternative procedure.

In February 2021, Indonesia issued GR No. 28/2021, which requires in-country conformity assessment testing for a wide variety of consumer goods including toys, electronics, and home appliances. GR No. 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. The implementing regulation to GR No. 28/2021, MOI Regulation No. 45/2022, entered into force in November 2022, two months prior to its notification to the WTO in January 2023. U.S. stakeholders have reported that the requirements under GR No. 28/2021 have made conformity assessment processes more difficult.

## Halal Import Requirements

Under Law No. 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. The Halal Product Assurance Organizing Agency (Badan Penanggulangan Jaminan Produk Halal, or BPJPH), under the Ministry of Religious Affairs (MORA), leads the implementation of halal certification.

As Indonesia continues to develop regulations to implement Law No. 33/2014, U.S. stakeholders are concerned that Indonesia finalized many of these regulations before notifying the draft measures to the WTO and taking stakeholder comments into account, 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 No. 26/2019, which initially set out the transition period for halal requirements, was notified to the WTO in October 2019. MORA Decree No. 748/2021, which outlines a broad range of products requiring halal certification, was notified to the WTO in July 2021, after it had already been adopted in June 2021. Indonesia notified MORA Decree No. 1360/2021 to the WTO in January 2022, but the measure had already entered into force in December 2021.

In November 2023, Indonesia notified to the WTO additional halal regulations that had already been finalized, failing to provide its trading partners the opportunity to provide comments. BPJPH Decree No. 20/2023 enumerates the criteria for Indonesia's halal product assurance system; however, the WTO notification did not provide an effective date. BPJPH Decree No. 77/2023, which states the guidelines for ruminant and poultry slaughter, had already entered into force in September 2023. BPJPH Decree No. 78/2023, which outlines the guidelines for the halal certification of processed food and beverages for direct consumption at restaurants and catering services and requires companies to secure halal certification for products containing non-haram ingredients, also had already entered into force in September 2023. An amendment to BPJPH Decree No. 141/2021, on the determination of service rates for the BPJPH public service agency, had entered into force two years prior, in December 2021.

In addition, Indonesia notified to the WTO in November 2023 two draft regulations concerning guidelines for the accreditation of foreign halal certifying bodies (HCBs) and/or conformity assessments, and the establishment of an HS codification of food and beverage product types required to be halal certified. The United States is concerned that the proposed accreditation regulations create redundant document requests, increasingly onerous requirements for auditors to qualify for scopes, and a new scope-to-auditor ratio policy, all of which are increasing costs and unnecessarily delaying accreditation procedures for U.S. HCBs.

GR No. 39/2021, a revision to the implementing regulations first published in 2019, maintains the original timeline for phasing in mandatory halal certification, including for: food and beverage products (by October 2024); 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). In January 2023, Presidential Decree 6/2023, on Halal Certification of Medicines, Biological Product, and Medical Devices, was issued, requiring class D medical devices to be halal certified by October 2039. Also known as the halal positive list, MORA Decree No. 1360/2021 is a living document that includes ingredients or materials that are not required to obtain halal certification.

In accordance with MORA Regulation No. 2/2022, on International Cooperation on Halal Product Assurance, U.S.-based HCBs are eligible to apply directly to BPJPH for recognition, which is required for

HCBs to issue halal certificates for U.S. exports. As of December 31, 2023, BPJPH officials had assessed five U.S. HCBs. The final step to obtaining recognition is for each HCB to conclude an MRA with BPJPH and receive a certificate of accreditation. As of December 31, 2023, BPJPH had accredited one U.S. HCB. Four others are in the process of completing BPJPH's final requirements for recognition.

The United States continues to raise concerns with the implementing regulations for Law No. 33/2014 at the WTO TBT Committee.

## **Product Testing**

Indonesia's National Agency of Drug and Food Control (BPOM) sets out requirements for testing of heavy metals in cosmetics in its Regulation No. 12/2019 which replaced Regulation No. 17/2014. A 2016 BPOM Circular Letter provided additional guidance on the requirements, which are fulfilled through a certificate of analysis that is valid for one year. In practice, Indonesia's Directorate General of Customs and Excise requires each shipment to provide a separate test in addition to the certificate of analysis. These measures appear to be intended to limit imports.

## **Sanitary and Phytosanitary Barriers**

### **Facility Registration for Animal-Derived Products**

Indonesia's animal health and husbandry law (Law No. 18/2009, as amended by Law No. 41/2014) requires companies that export to Indonesia animal-derived products, such as meat, dairy and eggs, to complete a pre-registration process with the MOA. The law allows imports of these products only from facilities that Indonesian authorities have individually approved. MOA Regulation No. 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 MOA Regulation No. 15/2021, all establishments seeking to export animal products to Indonesia must undergo inspections to obtain eligibility certificates. As part of this process, and based on GR No. 28/2023, the 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 required to pass lengthy technical desk audits. Among all trading partners' registration requirements, U.S. exporters identify Indonesia's as the most burdensome. Other facilities (*i.e.*, meat and rendering) are required to undergo on-site facility inspections and post-audit desk reviews. Indonesia charges fees for transportation and lodging costs for MOA officials conducting inspections in the United States. In total, companies seeking to export to Indonesia could pay more than \$10,000 for each facility's onsite inspection and post-audit desk review. Many of the U.S. companies affected are small businesses that report that the fee is a significant barrier.

## **GOVERNMENT PROCUREMENT**

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of domestic production in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulations No. 54/2010 (as amended by Regulation No. 16/2018) and No. 38/2015 both require procuring entities to maximize domestic production 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 domestic production and service provision. Depending on the sector or nature of the project, ministries with authority over the project may impose additional restrictions or requirements.

Indonesia's 2012 Defense Law and Presidential Regulation No. 76/2014 mandate priority for domestic materials and components and require defense agencies to use domestically 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 domestic production, 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. stakeholders have frequently raised concerns about their products being withheld from public hospital purchases under the e-Katalog and requested the Indonesian Government allow a sufficient grace period for the transition to local production, assuring patient access to safe and high-quality medical devices. In response, Indonesia offered limited exceptions to mitigate possible disruptions, but has not issued guidelines that companies can use to request exception.

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 [2023 Special 301 Report](#). Although Indonesia has recently taken steps to improve intellectual property (IP) protection and enforcement, including expanding 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 [2023 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 IP enforcement task force to improve enforcement cooperation among relevant law enforcement agencies and ministries. The United States also continues to encourage Indonesia to provide an effective system for protection against the unfair commercial use, in addition to unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States also remains concerned about Indonesia's law regarding geographical indications.

In March 2023, Indonesia amended its 2016 Patent Law through the Omnibus Law on Job Creation to address certain issues related to local manufacturing and use requirements. 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 and disclosure requirements for inventions related to traditional knowledge and genetic resources.

The United States also continues to urge Indonesia to fully implement the bilateral Intellectual Property Rights Work Plan and plans continued engagement with Indonesia under the United States–Indonesia TIFA to address these issues.

## SERVICES BARRIERS

### Audiovisual Services

Indonesia's 2009 Film Law imposes a 60 percent screen quota for Indonesian films. In 2019, the Minister of Education and Culture issued Regulation No. 34/2019, which if enforced, would prohibit dubbing foreign films and prohibit foreign companies from distributing or exhibiting films.

### 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

Indonesian law requires that suppliers of intercity courier and express delivery services be majority owned by Indonesians, and that foreign suppliers limit their activities to provincial capitals with international airports and seaports.

### Financial Services

Indonesia's central bank, Bank Indonesia (BI), restricts foreign ownership in private credit reporting firms to 49 percent under BI Circular Letter No. 15/49/DPKL.

Under BI Regulation No. 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).

BI Regulation No. 19/08/2017 on the National Payment Gateway (NPG) requires all domestic retail debit and credit transactions to 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, prohibiting the cross-border supply of electronic payment services for domestic retail debit and credit card transactions. BI Regulation No. 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.

Under BI Regulation No. 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, international stakeholders 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 BI Regulation No. 22/23/PBI/2020, effective July 2021, to implement BI's 2025 Payment System Blueprint. The umbrella regulation establishes a 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, but 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 exempted from 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 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 prior to issuance of regulations.

In May 2023, BI mandated that government credit cards be processed through the NPG and required the use and issuance of local government credit cards. U.S. payment companies are concerned the new policy will limit access to the use of U.S. electronic payment options.

### **Health Services**

Problematic sectoral regulations remain in place in the healthcare sector, including regulations that require foreign-owned hospitals to have more inpatient beds than is required for domestic hospitals.

### **Franchising and Retail Distribution Services**

Under MOT Regulation No. 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 No. 23/2021 requires modern shops to set aside promotion areas for products produced by micro-, small, and medium-sized enterprises (MSMEs) and requires business owners with more than 150 stores to franchise their business.

### **Telecommunications Services**

Indonesia has issued a number of measures that make it difficult to import cellular and Wi-Fi equipped products. To support the commodity balance policy, Indonesia issued MOT Regulation No. 20/2021, as amended by MOT Regulation No. 25/2022. Importers are required to become a registered importer to sell directly to retailers or consumers. To qualify for an MOT import license, Indonesia 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 producer's 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 have complained that it takes months to get a decision on license requests.

U.S. companies have reported that, in some cases, the MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation No. 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 No. 68/2016, which requires importers to obtain an 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**

### **Internet Services**

GR No. 71/2019 (GR 71) 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. The MCIT issued implementing regulations for GR 71, Regulation No. 5/2020 and Regulation No. 10/2021, which required private sector ESOs, including those providing services on a cross-border basis, to register with the MCIT by July 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. Stakeholders 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 the MCIT's takedown request. The MCIT intends to impose administrative sanctions under GR 71, which will be further regulated under the draft GR on Non-Tax State Revenue.

MOT Regulation No. 50/2020 requires foreign electronic commerce operators that have either 1,000 transactions in or 1,000 packages delivered to Indonesia per year to appoint a representative in Indonesia and/or register for an electronic commerce foreign business license. Stakeholders have voiced concerns that these requirements, particularly establishing a local representative, create unnecessary burdens for carrying out business operations in Indonesia.

## **INVESTMENT BARRIERS**

Presidential Regulation No. 10/21, as amended by Presidential Regulation No. 49/2021, identifies certain sectors subject to foreign ownership limitations. Foreign investment is limited to 49 percent for enterprises engaged in publishing newspapers and magazines, postal services, and air, land, and sea transportation. Foreign investment is limited to 20 percent for broadcasting service suppliers and certain financial service suppliers. Foreign investment is prohibited for certain activities such as fish processing and shipbuilding.

## **SUBSIDIES**

Indonesia has not submitted a subsidy notification to the WTO since 2019 and has only made one such notification since joining the WTO in 1995.

According to the WTO Secretariat Report on Indonesia's 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 domestic MSMEs. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Eximbank and Asuransi Ekspor Indonesia. The United States will continue to urge Indonesia to submit a WTO notification for all of its subsidy programs.

## **OTHER BARRIERS**

Although the Indonesian Government and the Corruption Eradication Commission investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include: poor coordination



within the Indonesian Government; 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. stakeholders 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**

As part of the implementation of the 2009 Mining Law, Indonesia prohibits nickel ore exports, one of several recent measures restricting exports of raw materials. The United States has expressed concerns about the impact this measure will have on the stainless steel industry amid ongoing multilateral efforts to address global excess capacity in the steel sector. On December 11, 2019, the United States requested to join consultations initiated by the European Union concerning the consistency of the export ban with Indonesia's WTO obligations and participated in subsequent panel proceedings as a third party. The panel report for this dispute was circulated on November 30, 2022; 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.

### **Energy and Mining**

In the oil and gas sector, GR No. 79/2010, as amended by GR No. 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.

# 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 16 times, most recently through December 31, 2024, 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 May 24, 2023.

## IMPORT POLICIES

### Tariffs

Israel’s average Most-Favored-Nation (MFN) applied tariff rate was 3.4 percent in 2022 (latest data available). Israel’s average MFN applied tariff rate was 11.7 percent for agricultural products and 2.1 percent for non-agricultural products in 2022 (latest data available). Israel has bound 75.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 22.6 percent.

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, fresh and frozen fish, and some processed foods. In 2022, Israel’s Ministry of Finance issued a decree that began a gradual reduction or elimination of tariffs on many agricultural products, including dairy, meat, fresh fruit, and vegetables as part of the Israeli Government’s agricultural reform. Stakeholders estimate that full market access in agriculture could result in increases in U.S. exports to Israel of a variety of agricultural products.

## 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, 35 percent for procurements excluded from GPA coverage, and 50 percent for military procurements. 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 making purchases in Israel in compliance with the IC agreements. As a result, their participation in Israeli tenders is limited.

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 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, Israel has not ratified either. U.S. stakeholders have 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.

# 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. The United States and Japan continue to monitor implementation of these agreements.

On March 28, 2023, the United States and Japan signed the Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (Agreement). The Agreement will strengthen and diversify critical minerals supply chains and promote the adoption of electric vehicle battery technologies. In particular, the Agreement formalizes the shared commitment of the United States and Japan with respect to the critical minerals sector to facilitate trade, promote fair competition and market-oriented conditions for trade in critical minerals, advance robust labor and environmental commitments, and cooperate in efforts to ensure secure, sustainable, and equitable critical minerals supply chains. The Agreement entered into force immediately upon signature.

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. The United States continues to utilize the United States–Japan Partnership on Trade mechanism as an important vehicle for raising bilateral trade concerns.

## IMPORT POLICIES

### Tariffs

Japan’s average Most-Favored-Nation (MFN) applied tariff rate was 3.9 percent in 2022 (latest data available). Japan’s average MFN applied tariff rate was 13.4 percent for agricultural products and 2.4 percent for non-agricultural products in 2022 (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 \$12.0 billion in 2023, 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 totaled \$665 million in 2023. 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 and

surimi, cod, Pacific whiting, mackerel, sardines, squid, herring, pollock roe, cod roe, scallops, and kelp. 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. 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 \$29) 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**

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. The 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—still identifiable as U.S. rice—reaches Japanese consumers. In recent years, SBS tenders have not been filled due partly to the non-market-based price markup that the 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 4 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**

Japan requires food wheat to be imported through the Grain Trade and Operations Division of the 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**

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 kilogram (approximately \$0.89 per kilogram) 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 is being reduced over time for U.S. pork, but not eliminated.

## **Ethanol**

In April 2023, Japan implemented a revised Biofuels Standard that will allow the United States to provide up to 100 percent of Japan's annual on-road biofuels target of 500 million liters crude oil equivalent. Under the previous standard, the United States was restricted to supplying no more than 66 percent of Japan's annual on-road biofuels target. However, the new Biofuels Standard did not increase the annual biofuels target volume, which has remained unchanged since 2017. The United States continues to urge Japan to increase its annual biofuels target volume to a level that would allow Japan to achieve at least an E3 blend rate (97 percent gasoline and 3 percent bioethanol) and further reduce its greenhouse gas emissions in the transportation sector.

## **Customs Barriers and Trade Facilitation**

Expanding Japan's advance rulings system to address more customs issues would improve transparency and predictability for U.S. exporters. 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.*)

# **SANITARY AND PHYTOSANITARY BARRIERS**

## **Food Safety**

### ***Regulatory Oversight***

As part of an overall effort to streamline management of issues relating to health and infectious disease, the Government of Japan will shift food safety standard administration (under the Food Sanitation Act) from the Ministry of Health, Labour and Welfare (MHLW) to the Consumer Affairs Agency (CAA). The Diet, Japan's national legislature, passed legislation for this purpose in 2023, and the transfer of responsibility was to occur on April 1, 2024. However, responsibility for monitoring and inspection of domestic and imported foods will remain with the MHLW. The United States will monitor implementation and development of regulations to ensure continued science-based regulatory decision-making and a level playing field for U.S. exports 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 selling their produce domestically do not need to treat that produce for long-distance distribution and 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 exporter. 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 approach to addressing individual MRL violations, and apply measures to all shipments from a particular country when evidence indicates a systemic, country-wide program.

## **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. When 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**

### ***Table-Stock 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 2023, Japan provided the final pest list for table-stock potatoes. 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 a comparable level of phytosanitary protection to Japan's current regulatory approach and eliminate costly pest-mitigation requirements for U.S. exporters. The United States will continue to engage with Japan and provide capacity building on the requested systems approach.

### ***Stone Fruit***

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

## GOVERNMENT PROCUREMENT

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

Japan is obligated to open its GPA-covered government procurement tenders 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.

In 2023, Japan amended its Copyright Act in a manner that may adversely affect individual creators. Under the amendment, where the copyright holder is not known, users have greater rights to engage in use of those works. For individual creations on the Internet, it is often difficult to contact the copyright holders; therefore, the amendment may facilitate use of those works relative to others by identifiable creators. Under the new system of “unmanaged works arbitration,” Japan will establish a contact organization to respond to user consultations and inquiries. Users will be granted temporary use by paying compensation and fees equivalent to the usage fee of this contact organization. The maximum period of use is three years, renewable by reapplying. Japan will also create a cross-disciplinary database of copyrighted works to allow searching for copyright holders. This new system is not envisioned to come into force until 2026. The United States will continue to monitor developments in this area.

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; counterfeits imported in this manner are subject to seizure. The United States is continuing to monitor the implementation and enforcement of the amendment to determine whether it reduces the import of counterfeit goods into Japan.

Japanese and foreign products are eligible for geographical indications (GIs) 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’s granting automatic GI protection to certain terms 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

### Express Delivery

The United States remains concerned by unequal conditions of competition between Japan Post Co. and international express delivery suppliers. Private U.S. express carriers are required to declare all shipments for customs clearance and calculate duties and consumption taxes based on cost. Different procedures apply to Japan Post Co., as duty assessment is based on Express Mail Service (EMS) shipment rules.



Japan Post Co. is regulated by a single agency—the Ministry of Internal Affairs and Communications (MIC), whereas private express delivery companies are subject to rules imposed by various ministries, including the Ministry of Finance; the MHLW; 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**

### **Postal Insurance and Banking**

The United States has longstanding concerns about the negative impact of Japan Post Insurance on competition in Japan’s insurance market and continues to closely monitor the implementation of reforms. The United States continues to urge Japan not to allow Japan Post Bank and Japan Post Insurance to expand the scope of their operations before a level playing field is established.

### **Insurance Cooperatives**

*Kyōsai* (insurance cooperatives) hold a substantial share of the insurance business in Japan. Some *kyōsai* are regulated by their respective agencies of jurisdiction (*e.g.*, the MAFF or the 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**

### **Educational Services**

Japan does not treat foreign universities’ Japanese campuses as equivalent to domestic higher education institutions for tax, scholarship, and research grant purposes. This has harmed the ability of such 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 faculties are excluded from applying for government-funded and other research grants on the same basis as faculty at other Japanese universities.

### **Legal Services**

In 2020, the Japan Fair Trade Commission (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 Antimonopoly Act regarding alleged antitrust cartels, which involve price-fixing, market allocation, and bid rigging. In principle, only an external lawyer’s advice to a client 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. 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 support fuller recognition of attorney-client privilege by the JFTC.

## **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 undertake intermediate communications with users in Japan, including providers of cross-border services, must register as telecommunications providers with the 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.

### **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 and are 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, the MIC released a summary of discussions held with an advisory council, laying out a policy direction introducing a "conditional auction" for allocation of then-underutilized 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. In March 2023, the MIC launched a task force to study the introduction of a spectrum auction system for millimeter wave.

## **Renewable Energy**

Renewable energy growth in some regions of Japan has been constrained by lack of electricity 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 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 is considering changes to the curtailment order that would favor renewable energy generation.

## **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 34 million cubic meters in 2021 to 42 million cubic meters in 2030, Japan allocated ¥49.9 billion (approximately \$330 million) for the Emergency Measures to Utilize Domestic Forest Resources and Strengthen the International Competitiveness of the Wood Industry from the 2022 MAFF supplemental budget. Furthermore, in 2023 Japan allocated ¥169 billion (approximately \$1.13 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 taxpayer to cover the cost of this program (approximately ¥60 billion, or \$400 million, per year). The United States is monitoring the disbursement of these funds and other support programs.

## **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 practices and ensure transparency with respect to the formation and operation of advisory councils 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 2023, 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. While the United States acknowledges recent instances when Japanese ministries allowed comments to be submitted in English and provided an appropriate amount of time for parties to draft, finalize, and submit their comments, for example METI's Draft Guidelines for Corporate Takeovers, the United States stresses the need for Japan to improve the system, such as by lengthening the standard public comment period for rulemaking, more broadly and consistently.

### **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 \$5,700) 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 \$17,000), 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 \$1,700) 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 in March 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. Japan also provides subsidies for vehicle charging stations but requires compliance with CHAdeMO, a charging standard originally developed in Japan and supported by Japanese industry groups. Although this standard was previously used in earlier model electric vehicles in other countries, Japanese automakers in 2023 joined U.S. and European automakers in endorsing other standards for their sales in North America, Europe, and China. This leaves Japan as an outlier on charging technology and disincentivizes foreign automakers and charging suppliers from operating in Japan by requiring outdated technology in order to receive the subsidy.

Japan does not permit use of the global standard of 433.92 MHz radio frequency for Short Range Vehicle Communication Systems, which includes remote keyless entry (RKE) and tire-pressure monitoring systems (TPM). Japan has allocated the frequency primarily to amateur radios and has expressed concern that its use in vehicles will cause interference for the amateur radio community. As a result, U.S. automakers must modify their products for the Japanese market. To address this longstanding concern of U.S. automakers over Japan's spectrum allocation, the MIC launched the 433.92 MHz TPM-RKE System Ad Hoc Group (AH Group) on July 13, 2023, to study potential sharing of the frequency between automakers and amateur radio users.

### **Medical Devices and Pharmaceuticals**

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 changes to its PMP rules that significantly reduced the number of innovative products and companies that received the full benefit of the PMP. In particular, several of the criteria that were used in PMP calculations appeared to make it easier for Japanese companies to qualify for top premiums and were unrelated to the degree of innovation of the individual product under consideration. However, the fiscal year 2024 National Health Insurance Drug Pricing System Reform Framework that was instituted for the 2024 pricing cycle made several promising adjustments to the PMP rules, including abolishment of these company criteria.

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 relevant international standards in the development

of its regulations in clinical development, multiregional clinical trials, and risk management. In November 2023, Japan announced it would relax its requirement of “in principle” drug testing on Japanese people before a drug’s release in the domestic market, a policy that is unique to Japan. However, the phase III local testing requirement will remain for some drugs with strong side effects, representing a continuing concern.

### **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 improve access in this market. U.S. nutritional supplement manufacturers must follow Japanese health claim systems that are often duplicative in nature.

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**

Quasi-drugs are defined in Japan’s Act on Securing the Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (PMD Act) as products with limited amounts of officially recognized active ingredients and are generally classified in the United States as over-the-counter drugs (for example, anti-acne products) or cosmetic products (for example, anti-aging products). U.S. companies indicate they are experiencing delays in market authorization due to Japan’s delay in the adoption of a well-designed online system to process requirements and updates. Although there have been some improvements in processing time, there continue to be delays in the adoption of a monograph (or product standard) system intended to expedite the registration of such products as quasi-drugs under the PMD Act. As a result, products that contain active ingredients that are approved for specific uses in Japan, such as in anti-dandruff shampoos and skin care, may require up to six months to receive market approval. The MHLW is currently working with industry and local prefectural governments to develop a monograph system (such as “Approval Product Standards for Medicated Cosmetics”), which lists the approved uses for previously reviewed ingredients and claims.

# 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 imposes a 15 percent special tax on carbonated drinks. Jordan also imposes a special tax on vehicles that varies according to the type of engine which in practice only affects imports as there is no domestic motor vehicle production. 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. Most U.S.-origin cars sold in Jordan are conventional fuel or hybrid. 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 continues to engage with Jordanian authorities to address this issue.

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

#### **Customs Barriers and Trade Facilitation**

Jordan ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) in February 2017. Jordan has not yet submitted 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 had been due to the WTO on February 22, 2017, and notification for details on the operation of the single window had been due on December 31, 2022, according to Jordan's self-designated TFA implementation schedule.

## TECHNICAL BARRIERS TO TRADE

### **Corn Import Sampling Procedures**

According to U.S. stakeholders, 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. The United States has worked with Jordan to improve sampling and inspection procedures, but problems persist. As a result, U.S. exports of corn to Jordan have decreased significantly compared to 2021 and prior years. In 2023, U.S. corn exports to Jordan were valued at approximately \$148,000. An agreement in principle with the Jordanian Government to accept certificates of inspection from the U.S. Department of Agriculture Grain Inspection Service to assure the quality of corn shipped from the United States expired in June 2023. While applicable Jordanian Government agencies have informally committed to accepting such certificates on an *ad hoc* basis, this mechanism has not been tested. The United States continues to work with Jordan to resolve this issue.

## GOVERNMENT PROCUREMENT

In September 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.

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 began the process of acceding to the WTO GPA with the submission of its initial offer, but negotiations on Jordan's accession have been inactive since 2014.

## INTELLECTUAL PROPERTY PROTECTION

Jordan continues to take steps to provide more comprehensive protection of intellectual property (IP) rights. In September 2023, Jordan's new Cyber Crime law went into effect, criminalizing a broad array of digital violations, including pirated content. However, challenges regarding IP protection and enforcement persist. As seen throughout the region, online and physical copyright infringement is widespread. For example, Jordan-based company Spider is listed in the [2023 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 challenges to combating this online and physical copyright infringement, including a lack of adequate resources. Despite past efforts by law enforcement officials to crack down on pirated and counterfeit products, enforcement efforts need to be strengthened, particularly with respect to using *ex officio* authority to pursue criminal investigations. The U.S. Government continues to engage with the Government of Jordan on these issues.

# KENYA

## IMPORT POLICIES

### Tariffs

Kenya's average Most-Favored-Nation (MFN) applied tariff rate was 14.3 percent in 2022 (latest data available). Kenya's average MFN applied tariff rate was 24.5 percent for agricultural products and 12.7 percent for non-agricultural products in 2022 (latest data available). Kenya has bound 16.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 93.8 percent.

Kenya applies the East African Community (EAC) Customs Union's Common External Tariff (CET), with four tariff bands: (1) zero percent duty for raw materials and inputs, (2) 10 percent duty for processed or manufactured inputs, (3) 25 percent duty for finished products, and (4) 35 percent for a list of products the EAC concluded would promote regional integration and domestic industrial sectors. Among the imports that are impacted by the 35 percent fourth tariff band are U.S. exports of secondhand clothing and environmentally cleaner cooking products. Many textiles and agricultural products are classified as "sensitive items" under the EAC and as a result are subject to *ad valorem* tariff rates above 35 percent. This includes rates of 50 percent for textiles, 60 percent for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 60 percent for wheat flour, and 100 percent for sugar.

When deemed necessary, the Kenyan Government has temporarily waived agricultural tariffs to stabilize prices when domestic agricultural prices exceeded certain levels. When the Kenyan Government has taken such action, the EAC has granted an exemption from the CET.

Under its exemptions regime, the EAC had exempted all solar and wind energy products from import duties. In June 2016, the EAC amended its exemptions regime to include only products related to the development and generation of solar and wind energy. The duties were subsequently imposed on spare parts and accessories to solar equipment. Kenya has not uniformly applied the duties, and some stakeholders have voiced concern that this amendment does not adequately define the term "spare parts and accessories."

### Non-Tariff Barriers

#### **Import Bans**

In October 2023, Kenya's domestic agricultural production exceeded projections. In response, the Kenyan Government issued an import ban on maize and wheat imports and stopped issuing import permits.

#### **Customs Barriers and Trade Facilitation**

U.S. companies have raised concerns about the length of time required for Kenyan Customs to release shipments, as well as the use of a complex and inefficient process that involves many steps with uncoordinated offices, despite implementation of a single window system. Many U.S. companies have commented that Kenya's one-stop customs clearance system does not operate as intended and that pre-arrival processing of electronic documents is ineffective. Other U.S. companies have raised concerns about the inconsistent application of classification and valuation decisions, as well as unnecessary transit inspections.



# TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

## Technical Barriers to Trade

### **Verification of Conformity to Standards Procedures**

In 2019, Kenya issued the Standards (*Verification of Conformity to Standards and Other Applicable Regulations of Imports*) Regulations, which subjects all imports, except those meeting certain exemption criteria, to the Pre-Export Verification of Conformity (PVoC) program. The PVoC program requires pre-shipment inspection of most imports—in their country of origin—to ensure compliance with applicable Kenyan standards and regulations. Under the PVoC program, an importer must obtain a Certificate of Conformity (CoC) from a PVoC inspection agent in its region designated by the Kenya Bureau of Standards (KEBS). The PVoC inspection agent assesses what, if any, testing is required to meet Kenyan standards and regulations. Kenya asserts that the program is necessary to address health, environmental, and security concerns, but U.S. industry has raised concerns that the program’s testing, certification, and labeling requirements deviate from international standards without providing an additional measure of safety.

Certain products are exempt from the PVoC program, including: raw materials, machines, and spare parts imported by registered local manufacturers; products certified by KEBS under the Diamond Mark of quality product certification; and products waived by the Kenyan Government through the Cabinet Secretary for Investment, Trade, and Industry. Goods exempted from the program are still subject to KEBS destination inspection.

Goods arriving at the port of entry without having undergone an inspection through the PVoC program to obtain a CoC are subject to inspection by KEBS. The cost of this inspection is 5 percent of the customs value of the shipment, and the goods may be rejected. After obtaining a CoC or undergoing inspection at the port of entry, the importer must also purchase from KEBS an Import Standardization Mark label that must be affixed to each imported article or its retail packaging. Additionally, many of the KEBS mandatory standards are not publicly available, which hinders transparency.

## Sanitary and Phytosanitary Barriers

### **Agricultural Biotechnology**

On October 3, 2022, Kenya lifted a 10-year ban on the import and commercialization of genetically engineered (GE) products, opening a path to cultivation and import of GE food and feed. However, the lifting of the ban is on hold pending the outcome of one remaining domestic legal challenge before Kenya’s High Court. In October 2023, the Environmental and Land Court dismissed one case against the release and planting of GE products, on the grounds that: 1) there was no evidence to support that the Kenyan Government breached the law while lifting the ban, 2) there was evidence to support Kenya has the proper framework to govern GE activities, and 3) the plaintiffs did not present sufficient evidence of harm to human and environmental health from GE products.

### **Animal Genetics**

In January 2020, Kenya’s Office of the Director of Veterinary Services (DVS) and the U.S. Department of Agriculture Animal and Plant Health Inspection Service agreed on veterinary requirements and certificate attestations for the importation of bovine embryos from the United States. In May 2020, however, the DVS proposed additional requirements that went beyond those previously agreed by the two agencies. Kenya

imposes standards that are overly restrictive for bovine semen imports, precluding actual market access for most U.S. bovine semen for dairy cattle and leaving the largest share of the market to the domestic producers who do not meet the same criteria. Technical work is ongoing.

### **Import Permits**

Kenya maintains complex, nontransparent, and costly requirements for the importation of all meat, dairy, and poultry products, including a “Letter of No Objection to Import Permit” (no-objection letter) from the DVS under the Ministry of Agriculture, Livestock, and Fisheries. Before issuing a no-objection letter, which requires several attestations, including animal and public health statements, the DVS requires an importer to explain the reason for importation through a “Letter of Application to Import” and to specifically address the market need the import would meet. The DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Importers have reported that the DVS has at times provided them with non-sanitary-related grounds for denying permits, such as the local availability of a similar product. The DVS does not always provide written justification for not issuing the letter.

### **Plants and Plant Products**

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion and a 13.5 percent maximum moisture content. The aflatoxin limit in Kenya is lower than the U.S. Department of Health and Human Services Food and Drug Administration’s action level for aflatoxin in corn in the United States, is lower than the standard established by the Codex Alimentarius, and does not appear to be based on a risk assessment. As a result, most U.S. exports are denied permits for importation. Under special circumstances—such as food shortages—Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive.

## **GOVERNMENT PROCUREMENT**

Since May 2015, an initiative dubbed “Buy Kenya Build Kenya” has required Kenyan state ministries, departments, and agencies to procure at least 40 percent of their supplies locally. For example, government entities are required to give an exclusive procurement preference to motor vehicles and motorcycles produced by companies that have assembly plants in Kenya.

The 2016 Public Procurement and Asset Disposal Act (PPADA) reserves procurement preferences for Kenyan-owned firms and goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than KES 50 million (approximately \$333,333), the preference for Kenyan firms and goods is exclusive. If the procuring entity seeks to contract with non-Kenyan firms or procure foreign goods, the PPADA requires a report detailing evidence of an inability to procure locally. In April 2020, the National Treasury issued implementing regulations for the PPADA, which mandate that tender proposals include skills and knowledge transfer to Kenyan citizens, a 75 percent set-aside of employment opportunities for Kenyans, and a plan relating to domestic sourcing.

U.S. firms have had very limited success bidding on Kenyan Government tenders, and corruption remains a significant concern. Many of these tenders are challenged in the courts. Foreign firms, some without proven track records, have won government contracts when partnered with well-connected Kenyan firms or individuals. As of January 2019, all tenders and procurements are required to be undertaken through the Kenyan Government’s electronic procurement system, the Integrated Financial Management Information System (IFMIS). U.S. companies have expressed concerns about IFMIS due to insufficient connectivity

and technical capacity in county government offices, apathy from county government officials, central control shutdowns, and security gaps that render the system vulnerable to manipulation and hacking.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Kenya's complex customs recordation system continues to raise concerns about the ability of U.S. importers to bring products containing intellectual property into Kenya. Widespread availability of counterfeit and pirated goods remains an issue. Stakeholders also have raised concerns regarding distribution of copyright-infringing content online and the need for Kenya to join the World Intellectual Property Organization (WIPO) Internet treaties, which deal particularly with copyright and related rights in the digital environment.

## **SERVICES BARRIERS**

### **Insurance Services**

Kenya requires that a minimum of one-third of the equity of an insurance company be held by Kenyan persons or citizens of another EAC Member State. In addition, Kenya requires that local insurers offer at least 20 percent of their treaty reinsurance contracts to the state-owned Kenya Reinsurance Corporation (Kenya Re). Although regulatory approval can be sought, Kenya generally prohibits cross-border Difference-in-Conditions and Difference-in-Limits insurance, which is an important type of insurance for facilitating U.S. investment in countries such as Kenya because it covers unique risks faced by U.S. firms.

### **Telecommunications Services**

Foreign participants in the telecommunications services market report long delays in the licensing process, creating an unpredictable regulatory environment.

## **BARRIERS TO DIGITAL TRADE**

### **Cross Border Data Flows**

Kenya's 2019 Data Protection Act (DPA) includes unclear provisions governing the cross-border transfer of personal information. The DPA requires that data controllers provide proof that personal data will be secure as a condition for transferring the data outside Kenya but does not describe what would constitute acceptable proof.

### **Digital Services Taxation**

Kenya applies a 1.5 percent digital services tax (DST) to nonresident businesses and persons. The DST taxes gross transaction value through any "digital marketplace," defined as "an online platform which enables users to sell or provide services, goods, or other property to other users."

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

Kenya imposes foreign ownership limitations in several sectors. For example, the 2016 Private Security Regulation Act restricts foreign participation in the private security sector by requiring at least 25 percent Kenyan ownership of private security firms. Additionally, since 2015, Kenya has imposed regulations requiring that Kenyans own at least 15 percent of the share capital of derivatives exchanges.

The 2016 Mining Act imposes a variety of restrictions on foreign participation in the mining sector. Among other restrictions, the Mining Act reserves acquisition of mineral rights for Kenyan companies, requires 60 percent Kenyan ownership of both mineral dealerships and artisanal mining companies, and requires large-scale mining operations to list a minimum of 20 percent of their shares on the Nairobi Securities Exchange within three years of commencing operations, while also offering 10 percent “free-carried interest” (free equity stake) to the Kenyan Government.

In August 2023, Kenya lifted the 30 percent domestic ownership requirements in the Information and Communications Technology sector, which stimulated new foreign investments in the sector.

### **Real Estate Restrictions**

The 2010 Kenyan Constitution prohibits foreigners from holding freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. The process for leasing developed land and property is clear and established, but the process for obtaining clear title of undeveloped land is opaque and unreliable. For undeveloped land, investors risk receiving fake title deeds or leasing a plot with multiple titles and unauthorized sales.

## **STATE-OWNED ENTERPRISES**

The Kenyan Government wholly owns the National Oil Corporation and the Kenya Pipeline Corporation, which limits competition in this sector. Other state-owned enterprises (SOEs), including Kenya Electricity Generating Company, Kenya Electricity Transmission Company, Kenya Power, and the Geothermal Development Company, dominate the electricity generation, transmission, and distribution segments of the energy sector. Kenya Power’s internal procurement rules require that 80 percent of supplies be sourced from Kenyan-registered companies to encourage foreign suppliers to establish manufacturing facilities in the country.

Certain SOEs have enjoyed preferential access to markets. Examples include Kenya Re, which enjoys a guaranteed re-insurance market share; Kenya Seed Company, which has fewer marketing barriers than its U.S. competitors; and the National Oil Corporation, which benefits from retail market outlets developed with government funds. Some SOEs have also benefited from easier access to government loan guarantees, subsidies, and credit at favorable interest rates. The Kenyan Government announced in November 2023 that it would privatize several SOEs.

## **OTHER BARRIERS**

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the Kenya Revenue Authority has offered an alternative dispute resolution mechanism to help taxpayers resolve some tax disputes more quickly. U.S. companies have expressed concerns with the delay experienced in tax dispute resolutions through this established mechanism.

### **Bribery and Corruption**

Corruption remains a substantial barrier to doing business in Kenya. U.S. firms continue to report challenges competing against foreign firms that are willing to ignore legal standards or engage in bribery and other forms of corruption. Corruption is widely reported to affect government procurements at the national and county levels. Kenya has not effectively implemented its anticorruption laws. U.S. firms routinely report direct requests for bribes from all levels of the Kenyan Government.

Despite efforts to increase efficiency and public confidence in the judiciary, the backlog of cases and continued corruption undermine the judicial system's credibility and effectiveness. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence court cases. As such, foreign and local investors risk lengthy and costly legal procedures.

### **Export Ban**

The 2013 Agriculture, Fisheries and Food Authority Act prohibits exports of raw agricultural produce such as macadamia nuts, Bixa, cashew nuts, and pyrethrum without authorization from the Kenyan Cabinet Secretary for Investment, Trade, and Industry.

# KOREA

## TRADE AGREEMENTS

### United States–Korea Free Trade Agreement

The United States–Korea Free Trade Agreement (KORUS) entered into force on March 15, 2012. Korea immediately eliminated duties on nearly 80 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over 10 years and have been eliminated as of January 1, 2021. Tariffs continue to be phased out for certain seafood products, which are scheduled to be eliminated in 2026. Korea has eliminated tariffs on the majority of U.S. agricultural products, while maintaining tariff-rate quotas (TRQs) on a handful of U.S. agricultural exports.

The United States and Korea reached agreement in 2018 to modifications and amendments to KORUS and a related letter exchange. The United States and Korea meet regularly to review the implementation and operation of KORUS and to address outstanding issues.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

#### **Chemicals**

Four laws and their respective implementing regulations form the basis of Korea’s chemical management system: the Act on the Registration and Evaluation of Chemicals (last revised in April 2021); the Occupational Safety and Health Act (last revised in August 2021); the Consumer Chemical Products and Biocides Safety Control Act (last revised in May 2021); and the Chemical Substances Control Act (last revised in August 2021). U.S. chemicals exporters regularly raise concerns with aspects of all of these laws and their implementing regulations, including: lack of guidance from the regulators on how to implement the regulations; insufficient protection for confidential business information; and, inadequate transparency regarding the selection of chemicals to be tested and the testing methodology.

#### **Packaging Materials and Labeling Regulations**

U.S. stakeholders remain concerned about the lack of clarity relating to the calculation method for packaging space ratios used by Korean Government authorities under the Act on the Promotion of Saving and Recycling of Resources (Recycling Act). While not yet passed, proposed amendments to the Recycling Act in August 2020 and November 2020 would mandate pre-launch testing of packaging materials and labeling of small electronic products to ensure compliance with specified packaging requirements. Stakeholders have raised concerns that the amendments would delay product releases, particularly when not provided with sufficient time to find alternative solutions to adapt to new requirements.

### Sanitary and Phytosanitary Barriers

#### **Agricultural Biotechnology**

Korea’s regulatory system for agricultural biotechnology continues to present challenges to U.S. agricultural exports. The approval process for new biotechnology products is onerous and protracted due

to inefficiencies, which include redundant reviews and excessive data requests. The regulatory approval is managed across five different agencies, each with its own process and data submission requirements. While there is no clear mechanism to address the inefficiencies of Korea's regulatory process, Korea has indicated a willingness to continue discussing potential reforms to its regulatory process. The United States and industry stakeholders have provided ideas on how to improve the process and developed pilot projects to test a streamlined process for biotechnology product reviews. These initiatives have had little impact, however, because Korea's Living Modified Organisms (LMO) Act mandates participation by the five agencies, limiting the potential for streamlining the system without legislative changes.

In 2022, Korea's Ministry of Trade, Industry and Energy (MOTIE) proposed a draft revision of the LMO Act to include a policy on products of innovative biotechnologies (*e.g.*, genome editing). Korea proposed to classify genome-edited products as LMOs, but also introduced a pre-review system to exempt certain products from a full risk assessment under certain conditions. Once the LMO Act revision is finalized, Korea will develop regulations to implement the pre-review system and establish approval procedures for products that are not exempted. The United States discussed concerns with Korea's approval process for agricultural biotechnology products during the August 2023 meeting of the KORUS Committee on Sanitary and Phytosanitary Measures (KORUS SPS Committee).

### **Beef and Beef Products**

Prior to 2008, Korea restricted the importation of U.S. beef and beef products, citing concerns related to bovine spongiform encephalopathy (BSE). In 2008, the United States and Korea reached a bilateral agreement to fully reopen Korea's market to U.S. beef and beef products. However, as a transitional measure, U.S. beef and beef products imported into Korea had to be derived from animals less than 30 months of age. This "transitional measure" has remained in place for sixteen years. In addition, imports of processed beef products, including ground beef patties, beef jerky, and sausage, are still prohibited.

### **Market Access for Pet Food Containing Ruminant Ingredients**

In May 2018, the United States sent a formal request to Korea's Ministry of Agriculture, Food, and Rural Affairs (MAFRA) for market access for pet food containing U.S.-origin ruminant ingredients, as well as any ruminant ingredients imported from countries that, like the United States, are deemed by the World Organisation for Animal Health as having a negligible risk for BSE. In July 2018, the MAFRA indicated that it was drafting import health requirements for pet food. The United States reiterated the request in the KORUS SPS Committee in August 2023. As of December 2023, Korea's revised pet food import health requirements remain unpublished.

### **Horticultural Products**

Several U.S. market access requests remain pending with the MAFRA Animal and Plant Quarantine Agency (APQA). Among these are expanded access for blueberries from U.S. states other than Oregon; improvement in the cherry import program; and access for apples, pears, Texas grapefruit, and California stone fruits. The United States requested that the APQA expedite the approval process for these products. The United States and Korea continued efforts to establish access for U.S. exports and discussed these issues during the KORUS SPS Committee in August 2023 and at a bilateral plant health technical meeting in November 2023.

### **Maximum Residue Limits**

Korea's Positive List System (PLS) requires the establishment of new import tolerances for agrochemical residues that were previously permitted but not officially registered for use in Korea, as well as for new

substances that do not have any maximum residue limits (MRLs) in Korea. As of January 2022, U.S. agricultural exports are required to comply with Korea's domestic MRLs, import tolerance, or a default of 0.01 parts per million (ppm).

Korea plans to introduce a PLS for meat, poultry, and other animal products. Like the PLS for agrochemical residues, Korea began a phased implementation of the PLS for veterinary drugs. Starting in January 2022, Korea lowered the default limit for antimicrobial residues from 0.03 ppm to 0.01 ppm, in the absence of Korean or Codex Alimentarius Commission MRLs. Under the second phase, expected to begin in January 2024, in the absence of a Korean MRL or import tolerance, Korea will apply a default of 0.01 ppm for veterinary drugs in six major product categories, including: beef; pork; chicken; milk; eggs; and, fishery products.

## GOVERNMENT PROCUREMENT

Korea is Party to the WTO Agreement on Government Procurement (GPA). Korea has made commitments to open its government procurement to U.S. suppliers under the revised GPA and under KORUS. KORUS provides U.S. suppliers significantly expanded access to central government procurements through a substantially lower threshold for eligible central government procurement contracts of goods and services than what exists in the WTO GPA (\$100,000 versus the current GPA threshold of \$182,000). While KORUS does not cover procurement by Korean sub-central government entities and government enterprises, the GPA provides U.S. businesses with access to procurement conducted by most Korean provinces, cities, and government enterprises.

### **Encryption and Security Requirements for Public Procurement of Information and Communication Technology Equipment**

Korea and the United States are both members of the Common Criteria Recognition Arrangement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. Korea's National Intelligence Service (NIS), however, has imposed additional domestic cybersecurity certification requirements through its Security Evaluation Scheme (SES) since October 2014. Korea has broadly imposed the SES for common criteria (CC)-certified information technology products to be sold to the public sector. In October 2022, the NIS introduced a three-tiered scheme dividing all public institutions into three sensitivity tiers. The NIS now allows institutions in the middle and lower tiers, such as universities and public schools, to use CC-certified information and communication technology products without additional domestic security verification. However, the SES still applies to most major public institutions, which account for over 90 percent of the public sector market, including all central administrative institutions such as ministries and metropolitan local governments. The United States has urged Korea to abide by its obligations as a CCRA member.

Korea requires network equipment procured by public sector agencies (*i.e.*, government agencies and quasi-government agencies) to incorporate encryption functionality certified by the NIS. However, the NIS only certifies encryption modules based on the Korean-developed ARIA and SEED encryption algorithms (which, although they align with ISO standards, are in practice primarily used in Korea), rather than the internationally standardized Advanced Encryption Standard (AES) algorithm in widespread use worldwide. This restriction has *de facto* significantly limited U.S. suppliers' access to this market as it requires the development of a Korea-specific product line, which may not be commercially viable. The United States has urged Korea to ensure that equipment based on widely used standards has full access to Korea's public sector market.



## **Cloud Security Certification for Public Sector Cloud Service Procurement**

The Cloud Security Assurance Program (CSAP) was created by the Korea Internet and Security Agency in 2016 and elevated from administrative guidance to a legal requirement through a March 2022 revision to the Cloud Computing Promotion Act. The CSAP, which applies to Korea's central, provincial, and local public sector with very limited exceptions, creates significant barriers to foreign cloud service providers (CSPs) seeking to sell to Korea's public sector. CSPs are required to create physically segregated facilities for exclusive use by government-owned customers, comply with data localization of cloud systems, create backup systems and data, and ensure that operations and management personnel of cloud service providers are located within the territory of Korea to obtain the low-tier certification. CSPs must also use only NIS-certified encryption algorithms (ARIA or SEED).

The potential market from which U.S. providers are being excluded is large and growing. In August 2022, Korea began a review of the CSAP with a view to reform it in a way that would open market access possibilities for foreign service providers, indicating it would benchmark the U.S. Federal Risk and Authorization Management Program (FedRAMP). In January 2023, Korea revised the Notification of the Security Certification for Cloud Computing Services to introduce a three-tiered scheme dividing all public networks into three risk tiers under the CSAP, which still creates significant barriers to U.S. CSPs seeking to sell to Korea's public sector. Only those CSPs that have at least the mid-tier CSAP certification can effectively participate in the government's digital transformation initiative. The United States raised this issue in June 2023 and in November 2023 and urged Korea to align its cloud security certification requirements with other internationally accepted standards.

## **INTELLECTUAL PROPERTY PROTECTION**

In general, Korea has a strong regime of intellectual property (IP) protection and enforcement. Under KORUS, Korea agreed to strong enforcement provisions for various types of IP rights and agreed to join key multilateral IP agreements. Moreover, the Korean Government prioritizes IP protection, as Korea is a significant creator of IP. Nevertheless, some IP-related concerns remain, including with respect to: the transshipment of counterfeit goods, especially via small express-shipped parcels; geographical indications; and, a lack of civil and criminal penalties sufficient to deter IP violations. The United States continues to work with Korea to improve these areas.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Notwithstanding KORUS commitments not to impose new restrictions, multiple Korean Government agencies and the National Assembly have been discussing ways to incorporate online media streaming platforms into the existing restrictive regulatory framework for legacy media, including potential Korean content requirements for U.S. over-the-top platforms.

### **Financial Services and Insurance Services**

#### **Cross-Border Data Transfer by Reinsurance Institutions**

Reinsurance firms are not able to transfer information outside Korea as required in their ordinary course of business and as they should be able to do under Korea's KORUS obligations. Korea's Financial Services Commission (FSC) informed the U.S. Government in 2021 and in 2022 that it changed its interpretation of relevant rules under the User Protection and Credit Information Act such that U.S. reinsurance companies

can send personal information of primary insurance policy holders outside Korea for purposes of data processing, risk management, and underwriting. However, U.S. reinsurance companies reported in 2022 that they had not seen such a change in practice, and, absent sufficient legal certainty, they have not been able to send information cross-border. In October 2022, progress was made in clarifying important outstanding questions, including: the allowable purposes for such information transfers; the locations to which information may be sent; and, the interaction of the User Protection and Credit Information Act and the Insurance Business Act, both of which regulate the insurance industry. These clarifications indicated that the transfer of such information by reinsurance companies would be allowed in most cases; however, there is no public written documentation of this upon which industry could rely for legal certainty.

### **Professional Services**

Since 2013, Korea has taken steps to open its legal services market, as outlined in KORUS. The amended Foreign Legal Consultants Act now allows foreign law firms to open foreign legal consultant offices in Korea and to enter into “cooperative agreements” with Korean firms to handle cases jointly where domestic and foreign legal issues are mixed. Foreign-licensed lawyers and firms have been able to establish joint ventures and hire Korean-licensed lawyers since 2017; but, several requirements that are unique to Korea discourage U.S. companies from doing so. The Act limits a foreign law firm’s ownership of the joint venture to 49 percent and requires that the firms composing the joint venture have been in operation for at least three years. The Act also requires foreign and Korean law firms participating in a joint venture to establish a new separate legal entity under Korean law. In addition, the Act limits the scope of practice of joint ventures. These provisions undermine the legislation’s purpose of facilitating trade in legal services between the two countries.

## **BARRIERS TO DIGITAL TRADE**

### **Network Usage Fees**

Since 2021, a number of bills have been introduced in the National Assembly that would require foreign content providers to pay network usage fees to Korean Internet service providers (ISPs). Because some Korean ISPs are also themselves content providers, fees paid by U.S. content providers could benefit a Korean competitor. Furthermore, such a mandate could be anticompetitive by further strengthening Korea’s ISP oligopoly of three major providers to the detriment of the content industry. The United States raised this issue with Korea on several occasions throughout 2023.

### **Location-Based Data**

Korea’s restrictions on the export of location-based data have led to a competitive disadvantage for international suppliers seeking to incorporate such data into services offered from outside Korea. For example, foreign-based suppliers of interactive services incorporating location-based functions, such as traffic updates and navigation directions, cannot fully compete against Korean companies because locally-based competitors typically are not dependent on foreign data processing centers and do not need to export location-based data. Korea is the only significant market in the world that maintains such restrictions on the export of location-based data. While there is no general legal prohibition on exporting location-based data, exporting such data requires a license. As of December 2023, Korea had never approved a license to export cartographic or other location-based data, despite receiving numerous applications from foreign suppliers.

## INVESTMENT BARRIERS

Korea maintains various restrictions on foreign investment in the telecommunications and media sectors. Korean law prohibits foreign investment in radio and terrestrial broadcasting operations; limits foreign ownership to 25 percent in news agency activities; and limits foreign ownership to 49 percent in television programming and content distribution, cable and satellite broadcasting services, and wired, wireless, satellite, and other telecommunications. Since March 2015, Korea has permitted U.S. investors to hold up to 100 percent ownership of a television program provider not engaged in news reporting, multi-genre programming, or home shopping, but foreign cable and satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the restrictions in the telecommunications and media sectors, Korea limits foreign ownership to 30 percent in hydroelectric, thermal, solar, and other forms of power generation, and limits foreign ownership to 50 percent for enterprises engaged in raising beef cattle, meat wholesaling, electric power sale, transmission, and distribution, coastal passenger and freight transport, domestic and small air transport, and newspapers, magazines, and periodicals.

## OTHER BARRIERS

### Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States.

The U.S. Government has raised concerns about Korea's emission-related components (ERC) regulations under Korea's Clean Air Conservation Act. Vehicle manufacturers and importers are required to obtain either a modification certification (for a substantial modification of ERCs) or prepare modification reports for insignificant changes. However, the automobile industry has expressed concern about lack of clarity over what types of modifications fall under which category. Automakers also have noted that violations with respect to imports could be subject to criminal prosecution by Korea's customs authorities, which lack authority to investigate domestically manufactured vehicles.

In August 2022, U.S. automotive industry stakeholders raised concerns around the Ministry of Environment's verification test procedure, conducted by the National Institute of Environment Research, on randomly selected new models imported to Korea. These tests have caused delays in manufacturers' product launches.

### Pharmaceuticals and Medical Devices

The U.S. pharmaceutical and medical device industries continue to report concerns regarding a lack of transparency in Korea's pricing and reimbursement policies and a lack of substantive opportunities for stakeholder input into proposed policy changes. Industry has raised similar transparency concerns regarding Korea's Innovative Pharmaceutical Company (IPC) Accreditation policy, under which the Ministry of Health and Welfare designates certain companies as IPCs that can receive tax credits, research and development support, and more favorable premiums, but does not offer an explanation to companies who are denied the accreditation.

The United States continues to urge Korea to improve its engagement with this sector by enhancing transparency and providing meaningful opportunities for stakeholder input.

# LAOS

## TRADE AGREEMENTS

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

The United States and Laos signed a Trade and Investment Framework Agreement (TIFA) on February 17, 2016. The Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Laos. The United States signed a bilateral trade agreement with Laos on February 4, 2005.

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Laos' average Most-Favored-Nation (MFN) applied tariff rate was 8.6 percent in 2022 (latest data available). Laos' average MFN applied tariff rate was 11.2 percent for agricultural products and 8.1 percent for non-agricultural products in 2022 (latest data available). Laos has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound MFN tariff rate of 19.2 percent, as all of its WTO accession commitments came into force in 2023.

#### **Taxes**

In October 2023, a Laos presidential decree raised excise taxes on six categories of products including gasoline vehicles, with progressively higher tax rates aligned with engine size, such that vehicles with engines over 5,000 cubic centimeters would be subject to a tax rate of 220 percent. U.S. automobile brands dominate the market for larger engines. Stakeholders have raised concerns that the decree was issued without adequate consultation.

### Non-Tariff Barriers

#### **Import Licensing and Restrictions**

Laos has gradually removed license requirements for some imports. Certain products are still subject to import licensing requirements, including motor vehicles, refined petroleum fuels and oil, and natural gas products.

#### **Customs Barriers and Trade Facilitation**

Laos notified its customs valuation legislation to the WTO in June 2013, but has not yet responded to the Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

## **TECHNICAL BARRIERS TO TRADE**

### **Vehicles**

Laos' Government Decree No. 470 of 2019 on the management of land vehicles requires that imported vehicles, registered and used in Laos, meet regional and international standards and are in accordance with the international obligations of Laos. Under the Association of Southeast Asian Nations (ASEAN) Mutual Recognition Agreement on Type Approval for Automotive Products, the ASEAN members established a procedure for accepting or recognizing conformity assessment results with reference to the United Nations Economic Commission for Europe (UNECE) 1958 Agreement regulations. Further regulations are anticipated, and the United States will continue to monitor the development of proposed regulations in 2024 to promote acceptance of imported vehicles that meet demonstrated high standards such as the U.S. Federal Motor Vehicle Safety Standards.

## **INTELLECTUAL PROPERTY PROTECTION**

Laos continues to improve its intellectual property (IP) regime, including by issuing regulations to implement its Law on Intellectual Property, and also continues to increase public awareness and media coverage of the harm caused by counterfeit goods and the impact of copyright piracy on local content industries. With U.S. Government assistance, Laos also continues to work to establish an effective system for civil and criminal enforcement of IP. However, counterfeit and pirated goods continue to be available in Lao marketplaces.

# MALAYSIA

## TRADE AGREEMENTS

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

The United States and Malaysia signed a Trade and Investment Framework Agreement on May 10, 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Malaysia.

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Malaysia's average Most-Favored-Nation (MFN) applied tariff rate was 5.6 percent in 2022 (latest data available). Malaysia's average MFN applied tariff rate was 7.9 percent for agricultural products and 5.3 percent for non-agricultural products in 2022 (latest data available). Malaysia has bound 83.8 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 21.2 percent. Malaysia's maximum WTO bound tariff rate varies significantly by product group, for example, from 5 percent for petroleum to 257 percent for dairy products.

Duties for tariff lines where there is significant local production are often higher. In general, tariffs are lower for raw materials than for value-added goods.

#### **Taxes**

Malaysia continues to assess a higher excise tax on imported distilled spirits than on spirits that are predominantly produced domestically. Malaysia maintains very high excise taxes on motor vehicles, ranging from 60 percent to 105 percent, based on vehicle type and engine size.

### Non-Tariff Barriers

#### **Import Restrictions on Motor Vehicles**

Malaysia imposes import restrictions on automobiles under the Malaysian National Automotive Policy, which makes a fundamental distinction between “national” cars (*e.g.*, domestic automakers Proton and Perodua) and “non-national” cars, which include other vehicles produced or assembled in Malaysia, as well as imports. The Malaysian system of “national approved permits” confers on permit holders the right to import and distribute cars and motorcycles. The national approved permits system is administered in a non-transparent manner and is used to implement a cap on the total number of vehicles that can be imported in a given year, currently set at 10 percent of the domestic market. In addition, Malaysia applies high tariffs in the automobile sector, and has traffic restrictions and noise standards that affect the usage of large motorcycles.

In its 2024 federal budget, the Malaysian Government proposed import and excise duty exemptions for imported electric vehicles (EVs) through December 31, 2025. Only locally assembled EVs would benefit from these exemptions through December 31, 2027.

## **Cabotage Policy on Submarine Cable Repairs**

In 2019, the Malaysian Ministry of Transport issued an exemption to the Merchant Shipping Ordinance of 1952 that allowed non-Malaysian ships to conduct submarine cable repairs in Malaysian waters. The exemption reduced the time required to conduct submarine cable repairs critical for continued internet, voice, and data traffic. In November 2020, the new Minister of Transport suddenly revoked the exemption. The United States and industry groups continue to raise concerns with the revocation and have called on the Malaysian Government to restore the exemption.

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

### **Technical Barriers to Trade**

#### **Halal Import Requirements**

Malaysia's halal requirements are more prescriptive than relevant internationally recognized guidelines on labeling food as halal. Specifically, Malaysia requires slaughter plants to maintain dedicated halal production facilities and to ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, relevant international practices allow for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. U.S. industry has expressed concerns regarding the costs of creating new, segregated production facilities to access Malaysia's market.

Prior to exporting to Malaysia, the halal practices at each individual U.S. meat and poultry plant must be inspected by Malaysia's Department of Islamic Development (JAKIM) and certified by a JAKIM-accredited Foreign Halal Certification Body (FHCb). Malaysia's Department of Veterinary Services (DVS), in conjunction with JAKIM, has approved only one U.S. beef plant and one U.S. turkey plant to export halal products to Malaysia. In October 2023, the DVS delisted the single approved U.S. beef plant, alleging violations of Malaysian halal requirements identified during a June 2023 plant audit. In addition to plant inspection requirements, all meat, poultry, and dairy products exported to Malaysia must be certified by a JAKIM-approved FHCb.

As of December 2023, Malaysia's Attorney General was still reviewing JAKIM's draft Procedure for the Recognition of Foreign Halal Certification Bodies, which sets out the new requirements for recognizing a FHCb and their post-recognition obligations. The United States will continue to engage with JAKIM on its draft procedure.

#### **Facility Registration Requirements for Export**

Malaysia requires that all meat, poultry, and dairy facilities that export to the country be registered by the DVS. This process requires submission of an application with supporting documentation for DVS review, which can take several months. Following the application review, meat and poultry products (with the exception of pork products) are subject to on-site inspection by the DVS and JAKIM. For all products subject to registration, the DVS requires a new application for any adjustment to registration parameters (e.g., introduction of a new product in an approved plant and clerical changes to plant numbers or addresses). Updating the registration can involve additional delays of weeks to months. Minor differences between export certificate details and plant details in the registration system can result in detained shipments that often take several days to clarify.

## **Restrictive Regulations on Alcoholic Beverages**

The definitions for a number of alcoholic beverage products in Malaysia's Food Regulations of 1985 are very narrow and do not provide for the sale of new products that do not fit neatly within the product categories. As a result, Malaysia prohibits the importation of products that do not meet a defined category. The United States is concerned that malt-based and spirit-based ready-to-drink products are not permitted in Malaysia, even though similar wine-based beverages are allowed. The United States continues to engage with Malaysia on its regulations for alcoholic beverage products, including potentially trade-restricting definitions for alcoholic beverages.

## **GOVERNMENT PROCUREMENT**

Malaysia generally invites international tenders only when domestic goods and services are not available. In those cases, foreign companies often find they need to take on a local, Bumiputera (indigenous ethnic Malay) -qualified partner before their tenders will be considered.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Malaysia has been in the process of reforming its intellectual property (IP) laws, including laws governing copyrights, patents, and trademarks. Malaysia has adopted the Copyright (Amendment) Act of 2022, which contains provisions that create a new criminal offense for committing copyright infringement with streaming. The amendment entered into force in March 2022. Malaysia also continues to take steps to enhance its IP enforcement regime.

However, concerns remain in a number of areas. Counterfeit goods are widely available, as highlighted by the continued inclusion of Petaling Street Market in Kuala Lumpur in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). In addition, online, book and journal piracy remain as challenges for right holders. The United States urges Malaysia to continue its efforts to improve protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to enhance criminal sanctions for trade secret theft and misappropriation.

## **SERVICES BARRIERS**

### **Financial Services**

#### **Best Interest Test**

Under the Financial Services Act, Bank Negara Malaysia (Malaysia's central bank) evaluates potential investments in financial institutions based on whether the investment serves the "best interests of Malaysia," the criteria for which include evaluating the level of Malaysian participation in the sector.

Bank Negara Malaysia continues to limit foreign banks to eight physical branches in Malaysia, and imposes certain other restrictions. For example, foreign banks cannot set up new branches within 1.5 kilometers of an existing local bank; and Bank Negara Malaysia considers ATMs as equivalent to separate branches. In



addition, Bank Negara Malaysia has conditioned foreign banks' ability to offer some services on commitments to undertake certain back-office activities in Malaysia.

As of December 31, 2023, Bank Negara Malaysia had issued digital bank licenses to five consortiums of banks, investment banks, and businesses.

Malaysia maintains some restrictions on the business of reinsurance, requiring that Malaysian insurers first seek reinsurance from local reinsurers, and then from reinsurers based in the Labuan territory, before obtaining cross-border reinsurance. Also, primary insurers must offer Malaysian Re, the national reinsurer, up to 15 percent of certain lines of both proportional and non-proportional treaty reinsurance, and for facultative and engineering reinsurance up to a certain amount.

## **BARRIERS TO DIGITAL TRADE**

### **Cloud Services**

As of April 2022, the Minister of Communications and Multimedia has mandated that the Malaysian Communications and Multimedia Commission subject cloud service providers, and data centers hosting cloud service applications, to licensing obligations under the Communications and Multimedia Act of 1998, which are vague and can result in unnecessary administrative burdens when operating in Malaysia. Cloud service providers with a local presence are required to apply for an "Application Service Provider's (ASP) license" and can remain 100 percent foreign-owned; cross-border suppliers of cloud services without a local presence do not need to register or obtain ASP licenses.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Ownership**

Foreign investment in certain sectors is subject to local participation requirements that take the form of joint ventures with mandated minimum ownership interests held by ethnic Malaysian individuals or entities. When applying for certain operating licenses, permits, and approvals, entities with foreign ownership most commonly comply with the local participation requirements through a 70–30 equity split between the foreign investors (who are limited to a maximum of 70 percent ownership) and ethnic Malaysian individuals or entities (which must have a minimum 30 percent stake). Sector-specific regulators set the applicable local participation requirements, including in banking and insurance, education, freight forwarding and logistics, power generation, and cable and satellite telecommunications. In the oil and gas industry, non-Malaysian firms are permitted to participate in oil services in partnership with local firms, and are restricted to the maximum 49 percent equity stake if the foreign partner is the principal shareholder.

## **SUBSIDIES**

### **Export Subsidies**

Malaysia maintains several programs relating to exports, distinct from the pioneer status and investment tax allowance programs listed in Malaysia's subsidies notifications to the WTO. For example, the normal and enhanced allowance for increased exports programs provide for tax deductions of up to 70 percent of statutory income for increased exports. Malaysia has not included these measures in its WTO subsidies notifications. The United States continues to raise concerns with Malaysia about these and other policies.

# MEXICO

## TRADE AGREEMENTS

### The United States–Mexico–Canada Agreement

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

## IMPORT POLICIES

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

Mexico continues to provide insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven border enforcement of Mexican standards and labeling rules. Some goods are still not allowed to be imported at all ports of entry. Restricting goods to certain ports has made it difficult for U.S. exporters to arrange for transportation and logistics, especially for electronic commerce purchases from U.S. SME exporters.

The USMCA prohibits arbitrary limits on the number of ports at which a customs broker may operate. Yet, Article 161 of Mexico’s Customs law limits a broker to operate at four ports if the broker is not part of a customs agency. The United States continues to urge Mexico to amend the law to allow brokers to operate at any port where the broker is able to perform its duties.

The USMCA also requires that Mexico implement a periodic payment option for express delivery shipments, which Mexico had not done as of December 2023.

On January 1, 2022, Mexico imposed a new requirement for a “complement” to the existing electronic waybill requirement on transportation services. Any shipment transported within Mexico over federal roads must be accompanied by an electronic waybill “complement” that contains up to 140 data elements about the shipment. On December 31, 2023, Mexico began enforcing the requirement. The United States continues to monitor Mexico’s implementation of this requirement.

#### **Medical Devices, Supplies, and Pharmaceuticals**

Industry continues to report delays of 18 months to 24 months for adjudication of sanitary registrations and import permit applications. Overall, the regulatory environment has shown minor improvements, but more structural changes need to be made to facilitate registration in Mexico. Although the Federal Commission for Protection Against Sanitary Risks (COFEPRIS) continues to work through its backlog, companies that try to register U.S. Health and Human Services Food and Drug Administration (FDA)-approved products in Mexico continue to report delays of more than a year. Regulatory delay remains a primary barrier to entering the Mexican market for medical devices and pharmaceuticals. COFEPRIS reportedly continues to be understaffed, with insufficient capacity to grant sanitary registrations and conduct factory inspections to issue good manufacturing practices certifications within the established timeframes. COFEPRIS is in

the process of implementing reliance mechanisms for approvals and inspections and, as part of these efforts, continues to hold technical regulatory discussions with the FDA to identify opportunities to improve its review process.

## **Glyphosate**

Mexico's Secretariat of the Environment and Natural Resources has rejected import permits for glyphosate-containing chemical products. Mexico has not provided an opportunity for public comment, submitted notifications to the World Trade Organization (WTO), or provided scientific evidence for the rejections. Glyphosate remains registered for use in Mexico.

Separately, on January 1, 2021, a decree that called for the phaseout of the use of glyphosate and glyphosate-containing products by January 31, 2024, entered into force. A subsequent decree, published on February 13, 2023, extended the phaseout deadline to March 31, 2024. During the phaseout period, Mexico's National Council of Humanities, Sciences and Technology has been tasked with studying, developing, and promoting alternatives to glyphosate. Furthermore, the decree prohibits Mexico from using glyphosate in any government-sponsored programs during the phaseout period. Mexico is implementing import quotas for glyphosate and glyphosate-containing products. On March 1, 2023, COFEPRIS reduced the quota for imports of glyphosate by 50 percent, to 4,131 tons of formulated glyphosate and 314 tons of technical glyphosate.

The United States continues to press Mexico to grant import permits for glyphosate and glyphosate-containing products, consistent with the fact that glyphosate remains registered for use in Mexico.

## **Pesticides and Agricultural Chemicals**

U.S. companies continue to report significant delays in receiving the necessary registration and marketing approvals from COFEPRIS for certain pesticides and agricultural chemicals. These delays appear to impact both applications for registration and applications for reregistration, sometimes involving only administrative updates such as changing the company's address. Companies report COFEPRIS is not granting registration renewals for many pesticide molecules. Consequently, some license holders have lost their registrations and the ability to import pesticides and agricultural chemicals.

## **Chemical and Petrochemical Products**

On October 23, 2023, Mexico issued a decree that immediately placed new import restrictions on over 60 chemical and petrochemical products. On June 6, 2023, Mexico published a separate measure expanding the scope of coverage of certain existing import and export requirements to 58 new chemical and petrochemical products and creating additional requirements for companies importing or exporting in scope products. The United States continues to monitor Mexico's implementation of these new requirements.

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

## **Technical Barriers to Trade**

### **Dairy Products**

The United States continues to be concerned about Mexico's proposed modifications to Mexican Official Standard NOM-223 on cheese conformity assessment procedures, NOM-222 on milk powder, and NOM-

181 on yogurt. The United States has requested that Mexico consider changes to its overly burdensome informational requirements and conformity assessment scheme, including by basing them on international standards. In 2023, the United States once again raised concerns regarding the cheese conformity assessment procedures in the WTO at every meeting of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) and the WTO Council for Trade in Goods.

### **Local Specific Absorption Testing Requirements**

The United States continues to express concerns with regulations that Mexico's telecommunications regulator, the Federal Telecommunications Institute (IFT), published in 2020 pursuant to Technical Provision IFT-012-2019 that pose a barrier to trade for mobile telecommunications products by requiring in-country testing for Specific Absorption Rates and reference out-of-date standards from the International Electrochemical Commission/Institute of Electrical and Electronics Engineers and the International Commission on Non-Ionizing Radiation Protection. The requirements include duplicative testing and may cause delays, as Mexico has a limited number of accredited facilities able to perform the required tests. The United States continued to press Mexico, including on the margins of the 2023 WTO TBT Committee meetings, to use the latest testing standards and to include testing to these standards in the scope of the Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment.

### **Sanitary and Phytosanitary Barriers**

#### **Fresh Potatoes**

Since 2003, the United States has sought access for fresh potatoes to all of Mexico, beyond a 26-kilometer zone along the U.S.–Mexico border outside of which imports were not permitted. In April 2021, the Supreme Court of Mexico affirmed the authority of Mexico's regulatory agency to expand access for U.S. fresh potatoes. Subsequently, in 2021, Mexico completed the regulatory steps necessary for access for U.S. fresh potatoes to cities with populations over 100,000 people. In May 2022, the United States began shipping fresh potatoes to Mexico beyond the 26-kilometer zone. The United States is monitoring the situation to ensure transparent and predictable access for U.S. exporters and that requirements are based on science.

#### **Products of Agricultural Biotechnology**

Mexico's Biosafety Law requires COFEPRIS to decide on a complete application for authorization covering the importation and sale of genetically engineered (GE) products within six months of receipt. The United States has expressed serious concerns that certain decisions on applications were not based on science and were subject to significant delays.

On February 13, 2023, the Mexican Government published a decree that bans the use of GE corn in tortillas and dough and instructs Mexican Government agencies to gradually substitute—*i.e.*, restrict and eventually ban—the use of GE corn in all products for human consumption and for animal feed. In March 2023, the United States requested and held technical consultations with Mexico regarding its measures concerning GE products under the USMCA Sanitary and Phytosanitary Measures Chapter, but the consultations did not resolve the matter. In June 2023, the United States requested and held dispute settlement consultations with Mexico regarding its measures under the USMCA Dispute Settlement Chapter, but these consultations also failed to resolve the matter. On August 17, 2023, the United States established a USMCA dispute settlement panel challenging the aforementioned measures reflected in Mexico's February 13, 2023 decree on the basis that these measures are not based on science and undermine the market access Mexico agreed to provide in the USMCA. A final panel report is expected at the end of 2024.

## Genetically Engineered Cotton

Mexico rejected applications for cultivation of GE cotton in 2019 and 2020. No applications were submitted in 2021 and 2022. In 2023, companies submitted three applications for experimental field trials of new GE cotton varieties. Mexico had not decided on these applications as of December 2023. GE cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on the environment, biodiversity, or animal or plant health. The United States continues to press Mexico to reconsider rejected applications, complete its approval procedure without undue delay, and use a science- and risk-based approval process.

## INTELLECTUAL PROPERTY PROTECTION

Mexico was listed on the Watch List in the [2023 Special 301 Report](#). Obstacles to U.S. trade in intellectual property (IP) intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and online markets. As broadband access increases, so has online piracy, and stakeholders report that Mexico has one of the highest rates of music and video game piracy in the world. Overall criminal enforcement of IP rights, including online, continues to be characterized by weak coordination among federal, state, and municipal officials; limited resources for prosecutions; the lack of sustained investigations targeting suppliers of counterfeit and pirated goods and services; and the lack of sufficient penalties to deter violations. Brand owners also face bad faith trademark registrations, making it important for companies to register their trademarks early. Moreover, rights holders continue to express concern about the length of administrative and judicial patent and trademark infringement proceedings and the persistence of continuing infringement while cases remain pending. The Tepito market in Mexico City, the La Cuchilla market in Puebla, and the La Pulga Río market in Monterrey are listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) for selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in 2020, Mexico and the European Union (EU) concluded negotiations on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers. The United States remains concerned about the EU practice of negotiating product-specific IP outcomes as a condition of market access and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico. In a USMCA side letter, Mexico confirmed that market access of U.S. products is not restricted in Mexico due to the mere use of certain individual cheese terms. Mexico has a *sui generis* system of protection for GIs that includes certain elements aimed at improving and respecting due process and transparency.

In 2020, Mexico enacted a new Federal Law for the Protection of Industrial Property and amended its Federal Copyright Law and Federal Criminal Code with a view to complying with various provisions of the USMCA and strengthening IP protection. Mexico is still in the process of drafting regulations for both the Federal Law for the Protection of Industrial Property and the Federal Copyright Law amendments, and the lack of regulations is creating uncertainty for the creative and innovative sectors looking to protect and enforce their IP.

## SERVICES BARRIERS

### Electronic Payments Services

The United States continues to closely monitor developments with respect to Mexico's evolving policy framework for electronic payment service suppliers. Aspects of the existing policy framework limit the

ability of U.S. electronic payment service suppliers to supply their complete suite of value-added services, including fraud protection, and differentiate themselves in the marketplace. On September 14, 2023, Mexico's Federal Economic Competition Commission identified barriers to competition in the card payment processing market and issued recommendations to Mexico's Central Bank—Banxico—and the National Commission for Banking and Securities to restore conditions for competition. As Mexico considers updating its regulations, the United States continues to urge Mexico to facilitate a competitive market and level playing field for U.S. electronic payment service suppliers, aligned with Mexico's USMCA obligations.

Mexico issued regulations in 2021 relating to the use of cloud service suppliers by electronic payment fund institutions. The United States continues to be concerned by the length, complexity, and uncertainty of the approval process for electronic payment fund institutions that seek to use secure, U.S.-based cloud computing services, raising questions about the extent to which the approvals are tacitly being conditioned on using local computing facilities.

### **Telecommunications Services**

Notwithstanding the sweeping reforms of the telecommunications sector in 2013 and 2014, new market entrants still must compete with the traditional dominant supplier, which has maintained a market share well above 60 percent and was designated as a “preponderant economic agent” by the IFT. The entrenched position maintained by this dominant supplier, particularly regarding the mobile services market, demonstrates the continued need for vigilant enforcement by the IFT of the regulations it adopted to address that supplier's status as a preponderant economic agent. Statements by the Mexican President concerning the intention to eliminate the IFT raise significant concerns regarding Mexico's continued compliance with its USMCA obligations.

The cost of spectrum in Mexico is one of the highest in Latin America. Although Mexico assigns spectrum licenses through competitive auctions, it imposes a substantial annual fee based on the amount of spectrum held by each licensee. This approach is out of sync with international best practices and is in part responsible for the relative failure of Mexico's most recent auction (IFT-10), where only 3 of 41 blocks of spectrum received any bids. It also appears that the structure of Mexico's annual spectrum fee may advantage the dominant supplier and has led another supplier to return to the Government of Mexico all the spectrum it had been awarded. The Government of Mexico dismissed several proposals to lower the costs made by the IFT and the private sector. The United States continues to press Mexico to consider changes to its rules that would lower overall costs for spectrum and address the market power of the dominant supplier.

## **INVESTMENT BARRIERS**

### **Energy Sector**

Since December 2018, Mexico has pursued an energy policy centered on reinstating the primacy of its state-owned electric utility, the Federal Electricity Commission (CFE), and oil and gas company, Mexican Petroleum (PEMEX). Mexico has undertaken various measures to achieve this aim. For example, in March 2021, Mexico amended its Electric Power Industry Law so that its grid operator will prioritize for dispatch to Mexico's grid CFE-generated electricity over electricity generated by all private competitors, irrespective of cost or environmental impact.

Certain actions or inactions by Mexico have also been curtailing the ability of private companies to participate effectively, if at all, in Mexico's energy sector. They include delaying, denying, or failing to

act on applications for new permits or permit modifications; suspending or revoking existing permits; and otherwise blocking private companies' ability to operate renewable energy facilities (such as wind and solar installations), import and export electricity and fuel, store or transload fuel, and build or operate retail fuel stations.

In addition, in December 2019, Mexico's energy regulator granted PEMEX—but not other companies, including U.S. companies—a five-year extension to comply with maximum sulfur content requirements under its fuel standard in certain parts of Mexico, which otherwise require the sale of ultra-low sulfur diesel fuel throughout the country. Without the extension, PEMEX would have had to purchase ultra-low sulfur diesel imported from the United States or upgrade its facilities to produce ultra-low sulfur diesel in sufficient quantities.

In June 2022, Mexico's Secretary of Energy notified the Energy Regulatory Commission and the National Natural Gas System Operator of a change in policy that would require, among other things, that users of Mexico's gas transportation network demonstrate that they source natural gas from PEMEX or CFE.

Multiple U.S. companies have reported exiting Mexico's energy market as a direct consequence of these measures.

In July 2022, the United States requested consultations with Mexico under USMCA Chapter 31 regarding these measures. In 2023, the United States engaged with Mexico in these consultations on specific and concrete steps Mexico must take to address the concerns set out in the consultations request.

### **Mining Sector**

The Government of Mexico passed legislation in April 2022 amending the national mining law to establish greater state control over the country's lithium resources. The amendments place responsibility for the exploration, exploitation, and utilization of Mexico's lithium under the exclusive control of a newly created state-owned lithium company, LitoMx, and prohibit concessions, licenses, contracts, permits, and authorizations to nonpublic entities to undertake those activities. The amendments also open the door to declaring other minerals as "strategic resources" that would require greater state control in the future. The Mexican Government was still drafting implementing measures for the amendments as of December 2023. The United States continues to monitor Mexico's implementation of these amendments.

### **Restricted Sectors**

Mexico restricts foreign investment in certain sectors under the Foreign Investment Law. Foreign ownership is capped at 49 percent for express delivery companies and land for agricultural, livestock, and forestry purposes, as well as port administration services. Certain other sectors, such as transportation infrastructure, are closed to foreign participation.

## **SUBSIDIES**

### **Export Subsidies**

On October 11, 2023, Mexico issued a decree that establishes nationwide tax benefits for investment in certain export sectors. Specifically, the decree provides for the accelerated deduction of expenditures in certain new fixed assets and the additional deduction of training expenses. The United States has expressed concerns about the provision of benefits that are contingent upon the export or sale for export of products.

# MOROCCO

## TRADE AGREEMENTS

### The United States–Morocco Free Trade Agreement

The United States–Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006. Morocco immediately eliminated duties on 95 percent of industrial and consumer goods. Morocco implemented phased tariff reductions culminating in the complete elimination of duties on most goods by 2016. Some sensitive agricultural products have longer periods for duty elimination and may be subject to other provisions, including tariff-rate quotas (TRQs). Goods from key U.S. export sectors such as information technology, machinery, construction equipment, chemicals, and textiles receive either duty-free or other preferential duty treatment when entering Morocco. The United States and Morocco consult regularly to review the implementation and functioning of the Agreement and to address outstanding issues. The United States–Morocco Joint Committee is the central oversight body for the USMFTA.

## IMPORT POLICIES

### Tariffs

On January 1, 2024, as prescribed in the USMFTA, Morocco published Circular 6519/222, announcing tariff changes for calendar year 2024. The circular includes a list of products for which tariffs have been phased out in 2024, products for which tariffs are not yet fully liberalized, and updated agricultural TRQs and agricultural safeguard measures for the period from January 1 through December 31, 2024. A notable change includes the imposition of additional safeguard measures on frozen, fresh, or chilled chicken legs and wings.

## TECHNICAL BARRIERS TO TRADE

### Technical Barriers to Trade

In 2023, Morocco adopted Decree No. 2.10.421 of Ramadan 5, 1445 which stipulates that starting in January 2024, vehicles that are not aligned with the Euro 6b standard for emissions may no longer be registered in the country. Heavy vehicles have an additional 24 months to comply. Morocco generally only allows the importation of automobiles meeting the United Nations Economic Commission for Europe (UNECE) 1958 Agreement vehicle standards, effectively barring many automobiles produced in the United States from entering the Moroccan market. Although the Moroccan Government has officially allowed for the importation of automobiles that meet the U.S. Federal Motor Vehicle Safety Standards since 2016 (under Decree No. 2-15-89 of Ramadan 3, 1437), U.S. companies continue to report that Moroccan customs has still not adopted a procedure to regularize this process.

## INTELLECTUAL PROPERTY PROTECTION

Inadequate intellectual property protection and enforcement in Morocco continues to be an area of concern. Although the United States acknowledges the efforts of Morocco to combat piracy and trade in counterfeit goods, Morocco faces challenges with digital piracy and continues to be a thriving market for counterfeit products.



The United States and Morocco continue to engage on matters related to Morocco's policy toward geographical indications (GIs). The United States remains concerned that the European Union (EU) has pursued negotiations with Morocco and other countries that would require partner countries to adopt overly broad protection of EU GIs as a condition of market access into the EU. The United States continues to reiterate to Morocco the importance of each GI being independently evaluated on its individual merits, with adequate due process requirements.

## **SERVICES BARRIERS**

Although Morocco's insurance regulations do not appear to make formal distinctions based on national origin, U.S. insurance suppliers have reported that, in practice, the Moroccan regulatory body (part of the Ministry of Economy and Finance) applies an authorization process that has impeded U.S. insurance companies from introducing products that compete with Moroccan firms.

## **OTHER BARRIERS**

U.S. firms have cited irregularities with regard to certain government procedures, including a lack of clear and accessible information about new regulations and certifications relating to imports into the country, as among the greatest obstacles to investment with Morocco. In particular, U.S. companies have pointed to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. U.S. companies also have noted the challenges created by rigid protocols and excessive bureaucracy, which can lead to long wait times for decisions and permissions, particularly when dealing with public sector entities. Morocco's property registration procedures also continue to impede business.

In an effort to avoid an excessive drain on foreign exchange, Moroccan authorities allow Moroccan companies to prepay only up to 30 percent of a shipment's total value in advance of importation. These restrictions on purchasers are often problematic for U.S. exporters that require 100 percent advance payment. Some U.S. exporters use letters of credit to mitigate the effect of these limitations, but these are costly and many U.S. exporters report lengthy payment delays. While Moroccan officials had indicated in 2019 that the 30 percent limit would be phased out over an indefinite timeline, it remained in effect as of December 31, 2023. The United States continues to press for removal of the limitation.

# NEW ZEALAND

## TRADE AGREEMENTS

### The United States–New Zealand Trade and Investment Framework Agreement

The United States and New Zealand signed a Trade and Investment Framework Agreement on October 2, 1992. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and New Zealand.

## IMPORT POLICIES

### Tariffs

New Zealand's average Most-Favored-Nation (MFN) applied tariff rate was 1.9 percent in 2022 (latest data available). New Zealand's average MFN applied tariff rate was 1.4 percent for agricultural products and 2.0 percent for non-agricultural products in 2022 (latest data available). New Zealand has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 9.6 percent.

As of 2022, New Zealand applied a zero percent duty on an MFN basis on 72.5 percent of its tariff lines in agricultural goods and on 65.0 percent of its tariff lines in non-agricultural goods.

## SANITARY AND PHYTOSANITARY BARRIERS

### Animal Health

New Zealand maintains restrictions on imports of pork from the United States related to concerns that certain pork products may transmit animal diseases, which do not appear to be grounded in science and risk. Imports of U.S. frozen or chilled pork products weighing more than three kilograms must be cooked, canned, or undergo further processing within New Zealand.

## INTELLECTUAL PROPERTY PROTECTION

The United States continues to monitor developments to amend the Medicines Act 1981, any developments regarding the Geographical Indications (Wine and Spirits) Registration Act 2006, and proposed amendments to the Patent Act 2013. The United States will continue to work with New Zealand to address any intellectual property issues.



# NICARAGUA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items (approximately 95 percent of Nicaragua’s tariff lines) at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, non-agricultural goods enter Nicaragua duty free.

In addition, nearly all U.S. agricultural exports enter Nicaragua duty free under the CAFTA–DR. Nicaragua eliminated its remaining tariffs on rice and chicken leg quarters on January 1, 2023, and is scheduled to eliminate tariffs on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through annual expansion of a TRQ that reaches a maximum of 7,000 metric tons in 2025. Nicaragua is required under the CAFTA–DR to make TRQs available on January 1 of each year. Nicaragua monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

#### **Taxes**

The Nicaraguan Government levies a consumption tax of 15 percent to 42 percent on certain luxury items. Since 2019, Nicaraguan customs officials have calculated this tax based on a unilaterally devised purchase price that often seems to be inflated. Other products, such as alcoholic beverages, are also taxed on the basis of a presumed purchase price. The selective consumption tax may disadvantage foreign suppliers because domestic products pay the tax only on the actual purchase price. In addition, businesses report being unable to secure tax refunds, with some stating that filing for a refund has resulted in audits, additional taxes, and penalties. The National Institute of Information and Development has provided a schedule of retail prices that is supposed to serve as a baseline for this tax, but businesses report that customs authorities often do not use the schedule.

## **Non-Tariff Barriers**

### **Customs Barriers and Trade Facilitation**

Businesses report that Nicaraguan customs officials routinely delay customs inspections and levy arbitrary fines for minor paperwork problems such as typographical errors. These fines reportedly often represent up to three times the value of the shipment. Businesses also continue to report that nearly all shipments are subject to physical inspection. Some businesses express concern that customs officials might target shipments for further scrutiny for political reasons.

In addition, six government institutions are involved in processing import paperwork. Many services, such as lab testing for food safety, are available only in the capital city of Managua, creating delays and additional costs if goods must be stored while testing is completed. Some businesses report that customs officials arbitrarily hold or open containers that contain perishable items, such as refrigerated or frozen goods.

Starting in 2019, Nicaragua's Customs Authority (DGA) began systematically seeking proof of country of origin for various types of products that had previously been established as originating under the CAFTA-DR, including through a comprehensive questionnaire to importers seeking detailed information about the products. Multiple businesses have reported that the requested information includes proprietary business data or trade secrets. Businesses have sought to make arrangements with the DGA to provide proof of origin without publishing trade secrets in questionnaires, such as through site visits to production plants and staff interviews. However, DGA has rejected those proposals and in multiple cases has initiated administrative processes to remove preferential treatment under the CAFTA-DR and has sought retroactive tariffs for the time that the product was imported with preferential treatment. The DGA's increased scrutiny of the proof of origin of imports has led to delays at customs and arbitrary fines for businesses. In multiple cases, the DGA has also levied a separate fine that doubles the amount owed.

U.S. exporters report that the DGA has ignored certifications of origin for various products provided by U.S. Government or local government agencies as proof of origin for agricultural commodities and that submission of additional documents requested by the DGA, such as questionnaires, has not resulted in approval of a claim for preferential treatment and has not appeared to be part of a good faith process.

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

### **Technical Barriers to Trade**

U.S. industry has raised concerns that food product registration in Nicaragua can be complicated and arbitrary. The Nicaraguan Ministry of Health requires a Certificate of Free Sale for product registration. Such documents are not issued at a national level in the United States and are not uniformly available to U.S. exporters. In some cases, U.S. companies have satisfied the requirement by submitting documents that are issued by some U.S. states or local government authorities or trade organizations. However, not all U.S. manufacturers are located in jurisdictions or affiliated with institutions that issue such documents and therefore cannot gain approval to sell in the Nicaraguan market as they are unable to submit such documents.

U.S. food companies have expressed concern regarding Law 842 (2013), which requires that all processed food products be marked with an expiration date. Nicaraguan officials have at times interpreted "Best By" dates, which indicate food quality or freshness rather than food safety, as expiration dates, and have destroyed products exceeding those dates. Nicaraguan importers of U.S. products have complained that

the law imposes costs on food importers, especially for products that do not typically have expiration dates. Nicaraguan importers continue to work with suppliers to include expiration dates in the translated Spanish label as required by the Central American Technical Regulation on General Labeling of Prepackaged Food Products (RTCA 67.01.07:10).

### **Sanitary and Phytosanitary Barriers**

U.S. exporters have faced multiple container rejections since 2021 as a result of Nicaragua's interpretation of a Central American Technical Regulation for fresh/chilled/frozen meat (RTCA 67.04.50:17). Among the Central American countries applying the regulation, only Nicaragua applies a 20 percent threshold requirement for the presence of Salmonella on raw chicken. Additionally, Nicaragua enforces a 'zero tolerance' standard for Salmonella on raw pork meat. Most of the shipments rejected by Nicaragua have been successfully returned to the United States, passed subsequent food safety inspections by U.S. regulators, and were re-exported to other Central American countries that operate under the same Central American regional regulation.

## **GOVERNMENT PROCUREMENT**

Significant hurdles inhibit the ability of U.S. suppliers to compete for sales to Nicaraguan Government entities. Existing law provides that all government purchases must be planned and approved by procurement committees within each public entity and published in Annual Procurement Plans. The law also requires a minimum of 30 days from publication of a bid to the due date for submissions. However, these requirements are not always followed. Industry reports that the Nicaraguan Government limits transparency on public procurement, publishes public procurements too late to ensure fair competition, creates terms of reference and technical specifications that are frequently unclear, and includes requirements for financial guarantees and local legal representation that create significant challenges for U.S. firms. Moreover, U.S. businesses report that the rule of law is weak and that outside actors can influence the judicial process and hamper due process.

Nicaragua is neither a Party to the World Trade Organization (WTO) Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the CAFTA–DR contains disciplines on government procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

Despite a strong legal framework to implement CAFTA–DR commitments on intellectual property (IP) protection and enforcement, concerns remain, including optical disc and broadcast media piracy and the use of unlicensed software in Nicaragua. Furthermore, the sale of counterfeit and pirated goods is reportedly on the rise throughout Nicaragua. The United States has expressed concern to the Nicaraguan Government about inadequate IP enforcement, as well as the need to ensure transparency in procedures relating to the protections for geographical indications. The United States will continue to monitor Nicaragua's implementation of its IP obligations under the CAFTA–DR.



# NIGERIA

## IMPORT POLICIES

### Tariffs

Nigeria's average Most-Favored-Nation (MFN) applied tariff rate was 12 percent in 2022 (latest data available). Nigeria's average MFN applied tariff rate was 15.9 percent for agricultural products and 11.4 percent for non-agricultural products in 2022 (latest data available). Nigeria has bound 19.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 120.5 percent.

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

Nigeria maintains a number of supplemental levies and duties on imports of certain goods, which significantly raises the effective tariff rate paid by importers. For example, Nigeria maintains a combined effective duty (tariff plus levy) of 50 percent or more on 156 tariff lines. These include 15 tariff lines on which the combined effective duty exceeds the 70 percent limit set by ECOWAS, covering products including rice (120 percent), wheat flour (100 percent), and sugar (80 percent).

### Non-Tariff Barriers

#### **Import Bans**

The Nigeria Customs Service continues to ban the import of 45 different product categories. The list of prohibited imports currently includes: bird eggs; cocoa butter, powder, and cakes; pork; beef; live or dead birds; frozen poultry; refined vegetable oil and fats; bottled water; spaghetti and other noodles; fruit juice in retail packs; tomatoes, tomato ketchup, and tomato sauces; nonalcoholic beverages (excluding energy drinks); bagged cement; beer and stout; all medicaments falling under Harmonized System headings 3003 and 3004; soaps and detergents; mosquito repellent coils; paper board; telephone recharge cards and vouchers; used motor vehicles more than 12 years old; ball point pens; pistols and air pistols; cartridge reloading implements; used clothing; and, certain spirits and alcohols.

#### **Customs Barriers and Trade Facilitation**

Nigeria ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Nigeria's notification on the use of customs brokers was due to the WTO in December 2020, according to Nigeria's self-designated TFA implementation schedule. Nigeria submitted an incomplete notification with respect to the use of customs brokers on November 25, 2022, and the United States will seek further information and encourage Nigeria to submit a revised notification with complete information.

The Nigeria Customs Service's practices continue to present major obstacles to trade. Importers report inconsistent application of customs regulations; lengthy clearance procedures, often due to outdated manual



processing systems; and, corruption. These factors sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes among Nigerian Government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. The customs authority has attempted to automate its processes, but many basic customs procedures are still paper-based and require an unreasonably long time to complete. In September 2020, the Nigerian Government approved a \$3.1 billion customs modernization project that would include the automation of paper-based customs processes. The project was to be completed in 36 months and executed via a public-private partnership through a 20-year concession. This project has experienced implementation delays and is the subject of domestic litigation. While the project is delayed, the Nigerian Customs Service announced in 2023 a partnership with the World Customs Organization to deploy geospatial intelligence at the nation's border, which will enhance enforcement.

While the Nigerian Government has undertaken efforts to implement access road improvement projects, traders continue to report that infrastructural limitations in and around Nigeria's ports contribute to long queues of both trucks and ships, resulting in delays and increased costs.

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

### **Technical Barriers to Trade**

#### **Transparency**

Transparency of the regulatory system in Nigeria is a concern. U.S. companies have raised concerns that some regulations are issued as final measures without a clear process or period for public comment on draft regulations. Nigeria has not consistently notified draft technical regulations to the WTO Committee on Technical Barriers to Trade. Additionally, Nigeria is not consistent in the implementation of technical regulations, which can create confusion and undermine compliance.

### **Sanitary and Phytosanitary Barriers**

#### **Import bans**

Nigeria continues to prohibit imports of beef, poultry, pork, sheep, goat meat, and edible offal. Nigeria has indicated that the import prohibitions are in place to prevent the spread of animal diseases or threats to human health, but the prohibitions apply to products from all countries regardless of animal disease status. Nigeria also prohibits the import of live poultry (with the exception of day-old chicks) due to alleged concerns about avian influenza that do not appear to be based on scientific approaches. The United States continues to press Nigeria to use science- and risk-based approaches to prevent the spread of animal disease.

#### **Import Certificates**

Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates from manufacturers, third-party certifiers, or exporters' national authorities, depending on the product. These certificates must attest that the product is safe for human consumption, even though certificate-issuing authorities do not inspect every shipment of exported food product. However, Nigeria's limited capacity to review certificates, carry out inspections, and conduct testing has resulted in delays in the clearance of food imports and has diverted imports to informal channels. Since 2019, the United States has sought to negotiate import permits for the export of several categories of U.S. food and agricultural products. Nigeria has been slow to approve these requests.

## GOVERNMENT PROCUREMENT

U.S. companies have expressed concerns about corruption and a lack of transparency in procurement processes in Nigeria.

The Public Procurement Act of 2007 established the Bureau of Public Procurement (BPP) as the regulatory authority responsible for the monitoring and oversight of public procurement in Nigeria. Nigeria only requires government entities to engage in competitive bidding for any procurement worth more than ₦2.5 million (approximately \$5,747). Only majority Nigerian-owned companies may bid on procurements above ₦2.5 million, up to ₦100 million (approximately \$229,885) for goods, and up to ₦1 billion (approximately \$2.3 million) for services and works. Above those thresholds, both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding. Nigerian Government agencies do not always follow procurement guidelines, despite the requirement that no procurement proceedings are to be formalized until the procuring entity has ensured that funds are available to meet the obligations and has obtained a “Certificate of ‘No Objection’ to Contract Award” from the BPP.

Executive Order 5 of 2018 added restrictions and obligations for public procurement related to science, engineering, and technology. The order is designed to bolster the Public Procurement Act of 2007 and directs government offices to grant preference to Nigerian professionals.

Foreign companies may be subject to requirements to, for example, use a local partner firm or join a consortium. In 2013, the National Information Technology Development Agency (NITDA), an agency of the Federal Ministry of Communication Technology, issued the “Guidelines for Nigerian Content Development in Information and Communications Technology” (NITDA Guidelines). The NITDA Guidelines require ministries and development agencies to source and procure all computer hardware only from NITDA-approved original equipment manufacturers. The Nigerian Oil and Gas Industry Content Development Act also mandates a maximum quota of 5 percent of all positions that can be allotted to foreign nationals.

Nigeria has made modest progress on its pledge to conduct open and competitive bidding processes for government procurement. The BPP has made a variety of procurement procedures and bidding information publicly available on its website. However, Nigeria’s National Assembly operates its own procurement process that is not subject to BPP oversight and lacks transparency. Although U.S. companies have won contracts in various sectors, difficulties in receiving payments are common and can discourage firms from bidding. Supplier or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements.

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

## INTELLECTUAL PROPERTY PROTECTION

Nigeria has taken steps to improve its legal framework for intellectual property (IP) protection. In 2019, Nigeria enacted the Federal Competition and Consumer Protection Act, which includes provisions designed to combat trademark counterfeiting, and in 2021, Nigeria enacted the Plant Variety Protection Act, creating a legal framework and administrative structure for the protection of plant varieties. In March 2023, the Nigerian President signed the Copyright Act 2022 into law. The Copyright Act 2022 includes provisions addressing technological protection measures, remuneration, and broadcasting rights and provides anti-piracy penalties, with a view toward implementing the World Intellectual Property Organization (WIPO)

Copyright Treaty; the WIPO Performances and Phonograms Treaty; the Beijing Treaty on Audiovisual Performances; and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. The United States has urged Nigeria to consider whether additional amendments are needed to ensure Nigerian copyright law is in compliance with all IP treaties to which Nigeria is a party.

Pirated and counterfeit goods remain widely available in Nigeria and often threaten the health and safety of consumers. Counterfeit pharmaceuticals, automotive parts, and other consumer goods, as well as online infringements and pirated software, music, and video recordings are prevalent. IP enforcement remains inadequate due to chronically insufficient resources for enforcement agencies, porous borders, entrenched trafficking systems that make enforcement difficult, and corruption. Public awareness is low regarding the role of IP in Nigeria's economy, despite the benefits Nigeria is seeing with its growth as a regional hub for the African film, music, and fashion industries and the harm to consumers from counterfeit products. The Nigerian Copyright Commission and the Federal Competition and Consumer Protection Commission, often in partnership with the U.S. Embassy, have taken steps to raise awareness about IP.

## **SERVICES BARRIERS**

Nigeria prohibits foreign firms from participating in reinsurance of risks in the oil and gas sector. Although the regulator may waive this prohibition, all local reinsurance capacity must be fully exhausted. Nigeria also imposes 5 percent mandatory reinsurance cession requirements in favor of the Africa Reinsurance Corporation and the WAICA Reinsurance Corporation.

In June 2022, the National Assembly passed the Advertising Regulatory Council of Nigeria Act, which entered into force on July 25, 2022. The Act replaced the Advertising Practitioners Council of Nigeria, which functioned like a trade association, with the Regulatory Council, which has sweeping regulatory and enforcement powers. The Act prescribes mandatory registration for any person or company engaging in any form of advertising in Nigeria and requires all advertisements to be approved before publication.

## **BARRIERS TO DIGITAL TRADE**

The NITDA Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens within Nigeria. The NITDA Guidelines further require that businesses host all government data locally, unless officially exempted. However, the requirements do not seem to be rigorously enforced.

The NITDA Guidelines also require information and communications technology companies to use Nigerian businesses for the provision of at least 80 percent of all value-added services on their networks. The NITDA Guidelines define “value-added service” vaguely, creating uncertainty for businesses seeking to comply with the measure. Though Nigeria has largely declined to enforce the NITDA Guidelines, periodic threats of repercussions for non-compliance remain a concern.

In October 2022, NITDA issued a “Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries,” which came into force on December 26, 2022. It also requires digital service platforms with more than 1 million users in Nigeria to incorporate in and have a physical contact address in Nigeria.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Corruption remains a substantial barrier to trade and investment in Nigeria. Corruption and lack of transparency in tender processes have been great concerns to U.S. companies. U.S. firms experience difficulties in day-to-day operations as a result of inappropriate demands from officials for “facilitative” payments. Efforts to strengthen anticorruption measures have been hampered by inter-ministry infighting and partisan politics. Questions also remain regarding the Nigerian justice system’s capacity to achieve convictions and appropriate sentencing for corruption-related crimes.

### **Foreign Exchange Controls**

Foreign exchange limitations have negatively impacted investment as well as trade. Restrictive measures have hampered some U.S. companies’ abilities to import finished or semi-finished goods for use in their Nigerian operations. Moreover, Nigeria’s policies have increased challenges for projects developed with international financing that include U.S. dollar-denominated debt obligations, as borrowers have struggled to secure the necessary foreign exchange to meet those obligations.

In addition, Nigerian importers report they sometimes must agree to schemes to produce domestically in order to be allocated import permits by the government and to access foreign exchange through the Nigerian Foreign Exchange Market to source similar products from abroad.

However, the Nigerian Government has taken steps to address these limitations. On June 14, 2023, the Central Bank of Nigeria (CBN) introduced a market-based foreign exchange regime, collapsing its multiple official exchange rates into one, the “Nigerian Foreign Exchange Market.” On October 13, 2023, the CBN reversed its eight-year-old restriction on access to U.S. dollars for the importation of 43 items such as rice, meat, poultry, vegetable oil, fertilizer, dairy products, maize, sugar, and several steel products. Despite these moves, many products remain restricted by Nigerian import prohibitions and the foreign exchange shortage persists. U.S. companies report they are unable to obtain dollars for imports or repatriation purposes.

### **Maritime Trade**

Delays caused by congestion and the poor condition of access roads, combined with corruption issues and an insufficient number of digital cargo scanners, make operations at Nigerian ports among the most expensive in the world. According to shipping industry reports, the 30-day average delay to clear a container ship makes Apapa in Lagos among the most expensive ports for shipments from the United States. Lagos ports also lack adequate space, and ships often wait for days—in some cases weeks and months—before being able to berth and discharge their contents. The \$1.5 billion Lekki Deepsea port commissioned in Lagos in January was expected to reduce the pressure on the inefficient Apapa and Tin Can ports but is yet to attract enough traffic. Nigeria continues to lose tens of millions of dollars daily because of traffic gridlock at the Apapa main port in Lagos. Maritime crime in the Gulf of Guinea emanating from Nigeria diminished in 2022 but still has a deleterious effect on maritime trade. To help address some of these challenges, in August 2023 the Tinubu administration created the Ministry of Marine and Blue Economy, which has encouraged the use of technology in Nigerian ports, including cargo tracking to promote efficiency and ease of doing business.

## **Export Ban**

The Nigeria Customs Service prohibits enforces an export ban on a number of products, including maize, timber, raw hides and skin, scrap metals, and unprocessed rubber latex. The export ban list can be found on the Nigerian Customs Authority's [Export Prohibition List](#).

# NORWAY

## TRADE AGREEMENTS

Norway participates in the European Union (EU) single market through the European Economic Area (EEA) Agreement. As an EEA Agreement signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway has implemented or is in the process of implementing most EU trade policies and regulations. Norway grants preferential tariff rates to EEA Members.

## IMPORT POLICIES

### Tariffs

Norway's average Most-Favored-Nation (MFN) applied tariff rate was 5.2 percent in 2022 (latest data available). Norway's average MFN applied tariff rate was 35.5 percent for agricultural products and 0.4 percent for non-agricultural products in 2022 (latest data available). Norway has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 22.3 percent. Norway continues to reduce tariffs on industrial products on a unilateral basis.

Although Norway is less than 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to protect domestic agricultural interests. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments, generally only two days to five days before implementation, make the export of products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult. For some processed food products, tariffs are applied based on a product's ingredients, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to provide all requested details and, as a result, their products are subject to maximum tariffs.

### Non-Tariff Barriers

#### **Agricultural Support**

Although agriculture accounts for only 0.5 percent of Norway's gross domestic product, support provided by Norway to its agricultural producers was 51.0 percent of total farm receipts between 2020 and 2022 (latest data available), the second highest among Organization for Economic Cooperation and Development (OECD) Member States, and more than three times the OECD average.

Norway maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, ice cream (for milk and glucose), pizza (for cheese and meat), and sweets. The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically-produced raw materials.

## **SANITARY AND PHYTOSANITARY BARRIERS**

### **Transparency**

Under the EEA Agreement, Norway applies certain EU sanitary and phytosanitary (SPS) regulations that may unnecessarily restrict trade without furthering safety objectives, because they appear to be applied beyond the extent necessary to protect human, animal, or plant life or health; are not based on science; or are maintained without sufficient scientific evidence. On plant health, the Norwegian Food Safety Authority provides measures to eradicate, prevent, or limit the spread of regulated pests independent of the EU. However, Norway's maximum residue limits for pesticides were adopted under the EEA Agreement and are updated when new EU regulations are adopted.

### **Agricultural Biotechnology**

Norway has implemented extremely restrictive policies for crops derived from agricultural biotechnology, with limited exceptions. The restrictions include prohibiting farmers from cultivating biotechnology crops and using biotechnology feed for farm animals. The United States continues to press Norway to recognize the applicable science on the safety of such products and, accordingly, to open its market to U.S. exports of such products. The advent of innovative biotechnology research approaches, such as genome editing, has led Norway to reconsider its stance on agricultural biotechnology.

In December 2018, the Norwegian Biotechnology Advisory Board published a proposal on a forward-looking regulatory framework for genetically modified organisms that was developed in close dialogue with the public. The proposal recommends basing risk assessment and approval for new breeding techniques on a tiered system related to the genetic change(s) that have been made, from level 1 to level 3 based on contribution to societal benefit, sustainability, and ethics. An expert committee on biotechnology was appointed by the Norwegian Government in 2020 to gather updated scientific information on new biotechnologies for use in formulating new policies and to assess whether to adjust the existing legal framework to ensure that technological advancements benefit society without harming health or the environment. The committee delivered its recommendations on June 6, 2023, and concluded that current regulations and their implementation create obstacles to realizing the full potential of these technologies. The committee proposed streamlining public administration, harmonizing regulations with EU legislation, and taking concrete measures to stimulate more socially beneficial innovation.

### **Beef**

Norway applies regulations developed by the EU that ban imports of beef from animals treated with hormones, despite the absence of scientific evidence demonstrating that beef from animals treated with hormones not exceeding the regulatory limit poses any risk to human health.

## **GOVERNMENT PROCUREMENT**

U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals, including a lack of detailed information on the selection process for winning bidders and unauthorized disclosures of confidential pricing data. Tenders in the pharmaceutical sector in Norway have been unpredictable and nontransparent, and companies have sought more direct communication with the body responsible for final procurement decisions on behalf of regional health authorities (the Norwegian Decision Forum).

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

## **INVESTMENT BARRIERS**

Direct foreign ownership of hydropower resources is prohibited in Norway, except in rare instances in which the government allows foreign investors up to 20 percent equity ownership.





# PAKISTAN

## TRADE AGREEMENTS

### United States–Pakistan Trade and Investment Framework Agreement

The United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) in June 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Pakistan.

## IMPORT POLICIES

### Tariffs

Pakistan's average Most-Favored-Nation (MFN) applied tariff rate was 10.3 percent in 2022 (latest dates available). Pakistan's average MFN applied rate was 13.1 percent for agricultural products and 9.9 percent for non-agricultural products in 2022 (latest data available). Pakistan has bound 98.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 60.8 percent. For agricultural products, the average WTO bound rate is 96.2 percent. The average WTO bound rate for non-agricultural products is lower at 55.2 percent.

Despite the reduction of applied tariff rates since 2013, U.S. companies have cited concerns that Pakistan has been imposing high tariff rates and, in some cases, additional duties, on products such as automobiles and finished goods. In addition, Pakistan grants sector and product-specific import duty exemptions, concessions, and protections through the promulgation of statutory regulatory orders (SROs). SROs may be issued without providing for stakeholder consultations or allowing importers time for implementation and compliance. Under previous International Monetary Fund (IMF) programs, Pakistan pledged to limit the use of SROs to genuine emergencies. However, SROs continue to be issued, and Pakistan has not provided a timeline for their removal.

### Non-Tariff Barriers

Pakistan permits the importation of certain goods only by the public sector or industrial consumers (*e.g.*, active ingredients for the formulation or manufacturing of pesticides). Some imports require approvals from federal-level ministries such as the Ministry of Climate Change (MOCC) and the Ministry of National Health Services, Regulations and Coordination. Imports of certain products, including food colors, waste, parings, and scrap plastics, must receive official certification by the exporting country or by a specialized pre-shipment inspection company.

### **Customs Barriers and Trade Facilitation**

U.S. food and consumer product exporters have expressed concerns regarding a lack of uniformity in customs valuation in Pakistan that negatively affects U.S. stakeholders. Similarly, in the machinery and materials sectors, there are reports that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transaction value.

Some U.S. companies have reported being adversely affected by Customs Rules 389 and 391. Customs Rule 389 requires the placement of a physical invoice and packing list in the shipping container, while Customs Rule 391 places the responsibility of including such documents, and liability for failure to comply,

on the owner of the goods and the carrier. Such rules pose compliance challenges for companies that use intermediaries, re-invoicing, or the storage of goods at various points during transit in order to insert paper documents into the shipping container. They also create additional burdens for shippers who are required by other countries' customs requirements to provide this information only through electronic filings and may, therefore, not have paper documentation available. Many companies' invoicing, accounting, and shipping systems do not permit the generation of invoices and packing lists prior to the departure of the goods from the company's production or storage facilities. Customs officials impose penalties on companies lacking invoicing systems or incapable of producing paper documentation. While Pakistan has shown openness to addressing the issue, and U.S. authorities have worked with Pakistan's Federal Board of Revenue (FBR) to that end, the rules remain formally in place and customs officials can implement them at any time.

Pakistan notified its customs valuation legislation to the WTO in May 2001, but has not yet responded to the WTO Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

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

### **Technical Barriers to Trade**

Pakistan generally accepts imported food as packaged in the exporting country. A notable exception, however, is food packaging for vegetable oil. Pakistan requires refined vegetable oil to be imported in bulk for re-packaging.

In July 2019, Pakistan issued SRO 237, which was not notified to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) for comment. This measure mandates that each food and beverage shipment include a halal certificate and prohibits the use of stickering, overprinting, or stamping to meet the requirements, even on an interim basis. Although Pakistan resolved the issue for wholesale bulk food items by permitting the use of stickers, the issue remains for retail sales. SRO 237 also requires all products to have 50 percent shelf-life remaining from the date of filing of the Import General Manifest, and 66 percent shelf-life remaining from the date of manufacture. When taken together, manufacturers report that these requirements introduce significant uncertainty and operational barriers. After notification requests from the United States, Pakistan eventually notified SRO 237 to the WTO TBT Committee in May 2020. The United States raised concerns with Pakistan's requirements at WTO TBT Committee meetings between November 2019 and May 2020. The United States continues to monitor updates to SRO 237. During the February 2023 TIFA meeting, the Ministry of Commerce and the Ministry of National Food Security and Research (MNFSR) indicated a willingness to amend SRO 237 to allow for stickering. The United States continues to engage on this issue.

### **Sanitary and Phytosanitary Barriers**

Pakistan continues to ban imports of all beef and beef products from the United States. However, during the February 2023 TIFA Council meeting, Pakistan and the United States reached an agreement in principle on an export certificate that would re-open the market for U.S. beef. Finalization of the agreement was still pending as of December 2023.

In October 2022, Pakistani customs authorities detained two shipments of U.S. genetically engineered (GE) soybeans. The MNFSR reiterated the requirement to apply for an import license for GE products, a process currently stymied by a lack of implementing regulations for approval of GE soybeans for food, feed, and processing (FFP). In December 2022, Pakistan formed a committee to evaluate the issue. On November

24, 2023, Pakistan's cabinet passed amendments to the Biosafety Rules aimed at restarting the importation of GE commodities for FFP purposes. Based on the approved amendments, Pakistan's National Biosafety Committee is working on developing an import license regime to allow future imports of GE commodities. During 2023, the United States routinely engaged the Government of Pakistan on re-opening the market for U.S. GE soybeans.

## GOVERNMENT PROCUREMENT

Since 2014, Pakistan has relied more on technical qualifications in its procurements relative to prices, though U.S. suppliers continue to struggle with pricing issues. Some U.S. companies report instances in which the procuring agency used a U.S. bid as a basis for, and to incentivize, further negotiations with other competitors, rather than accepting the lowest-priced and technically superior bid as outlined and required by applicable bidding guidelines. Most notably, this has occurred with competing firms based in the People's Republic of China. There is concern that Pakistan's practice rewards anticompetitive behavior, in that it may facilitate the use of lower bids in an effort to negotiate lower prices from U.S. and other foreign companies, thereby procuring goods at below-market pricing.

Pakistani authorities have worked with international financial institutions on improving the transparency of their procurement regime, including a structural benchmark in Pakistan's current IMF program, which requires publication of beneficial ownership information for companies awarded contracts above \$178,000. Pakistan is also receiving World Bank support for the development of an electronic procurement system that will publish information on procurement contracts and bid winners across federal and provincial authorities. According to the IMF, the Public Procurement Regulatory Authority in March 2023 piloted the electronic procurement system with the ministries responsible for health and education. A complete roll out at all federal and provincial levels was not completed as of December 2023.

Pakistan is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2015.

## INTELLECTUAL PROPERTY PROTECTION

Pakistan remained on the Watch List in the [2023 Special 301 Report](#). Intellectual property (IP) concerns in Pakistan were raised during the February 2023 TIFA Ministerial meeting. However, serious concerns remain, particularly in the area of IP enforcement.

Although Pakistan has maintained a positive dialogue with the United States on IP, as noted in the 2023 Special 301 Report, Pakistan must do significantly more to overcome challenges with respect to adequate and effective IP protection and enforcement. A new IP Policy Board was constituted at the federal level in January 2023, but a lack of public awareness, as well as budgetary and human resource constraints, are also challenges for IP enforcement. For example, while Pakistan's establishment of IP tribunals in three cities in 2016 and the addition of tribunals in two more cities in 2023 were welcome developments, litigants with experience in Pakistan's tribunals have raised concerns over lack of capacity, inconsistency of rulings, nominal fines, a general lack of expertise among tribunal judges, confusion over standards by which courts review tribunal decisions, and large case backlogs. Additionally, Pakistan's ongoing but unfinished efforts to align its patent, trademark, and copyright laws, and IP regulations and enforcement regimes, with international standards continues to be an area for further progress. Moreover, counterfeiting and piracy in Pakistan remain high, particularly in the areas of pharmaceuticals; consumer goods such as food and beauty products; printed works; digital content; and, software.

## SERVICES BARRIERS

### Insurance Services

The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. Pakistan has the discretion to grant exemptions to this requirement. Private sector firms may use foreign reinsurance companies to meet only up to 65 percent of their treaty re-insurance needs, but the remainder of reinsurance must be ceded locally. In the case of facultative reinsurance, there is a system of mandatory cession; business must initially be offered to the state-owned Pakistan Reinsurance Company, which may choose to accept the business or not.

## BARRIERS TO DIGITAL TRADE

### Data Localization

As of December 31, 2023, Pakistan was finalizing the Personal Data Protection Bill. Although there was an initial stakeholder consultation on an early draft of the bill in 2021, the Pakistani Government has not offered formal comment periods on subsequent drafts. The latest draft bill would require platforms to store all personal data on servers within the territory of Pakistan and prohibit the cross-border transfer of “critical” personal data. The scope of what information is considered “critical” personal data is not clearly defined.

### Internet Services

Pakistan routinely blocks access to Internet services for hosting content deemed to be blasphemous or immoral, or on grounds that such services can be used to “undermine national security.” The Pakistan Telecommunications Authority (PTA) has also sent notices to U.S.-based social media platforms threatening adverse action if those platforms did not remove objectionable content. Pakistan has repeatedly suspended access to mobile data and certain online services in major cities in response to perceived unrest. In September 2022, the PTA inhibited the live streaming of a former prime minister’s speeches, and the Pakistan Electronic Media Regulatory Authority (PEMRA) suspended transmission of multiple television broadcasters in response to their airing of the speeches. In November 2022, PEMRA briefly blocked all broadcasting of a former prime minister’s speeches across all channels. On March 5, 2023, PEMRA imposed a blanket ban on broadcasting of live or recorded speeches of a former prime minister.

In October 2021, Pakistan adopted the Removal and Blocking of Unlawful Online Content (Procedure, Oversight, and Safeguards) Rules. The Rules authorize the removal and blocking of online content on a “social media or social network service” that is deemed unlawful. Several provisions would pose significant barriers to foreign firms operating in Pakistan, including content restrictions and requirements that companies maintain a physical presence in Pakistan. These Rules may also expand authorities’ ability to censor online content and enable government access to encrypted data. The Ministry of Information Technology and Telecommunication (MOITT) and the PTA consulted with foreign and domestic firms and other stakeholders, but did not circulate a revised version of the rules for further public consultation before sending it to the Pakistani cabinet for final approval. In April 2022, the prime minister instructed the MOITT to review the Prevention of Electronic Crimes Act (PECA) 2016 and the Removal and Blocking of Unlawful Online Content Rules, soliciting feedback from all stakeholders to identify and address issues. The MOITT started its deliberations but was not able to finalize the revised drafts of PECA and Rules by the end of the government’s tenure.

Pakistan drafted an Electronic Commerce Policy Framework in August 2018, with the aim of increasing exports and strengthening the digital economy. The framework, adopted in January 2022, contains some restrictive requirements. For example, the policy contains licensing, registration, and local presence requirements, as well as broad restrictions on cross-border data flows.

## **INVESTMENT BARRIERS**

Pakistan generally permits foreign investment, subject to equity caps in certain sectors including agriculture, aviation, banking, media, insurance, securities, and railways. Ostensibly to combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors' remittance of royalty payments to a maximum of \$100,000 for the first payment, with subsequent payments capped at 5 percent of net sales for the following 5 years.

Although Pakistani law allows 100 percent repatriation of profits, subject to restrictions listed in Chapter 14, section 15 of the SBP Foreign Exchange Manual, U.S. and other companies continue to face bureaucratic hurdles repatriating profits and assets from Pakistan, generally coinciding with the government's focus on stemming dollar outflows. Local franchises of U.S. brands report limitations and extended delays in remitting funds to the United States as a result of SBP policies. Payment repatriation delays were further exacerbated by balance of payments challenges in 2022 and 2023. U.S. and other foreign investors saw a slight increase in successful repatriations in the final quarter of 2023 following concerted U.S. and other foreign governments' advocacy.

U.S., global, and domestic firms also continue to face arbitrary restrictions on letters of credit (LCs) due to the balance of payments situation. Stakeholders report long delays in banks' issuance of LCs, a lack of clarity from SBP on which items may qualify for exemption, granting of priority status to favored firms, and expedited approvals only for imported inputs destined for export-oriented industries.

Industry reports that contract enforcement can be difficult for U.S. and other foreign investors in Pakistan due to significant delays and lack of enforcement of court rulings.

### **Taxes**

Pakistan has one of the lowest tax compliance and tax-to-Gross Domestic Product ratios in the world, 9.4 percent in FY2023. Pakistan relies heavily on multinational corporations for the revenue generated by tax collection. Foreign investors in Pakistan regularly report that both federal and provincial tax regulations are difficult to navigate, frequently citing the lack of transparency in the assessment of taxes.

Improving and broadening tax collection is a key focus of the IMF's Standby Agreement program for Pakistan, agreed to in July 2023. Under the program, the target is for Pakistan to increase its tax revenues to PKR 9.4 trillion (approximately \$33.6 billion) in 2024, an increase of PKR 2.2 trillion (approximately \$7.8 billion) from the collections made during FY2023. However, Pakistani authorities have long delayed key politically sensitive tax reforms under the previous program signed in July 2019. U.S. companies have experienced increased pressure from the FBR to prepay anticipated tax liabilities and have expressed concern that many of their local competitors still do not pay taxes at all or engage in tax evasion. The U.S. Government has repeatedly engaged Pakistani Government officials on issues involving unfair and disproportionate taxation of U.S. companies and continues to reinforce the importance of Pakistan broadening its tax base.

## OTHER BARRIERS

### **Bribery and Corruption**

U.S. companies cite corruption and a weak judicial system as substantial disincentives to foreign investment in Pakistan. Pakistan's federal anticorruption agency, the National Accountability Bureau (NAB), provides a legal framework to combat corruption. However, business and civil society stakeholders have expressed reservations about the body's effectiveness. The NAB's broad exercise of its remit to investigate government operations and business dealings have led to a number of cases where it reopened established policies and targeted reputable businesses, potentially dissuading foreign investors and making officials reticent to exercise authority.

# PANAMA

## TRADE AGREEMENTS

### The United States–Panama Trade Promotion Agreement

The United States–Panama Trade Promotion Agreement (the Agreement) entered into force on October 31, 2012. The United States and Panama continue to work closely together to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

Tariff reduction under the Agreement began on October 31, 2012, and all U.S. non-agricultural products have been duty free since January 1, 2021. Remaining duties on the most sensitive agricultural products will phase out between 2026 and 2031, 15 years to 20 years after entry into force of the Agreement.

Since August 2020, Panama has imposed volume restrictions on U.S. onion imports outside of the Agreement tariff-rate quota (TRQ) quantities. Panamanian authorities have also designated approved importers and specified volumes per importer. The United States has since raised concerns regarding these issues at the World Trade Organization (WTO) Committee on Import Licensing and discussed them with Panamanian authorities in light of the Agreement commitments.

On December 19, 2023, Panama held its auction for rough rice TRQ volumes for 2024 after notifying the United States that the volume of the 2024 milled rice quota allocation would be converted to rough rice and added to the rough rice quota allocation. The United States is discussing this issue with Panamanian authorities in light of the Agreement commitments.

In early 2023, Panama’s Ministry of Commerce and Industry (MICI) enacted safeguards for a number of U.S. agricultural products. In the case of cheddar, other cheeses, and butter, it appears MICI miscalculated imported volumes in making its safeguard determination. The United States continues to discuss the issue with Panama to ensure proper application of safeguard measures.

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

Panama ratified the WTO Trade Facilitation Agreement (TFA) in November 2015. Panama submitted its transparency notification related to the operation of its single window on March 14, 2023. This notification had been due to the WTO on January 1, 2022, according to Panama’s self-designated TFA implementation schedule. Panama has not yet submitted its transparency notification related to import, export, and transit regulations. This notification had been due to the WTO on June 1, 2022, according to Panama’s self-designated TFA implementation schedule.



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

### **Technical Barriers to Trade**

Since February 2017, the United States has raised concerns with Panama's quality requirements for fresh onions and, since March 2019, its quality requirements for fresh potatoes. Both measures establish mandatory harvest date requirements, sprouting limits, and temperature and storage criteria, raising concerns regarding their consistency with international standards. Since October 2020, the United States has raised these issues at the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) and elevated the concerns to the WTO Council for Trade in Goods. U.S. concerns regarding the measures continue to go unaddressed, and U.S. onion and potato producers continue to be negatively affected. After a number of delays, in December 2021, Panama issued Resolution 235, which finalized quality requirements on fresh potatoes, and began implementing the measure on February 19, 2022. The United States has raised this issue with Panama and will continue to raise concerns regarding these regulations.

In August 2022, the United States submitted comments on Panama's draft technical regulations on grains and cereals, including requirements for paddy rice and milled and white rice. The United States raised concerns regarding Panama's creation of a unique grading system for rice, and bagging requirements for paddy rice that needs further processing. Panama's draft technical regulations contain unreasonable requirements for bagging paddy rice prior to export. Paddy rice cannot be consumed directly and must be milled after export before being bagged for retail, and thus the requirement poses a barrier to trade. As of December 2023, Panama was still reviewing these comments. Also, Panama does not accept U.S. Department of Agriculture (USDA) grading standards, despite the fact that Panama is required to give favorable consideration to sector-specific regulatory cooperation in the Agreement.

On January 22, 2020, Draft Bill 265 was presented in Panama's National Assembly. If passed, the bill would establish a front-of-package nutritional warning labeling scheme. The United States provided its formal comments to Panama in October 2021 and requested that it notify the proposed implementing measure to the WTO TBT Committee. As of December 2023, Panama had not yet notified this draft bill. A National Assembly commission was created in 2022 to address the labeling program, but, as of December 2023, the bill had not been approved. The United States will continue to monitor the status of the draft bill and engage with Panama.

### **Sanitary and Phytosanitary Barriers**

In 2023, Panama adopted its Agri-Food State Policy Law No. 352 (PADE), as well as implementing regulations. The measures contain restrictions on sales of imported products at national traditional markets, import restrictions based on local harvest dates, and the creation of private customs observers. The USDA has engaged with Panama to ensure PADE and its implementing regulations do not unnecessarily affect U.S. exports.

In August 2020, the Panamanian Food Safety Authority began implementing Ministry of Health (MINSA) Decree 255, which requires registration of establishments involved in the storage, display, distribution, and sale of raw meat and raw meat products. These products were previously only subject to routine registration, a process that could be completed in 24 hours. The process under Decree 255 takes 180 days, resulting in delays of U.S. exports, including U.S. beef, pork, and poultry that supply the hotel, restaurant, and institutional market, as well as products destined for supermarkets. The United States is monitoring the implementation of Decree 255 to ensure that the registration requirements for raw meat are consistent with the basic product information requirements in the 2006 United States–Panama Agreement Regarding

Certain Sanitary and Phytosanitary Measures and Technical Standards Affecting Trade in Agricultural Products.

On August 25, 2022, MINSA shared draft revisions of Decree 255, and in October 2022 the United States shared comments on the proposed draft. The August 2022 revision separated out regulations for poultry products and proposed a draft regulation (Decree 147). While the United States reviewed the draft measure and provided comments, it was published unchanged in December 2022. In January 2024, Panama issued Executive Decree 71 of 2023, which further clarified beef slaughter and handling practices for domestic and imported beef. The United States will continue to monitor developments and seek to engage with Panama on concerns with certain aspects of these decrees, particularly regarding labeling, end-use attestations, and bans on the sale of thawed, previously frozen product.

In October 2022, the Animal Health Directorate of Panama's Ministry of Agriculture issued two decrees that clarified import procedures for U.S. pet food and poultry products from U.S. counties in which Highly Pathogenic Avian Influenza has been detected in commercial flocks. These decrees clarified trade issues related to these products and are in line with World Organisation of Animal Health (WOAH) guidance, as well as regulations under the Agreement.

## **INTELLECTUAL PROPERTY PROTECTION**

Panama still must develop a system for Internet service provider notice-and-takedown procedures and preestablished damages for copyright infringement and trademark counterfeiting, as required by the Agreement. An interagency committee, which is led by the Panama Customs Authority and includes the Ministry of Commerce and Industry, the Ministry of Economy and Finance, the District Attorney for Intellectual Property Rights (IPR), and the Ministry of Health, has held discussions on modifying the current decree for IPR enforcement in customs and providing for preestablished damages. The committee last met in April 2020 to discuss customs-related fines, but the initiative has not advanced since then. Challenges also remain in the areas of trademarks as well as pirated and counterfeit goods. The United States continues to engage closely with Panama to ensure its effective implementation of all obligations under the Agreement.



# PARAGUAY

## TRADE AGREEMENTS

The United States and Paraguay signed a Trade and Investment Framework Agreement on January 13, 2017. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Paraguay.

## IMPORT POLICIES

### Tariffs

Paraguay's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2021 (latest data available). Paraguay's average MFN applied tariff rate was 10.0 percent for agricultural products and 9.5 percent for non-agricultural products in 2021 (latest data available). Paraguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 33.4 percent.

Paraguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also comprises Argentina, Brazil, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of tariff lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Paraguay (not including free trade zones) is subject to the payment of the CET to Paraguay's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not yet taken effect.

### Non-Tariff Barriers

#### **Import Licensing**

Paraguay requires import licenses on a variety of products. Import licenses, once issued, are only valid for 30 days. Importing goods within this 30-day window can be difficult if there are shipment delays, which are fairly common in Paraguay, a landlocked country largely dependent on riverine shipment that can slow during dry seasons. Due to those delays, importers may need to reapply for an import license.

#### **Customs Barriers and Trade Facilitation**

Paraguay ratified the WTO Trade Facilitation Agreement (TFA) in March 2016. Paraguay submitted its transparency notification related to import, export, and transit regulations on December 20, 2023. This notification had been due to the WTO on September 1, 2021, according to Paraguay's self-designated TFA implementation schedule.

Paraguay passed Law 7196/23 on November 2, 2023, eliminating its trade-related consular fees, payment of which required specific documentation for each import shipment (*e.g.*, commercial invoice, certificate of origin, and cargo manifest). These consularization requirements had been burdensome for U.S. exporters and imposed additional costs for each set of commercial documents.

## INTELLECTUAL PROPERTY PROTECTION

Paraguay was listed on the Watch List in the [2023 Special 301 Report](#). The United States is concerned with the lack of enforcement action in Paraguay. Ciudad del Este is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) as one of the main distribution and sales hubs for counterfeit goods in the region, and has reportedly become a home to manufacturing and “finishing” facilities for counterfeit goods. The United States urges Paraguay to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Paraguay proceeds with the European Union–MERCOSUR Trade Agreement. The United States and Paraguay agreed on an Intellectual Property Work Plan in September 2022 that serves as a roadmap for Paraguay to address a number of these outstanding issues.

# PERU

## TRADE AGREEMENTS

### The United States–Peru Trade Promotion Agreement

The United States–Peru Trade Promotion Agreement (the Agreement) entered into force on February 1, 2009. Under the Agreement, Peru currently provides duty-free access to nearly all U.S. exports. The United States and Peru meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

All duties for U.S. non-agricultural goods exported to Peru have been eliminated, while a small number of Peruvian tariffs apply to select U.S. agricultural products. These are scheduled to be phased out by 2026. In accordance with the Agreement commitments, Peru has ceased applying its price band system to U.S. agricultural products.

### Non-Tariff Barriers

Under Peru’s Customs Crime Law No. 28008 of 2003, express delivery managers and legal representatives are subject to criminal investigations and penalties for minor discrepancies in the value of invoices of low value shipments. The same law also allows for concurrent administrative sanctions against the express courier companies for the same violations. Express delivery carriers are subject to the same fixed monetary penalty as containerized cargo, regardless of the differences in shipment size or value.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

A variety of stakeholders have continued to note inconsistencies in the application and enforcement of regulatory processes in Peru. Peru’s Congress approved Decree No. 063-2021 on regulatory quality improvement and the application of regulatory impact analysis (RIA) in 2021. The United States is working with Peru on its whole-of-government initiative to integrate the RIA with public consultation for future regulatory actions.

### Sanitary and Phytosanitary Barriers

#### **Agricultural Biotechnology**

In January 2021, the Peruvian Congress passed Law No. 31111, which extended Peru’s moratorium on the cultivation and import for cultivation of genetically engineered crops and the import of genetically engineered seeds for 15 years. Peru has not supported its biotechnology moratorium with a risk assessment or otherwise put forward a scientific justification for it. The United States has raised its concerns regarding the moratorium with government officials from Peru at each annual meeting of the Agreement’s Standing Committee on Sanitary and Phytosanitary Measures from 2012 through 2022. The United States will

continue urging Peru in this forum and at other opportunities to address the United States' concerns and to notify its moratorium and its implementing regulations to the WTO Committee on Sanitary and Phytosanitary Measures.

### **Agricultural Product Certification**

In January 2018, Peru's Ministry of Foreign Trade and Tourism created new sanitary import requirements for U.S.-processed meat and egg products. As of 2018, a Single Export Sanitary Certificate (SESC) containing both human and animal sanitary requirements from Peru's National Sanitary Authority and the National Agrarian Health Service (SENASA) must accompany shipments of processed products of animal origin, including processed meat and egg products. In October 2022, Peru clarified some requirements and added a few additional requirements to the certificate. As of December 1, 2023, Peru had not notified the certificate requirement to the WTO Committee on Sanitary and Phytosanitary Measures. The United States continues to engage with Peru to finalize a certificate that includes Peru's SESC attestations.

In November 2022, SENASA published a resolution requiring additional food safety requirements for corn, beef, pork, and poultry. This resolution requires that each shipment of these products be accompanied by a health certificate or undergo testing in a local laboratory. Following U.S. Government engagement, SENASA agreed to delay implementation of the resolution until after it is notified to the WTO, which had not occurred as of December 2023.

## **GOVERNMENT PROCUREMENT**

Legislative Decree 1444 issued in September 2018 modified the public procurement law to allow government agencies to use government-to-government (G2G) agreements in procurement processes. Following the execution of recent infrastructure tenders using the G2G model in 2019, an increasing number of ministries and government entities require foreign companies, including U.S. firms, to obtain sponsorship by their respective governments to compete for major procurements. The U.S. Government is not permitted to sign such contracts, making Peru's use of G2G procurements a barrier for U.S. domiciled companies to compete in some relevant government tenders.

Peru is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. Peru does open procurement to U.S. goods, services, and suppliers covered under the Agreement.

## **INTELLECTUAL PROPERTY PROTECTION**

Peru remained on the Watch List in the [2023 Special 301 Report](#).

Pirated and counterfeit goods continue to remain widely available in Peru, and right holders cite particular concerns with respect to counterfeit medicines, internet piracy, and illicit recordings in cinemas. The Gamarra market in Lima is listed in the [2023 Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List).

The United States continues to call for Peru to fully implement the Agreement's intellectual property (IP) obligations, including enacting statutory damages for copyright and trademark infringement. The United States also calls on Peru to undertake IP reforms that include increasing and enhancing enforcement efforts such as expanding the imposition of deterrent-level fines and penalties for counterfeiting and piracy, border measures, and building the technical IP-related capacities among enforcement agencies.

## LABOR

A review of Peru's progress on implementing specific recommendations to improve worker rights practices in Peru's nontraditional export sectors has been ongoing since the issuance of a U.S. Department of Labor (DOL) [report in 2016](#). The DOL report, published in response to a submission from the public under the Agreement, raised significant concerns regarding the right to freedom of association in certain sectors, including textiles, apparel, and certain agricultural sectors. The DOL report also noted concerns regarding labor law enforcement in Peru.





# THE PHILIPPINES

## TRADE AGREEMENTS

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

The United States and the Philippines signed a Trade and Investment Framework Agreement (TIFA) on November 9, 1989. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the Philippines.

## IMPORT POLICIES

### Tariffs

The Philippines' average Most-Favored-Nation (MFN) applied tariff rate was 6.1 percent in 2022 (latest data available). The Philippines' average MFN applied tariff rate was 9.8 percent for agricultural products and 5.5 percent for non-agricultural products in 2022 (latest data available). The Philippines has bound 67.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 24.9 percent.

Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fiber, footwear, headgear, fish, and paper products. MFN applied tariffs on fresh fruit, such as grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products (including frozen fries), range between 7 percent and 15 percent. Exceptions include dates and figs, which carry a 3 percent MFN applied tariff. WTO bound rates are much higher, ranging between 35 percent and 50 percent, with fresh potatoes subject to a 40 percent tariff.

U.S. agricultural exports are significantly inhibited by the high in-quota tariffs for agricultural products under the Philippines' tariff-rate quota (TRQ) program, known as the Minimum Access Volume (MAV) system. Under the MAV system, the Philippines has scheduled TRQs on select agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products, with in-quota tariffs ranging from 30 percent to 50 percent.

The Department of Agriculture (DA) Administrative Order No. 52 (2000) amended the Rules and Regulations for the Implementation of the MAV, which canceled penalties for underutilization if the MAV licensee purchased local supply. This provision effectively allows existing MAV license holders to keep their full allocation for next year without having to import.

The Philippine President signed Executive Order No. 171 on May 17, 2022, reestablishing the uniform tariff on rice at 35 percent, reducing tariffs on pork to 15 percent in-quota and 25 percent out-of-quota, and reducing tariffs on corn to 5 percent in-quota and 15 percent out-of-quota until December 31, 2022. To temper continuing inflation, through Executive Order No. 10, the Philippines extended the validity of temporary duty reductions on rice, corn, and pork through the end of 2023. On January 13, 2023, the Philippine President signed Executive Order No. 13, extending the tariff reduction on mechanically deboned meat until the end of 2024. On December 22, 2023, through Executive Order No. 50, the Philippines extended its tariff reductions on rice, pork, and corn until December 31, 2024.

The Philippines continues to apply high tariffs on finished automobiles and motorcycles. A 30 percent tariff is imposed on completely built passenger vehicles with capacity of less than 10 persons (*i.e.*,

automobiles), as well as motorcycles. Passenger vehicles with a capacity of 10 or more (*i.e.*, buses) and commercial vehicles (*i.e.*, trucks) both incur a 20 percent tariff. The Philippines continues to extend duty-free treatment to imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments under Executive Order No. 226.

On January 13, 2023, the Philippine President signed Executive Order No. 12, eliminating tariffs for completely built-up units of certain electronic vehicles (EVs), including passenger vehicles, buses, minibuses, vans, trucks, motorcycles, tricycles, scooters, and bicycles. The Executive Order, however, does not include hybrid EVs. Tariffs on certain EV parts and components were also reduced to 1 percent from 5 percent. Executive Order No. 12 is set to expire in 2028.

## **Non-Tariff Barriers**

### **Quantitative Restrictions**

The Philippines prohibits the importation of used motor vehicles, except in certain cases, which require prior authority to import from the Department of Trade and Industry. Importation of used motor vehicle parts is also regulated.

The Philippine DA regularly uses the Certificate of Necessity to Import (CNI), the Sanitary-Phytosanitary Import Clearance (SPSIC) system, or both to enact unscheduled quantitative restrictions to increase prices of sensitive agricultural and fishery products, especially during and near harvest periods. (*For further information on the SPSIC system, see the Technical Barriers to Trade / Sanitary and Phytosanitary Barriers section*).

The Philippine Secretary of Agriculture may prescribe the species type of fish to be imported and the volume to be imported. Importers must obtain a CNI to import these products.

The DA's Sugar Regulatory Administration sets the allowable import quota of sugar, typically at the beginning of each marketing year. The allowable volume applies to all sources, whether imported from an ASEAN or an MFN trading partner.

### **Customs Barriers and Trade Facilitation**

The Philippine Bureau of Customs launched its modernization program in 2021 to address customs and corruption concerns. However, reports of corruption and irregularities in customs processing are widespread, including incidents of undue and costly delays, irregularities in the valuation process, 100 percent inspection and testing of some products, and inconsistent assessment of fees.

In 2020, the Bureau of Customs implemented the Enhanced Value Reference Information System, which is a database of information on the value and classification of imports for reference purposes in support of the implementation of the WTO Customs Valuation Agreement (CVA). Despite the submission of documentary evidence of payments (*e.g.*, contracts, purchase orders, telegraphic transfers, and letters of credits), some importers still report that the Bureau of Customs continues to use reference prices for the valuation of meat and poultry products.

# TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

## Technical Barriers to Trade

### Vehicle Standards

In conjunction with ASEAN harmonization efforts, the Philippines is working to align domestic motor vehicle standards and regulations with those set under the United Nations Economic Commission for Europe (UNECE) 1958 Agreement. Under the October 2018 United States–Philippines Joint Statement, both governments pledged to cooperate to implement a U.S. work program on automotive standards issues in the context of the TIFA. The United States also recognized the Philippines’ commitment to the continued acceptance of vehicles that meet multiple high-standard automotive standards, including U.S. Federal Motor Vehicle Safety Standards. However, as of December 31, 2023, the Philippines had not yet issued regulations to implement that commitment.

### Meat Labeling

Following a surge in imports, the Philippines in July 2021 abruptly began enforcing meat and poultry labeling requirements without notice, resulting in many detained containers of U.S. products and delays of other container shipments enroute. The Philippine Government issued policy clarifications in November 2021 granting labeling flexibilities until the policies can be reviewed and revised, thereby allowing continued exports of U.S. meat and poultry. On November 25, 2022, the Philippines established the Philippine National Standard for Labeling of Prepackaged Fresh Chilled and Fresh Frozen Meat. The Philippines plans to draft revised labeling requirements based on this standard and to make them available for public comment.

### Utilization Report

On June 25, 2022, the Philippine DA’s Bureau of Animal Industry (BAI) informed domestic stakeholders that it will enforce BAI Memorandum Circular No. 26 (MC 26), dated August 2021. MC 26 requires importers to submit a utilization report concerning their importation of ingredients used in the manufacture of animal feed to ensure such ingredients imported for animal feed are not diverted for human consumption or for other purposes. Stakeholders have expressed concern regarding the burdensome nature of this requirement. The measure has not been notified to the WTO.

The DA extended similar requirements to importation of fishery products in December 2022, through the issuance of DA Administrative Circular 11, Suspension of Issuance of SPS Import Clearance for Importation of Certain Fish Species under Fisheries Administrative Order No. 195.

## Sanitary and Phytosanitary Barriers

### Import Permits

The DA requires that importers obtain an import permit, known as an SPSIC, and transmit the permit to the exporter prior to shipment of any agricultural product. Each import permit is valid for only one shipment and has a limited validity period of 15 days to 90 days, depending on the commodity. Requiring one SPSIC per shipment with a limited validity period adds costs, complicates the timing of exports, and prevents the rerouting to the Philippines of products intended for other markets but not sold there for commercial reasons. It also prevents an exporter from reselling an imported product if the importer refuses to accept

delivery or abandons the shipment. The length of validity and issuance appear to be based on the political sensitivity of the products, rather than on sanitary and phytosanitary risk. In 2019 and 2020, the Philippines stopped issuing SPSICs for certain imported agricultural products, including U.S. table grapes, chipping potatoes, and whole birds, along with products not currently supplied by the United States, such as feed wheat, rice, and corn. The DA continues not to issue SPSICs for whole birds.

DA Administrative Circular 6, issued on June 23, 2022, made permanent the 90-day validity of SPSICs for meat and poultry. Meanwhile, must-ship-out requirements for garlic, onions, rice, wheat, corn, and fresh/chilled fruits and vegetables remain limited to 20 days. SPSICs for frozen fish expire within 30 days of issuance to institutional buyers and expire within 45 days of issuance to retail buyers. SPSICs for other plant, animal, and aquatic products are also still generally subject to 60-day validity.

The DA BAI issued Memorandum Circular No. 25 (2023), which reiterates that SPSICs are no longer needed for cured processed meat products from eligible countries, including the United States, provided they comply with the World Organisation for Animal Health (WOAH) standards for the inactivation of viruses. However, SPSICs are still required for uncooked/not-fully-cooked/non-heat-treated processed animal products.

### **Local Government Regulations**

Since the onset of African Swine Fever in 2019, and the return of avian influenza in 2022, a number of local government units (LGUs) have maintained restrictions on the import and export of live pigs and birds, and products thereof, that exceed both international and national recommendations. LGU measures are not notified to the WTO.

However, to streamline regulatory processes among LGUs and align with WOA recommendations, the DA BAI issued Memorandum Circular No. 45 (2023) that enumerates requirements for the local movement of meat and processed meat products.

### **Cold Chain Regulations**

The Philippines has long maintained a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local wet markets. This system imposes more burdensome requirements on the sale of frozen meat, including imported meat, compared to the sale of freshly slaughtered meat, which is sourced predominantly from domestically raised animals. A U.S. Department of Agriculture Food for Progress project includes a cold chain component in its overall mission to improve Philippine sanitary and phytosanitary measures and facilitate agricultural trade.

In June 2020, the DA issued Administrative Order (AO) 24 to add conditions to approve SPSIC permits by requiring importers to obtain certificates of availability of space at accredited cold storage warehouses and usage reports for imported meat and poultry. While the DA subsequently suspended implementation of AO 24, this measure has not been repealed. In September 2020, the Philippines reinterpreted its existing regulations to expand its longstanding ban on the sale of imported frozen fishery products in traditional “wet” markets to include modern supermarkets and electronic commerce. As a result, the sale of frozen fish products is limited to institutional buyers, such as food processors and hotel and restaurant chains.

## **GOVERNMENT PROCUREMENT**

The government procurement system in the Philippines generally favors Philippine nationals or Filipino-controlled enterprises for procurement contracts. Republic Act (RA) No. 9184, or the Government

Procurement Reform Act, specifies a minimum Filipino ownership requirement of at least 60 percent in the procurement of goods, consulting services, and infrastructure projects. Domestic goods are also given preferential treatment over imported products in the bid evaluation process. Additionally, Executive Order No. 120, issued in 1993, directs government departments and agencies, including government-owned and controlled corporations, to exert best efforts to negotiate countertrade equivalent to at least 50 percent of the value of contracts on foreign capital equipment, machinery, products, goods, and services worth at least \$1 million. Government Procurement Policy Board Resolution 14-2005 states that a government agency must comply with the provisions of RA 9184 if it decides to adopt countertrade as an internal procurement policy.

While U.S. cloud service providers are active in the Philippine market, they continue to face constraints that limit their participation, particularly in competing for government projects. The Philippines requires government agencies to procure cloud computing services from the Government Cloud (also known as GovCloud), a cloud infrastructure set up by the Department of Information and Communications Technology.

The Philippines is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

## **INTELLECTUAL PROPERTY PROTECTION**

While the Philippines has made progress in intellectual property (IP) protection and enforcement since its removal from the Watch List in the 2014 Special 301 Report, the United States continues to have concerns, including limited enforcement activities. Stakeholders report issues with online piracy and sales of counterfeit goods, including apparel, shoes, watches, jewelry, perfume, and electronics. Such counterfeiting and piracy concerns led to the continued inclusion of Manila's Greenhills Shopping Center in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). Other stakeholder concerns include slow prosecution and conviction of cases. The government is reportedly considering amending the IP Code to adapt to new technological changes and improve IP protection and enforcement.

The United States will continue to monitor the implementation of new regulations related to geographical indications (GIs) that entered into force in November 2022, including their potential impact on market access for U.S. products. As part of the October 2018 Joint Statement, the United States recognized that the Philippines committed "to protect GIs in a manner mutually beneficial to both countries by ensuring transparency, due process, and fairness in the laws, regulations, and practices that provide for the protection of GIs, including by respecting prior trademarks and no restriction of the use of common names." In addition, the Joint Statement includes confirmation by the Philippines that it will not provide automatic GI protection, including to terms exchanged as part of a trade agreement. The United States will continue to monitor the implementation of this and other commitments related to GIs, including through engagement under the TIFA.

## **SERVICES BARRIERS**

### **Audiovisual Services**

The Philippine Constitution prohibits foreign ownership in mass media, including cable television and broadcasting, as well as film distribution and pay-television. Additionally, foreign ownership in private radio communications networks is limited to 40 percent under 2022 changes to the Foreign Investment Negative List (FINL).

## **Financial Services**

Qualified foreign banks may own up to 100 percent of domestically incorporated banks, or enter the market as foreign branches. However, ownership restrictions apply to nonbank investors, regardless of their nationality. Nonbank foreign individuals and enterprises, like nonbank Filipino investors, are restricted from owning more than 40 percent of the total voting stock in a domestic commercial bank and more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five subbranch offices. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

## **Insurance Services**

The Insurance Code provides that all insurance companies operating in the Philippines must seek to cede risks to reinsurance companies authorized to conduct business in the country before entering outward foreign reinsurance arrangements. Moreover, insurance companies operating in the country must cede 10 percent of outward reinsurance placements to the state-controlled National Reinsurance Corporation of the Philippines.

Generally, only the state-owned Government Service Insurance System may provide insurance for government-funded projects and coverage for all government properties, assets, contracts, rights of action, and other insurable risks to the extent of the government's interest.

## **Professional Services**

The Philippine Constitution limits the practices of certain professions to Philippine citizens. However, various laws and regulations offer exceptions on a reciprocal basis, such as medicine, pharmacy, nursing, dentistry, accounting, teaching, architecture, and engineering. The practice of law is still reserved for Philippine citizens.

## **Advertising Services**

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

## **Retail Services**

Philippine law restricts foreign investment in certain retail ventures to Philippine nationals; however, amendments to its Retail Trade Liberalization Act, enacted in December 2021, open the retail sector to greater foreign participation. These amendments lower the minimum investment required for foreign retailers from \$2.5 million to \$500,000 and lower the per-store investment requirement from \$830,000 to \$200,000. Foreign retailers remain prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling.

The March 2, 2022 amendments to the Foreign Investment Act reduced capitalization requirements for foreign-owned micro and small domestic enterprises from \$200,000 to \$100,000, if the business involves advanced technology, is registered as a startup or startup enabler, or the majority of its direct employees are Filipino (assuming the firm has at least 15 Filipino employees).

## **Telecommunications Services**

Under the amended Public Services Act (PSA) which took effect in April 2022, public services engaged in the provision of telecommunications services are considered critical infrastructure. Foreign nationals may own more than 50 percent of public services engaged in the operation and management of critical infrastructure, subject to reciprocity requirements.

The Philippines allocates and manages spectrum through the Radio Control Law of 1931 (RA 3846 and its amendment, RA 584), Executive Order No. 546 1979, and the Public Telecommunications Policy Act of 1995 (RA 7925). These laws and directives provide the country's legal framework for spectrum enfranchisement, operation, and permitting in line with International Telecommunication Union requirements, and general provisions on the allocation and assignment of radio spectrum. While RA 7925 requires the conduct of open tenders in allocating spectrum, no public bidding has ever been carried out to allocate spectrum (*e.g.*, spectrum auctions). Evaluation of applications typically involves the submission by an applicant of a letter of request to the National Telecommunications Commission for its spectrum needs. This model is inherently non-transparent, constituting an administrative approach by which applicants are chosen based on the government's prioritization of certain criteria (like financial or technical capacity).

The proposed Open Access in Data Transmission bill, pending full congressional approval in the Philippines as of December 31, 2023, seeks to lower barriers to market entry, lower the cost of deploying broadband facilities, and make more spectrum available for Internet service.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Ownership**

The FINL, which is published every two years and was last updated in June 2022, enumerates foreign investment restrictions. Foreign investment in FINL-listed sectors may be prohibited outright (*e.g.*, mass media, marine resources, and small-scale mining cooperatives) or subject to limitation (*e.g.*, up to 40 percent foreign ownership in natural resource extraction; educational institutions; private radio communication networks; companies participating in government procurement; and public utilities such as electricity transmission and distribution, water and petroleum pipelines, seaports, and public utility vehicles). The 2022 FINL reflects amendments to the Retail Trade Liberalization Act, the PSA, and the Foreign Investment Act.

## **SUBSIDIES**

### **Export Subsidies**

The Philippines offers a wide array of fiscal incentives for export-oriented investments, particularly investments related to manufacturing. These incentives are available to qualified firms located in designated export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA). The available incentives include: income tax holidays or exemptions from corporate income tax for up to seven years; an option for either special corporate income tax or enhanced deductions for up to 10 years after the income tax holiday period; payment of a 5 percent special tax on gross income less allowable deductions in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts, and raw materials; exemption from wharfage dues, imposts, and fees; and a zero percent value-added tax (VAT) rate on local purchases (including telecommunications, electricity, water, and building lease) directly and exclusively used in the



registered project or activity. The PEZA approves incentives for projects with investment capital of \$20 million and below, and the Fiscal Incentives Review Board (FIRB) approves incentives for projects above a \$20 million investment capital threshold.

The Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act introduced a sunset provision on the aforementioned preferential tax rates and benefits provided to activities currently registered with Philippine investment promotion agencies, including the PEZA. The CREATE Act grants a 10-year transition period to export enterprises registered prior to its enactment, with the option to reapply for special corporate income tax treatment subject to the conditions set in the Strategic Investment Priority Plan and a performance review by the FIRB. In response to VAT-related issues experienced by firms, the Philippines amended the CREATE Act's implementing rules and regulations on August 11, 2023, to clarify the applicability of VAT exemptions and refunds. Also in August 2023, a new tax reform bill, known as the CREATE More Act, was introduced to further lower corporate income tax from 25 percent to 20 percent and to harmonize VAT incentives in special economic zones. As of December 31, 2023, the CREATE More Act was pending congressional approval.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Corruption is a pervasive and longstanding problem in the Philippines. National and local government agencies, particularly the Bureau of Customs, are beset with various corruption issues. Both foreign and domestic investors have expressed concern about the lack of transparency in judicial and regulatory processes. Investors have also raised concerns about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

# RUSSIA

## SANCTIONS AND COUNTERSANCTIONS

In response to Russia's March 2014 invasion of Ukraine and self-proclaimed annexation of Crimea, the United States imposed sanctions on Russian Government officials, individuals who supported the annexation policy, and critical sectors of the Russian economy. In response, Russia enacted a variety of measures in retaliation. The initial measures banned the importation of a variety of agricultural and seafood products from the United States and other countries.

As a result of Russia's full-scale invasion of Ukraine beginning in February 2022, the United States imposed unprecedented further sanctions on Russia in 2022, ceased virtually all bilateral engagement on trade and investment issues with Russia, and continues to take steps to isolate Russia from the global economy and hold President Putin accountable for his war against Ukraine. Those measures include: withdrawal of Most-Favored-Nation (MFN) status for Russian goods; increased tariffs on certain imports from Russia; import and export bans and restrictions; financial and investment restrictions in certain industries; and, blocking measures against certain entities and individuals. In response, Russia has expanded its retaliation, imposing or proposing measures to impact financial transactions, protection and enforcement of intellectual property, exports and re-exports of certain goods, and foreign direct investment, which may extend to nationalization of foreign-owned assets. Russia has also accelerated and expanded its efforts to replace imports with domestic goods and services. As a result of the increased geopolitical tensions, hundreds of U.S. companies have withdrawn from or significantly reduced their presence in Russia.

Bilateral trade in goods has fallen from \$38.2 billion in 2013 to \$5.2 billion in 2023. While some of the decline in trade is undoubtedly due to the overall decline in global trade because of the COVID-19 pandemic, the decline also reflects the geopolitical tensions and Russia's increasingly inward-looking industrial and trade policies, as well as the impact of U.S. sanctions and export controls applied to Russia.

This chapter of the National Trade Estimate reports primarily on the significant trade and investment barriers in Russia before the full-scale invasion of Ukraine that began in February 2022. The United States continues to engage with U.S. stakeholders to analyze and assess the impact of the sanctions and counter sanctions on trade in the broader context of U.S. national interests. However, due to the near total cessation of engagement with Russia, engagement on significant trade barriers in Russia is severely limited.

## TRADE AGREEMENTS

### **Membership in the World Trade Organization**

On August 22, 2012, Russia became the 156th Member of the World Trade Organization (WTO). On December 14, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia, the United States and Russia consented to the application of the WTO Agreement between the two countries. Russia's accession to the WTO signaled its movement to adopt key WTO principles, including transparency. Despite its WTO commitments, as noted in the [2023 Report on the Implementation and Enforcement of Russia's WTO Commitments](#), the Russian Government has maintained restrictive at-the-border measures, instituted behind-the-border measures to inhibit trade, and pursued principles of import substitution and forced localization, taking it on a comprehensive trajectory away from the guiding principles of the WTO.

## **Eurasian Economic Union**

Russia is a member of the Eurasian Economic Union (EAEU), a limited customs union that also includes Armenia, Belarus, Kazakhstan, and Kyrgyzstan. Moldova, Uzbekistan, and Cuba have observer status at the EAEU. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for EAEU member states and coordinating economic integration among them. While tariff harmonization and standardized regulatory approvals across member states have eased the process of doing business within the customs union for some U.S. companies, some regulatory regimes such as those applying to medical devices and to pharmaceuticals have not been standardized and still require approvals by the individual member states. As a consequence of its membership in the EAEU, Russia's import tariff levels, trade-in-transit rules, non-tariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on EAEU legal instruments. The EAEU member states are estimated to have harmonized approximately 90 percent of their tariffs governing trade with third countries.

## **IMPORT POLICIES**

### **Tariffs and Taxes**

#### **Tariffs**

Russia's average MFN applied tariff rate for all goods was 6.6 percent in 2022 (latest data available). Russia's average MFN applied tariff rate was 9.7 percent for agricultural products and 6.1 percent for non-agricultural products in 2022 (latest data available).

Russia has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 7.5 percent. Russia's average WTO bound tariff rate for agricultural goods (10.7 percent) was slightly higher than its average applied rate of 9.7 percent in 2022 (latest data available). Russia's average WTO bound rate for non-agricultural products was 7.1 percent also slightly higher than its average applied rate of 6.1 percent. Russia's maximum WTO bound tariff rate was 113 percent in 2022 (latest data available). Although Russia has implemented all the tariff reductions required by its WTO commitments, some concerns remain.

In 2018, the Government of Russia adopted Decree No. 788 On Approval of Rates of Import Customs Duties In Respect of Certain Goods Whose Country of Origin Is the United States of America (amended April 26, 2022) imposing tariffs ranging from 25 percent to 40 percent on various industrial products (mainly certain types of construction machinery) imported from the United States. Russia took this action in retaliation against the U.S. President's decision to adjust duties on U.S. imports of Russian steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862). These retaliatory duties are being applied by Russia only, not by other EAEU member states. The United States had been urging Russia to work with the United States to address excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish U.S. workers and companies. On August 27, 2018, the United States launched dispute settlement proceedings against Russia at the WTO and requested consultations with Russia. Following unsuccessful consultations in November 2018, a WTO dispute panel was established on December 18, 2018 and composed on January 25, 2019. On June 16, 2023, Russia requested that the panel suspend its work. Despite an objection from the United States, the panel accepted Russia's request and, effective June 23, 2023, the panel suspended its work.

Through Decree No. 1173, on July 20, 2023, Russia increased customs duties on imports of certain goods from “unfriendly” countries, including the United States. Specifically, Russia increased duties on wine (from 12.5 percent to 20 percent), purified glycerin (from 9 percent and 12 percent to 50 percent), and polyurethane (from 6.5 percent to 35 percent). These duty increases were authorized by Presidential Decree No. 973 signed in December 2022 and will stay in effect until December 31, 2025.

On August 3, 2023, Russia introduced amendments to the Federal Law On Customs Tariffs bill amending the Federal Law on customs tariffs to the State Duma (the lower chamber of Russia’s parliament) providing the government with the authority to lower export tariffs on grain, fertilizers, and raw materials to “friendly” countries. The bill was approved by the State Duma on December 12, 2023, and was pending in the upper chamber of parliament as of December 31, 2023.

## **Taxes**

Russia applies a value-added tax (VAT) of 20 percent on goods, works, and services (with some limited exceptions). According to Article 149.2 (paragraph 21) of the Russian Tax Code, the 20 percent VAT payments on royalties paid for screening Russian movies (as defined in the Russian tax code) can be rebated, but not VAT payments on royalties for screening U.S. (or other non-Russian) films. However, following Russia’s full-scale invasion of Ukraine in February 2022, most major U.S. studios withdrew from and ceased screening movies in Russia. Similarly, Article 149 exempts from the 20 percent VAT the royalties paid on software included in the Unified Register of Russian Software (pursuant to Federal Law No. 188-FZ of June 29, 2015, and Resolution 1236 of November 16, 2015.) Because only Russian software is included in the Register, the cost of using non-Russian software can be automatically 20 percent higher than using Russian software. The United States has raised these discriminatory tax practices with the Government of Russia, but Russia has not changed its practices.

Russia’s Federal Law No. 89-FZ (as amended), imposes a recycling fee to be paid on automobiles and certain other wheeled vehicles that requires importers (since 2012) and manufacturers (since 2016) of automobiles and certain other wheeled vehicles (including self-moving agriculture and industrial vehicles). The fee is determined by the age, total mass, and engine size of the vehicle. Purportedly, the fee was imposed to offset the reduction in tariffs. The recycling fee has increased from between RUB 3,000 and RUB 110,000 (approximately \$41 and \$1,494) in 2012, depending on total mass and engine size of the vehicle, and between RUB 3,400 and RUB 1,235,000 (approximately \$36 and \$13,138) in 2023 for new passenger cars with no more than eight seats. For used passenger cars, the recycling fee increased from between RUB 5,000 and RUB 700,200 (approximately \$68 and \$9,507) in 2012 to RUB 5,200 and to RUB 1,622,800 (approximately \$55 and \$17,274) in 2023. Although the fee applies to both domestic and imported vehicles, concerns remain regarding the overall level and calculation of the fee for heavy-duty commercial vehicles.

Russia appears to apply a variable excise tax on automobiles based on their engine size. For example, in 2023, cars with engine power below 150 horsepower (hp) (e.g., a Lada, as well as some models of Fiats, Mini Coopers, and older Fords) are subject to an excise tax of RUB 55 (approximately \$0.60) per hp. For cars with engine power above 150 hp, the excise tax rate increased from RUB 531 per hp to RUB 1,584 per hp (approximately \$5.70 to \$16.90). Those rates translate to a maximum tax of approximately RUB 8,250 (approximately \$87.80) for a car with less than 150 hp, and RUB 80,181 (approximately \$852) for a car with 151 hp, and RUB 793,584 (approximately \$8,442) for a car with over 500 hp (e.g., certain models of Cadillacs, Ford Mustangs, Jaguars, Alfa Romeos or Mercedes Benz). Although the tax applies to both domestically produced and imported vehicles, it disadvantages foreign manufacturers as Russia produces a limited number of high horsepower cars. In its 2022 WTO Trade Policy Review, Russia acknowledged that it does not produce passenger cars with engine power over 300 hp.

## **Non-Tariff Barriers**

### **Import Bans**

Russia has maintained a ban on imports of certain food and agricultural imports from Australia, Canada, the member states of the European Union, Norway, and the United States since 2014. The list of banned food includes: certain beef, pork, poultry, fish and seafood products; fruits and nuts; vegetables; some sausages; and, most prepared foods. Russia has since amended the list of products and expanded the list of countries covered by the ban, adding Albania, Iceland, Liechtenstein, Montenegro, Ukraine, and the United Kingdom. In September 2023, Russia extended the ban until December 31, 2024 through Presidential Decree No. 693 On the Extension of Certain Special Economic Measures to Ensure the Russian Federation's Security (September 18, 2023).

### **Import Licensing**

Even before Russia's full-scale invasion of Ukraine in February 2022, the Russian Government maintained barriers to the importation of products with cryptographic functionalities (encryption products). Although Russia has WTO commitments to allow the importation of "mass market" consumer electronics without an import license or other customs formalities (other than import duties), stakeholders report that Russia continues to require at a minimum a one-time notification or, for products with strong encryption, permission from the Russian security services in addition to an import license, which significantly increases import costs and often precludes imports altogether. In addition, pursuant to Government Resolution No. 313 (April 16, 2012), as amended, Russia requires an activity license to distribute encryption products, including many common consumer electronics, which further restricts U.S. exporters access to the Russian market. Only Russian legal entities or individual entrepreneurs may apply for a local (domestic) encryption license. Representative offices of foreign companies registered in Russia cannot apply for a local license. Prior to Russia's 2022 full-scale invasion of Ukraine, the U.S. Government had raised these concerns with the Russian Government about the import licensing regime for encryption products but Russia failed to respond to repeated outreach.

### **Customs Barriers and Trade Facilitation**

In 2019, Russia began to implement a mandatory labeling regime (track and trace regime) in selected industry sectors that requires the application of an encrypted label to products, both imported and domestically produced, in an ever-widening list of industry sectors. The mandatory labeling regime applied initially to only certain industry sectors (*e.g.*, footwear, apparel, pharmaceuticals, and perfumery products), but now covers 16 groups of goods with the goal of making the majority of consumer goods digitally traceable by 2024. Various affected industry stakeholders have raised significant concerns about the regime, including: short implementation timelines; the risk of disclosure and misuse of sensitive commercial data collected under the regime; the lack of operational details from the Russian Government; the quantity of detailed data required for the labels; the possibility of national treatment and trading rights issues stemming from different procedures for importers to obtain these labels compared to domestic manufacturers; the requirement that the labels must be purchased from a single Russian company; the duplication with existing tracking regimes (*e.g.*, the system for tracking alcohol products); and, arbitrary misuse of the system to halt imports. Russia had shown some flexibility in response to stakeholder concerns and, in 2022, suspended some of the labeling requirements. The United States will work with stakeholders and, where possible, the Russian Government to ensure that the system does not create new trade barriers to U.S. exports, or undermine the benefits of the WTO Trade Facilitation Agreement.

U.S. stakeholders report that the Russian Government does not publish all regulations, judicial decisions, and administrative rulings of general application on customs matters. In addition, U.S. exporters report that

customs enforcement varies by region and port of entry, and that changes in regulations can be frequent and unpredictable, adding to costs and delays at the border. U.S. officials have pressed Russian officials to improve transparency in this area and ensure compliance with WTO commitments.

### **Import Substitution Policies**

Russia's extensive import substitution policies posed a significant barrier to a wide variety of U.S. exports, even before the full-scale invasion of Ukraine in February 2022 caused a precipitous drop in trade. These policies have a long history in Russia, but have increased in prominence in the past few years and transformed into a set of policy initiatives to ensure Russia's technological sovereignty by reducing its dependence on foreign technologies. Sectors in which these policies have been developed and implemented over the last several years include: agriculture; transport vehicles; telecommunications; consumer goods; textiles; optical fiber; defense; banking; oil and gas; solar and wind energy; software; aircraft manufacturing; and, medical devices. *(For further information, see the sections on Investment Barriers, State-Owned Enterprises, and Government Procurement.)*

Initially, the Russian Government implemented these preferences primarily through government procurement, but since 2015 has increasingly extended the mandated preferences to purchases by state-owned enterprises (SOEs). For example, Russia's law governing SOE purchases expressly: (1) favors Russian-produced products; (2) grants the Russian Government the authority to establish plans and tender rules for the purchase of specific Russian goods, works, and services; (3) establishes a Government Import Substitution Commission with responsibility for determining which types of machinery and equipment must be sourced locally for large investment projects by SOEs, state corporations, or certain private businesses; (4) requires the coordination of SOEs' purchases of pharmaceutical, high technology, and innovative products with the government; and, (5) recommends that SOEs follow the more restrictive procurement rules that govern federal and municipal procurement. *(For further information, see the Government Procurement section.)*

Russia's import substitution requirements have not been limited to SOEs. Since December 2019, Russia has required the pre-installation of Russian software (e.g., search engines, Yandex browser, mapping and navigation software, anti-virus software, software that provides access to electronic government infrastructure, instant messaging and social network software, and national payment software) on certain consumer electronic products (e.g., smartphones, computers, tablets, and smart TVs) sold in Russia. (Law No. 425 On Amending Article 4 of Russian Federation Law 'On Protecting Consumer Rights' December 2, 2019.) Stakeholders contend that the law appears to be another effort by the Russian Government to disadvantage imports and increase control over technology. In August 2023, the Russian Government approved a new list of Russian software that must be pre-installed on smart TVs in 2024, adding several video streaming services. The list of programs for computers and mobile devices remained basically the same. In addition, technology companies are concerned that the law would expose devices and services to potentially unsafe, insecure, or unreliable technology. The United States raised concerns directly with the Russian Government prior to the full-scale invasion of Ukraine in 2022 and will monitor closely the implementation of this policy, which has the potential to seriously disrupt U.S. and other foreign suppliers of devices, software, and services.

Russia has expanded its localization policies beyond Russian-made goods to include Russian-origin services. *(For further information, see the Services Barriers section.)*

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

### **Technical Barriers to Trade**

U.S. companies cite Russia's administration of technical regulations and related product-testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russia does not accept export certificates recognized by other countries, such as those issued by the Food and Drug Administration of the U.S. Department of Health and Human Services. Russia recognizes only the certificates issued by authorized agencies from one of the EAEU member countries with a representative office in Russia. Russian authorities require product testing and certification as a key element of the approval process for a variety of products; and, in many cases, only an entity registered and residing in Russia can apply for the necessary documentation for those product approvals. Consequently, opportunities for testing and certification performed by competent bodies outside Russia are limited, which is contrary to standard practice and inappropriately increases the burdens for companies exporting to Russia. Manufacturers of telecommunications equipment, oil and gas equipment, construction materials and equipment, and veterinary biologics, such as vaccines, have reported serious difficulties in obtaining product approvals within Russia. Other EAEU member states are in the process of adopting similar requirements.

### **Alcoholic Beverages**

Stakeholders have raised concerns about legislative amendments that affect Russia's regulation of the wine market, particularly Federal Law No. 345-FZ of July 2, 2021. Stakeholders are concerned that certain definitions and provisions, such as limitations placed on wine exported to Russia in bulk and restrictions on the use of certain ingredients, could create barriers to exports from the United States and other producers of wine. Stakeholders have also raised concerns related to limitations on the right to use certain geographical indications (GIs) or appellations of origin, and the rules governing labeling (with follow-on implications for labeling approvals). In December 2022, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, which contains requirements that can reduce safeguards for the use of common names, came into force in Russia.

In addition, stakeholders noted that Russia requires one or multiple certificates for imported wine from the United States, even when those wines conform to both U.S. and Russian standards. Often, these certificates must be an original document issued by the U.S. Department of Treasury (Alcohol and Tobacco Tax and Trade Bureau) or an officially accredited organization located in Russia. Stakeholders also expressed concerns about the Ministry of Industry and Trade's November 2022 decision to allow imports of premium liquor brands without the trademark owners' consent under Russia's parallel imports scheme. When appropriate, the United States will work to ensure that Russia's and the EAEU's alcoholic beverages control regime is consistent with Russia's WTO commitments, and also urge Russia and the EEC to adopt international standards or guidelines for such products.

### **Pharmaceuticals**

U.S. stakeholders continue to raise concerns about the implementation of Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical products. U.S. stakeholders are concerned that Russia treats domestic and foreign manufacturers differently in the implementation of its GMP regime for medicines. For example, stakeholders have highlighted the higher rate of unwarranted denials of foreign GMP certificates, the lack of a process for paper review of corrective actions for minor deficiencies, and the disparate, legislatively-mandated treatment of GMP procedures for local and foreign sites. Moreover,

industry stakeholders report that the GMP certificates for veterinary drugs, required since September 1, 2023, present a significant barrier to imports and could potentially close the Russian market to exports of U.S. veterinary drugs.

## **Toys**

U.S. industry is concerned about the arbitrary exclusion of certain toys from the Russian market as a result of the “psychological assessment of toys, games and play structures” required under the 1998 Federal Law No. 124-FZ On Basic Guarantees of Children’s Rights to the Russian Federation. U.S. toy industry stakeholders have also raised a concern about the EAEU’s ban on recycled content in toys, which they claim contradicts global toy safety standards and undermines the growing focus of the U.S. toy industry on sustainability.

## **Sanitary and Phytosanitary Barriers**

Russia has banned imports of most agricultural products since August 2014. The issues discussed below continue to be of concern to the United States and still constitute market access barriers in addition to the import ban.

## **Food Safety Standards**

Russia maintains standards on a wide array of animal products that are inconsistent with international standards set by the World Organisation for Animal Health (WOAH), the International Plant Protection Convention (IPPC), or the Codex Alimentarius Commission (Codex) without an apparent scientific justification. Findings of veterinary drug residues during Russian border inspection of U.S. meat and poultry products have resulted in trade disruptions, including the suspension of previously-approved U.S. beef, pork, and poultry facilities. For example, in October 2013, the EEC adopted a zero-tolerance policy for beta-agonists, including ractopamine, and trenbolone acetate for beef and pork products. These standards are more stringent than the Codex’s maximum residue limits for these substances in both beef and pork. Russia notified this measure to the WTO in November 2017, and to date the United States is not aware of any complete risk assessment. Although the United States has established a Never Fed Beta Agonists Program, Russia’s prohibition of these veterinary drugs, including for products that are not affected by Russia’s import bans, prevents U.S. exporters of beef and pork products from accessing the Russian market.

## **Plant and Animal Health**

U.S. exporters of agricultural products also continue to face systemic issues in Russia. For example, since August 2008, Russian and EAEU veterinary certificates require U.S. regulatory officials to certify that exported products satisfy EAEU sanitary and veterinary requirements and meet certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear to be excessively restrictive and lacking in scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where the product in question could pose no risk of transmission. In other cases, Russia requires sanitary or phytosanitary attestations on export certificates for low-risk food or agricultural products without providing scientific evidence of the risk justifying such measures. For example, Russia requires phytosanitary attestations for shipments of certain plant-origin products destined for further processing, such as corn for popcorn, even though such processing removes any potential plant health risk. The United States is also concerned with Russia’s failure to remove certain veterinary control measures for lower-risk products. Russia maintains a ban on cultivation of genetically engineered (GE) crops and the import of GE planting seeds, as well as stringent import restrictions on



animal feed and burdensome methodological guidelines for the registration of GE products. The United States has pressed and will, as appropriate, continue to press for the removal of these types of barriers to exports of U.S. plant and animal products.

### **Approved Exporter and Facility Listing Requirements**

Pursuant to a June 2010 EEC regulation, Russia only allows imports of most products under veterinary control (*e.g.*, meat, poultry, dairy, and seafood) from facilities on a list approved by all EAEU member states. Pursuant to a bilateral agreement signed in November 2006, Russia agreed to grant U.S. regulatory officials the authority to certify new U.S. facilities and recertify U.S. facilities that have remedied any previously reported import noncompliance. In practice, however, Russia has not consistently recognized the authority of U.S. regulatory officials to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of approved U.S. facilities. Russia justifies its approach based on the EEC Customs Union Commission Decision No. 834, dated October 18, 2011, On the Regulation on the Harmonized Procedure of Joint On-Site Inspections and of Taking Samples of Goods (Products) Subject to Veterinary Control (Supervision) and the subsequent EEC Decision No. 94, dated October 9, 2014, On the Regulation on the Harmonized Procedure of Joint On-Site Inspections and of Taking Samples of Goods (Products) Subject to Veterinary Control (Supervision). The EAEU has competence for facility inspections and approvals. The United States worked with Russian and EAEU authorities to negotiate an EAEU inspection regulation that allows the EAEU to accept the certification of additional facilities provided by sanitary and phytosanitary authorities in third countries that certify new facilities. However, implementation of this regulation has lacked predictability and transparency because EAEU member states often continue to insist on conducting their own inspections prior to approving a facility, without providing any rationale.

Similarly, Russia maintains exporter approved lists. Russia has effectively banned the importation of U.S. dairy products since September 2010, when Russia's Federal Service for Veterinary and Phytosanitary Surveillance (VPSS) instructed customs officials to allow shipments only from exporters on VPSS-approved lists. The EEC has now extended this listing requirement to most agricultural products. This directive appears to be inconsistent with EAEU legislation eliminating the requirement that a foreign producer be included on an approved list in order to be eligible to export dairy products to the EAEU. The listing requirement continues to prevent U.S. exports of heat-treated dairy products despite the fact that, in March 2014, the United States and the Russia–Kazakhstan–Belarus Customs Union (CU) concluded negotiations on a U.S.–CU veterinary certificate. Despite its WTO accession commitment to eliminate listing requirements for pet food and animal feed products, Russia also continues to require approved lists of exporting establishments for pet food of animal origin. The United States has worked, where possible, with Russia and the other EAEU member states to eliminate the listing requirement for exporters, including heat-treated dairy products.

## **GOVERNMENT PROCUREMENT**

Russia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2013. In 2013, Russia adopted Law No. 44-FZ On the Contract System for the Procurement of Goods, Works and Services for State and Municipal Needs establishing the basis for a broad range of requirements relating to federal or municipal government procurement that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. Given the breadth of the Russian Government's role in the economy and the scope of the numerous import substitution policies applicable across a broad swath of the Russian economy, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy. Notwithstanding legislation simplifying the public

procurement process, Russia's restrictions on its government procurement opportunities have accelerated since 2014 when Russia established a 15 percent preference for a variety of goods (including certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU for government use, and up to 30 percent for certain other products.

Since 2015, Russia has adopted increasingly autarkic measures reaffirming and expanding the ban on government procurement of a wide range of foreign-made products, including, but not limited to: furniture; vehicles; machinery and equipment; tools; appliances; paper and cardboard; and, shoes and clothing.

In addition, Russia has banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU, unless there are no domestic or EAEU alternatives. The Industrial Policy Law, dated December 31, 2014, specifically promotes import substitution, restricting government procurement (and SOE purchases) of foreign-made products. It provides a framework for the support of certain product manufacturing, research and development (R&D) subsidies, and infrastructure projects as well as implementation of the Buy Russia Law. The Industrial Policy Law also includes provisions for financial and material support to Russian companies to boost their export potential.

In addition, measures aimed at the healthcare industry, such as Russia extending its “three’s-a-crowd” localization policy (banning government procurement of certain imported goods if more than two companies from EAEU member states submitted a bid) to government tenders for many drugs, medical devices and health-related disposable goods, have been challenging for U.S. stakeholders. If the “three’s-a-crowd” rule is not applicable, a 15 percent price preference is applied. Russia has also adopted additional restrictions on government procurement of imported medicines and medical devices. An additional challenge to U.S. pharmaceutical producers is a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health.

In February 2023, the Russian Government adopted Decree No. 318 further expanding the list of goods banned from government procurement and replaced the “three’s-a-crowd” localization policy with the “two’s-a-crowd” rule previously applied to public procurement of electronic equipment.

The so-called “two’s-a-crowd” rule requires public sector customers procuring products listed in the resolution to reject bids from foreign manufacturers if there is already one (or more) bids for the supply of the same product manufactured in the EAEU. The rule was first approved in August 2021 when the Russian Government issued a resolution that significantly strengthened restrictions on public procurements for over 170 groups of electronic equipment, including more than 30 groups of medical devices manufactured by foreign companies. For the medical devices listed in this measure, this requirement will replace the similar “three’s-a-crowd” rule, described above.

These measures follow restrictions imposed by Russia that ban government procurement of over 100 imported radio electronic products and components and establish a 30 percent price preference in purchases by state-owned enterprises. In June 2022, the Ministry of Industry and Trade (MoIT) announced it had prepared a draft government decree on the introduction of the “two’s-a-crowd” rule in public procurement of essential drugs providing procurement preferences to pharmaceutical companies in EAEU member states that engage in full-cycle pharmaceutical R&D and manufacturing. In 2023, the MoIT confirmed that the decree would apply to the entire list of strategically important medicines as of September 2024.

In 2016, the Russian Government issued Decree No. 832 (last amended in May 2022) banning certain food and dairy products from non-EAEU member states for federal and municipal government procurement, (including fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter, and sugar) and established minimum purchasing requirements of domestic goods. In

April 2020, with the adoption of Resolution No. 616, the Russian Government introduced another series of bans and restrictions on the admission of foreign industrial goods for the purpose of public procurement and procurement for the needs of national defense and state security. Resolution No. 616 was last amended on September 16, 2023, expanding the list of banned foreign industrial goods in public procurement to meet the needs of national defense and state security during “special military operations” and mobilization in Ukraine. In August 2023, Russia approved amendments to the Federal Procurement Law to further simplify uncompetitive sole-source public procurement for the needs of national defense and state security during the “special military operation” (Federal Law No. 443-FZ of August 4, 2023). Eligible government entities, approved by Government Resolution No. 3514 in November 2022, are now allowed to sign with winning bidders any type of contract provided for in Russia’s Civil Code without any restrictions.

Russia has expanded the reach of its import substitution policies into the technology sector. Pursuant to amendments to Russia’s national procurement law (Law No. 44-FZ), Russia has created a registry of Russian software. Foreign-made software not on the list will no longer routinely qualify for federal and municipal government procurement, unless no similar domestically produced software is available. In July 2016, the Russian Government went a step further and issued an order approving a three-year plan to switch government agencies to Russian-origin office software. According to U.S. stakeholders, because the move to domestic software was not moving fast enough, the Russian Government in 2020 proposed measures that would expand the list of companies considered Critical Information Infrastructure (CII), and thus extending to many private companies the import substitution requirements applied to government entities. In March 2022, the Russian President signed Decree No. 166 to ban SOEs from procuring foreign software and information technology (IT) services for the CII that they operate. The Decree also bans SOEs and public authorities from using foreign IT for CII starting on January 1, 2025. In August 2023, the MoIT released a detailed action plan to ensure SOEs and public authorities meet the January 2025 deadline.

The Ministry of Digital Development, Communications, and Mass Media drafted a bill to expand the current ban on the purchase and use of foreign IT products for CII operated by public authorities and SOEs to include privately-owned CII. If the bill becomes law, the ban on the purchase and the use of foreign IT products for CII will be applied to all CII operators, regardless of government or private ownership. This measure will likely severely limit the ability of foreign-controlled entities to provide IT services to CII operators, and require such operators to migrate toward the use of domestic software and hardware only.

## INTELLECTUAL PROPERTY PROTECTION

Russia remained on the Priority Watch List in the [2023 Special 301 Report](#). Challenges to intellectual property (IP) protection and enforcement in Russia include continued copyright infringement, trademark counterfeiting, and the existence of non-transparent procedures governing the operation of collective management organizations (CMOs). The United States is also closely monitoring proposals and measures undertaken by Russia to target IP rights for foreign right holders based in countries that have sanctioned Russia. Some of these measures have been implemented, including Decree 299, which permits Russian companies and individuals to forgo compensation to right holders for the use of inventions, utility models, and industrial designs under Article 1360 of the Russian Civil Code, if the right holder is a national from a list of countries designated by Russia as “unfriendly” due to factors including publicly supporting or calling for sanctions against Russia. Another new measure, Decree 322, restricts the ability of foreign right holders from those same “unfriendly” states to collect license payments for most types of IP.

Russia’s inadequate and ineffective protection of copyright, including with regard to online piracy, continues to be a significant problem, damaging the market for legitimate content in Russia and in other countries. Despite adoption of anti-piracy legislation in 2017, Russia remains home to several sites that facilitate online piracy, as identified in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#)

(Notorious Markets List). Stakeholders continue to report significant piracy of video games, music, movies, books, journal articles, and television programming. While right holders are able to obtain court-ordered injunctions against websites and smartphone applications offering infringing content, investigations and prosecutions of the owners of the large commercial websites distributing pirated material, including software, are lacking.

Trade in counterfeit goods causes significant financial losses for U.S. right holders and legitimate businesses. Russia remains a thriving market for counterfeit goods sourced from China. Despite increased seizures by the Russian Federal Customs Service, certain policies hamper IP enforcement efforts. For example, the “return to sender” policy for small consignments, which returns counterfeit goods to their producer, is problematic because it does not remove such goods from channels of commerce.

CMOs for copyright can play an important role in ensuring compensation for right holders when CMO practices are fair, efficient, transparent, and accountable. However, royalty collection by CMOs in Russia continues to lack transparency and lags behind international standards. Reports indicate that right holders are denied detailed accounting reports, making it difficult to verify how much money is being collected and distributed. Also, right holders are excluded from the selection and management of CMOs.

Finally, the United States is concerned about Russia’s implementation of its WTO commitments related to the protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Stakeholders report that Russia is eroding protections for undisclosed data and lacks an effective mechanism for the early resolution of potential pharmaceutical patent disputes. Stakeholders also continue to express concerns regarding certain evidentiary standards applied by the judiciary.

## **SERVICES BARRIERS**

Russia has extended its import substitution policies beyond the provision of goods to include the provision of services.

### **Audiovisual Services**

In January 2022, the Russian Government announced that it would require any streaming service with over 100,000 daily users to register as a Russian company and to add 20 Russian television channels to its service, including Russian news stations, thereby forcing U.S. suppliers to become platforms for Russian state propaganda. However, affected U.S. companies suspended operations in Russia due to the full-scale invasion of Ukraine before the measure went into effect.

### **Financial Services**

Russia continues to prohibit foreign banks from establishing branches in Russia, which means that only local subsidiaries are allowed. In June 2023, the Ministry of Finance released for public discussion a draft bill that would allow foreign banks from “friendly” countries to open branches in Russia. If the bill is approved, they will be allowed to provide banking services in Russia to corporate entities, while individual clients will only be allowed to make fund transfers without opening a bank account. Branches of foreign banks will not be allowed to open demand and term deposits. Moreover, since 2014, Russia has required that foreign-based credit card companies transmit data for all transactions within Russia through the National System of Payment Cards, undermining a key competitive advantage of foreign payments suppliers, which market their self-owned processing facilities located outside of Russia as supporting their reputation for strong consumer and privacy protections. In addition, the Central Bank of Russia (CBR)

offers a domestic credit card (Mir) and a system which allows inexpensive peer-to-peer payments for Russian retail bank customers (Faster Payment System). Providing preferential treatment for Mir payment cards, the Government of Russia has passed mandates requiring public sector employees receiving state funds and welfare benefits to migrate to Mir payment cards and making pensions accessible only through Mir bank cards. U.S. stakeholders have raised concerns about Russia's creeping financial nationalism and the potential for unfair competition in the provision of these services because the CBR is the state regulator as well as the service provider.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization Requirements**

In 2016, Russia began to enforce the first step of its data localization regime. By 2020, the Russia Government had implemented a regime requiring certain electronically-collected data about Russian citizens be processed and stored in Russia, imposing significant operational challenges on providers of data-intensive services, as well as on manufacturers who rely on those services. The requirements also raise concerns about state surveillance. Russia also requires certain telecommunications and Internet service providers (ISPs) to store certain communications content locally for six months and to store metadata for such content for one year or longer, depending on the type of provider (Yarovaya law), giving the Russian security services the opportunity to request those data.

### **Other Digital Trade Issues**

Russian ISPs must install a special device on their servers to allow the Russian security services to track all credit card transactions. Russia threatens to shut off market access to ISPs that allow their customers to use virtual private networks (VPNs). In addition to the obvious concerns over state surveillance, industry stakeholders contend that the effects of these laws limit their ability to offer a variety of services in Russia and increase the cost of doing business in Russia, particularly for small and medium-sized enterprises (SMEs). Moreover, the Russian law (the Yarovaya law) may require ISPs to provide excessive access to citizens' private information, which raises privacy concerns.

In 2021, Russia implemented the so-called Landing Law which requires certain IT companies (*i.e.*, any company with a website or an application with more than 500,000 daily users) to establish a physical presence in Russia. U.S. companies, particularly SMEs, contend that this local presence requirement, coupled with difficult compliance requirements, harsh penalties, and concerns about staff safety, can constrain their ability to operate their businesses in Russia.

## **INVESTMENT BARRIERS**

With the imposition of sanctions by the U.S. Government, numerous U.S. companies have withdrawn from the Russian market or severely limited operations. For companies with a continued presence in Russia, corruption, lack of transparency, inability to repatriate capital, and the threat of creeping expropriation remain impediments to a stable and predictable investment environment. In 2022, Russia introduced significant restrictions on cross-border transactions, such as the sale of shares, payment of dividends, and liquidation of Russian entities controlled by persons from jurisdictions deemed "unfriendly" by the Russian Government. Further obstacles to investment in Russia include: problems with enforcing the rule of law; restrictions on foreign ownership of agricultural land and land in border areas and on investment in the mining and mineral extraction sectors; inadequate dispute resolution mechanisms; weak corporate governance, including the protection of minority shareholder rights; the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms. In 2023,

Russia continued to adopt a variety of measures restricting the business affairs of foreign investors from “unfriendly” states (*e.g.*, limiting disclosure requirements in certain sectors, allowing payment of financial obligations in rubles rather than dollars, limiting certain transactions in sensitive sectors, placing Russian assets of several foreign companies which Russia claims will be under temporary control of the Federal Agency for State Property Management, and setting additional conditions for the exit of foreign companies from Russia). Finally, despite the existence of an Anticorruption Council and anticorruption legislation, with the departure of many international companies and the growing role of the state in the domestic economy, corruption is an increasing concern in Russia.

### **Investment Taxes**

U.S. companies have raised concerns about Russian tax authorities’ scrutiny of payments that cross Russia’s borders, but remain, for tax purposes, in the legal structure of the same Russian company. This issue has arisen when a multinational company transfers an employee temporarily to the company’s Russian office from an office outside Russia. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, Russian tax inspectors have in the past disputed such expenses as economically unjustified and, consequently, impermissible under the Russian Tax Code.

### **SUBSIDIES**

Russia agreed to no longer subsidize exports of agricultural products pursuant to the WTO 2015 Nairobi Ministerial Decision. However, U.S. stakeholders have raised concerns about the potential cost advantage to certain Russian agricultural producers resulting from the provision of subsidies for the transportation of agricultural products, including for the transportation of wheat, barley, and corn from interior regions toward export destinations. Russia has provided this subsidy since 2017, stating the measure is intended to stimulate the movement of grain exports, stabilize domestic grain prices, and support profit margins of agricultural producers. In August 2023, Russia relaxed the eligibility criteria for railroad transportation subsidies available for producers of agricultural goods and fertilizers. The United States is concerned that this measure directly or indirectly subsidizes exports of Russian agricultural products. The implementing decree No. 1104, dated September 15, 2017, specifically mentions several border crossings with Mongolia and China and authorizes the Russian Export Center (REC) to administer the subsidy. According to Russia, the REC is a state export promotion institution that provides financial and non-financial export support both to agricultural and non-agricultural value-added products.

### **STATE-OWNED ENTERPRISES**

Russia’s numerous SOEs play a prominent role across much of the Russian economy. The Russian Academy of National Economy and Public Administration (RANEPA) estimated in May 2023 that the state’s share in the economy had grown from 47.3 percent in 2016 to 56.2 percent in 2021. While private enterprises are theoretically allowed to compete with SOEs on the same terms and conditions, in practice, the competitive playing field is distorted in favor of SOEs. These advantages result from SOEs’ lack of transparency and lack of independence, the presence of senior Russian Government officials on their boards of directors, subsidization by the government, access to preferential lending by state-owned banks, unclear responsibilities of their boards of directors, misalignment of managers’ incentives and company performance, inadequate control mechanisms on managers’ total remuneration or their use of assets transferred by the government to the SOEs, and minimal disclosure requirements.

A specific variant of SOEs, state corporations, are completely owned by the government and operate under separate legislation and in a marketplace distorted in their favor. For example, state corporation holding

structures and management arrangements (*e.g.*, senior government officials as board members) create conditions for preferential treatment and leave much scope for discretion and lobbying by company insiders, which disadvantage private enterprises. There are six state corporations: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec.

In order to spur growth and boost revenue through privatizations, the Russian Government in September 2023 decided to extend its existing three-year privatization program through 2026. Russia plans by 2026 to fully privatize 23 federal state unitary enterprises and sell its stakes in 166 joint stock companies and seven limited liability companies. As of June 2023, the Russian Government still owned 278 federal state unitary enterprises, as well as stakes of various sizes in 561 SOEs. In October 2023, the Government extended the program through 2025, with plans to fully privatize 23 federal state unitary enterprises and sell its stakes in 151 joint stock companies and 9 limited liability companies by 2025. As of December 2022, the Russian Government still maintained a list of 55 SOEs with “national significance” that are either wholly or partially owned by Russia and whose privatization is permitted only with a special governmental decree, including Aeroflot, Rosneft, Rosneftegaz, Transneft, Russian Railways, and VTB. However, Russia has been slow in implementing the privatization plan. The treatment of foreign investors in privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, which creates concerns about protection for minority shareholders and corporate governance.

## **OTHER BARRIERS**

### **Export Policies**

Notwithstanding its stated intent of reducing export duties following its accession to the WTO in 2012, Russia in 2022 began to impose various export restrictions on a wide variety of products. For example, in March 2022, Russia imposed a temporary ban on exports of over 200 types of industrial products including technological, communications and medical equipment, vehicles, agricultural machinery, and electrical equipment covering over 1,600 items, in total. In November 2022, the Russian Government extended the ban through the end of 2023. In May 2023, the list of industrial products subject to the ban was narrowed by about 200 items. In addition, notwithstanding the global food security crisis, Russia has imposed temporary export restrictions (*e.g.*, export bans, export quotas, or export duties) on sunflower seeds, soybeans, grain crops, white sugar, raw cane sugar, rice and rice cereal, rapeseed, millet, buckwheat, meslin, cereal and cereal pellets, crude flour, barley, rye, corn, onions, garlic, turnips, sunflower oil and bagasse, fish products, sulfur used to produce sulfur-containing fertilizers, sulfur containing fertilizer, nitrogen-containing fertilizer. Other temporary export restrictions include non-agricultural products such as certain types of logs, ferrous waste and scrap, stainless scrap and waste, waste and scrap of other alloy steel, and waste and scrap of tungsten. Export restrictions for many of the agricultural goods continue to be extended.

In September 2023, the Russian Government, through Resolution 1538, introduced exchange rate-linked export duty rates for the period of October 1, 2023 through December 31, 2024. The new rates apply to wide range of export commodities and goods, including oil, gas, grains, timber, machine building and scrap metal, fertilizers, nickel, aluminum, ferrous metal products, ceramics, precious metals and jewelry, paper and cardboard, wool, cotton, chemical fibers, textile material, polymers, and rubber. The scope of this measure covers about 30 percent of Russia’s exports. Export duties vary from zero percent to 7 percent. Export duties on fertilizers were increased from 7 percent to 10 percent if the exchange rate remains above RUB 80 per \$1.00.

In September 2023, Russia temporarily banned diesel and gasoline exports to stabilize fuel prices in the domestic market. The ban was relaxed at the beginning of October 2023. However, restrictions on railway

diesel exports, as well as all previously introduced restrictions on gasoline exports, remain in place. Stakeholders claim that Russia has placed higher rail freight rates on certain raw materials intended for export, contrary to its WTO commitment to eliminate discrepancies in such rates by July 1, 2013.





# SINGAPORE

## TRADE AGREEMENTS

### The United States–Singapore Free Trade Agreement

The United States–Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. The United States and Singapore meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## INTELLECTUAL PROPERTY PROTECTION

Despite Singapore’s overall strong record on intellectual property (IP) protection and enforcement, U.S. stakeholders continue to raise concerns regarding enforcement efforts against infringing goods transshipped through Singapore, and the use of unauthorized streaming services and third-party illicit streaming devices to access pirated content. Since November 2021, amendments to the Copyright Act impose civil and criminal liability for knowingly making, importing for sale, commercially distributing, or selling illicit streaming devices, and also for providing a service to enable such devices to access content from unauthorized sources. The United States continues to monitor the implementation of these measures.

The United States continues to urge Singapore to implement its geographical indication (GI) system in a fair and transparent manner that does not undermine market access for U.S. producers and exporters who hold trademarks or rely on the use of common names, including in connection with trade agreement negotiations and implementation.

## SERVICES BARRIERS

### Financial Services

When considering certain mergers or takeovers of banks, the Government of Singapore has a policy of maintaining local banks’ market share at no less than 50 percent of total resident deposits. Regarding the expansion of business within Singapore, the Monetary Authority of Singapore (MAS) will consider awarding full bank privileges to new qualifying foreign banks from countries like the United States, with which Singapore has entered into a free trade agreement, provided there are substantial benefits to Singapore.

The MAS has issued digital bank licenses to two digital full bank firms and two digital wholesale bank firms since December 2020. For digital full banks, the MAS mandates the following requirements: applicants must be controlled and headquartered in Singapore; a majority of its employees must be Singapore citizens; and foreign entities must form a joint venture with a Singapore company.

### Professional Services

#### **Legal Services**

Except in the context of international arbitration, U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singaporean law by employing, or entering into partnership with, Singapore-qualified lawyers. To advise on Singaporean law, foreign firms must either form a joint venture with a Singaporean law practice (licensed as a Joint Law Venture) or obtain licensing as a Qualifying Foreign Law

Practice (QFLP). QFLP licenses are limited. Ten licenses have been issued since 2008; nine are still active as of March 2022. According to the Ministry of Law, the QFLP scheme is not currently open for application, and there are no details available regarding future applications.

## **OTHER BARRIERS**

### **Medical Products**

U.S. stakeholders have expressed interest in greater transparency regarding the Ministry of Health's procurement process, subsidy policies, and procedural rules regarding medical devices and pharmaceuticals, notably for approvals of biopharmaceutical innovations.

### **Pharmaceuticals**

In August 2021, Singapore introduced a list of government-approved drugs and treatments eligible for the country's basic health insurance plan available to citizens and permanent residents. It is important for Singapore to provide stakeholders with meaningful opportunities for input when considering changes to its reimbursement policies.

# SOUTH AFRICA

## TRADE AGREEMENTS

The United States and South Africa signed a Trade and Investment Framework Agreement (TIFA) on June 18, 2012, amending the original 1999 agreement. The Agreement is the primary mechanism for discussions of trade and investment issues between the United States and South Africa.

## IMPORT POLICIES

### Tariffs

South Africa's average Most-Favored-Nation (MFN) applied tariff rate was 7.6 percent in 2022 (latest data available). South Africa's average MFN applied tariff rate was 8.7 percent for agricultural products and 7.4 percent for non-agricultural products in 2022 (latest data available). South Africa has bound 93.8 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 19.0 percent, including 39.0 percent for agricultural products and 15.6 percent for non-agricultural products in 2022 (latest data available). South Africa's maximum WTO bound tariff rate for industrial products is 50 percent, and its maximum WTO bound tariff rate for agricultural products is 597 percent.

The European Union–South African Development Community (SADC) Economic Partnership Agreement (EPA), which has been provisionally applied since October 2016 but is pending entry into force while awaiting ratification by all EU Member States, has led to greater disparities in tariff rates between EU and U.S. exports. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa, noting the unilateral tariff benefits that the United States offers South African imports under preference programs such as the African Growth and Opportunity Act (AGOA).

The South African International Trade Administration Commission (SAITAC) is reviewing the poultry tariff structure and considering proposals that include instituting a specific tariff rate rather than *ad valorem* duties and redefining tariff lines to reflect tariffs at the Harmonized System 6-digit, 7-digit, or 8-digit level. This tariff line change would fold different product categories together, and the South African Government could then select the highest tariff from among the group to represent the new product set.

The antidumping tariff-rate quota (TRQ) established by U.S. and South African poultry industry groups in 2016 for U.S. frozen bone-in chicken meat initially led to significant growth in exports. The volume of U.S. exports, however, has fallen over the past three years as a result of unjustified administrative barriers, including slow approval processes, and late announcements of antidumping TRQ windows. The volume of U.S. poultry exports has not reached the TRQ allocation since South Africa increased the in-quota tariff rate on bone-in chicken portions from 37 percent to 62 percent. In 2023, SAITAC recommended the continuation of antidumping duties on U.S. products that exceed the TRQ allocation despite the decreasing volume of U.S. exports. In 2023, U.S. export challenges were compounded by South African restrictions on poultry exports from U.S. states due to highly pathogenic avian influenza. The United States continues to work with South Africa to improve access to the South African poultry market.

## **Non-Tariff Barriers**

### **Import Bans and Import Restrictions**

The South African Department of Trade, Industry, and Competition prohibits the importation of certain classes and types of goods into South Africa, but in some cases an importer may get an exemption from the prohibition by applying for an import permit from SAITAC. SAITAC also requires import permits on used goods if such goods are also manufactured domestically, significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications and regulations published by the Government of South Africa.

### **Customs Barriers and Trade Facilitation**

South Africa ratified the WTO Trade Facilitation Agreement (TFA) on November 30, 2017. South Africa submitted three transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and, (3) customs contact points for the exchange of information on March 10, 2023. These notifications had been due to the WTO on February 22, 2017, according to South Africa's self-designated TFA implementation schedule.

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

### **Technical Barriers to Trade**

#### **Certification for Electromagnetic Compatibility Goods**

The South African Bureau of Standards (SABS) implements a program for the issuance of Certificates of Compliance (CoCs) for Electromagnetic Interference/Compatibility (EMI/EMC) of electrical and electronic goods, including an annual nonrefundable fee paid by manufacturers for each CoC, fees for registering factories, and fees for model name changes. The program also requires manufacturers to have EMI/EMC testing done at SABS-verified third-party labs. If testing is required from an independent lab that is not SABS verified, the manufacturer must request that the lab be verified through SABS at the expense of the lab. Ultimately, the regulation is meant to ensure that all electronic equipment entering South Africa meets the required quality-performance standards. Some stakeholders, however, have raised concerns that the five-fold increase in certification costs, the additional administrative burden, and the lack of resources in South Africa to support the new procedure will extend time to market for quickly evolving and obsolescing information and communications technology products. South Africa still accepts test results from International Laboratory Accreditation Cooperation-certified labs, but SABS also conducts a comprehensive review of the test results to ensure that the product meets South African EMC standards. The protracted review can take up to 18 months to complete, during which time the product may become obsolete.

### **Sanitary and Phytosanitary Barriers**

#### **Meat and Poultry**

Following the conclusion of health certificate negotiations on poultry, pork, and beef in 2016, South Africa's Department of Agriculture, Land Reform and Rural Development (DALRRD) agreed to accept that U.S. Department of Agriculture (USDA) veterinarians are not authorized to certify container and seal information as required by DALRRD and that U.S. exporters must meet the requirement to include and

certify this information on a letterhead certificate that accompanies export certificates. DALRRD has not consistently accepted the agreed-upon certificate format, often requiring USDA intervention to correct any clerical errors made by exporters, which causes lengthy and costly delays. The U.S. Government has provided numerous and extensive explanations for U.S. export processes, noting that—although USDA veterinarians examine and certify consignments of USDA Food Safety and Inspection Service-regulated products intended for export—veterinarians are not present at each port to certify industry details such as container and seal information. Since 2016, DALRRD has declined granting new market access for additional meat, poultry, and egg products regulated by USDA, noting the compromise that allowed an exporter to provide container and seal information was a “one-time-exception.”

## **Pork**

South Africa imposes multiple restrictions on the importation of pork. For example, South Africa imposes freezing requirements for imported pork and pork products that do not align with international standards. Additionally, South Africa requires certification that swine are free of pseudorabies, even though the United States eradicated pseudorabies in commercial pork herds in all 50 states in 2004. South Africa also imposes a restriction on pork cuts allowed for importation due to South Africa’s concerns related to the risk profile of specific cuts for Porcine Reproductive and Respiratory Syndrome. This restriction raises concerns of consistency with current international standards.

In January 2016, the U.S. Government and DALRRD reached agreement on the content of a USDA export health certificate for the importation of some U.S. pork and pork products into South Africa. South Africa maintains a list of U.S. eligible pork products and approves each one individually. In December 2017, DALRRD began allowing the importation of five additional pork cuts from the United States. An additional two cuts were approved on October 20, 2022. Many cuts, however, remain ineligible for import.

## **Poultry and Poultry Products**

In October 2023, South Africa announced the lifting of restrictions on U.S. poultry and poultry product exports from 27 U.S. states that have been declared free from highly pathogenic avian influenza (HPAI). Prior to this announcement, South Africa had delayed the lifting of restrictions on U.S. states that had been declared free from HPAI, and met both World Organisation of Animal Health (WOAH) guidelines and South African sanitary and phytosanitary requirements. The United States continues to urge South Africa to follow the terms of the 2015 United States–South Africa Protocol for Poultry Meat and Day-old Chicks to ensure that safe U.S. poultry exports can resume in a timely manner after U.S. states have been declared free from HPAI. In 2023, U.S. poultry meat exports to South Africa were \$44 million. This was the lowest export value since 2016.

## **Meat and Poultry**

South Africa imposes strict microbiological standards for imported meat and poultry products that are not based on international standards and are not enforced on domestically produced products. In 2016, South Africa signed the Agreement on Poultry Importation from the USA to South Africa, which noted specific procedures that would be followed for sampling. Noncompliant products are required to be returned to the country of origin, undergo heat treatment at a registered South African facility, or are destroyed. U.S. industry has raised concerns that South Africa does not use consistent test methods, which leads to a high level of product rejection.

## GOVERNMENT PROCUREMENT

Some U.S. companies have reported challenges in competing for government tenders, noting issues with nontransparent cancellation of tenders or closed procedures for direct contract awards. On September 12, 2023, the South African Parliament's Standing Committee on Finance began hearings on proposed legislation to create a simplified national legislative framework for public procurement and outline regulatory procedures for procurement compliance.

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

## INTELLECTUAL PROPERTY PROTECTION

The South African Government has taken some positive steps toward more effective enforcement of intellectual property (IP), including increasing raids of physical markets, appointing additional enforcement officials, improving the training provided to these officials, and increasing public awareness of IP. However, stakeholders report significant concerns.

On February 29, 2024, South Africa's Parliament passed the Copyright Amendment Bill and Performers' Protection Amendment Bill that contain some needed modernizations of the copyright law, such as new performers rights from the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty. These bills, however, also contain provisions that some stakeholders assert would weaken the adequacy and effectiveness of copyright and related rights protection in South Africa. Specific concerns include broad and ambiguous exceptions to copyright and provisions regarding technological protection measures that include overly broad exceptions and lack prohibitions on the circumvention of access controls. Stakeholders raised concerns regarding these bills during the public hearing portion of the 2024 AGOA Annual Eligibility Review process. The United States continues to monitor these bills and any subsequent implementation.

Under the SADC EPA, South Africa agreed to prohibit the use of certain terms that may be common names by recognizing them as geographical indications in its domestic market. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each IP right being independently evaluated on its individual merits.

## SERVICES BARRIERS

On September 28, 2021, South Africa's President signed the Private Security Industry Regulation Amendment Act, which prescribes that a security business may only be registered to render security services in South Africa if it is at least 51 percent owned and controlled by South African citizens. The Act also permits the police minister to prescribe different percentages of domestic ownership and control required as a prerequisite for the registration of security businesses operating in different market segments. South Africa has full commitments under the WTO General Agreement on Trade in Services with respect to investigation and security services, including with respect to national treatment for the commercial presence of foreign suppliers. The United States continues to engage South Africa on the issue.

## INVESTMENT BARRIERS

### Other Investment Restrictions

In September 2022, a draft bill that would explicitly allow expropriation of property, including land, without compensation was adopted by the South African National Assembly and was still undergoing the legislative process as of December 2023.

## STATE-OWNED ENTERPRISES

State-owned enterprises play a significant role in the South African economy in key sectors such as electricity, transport (air, rail, freight, and pipelines), and telecommunications. Limited competition is allowed in some sectors (*e.g.*, telecommunications and air). The limited nature of the competition in these sectors discourages foreign investment.





# SWITZERLAND

## TRADE AGREEMENTS

### The United States–Switzerland Trade and Investment Cooperation Forum Agreement

The United States and Switzerland signed the Trade and Investment Cooperation Forum Agreement on May 25, 2006. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Switzerland.

## IMPORT POLICIES

### Tariffs

Switzerland's average Most-Favored-Nation (MFN) applied tariff rate was 5.6 percent in 2022 (latest data available). Switzerland's average MFN applied tariff rate was 32.4 percent for agricultural products and 1.3 percent for non-agricultural products in 2022 (latest data available). Switzerland has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 7.4 percent. The WTO bound tariff rate is 43.7 percent for agricultural products and 1.9 percent for non-agricultural goods.

In September 2021, the Swiss parliament approved amendments to the Customs Tariff Act that would abolish tariffs on all industrial imports, while leaving agricultural tariffs unchanged. The amendments entered into force on January 1, 2024. The elimination of industrial tariffs is expected to remove duties that currently apply to almost 26 percent of U.S. non-agricultural exports to Switzerland.

### Agriculture

U.S. agricultural market access to the Swiss market is limited by high tariffs on certain products, preferential tariff rates for products from other trading partners, and certain government regulations.

Swiss agriculture is highly subsidized and regulated with price controls, production quotas, import restrictions, and tariffs, which all support domestic production. Imports of a broad range of agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs. Support to producers as a share of gross farm receipts remains high at 49 percent on average between 2020 and 2022, more than three times the Organization for Economic Cooperation and Development member state average.

Swiss trade groups and certification associations also impose some barriers on agricultural imports that compete with Swiss products. In particular, the registration fee for bovine genetics for U.S. bulls remains many times higher than the fee for domestic bulls.

## **Non-Tariff Barriers**

### **Import Licensing**

Switzerland maintains a complex import licensing regime, primarily to facilitate the allocation of tariff-rate quotas (TRQs). TRQ-related non-automatic licenses are required for imports of various animal, dairy, fresh fruit, and vegetable products.

## **SANITARY AND PHYTOSANITARY BARRIERS**

Switzerland aligns many of its sanitary and phytosanitary (SPS) measures with those of the European Union (EU). As outlined in the SPS section of the EU Chapter in this National Trade Estimate Report, specific trade concerns include measures that unnecessarily restrict trade without furthering safety objectives because they are not based on science, are maintained without sufficient scientific evidence, or are applied beyond the extent necessary that negatively impact market access for U.S. agricultural products.

### **Agricultural Biotechnology**

Switzerland's restrictive phytosanitary measures for agricultural biotechnology products have impeded access to the Swiss market. In particular, Switzerland maintains a moratorium on the planting of biotechnology crops and the marketing of products derived from animal biotechnology. In March 2022, the moratorium was extended, for the fourth time, until 2025. However, by mid-2024, the Swiss Government must present approval rules on how genetically modified organisms without foreign genetic material can be exempted from the moratorium. As of December 2023, Switzerland had approved only 1 biotechnology soybean product and 3 biotechnology corn products for food and feed use and only 11 total enzymes, vitamins, and sugars produced by or derived from modern agricultural biotechnology for food use.

## **INTELLECTUAL PROPERTY PROTECTION**

Switzerland generally maintains high standards of intellectual property (IP) protection and enforcement and makes important contributions to promoting such protection and enforcement internationally. Although Switzerland was removed from the Special 301 Report in 2020 after many years of engagement, U.S. copyright holders continue to have concerns that Switzerland remains a host country for websites offering infringing content and the services that support them and about amendments to Switzerland's Copyright Act that came into force on April 1, 2020. These concerns include: continuing uncertainty regarding the application of the amended provisions of the Copyright Act; alleged difficulties in using IP addresses to pursue civil claims of copyright infringement; a "private use" exception that permits personal use of a single copy of a work even if derived from an unauthorized source; and a lack of sufficient "know-your-customer" protocols for data centers and Internet service providers. The United States is carefully monitoring the Swiss Government's implementation and interpretation of the new legislation as well as its effectiveness.

## **SERVICES BARRIERS**

### **Audiovisual Services**

A "unique distributor clause" in Switzerland's Film Act requires a single distributor to have exclusive control over all language versions of a film for all forms of distribution, including theatrical release, DVDs, and video-on-demand. In 2021, the Swiss Parliament passed a new law requiring non-domestic video-on-demand services to pay 4 percent of their revenues sourced from Switzerland into a fund to support Swiss

film production. The law also requires a 30 percent quota of European-produced content in their video-on-demand offerings, which applies as of January 1, 2024.

### **Insurance Services**

Managers of foreign-owned insurance company branches must reside in Switzerland.



# TAIWAN

## TRADE AGREEMENTS

The United States and Taiwan have had in place a Trade and Investment Framework Agreement (TIFA), signed by the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) since 1994. This Agreement is an important mechanism for discussing a broad range of trade and investment issues between the United States and Taiwan. Meetings of the TIFA Council are typically co-led by a Deputy United States Trade Representative and Taiwan's Deputy Minister of Economic Affairs, under the auspices of AIT and TECRO. The last TIFA Council meeting was held virtually on June 29, 2021.

In addition to engagement under the TIFA, the United States and Taiwan, under the auspices of AIT and TECRO, announced the launch of the United States–Taiwan Initiative on 21st-Century Trade on June 1, 2022. The U.S.–Taiwan Initiative on 21st-Century Trade is intended to develop concrete ways to deepen the economic and trade relationship between the two economies, advance mutual trade priorities based on shared values, and promote innovation and inclusive economic growth for workers and businesses. On June 1, 2023, the two sides signed the first agreement under the U.S.-Taiwan Initiative on 21st-Century Trade. This agreement includes important commitments and outcomes in the areas of customs administration and trade facilitation, good regulatory practices, services domestic regulation, anticorruption, and small and medium-sized enterprises. Shortly after the signing of the first agreement under this trade initiative, the two sides began discussing remaining trade areas set forth in the negotiating mandate.

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Taiwan's average Most-Favored-Nation (MFN) applied tariff rate was 6.5 percent in 2022 (latest data available). The average MFN applied tariff rate was 16.9 percent for agricultural products and 4.8 percent for industrial products in 2022 (latest data available). Taiwan has bound 100 percent of its tariff lines at the World Trade Organization (WTO), with an average WTO bound tariff rate of 6.8 percent.

Taiwan maintained tariff-rate quotas (TRQs) on multiple products when it became a WTO Member in January 2002, and then phased several of them out over the years. However, many TRQs on agricultural products remain in place today. Agricultural TRQs cover 16 products, including rice, and peanuts.

Taiwan has recourse to special safeguards (SSGs) for agricultural products covered by TRQs. SSGs, which are permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, its SSG trigger volumes are relatively low. In 2023, Taiwan had recourse to an SSG for 14 agricultural product categories, including poultry meat, certain types of offal, and milk.

## **Taxes**

Taiwan taxes rice wine for cooking and distilled rice wine (*mijiu*) at a lower rate than that applied to alcoholic products consumed as beverages, even though *mijiu* is consumed as an alcoholic beverage. The United States and other trading partners continue to express their concerns to the Taiwan authorities that steps should be taken to ensure that imported alcoholic beverages are not taxed at a higher rate than domestically produced alcoholic beverages, including *mijiu*.

## **Non-Tariff Barriers**

### **Quantitative Restrictions**

In certain years, the Taiwan authorities have rejected bids from U.S. rice exporters under its country-specific quota (CSQ) regime, arguing that high U.S. prices exceeded Taiwan's ceiling price. Taiwan's ceiling price mechanism is not made public, raising concerns that prices are arbitrarily set lower than the levels bid by U.S. exporters, causing the tenders to fail. In 2022, Taiwan filled only 61 percent (39,355 metric tons) of the U.S. CSQ for rice with the remainder (25,279 metric tons) released to global tender, the biggest shortfall since 2014 given fluctuations in rice prices. In 2023, Taiwan filled 100 percent of the CSQ for U.S. rice, totaling 64,634 metric tons. Nevertheless, U.S. Government and industry concerns over rice market access persist.

### **Customs Barriers**

Taiwan requires that genetically engineered (GE) and non-GE raw materials, such as corn and soybeans, enter under separate tariff lines. The GE products are evaluated by regulatory authorities in comparison to their non-GE counterparts and found to be as safe as their non-GE counterparts. Once approved, they are comingled with the non-GE products in the agricultural supply chain. There is no scientific or technical basis for Taiwan's separate tariff lines for GE and non-GE raw materials.

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

### **Technical Barriers to Trade**

#### **Pork**

On January 1, 2021, Taiwan implemented country of origin labeling requirements for a range of pork products, including processed pork products. The relevant measures were notified to the WTO in September 2020. Taiwan's presentation of the labeling requirements to the public as a means to ensure the food safety of U.S. pork products, while simultaneously implementing maximum residue limits (MRLs) for ractopamine in imported pork, inaccurately implied that there is a food safety concern with U.S. pork products, including pork produced with ractopamine. (*For further information, see the Sanitary and Phytosanitary Barriers section.*) The United States submitted comments through the USA WTO Technical Barriers to Trade (TBT) Enquiry Point, raising concerns with these labeling requirements. The United States has raised concerns about the labeling requirements bilaterally with Taiwan, including on the margins of the October 2020 and the February 2021 WTO Committee on Technical Barriers to Trade meetings, the June 2021 TIFA Council meeting, and the 2022 meetings of the TIFA Agriculture Working Group.

## **Automobiles**

Taiwan adopted the United Nations Economic Commission for Europe (UNECE) 1958 Agreement automobile standards when it became a WTO Member in January 2002. In April 2008, Taiwan's Ministry of Transportation and Communications (MOTC) introduced a regulation that allows the importation of a limited number of imported vehicles that are not UNECE-compliant but do comply with U.S. Federal Motor Vehicle Safety Standards (FMVSS), which provides an equivalent level of safety. The MOTC's regulation limited the number of FMVSS-compliant vehicles on the road in Taiwan to 100 units per car model in 2021, and this number was reduced to 75 units per car model in 2023. Some vehicle manufacturers in the United States want to introduce periodically unique new U.S.-made models in order to stimulate interest in their brands. However, if the vehicles are FMVSS-compliant but not UNECE-compliant, exports of those vehicles cannot exceed the limit set by the MOTC.

## **Sanitary and Phytosanitary Barriers**

### **Agricultural Biotechnology**

Taiwan has banned the use of biotechnology food ingredients and processed food with biotechnology food ingredients in school meals since December 2015. The United States continues to have concerns about the scientific basis for this ban and continues to urge Taiwan to rescind it.

### **Beef and Beef Products**

Taiwan banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In October 2009, the United States and Taiwan reached an agreement on a protocol, signed by AIT and TECRO, to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, Taiwan subsequently implemented a number of barriers to U.S. beef and beef products.

On January 1, 2021, Taiwan lifted its ban on imports of U.S. beef and beef products from cattle 30 months of age and older, which had been in place since 2010.

Taiwan has not addressed other longstanding barriers to U.S. beef products. Claiming BSE concerns, Taiwan continues to ban imports of certain U.S. beef products (*e.g.*, ground beef) even though imports of these products are permitted under the 2009 AIT-TECRO beef protocol. Taiwan imposes onerous port-of-entry inspection procedures that are not science-based on certain U.S. beef offal products. The United States continues to urge Taiwan to open its market fully to U.S. beef and beef products based on science, the World Organisation for Animal Health (WOAH) guidelines, the United States' negligible risk status for BSE, and the 2009 AIT-TECRO beef protocol.

### **Animal Byproducts**

Taiwan continues to restrict the importation of bovine blood products for animal consumption and bulk shipments of tallow from the United States, citing concerns related to BSE. The WOAH guidelines recognize these commodities as safe-to-trade, regardless of the BSE risk status of the exporting country. The United States continues to urge Taiwan to open its market to U.S. bovine blood products for animal consumption and bulk shipments of U.S. tallow consistent with the WOAH guidelines.



### **Maximum Residue Limits – Beta-Agonists**

Taiwan has not implemented Codex Alimentarius Commission (Codex) maximum residue limits (MRLs) for ractopamine in imported beef products other than imported beef muscle (*e.g.*, offal). On January 1, 2021, Taiwan implemented Codex MRLs for ractopamine in imported pork muscle, fat, and liver. Taiwan also implemented MRLs for ractopamine in imported pork kidney and other edible parts (*e.g.*, offal other than kidney and liver) that are more restrictive than the Codex MRLs. The United States is concerned that Taiwan's MRLs for imported pork kidney and other edible parts do not reflect consumption exposure. The United States is also concerned that Taiwan's method of testing for ractopamine residue is not aligned with methods of analysis for ractopamine recommended by Codex, and could provide inaccurate results. The United States continues to ask that Taiwan align its methods of testing for ractopamine residue with the methods recommended by Codex.

Apart from ractopamine, Taiwan has not established MRLs for other beta-agonist compounds or provided a rationale to support this policy. The United States continues to urge Taiwan to implement science-based MRLs without undue delay and to accept and approve new applications for MRLs for beta-agonists based on science and in a timely manner.

### **Maximum Residue Limits – Agrochemicals**

The United States has raised concerns with various aspects of Taiwan's process for establishing MRLs for pesticides, such as the limited opportunities for applicants to provide additional information during the review process and the inconsistent application of crop groups to import tolerances. The United States will continue to encourage Taiwan to further improve its MRL regulatory system for pesticides.

### **Chipping Potatoes**

On occasion, Taiwan rejects shipments of U.S. chipping potatoes due to requirements put in place in 2018 that implemented specific restrictions on sprouting for imported potatoes. Entire shipments have been rejected, even though sprouting does not pose a food safety risk, and potatoes with sprouts were previously removed as part of a normal sorting process prior to 2018. The United States, in coordination with U.S. industry and with regulators in Taiwan, is pursuing technical engagement on this matter.

## **INTELLECTUAL PROPERTY PROTECTION**

In May 2019, Article 87.1.8 and Article 93 of Taiwan's Copyright Act were amended to combat the use of illicit streaming devices. However, right holders report that online piracy remains widespread. Additionally, right holders continue to report serious challenges with respect to the unauthorized use of textbooks and copyrighted teaching materials, particularly via on-campus digital platforms. In May 2022, Taiwan further amended the Copyright Act to allow criminal prosecution without a complaint from the right holder for online piracy over the threshold of approximately \$32,800 in damages. As of December 31, 2023, the Executive Yuan had not yet announced an implementation date for the amended Copyright Act.

Draft amendments to other articles of the Copyright Act, which were sent to the Legislative Yuan in October 2017 for review, remain pending. While the draft amendments represented progress in some areas, they also contained potentially overly-broad exceptions to copyright protection and obstacles to criminal enforcement, in addition to troubling provisions relating to licensing and the role of collective management organizations. These draft amendments were resubmitted to the Legislative Yuan by the Executive Yuan in April 2021. As of December 31, 2023, they were still being reviewed by the Legislative Yuan.

In June 2022, the Legislative Yuan approved amendments to the National Security Act to establish misappropriation of trade secrets involving the national core key technologies as a violation of national security laws, with both criminal and administrative penalties. The amendments provide that obtaining trade secrets of national core key technologies by theft, embezzlement, fraud, duress, unauthorized reproduction, or by other improper methods, or using or disclosing such trade secrets, can be punished by imprisonment for between 5 years and 12 years. The amendments also authorize the possible imposition of fines ranging between approximately \$164,000 and \$3.28 million.

Amendments to the Patent Act entered into force in July 2022. A new Article 60-1 of the Patent Act clarified the legal basis for a patent owner's patent infringement suit and a generic drug applicant's declaratory judgment of non-infringement suit under the mechanism for early resolution of potential patent disputes.

## **SERVICES BARRIERS**

### **Financial Services**

In August 2023, the Insurance Bureau (IB) and the Securities and Futures Bureau (SFB) issued cloud outsourcing regulations for insurance, securities, and futures companies. These regulations duplicate the approach of the Banking Bureau (BB). However, the IB and the SFB did not provide a 60-day public comment period for interested parties, including cloud service providers and financial institutions, to review and comment on a draft of the regulations. The failure to provide a 60-day comment period is in contrast to the BB's customary approach. In addition, while the SFB issued a guideline with its cloud outsourcing regulations, the IB did not release any further guidance or instructions, which has created uncertainties for cloud service providers seeking to sell into the insurance market in Taiwan.

## **INVESTMENT BARRIERS**

In Taiwan, no foreign investment is allowed in the manufacturing of certain chemical materials and metals, television and radio programming services, electricity transmission and distribution, and postal activities. Foreign ownership in the telecommunications sector is limited to 49 percent direct ownership. For foreign ownership of telecommunications, combined direct and indirect foreign ownership is limited to 60 percent. The foreign ownership ceiling on airline companies, airport ground handling companies, forwarders, air cargo terminals, and catering companies is 49 percent, with each individual foreign investor subject to an ownership limit of 25 percent. Taiwan's Cable Radio and Television Law limits foreign direct investment in domestic cable television services to 20 percent of the operator's total issued shares. Foreign investment in satellite television broadcasting services is also restricted to no more than 50 percent.

Taiwan also maintains government investment in certain key companies. For example, the MOTC owns 35 percent in Chunghwa Telecom, the largest domestic telecommunications company, and 43 percent in Taiwan High Speed Rail Corporation, the domestic high-speed rail provider.

## **OTHER BARRIERS**

### **Pharmaceuticals**

In the pharmaceuticals sector, although the National Health Insurance Administration (NHIA) has tried to improve engagement with concerned stakeholders, U.S. stakeholders continue to highlight the lack of transparency and predictability with respect to the NHIA's pricing approval procedures, including during

renegotiations of managed entry agreements and under recent applications of Health Technology Reassessments. The NHIA has shortened the pricing approval timelines effective January 2024 to respond to some concerns raised by stakeholders.

### **Medical Devices**

In Taiwan, self-pay options are available for implanted medical devices and a range of other commonly used medical devices that are not approved for NHIA reimbursement. These medical devices must be issued a self-pay code. According to U.S. stakeholders, the NHIA imposes administrative penalties on hospitals that ask patients to self-pay for devices without a self-pay code. The NHIA began assigning temporary self-pay codes in April 2014, but it also requires a review of new therapeutic procedures for which the medical device is used before a temporary self-pay code can be issued. U.S. stakeholders have raised concerns with these procedures, highlighting that increased transparency and faster issuance of temporary self-pay codes are needed to be responsive to patient demand.

# THAILAND

## TRADE AGREEMENTS

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

The United States and Thailand signed a Trade and Investment Framework Agreement (TIFA) on October 23, 2002. This Agreement is the primary mechanism for bilateral discussions of trade and investment issues.

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Thailand's average Most-Favored-Nation (MFN) applied tariff rate was 9.7 percent in 2022 (latest data available). Thailand's average MFN applied tariff rate was 26.6 percent for agricultural products and 7.1 percent for non-agricultural products in 2022 (latest data available). Thailand has bound 75.9 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 26.8 percent.

Wine imports are subject to a 54 percent tariff and six different taxes; taken together, the effective duty and tax burden is nearly 400 percent. Stakeholders have raised concerns about the import tariffs on wine and disparate *ad valorem* taxes that appear to favor domestic white liquor.

#### **Import Fees**

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. The current fee levels were set in October 2016 at 7 baht per kilogram (approximately \$201 per metric ton (MT)) for imported uncooked meat for food or feed and at 3 baht per kilogram (approximately \$86 per MT) for imported uncooked meat for purposes other than food or feed. Under the Thai Animal Epidemics Act of 2014, the Ministry of Agriculture and Cooperatives (MOAC) Department of Livestock Development (DLD) has discretionary authority to increase these import fees up to five-fold.

### Non-Tariff Barriers

#### **Import Restrictions**

Despite its 20-year Alternative Energy Development Plan (2018-2037), which aims to increase biofuels consumption, Thailand restricts the importation of biofuels intended for fuel use. Fuel ethanol imports require approval and issuance of permits by Thailand's Ministry of Energy, which bases its decision on the availability of domestic ethanol supply. Thailand has not approved an import permit for fuel ethanol since 2005.

#### **Import Licensing**

Import licenses are required for the importation of many items, including: wood; petroleum; industrial machinery; textiles; pharmaceuticals; cosmetics; and food and agricultural items, such as plants, seeds, processed meats, and salt. In some cases, imports of certain items not requiring licenses are subject to extra

fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under miscellaneous laws.

Thailand imposes domestic purchase requirements on imports of several products subject to tariff-rate quotas (TRQs), including coffee, tea, potatoes, corn, soybeans, and soybean meal.

### **Customs Barriers and Trade Facilitation**

Thailand provides incentives to customs officials who initiate investigations or enforcement actions. Thailand is one of the only major U.S. trading partners that still has such an incentive system. This system has been a cause of concern for many years among Thailand's trading partners due to the potential for corruption and the cost, uncertainty, and lack of transparency associated with the customs penalty and reward system. Despite Thailand's amendment of the Customs Act in 2017, potential conflicts of interest or excessive personal incentives remain. The amendment caps incentives at 20 percent of the sale price of seized goods or of the fine, with a maximum incentive of 5 million baht (approximately \$144,700). The amendment also limits post-audit inspections to five years from the date of import or export.

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

### **Technical Barriers to Trade**

#### **Labeling Requirements for Information and Communications Technology Products**

In July 2023, Thailand issued a regulation prescribing unique labeling requirements for personal computers and computer devices (*e.g.*, keyboards, mice, monitors, and central processing units). The measure entered into force on November 1, 2023. U.S. industry has reported that since the measure has gone into effect, costs have increased for exporters due to the additional labeling requirements. In September 2023, Thailand also issued a regulation prescribing labeling requirements for products containing lasers, such as computers, CD and DVD players, recorders, barcode scanners, photocopiers, and fax machines. The measure entered into force on January 27, 2024.

Stakeholders are concerned that Thailand's labeling requirements diverge from relevant international standards and are overly prescriptive and unnecessarily burdensome for producers, given the amount of information required and the limited space for physical labels. Furthermore, the 120-day implementation periods following publication of the final measures are insufficient time in which to adapt to the new requirements.

The United States continues to encourage the Office of the Consumer Protection Board of Thailand to consider extending the implementation period to a minimum of one year and to accept electronic labeling as a voluntary option.

### **Sanitary and Phytosanitary Barriers**

#### **Animal-Derived Products**

Thailand's Department of Livestock Development (DLD) requires audits of production facilities in the exporting country to allow the importation of several animal-derived products, including meat, bone meal, and feather meal. Each audit approval is valid for five years. In addition, the DLD imposes five-year facility audit approvals for imported animal feed ingredients derived from or containing poultry products.

The United States has recommended that Thailand adopt a systems approach, which would recognize the U.S. inspection system as equivalent to that of Thailand's, and reduce the expense and burden of the current Thai audit requirement. The DLD conducted a fact-finding trip to the United States in late 2019, but has not yet submitted the questionnaire to the U.S. Department of Agriculture (USDA) to proceed with the audit. The USDA Animal and Plant Health Inspection Service (APHIS) resubmitted the system audit request in August 2023.

## **Beef and Beef Products**

Thailand restricts imports of beef offal treated with beta-agonists. The DLD confirmed that fresh tongue, cheek meat, oxtail, tendon, hanging tender, inside skirt, and outside skirt are categorized as muscle cuts; and are thus not affected by this restriction. In September 2018, the DLD conducted an audit of the U.S. production system and transmitted its draft findings to the United States in March 2019. In its report, the DLD informed the USDA that U.S. beef products for export to Thailand are not to be derived from cattle treated with beta-agonists, including ractopamine, as a condition for access to the Thai market, despite a determination by the Codex Alimentarius Commission (Codex) that the use of ractopamine is safe within its established maximum residue limits (MRLs). The United States continues to press Thailand to align its import requirements with science-based international standards.

## **Pork**

In 2012, after the Codex established MRLs for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow ractopamine use, including the United States. However, Thailand has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. In 2019, Thailand and the United States agreed to review potential risk management options for Thailand to develop an MRL for ractopamine. However, due to lack of progress on the issue, effective December 30, 2020, the United States revoked approximately one-sixth of Thailand's duty-free trade preferences under the U.S. Generalized System of Preferences (GSP) program.

## **Poultry**

Since 2014, Thailand has, at various times, and most recently in February 2022, imposed a ban on U.S. live poultry and poultry meat imports due to the sporadic presence of highly pathogenic avian influenza in the United States. The ban applies to all such U.S. products, notwithstanding World Organisation for Animal Health (WOAH) guidelines that recommend importing countries regionalize their bans, rather than apply them on a country-wide basis. In addition, Thailand has banned U.S. turkey meat imports since late 2014. Thailand sent officials to conduct a production-system audit of U.S. turkey in July 2019 and determined in November 2020 that the United States failed the systems approach audit. The United States continues to negotiate with the DLD to regain market access for uncooked U.S. turkey.

## **New Processed Meat Products**

The DLD's regulatory authority was extended in 2018 to include "processed foods made or derived from animal carcass," including: sausage; salami; ham; bacon; smoked meat products; pickled meat products; cured meat products; honey and related products; and, salty/processed eggs and egg yolks. Other than a single product approved in early 2022, the DLD has not approved any new processed meat products. The DLD claims that a new import protocol has been under development since 2018, and that market access requests could be submitted either through government-to-government channels, or by individual stakeholders. As of December 2023, the DLD had not yet published or notified import requirements and procedures that allow individual U.S. suppliers to access the establishment-by-establishment approval process.

## INTELLECTUAL PROPERTY PROTECTION

Thailand remained on the Watch List in the [2023 Special 301 Report](#). Thailand continues to make progress on intellectual property (IP) protection and enforcement. For example, Thailand acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty in 2022. In September 2022, Thailand established the Thai Customs IPR Recordation System, a new online database that allows right holders to file confidential information that would allow Thai customs officers to verify the authenticity of copyrighted or trademarked goods being imported, being exported, or in transit. Right holders continue to use Thailand's 2021 memorandum of understanding with electronic commerce platforms to report online listings of counterfeit products.

While Thailand is making progress in these areas, concerns remain. Counterfeit and pirated goods are still readily available, particularly online. The [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) included the MBK Mall as a physical market with a large number of counterfeit goods in Bangkok. Other U.S. concerns include: online piracy by devices and applications that allow users to stream and download unauthorized content; a process established by the 2022 Copyright Act amendments that may lead to overly broad exceptions to technological protection measures; unauthorized collective management organizations; the continued use of unlicensed software in the private sector; the backlog in pending pharmaceutical patent applications; lengthy civil IP enforcement proceedings; and, low civil damages. The United States will continue to monitor these issues.

The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States continues to urge Thailand to engage in a meaningful and transparent manner with all relevant stakeholders before adopting new IP laws, regulations, or guidelines.

## SERVICES BARRIERS

### Audiovisual Services

The 2008 Motion Picture and Video Act authorizes Thailand's Film Board to establish ratios and quotas limiting the importation of foreign films. The Film Board had not exercised this authority, however, as of December 31, 2023. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

### Financial Services

Thailand limits the number of licenses for foreign bank branches and subsidiaries, and only sporadically accepts applications for new foreign banking operations. Thailand has not held a round of applications for new licenses for traditional banks since 2013, when Thailand granted new subsidiary licenses to two foreign banks.

Since 2013, Thailand has required in-country processing of all domestic retail electronic payment transactions for debit cards issued in Thailand. As a result, foreign electronic payment service suppliers are precluded from supplying these services across borders and must establish a local presence and build processing facilities in Thailand. When a card is accepted on more than one network, at least one of those networks must be a domestic debit card network. Under the 2016 Thai Bank Chip Card Standard, the Bank of Thailand requires financial institutions that issue debit cards to issue cards with local-standard chips.

Foreign ownership in insurance companies is initially limited to less than 25 percent of outstanding voting shares. Foreign directors may hold no more than 25 percent of the initial board seats. The Thai Government allows a company to increase the foreign equity in the company up to 49 percent and up to half the seats on the board be held by foreign directors, if the company meets conditions relating to improving efficiency and competitiveness. In addition, the Ministry of Finance, with the recommendation of the Office of Insurance Commission, may permit a company to have foreign ownership exceeding 49 percent, or foreign directors comprising more than one-half of the board, or both, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector.

## **BARRIERS TO DIGITAL TRADE**

### **Internet Services**

According to U.S. stakeholders, including human rights organizations, Thailand's Computer Crime Act raises particular concerns for online services that host non-IP-protected, user-generated content. The concern is that it provides the government with authority to regulate online content that is so expansive it could restrict legitimate activities. The Act establishes a liability shield for online service providers with respect to non-IP-protected, user-generated content if they comply with requirements to remove certain content within specified timeframes. However, the mandated timeframes vary across content types and are as short as 24 hours for some types of content. Without strict compliance, service providers may be subject to penalties and treated as if they had created the offending content themselves.

## **INVESTMENT BARRIERS**

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, non-Thai nationals and majority foreign-owned entities are prohibited from holding more than 50 percent ownership in many sectors; but U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are generally exempt. Nevertheless, the privileges under the AER do not exempt U.S. investments from the prohibitions on majority foreign ownership in the following areas: telecommunications; transportation; fiduciary functions; banking involving depository functions; exploitation of land or other natural resources; and, the practice of certain professions reserved for Thai nationals. The United States has encouraged Thailand to extend the exemptions available to U.S. investors registered under the AER to these sectors, or to amend the FBA to remove barriers to foreign ownership in these sectors. In particular, stakeholders report interest in investing in Thailand's telecommunications sector, but the Telecommunications Business Act prohibits majority foreign-owned entities from receiving the necessary operating licenses.

## **LABOR**

In April 2020, the United States partially suspended Thailand's tariff benefits under the GSP program due to Thailand's failure to take steps to afford workers in Thailand internationally-recognized worker rights, particularly with regard to freedom of association. Approximately one-third of Thailand's GSP-eligible trade, for which the United States is a relatively important market for Thailand, were excluded from duty-free treatment. As of December 31, 2023, partial suspension of duty-free treatment under GSP remained in effect.





# TUNISIA

## TRADE AGREEMENTS

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

The United States and Tunisia signed a Trade and Investment Framework Agreement (TIFA) on October 2, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Tunisia. The most recent meeting of the United States–Tunisia Trade and Investment Council, established under the TIFA, was held in May 2021.

## IMPORT POLICIES

### Tariffs

Tunisia's average Most-Favored-Nation (MFN) applied tariff rate was 19.5 in 2022 (latest data available). Tunisia's average MFN applied tariff rate was 30.3 percent for agricultural products and 17.8 percent for non-agricultural products in 2022 (latest data available). Tunisia has bound 58.0 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 57.9 percent.

Goods imported into Tunisia can be subject to tariff rates as high as 200 percent. Agricultural goods are subject to tariffs ranging from zero percent to 50 percent, with most agricultural imports within the 36 percent to 50 percent range. All imported goods subject to tariffs are assessed a customs administrative fee amounting to 3.0 percent of the total duties paid on the imported good.

The 2022 Budget Law instituted 20 percent to 50 percent tariff increases on consumer products that have locally-manufactured equivalents. The law also included higher tariffs on some goods with no local equivalent such as bananas (from zero percent to 50 percent), mobile phones (from zero percent to 20 percent), coffee (from 36 percent to 50 percent), and cosmetic products and perfumes (from 30 percent to 43 percent). Tariffs increased to 50 percent on imported apparel and bedding, shoes, and food products such as cheese, honey, chocolate, candies, juices, beer, and wine. Tariffs also increased to 43 percent on construction materials and products with local equivalents such as marble, gypsum, paint, wood, aluminum, ceramics, glassware, and tools.

The 2023 Budget Law, passed on December 22, 2022, eliminated tariffs on milk powder and butter.

The 2024 Budget Law, passed on December 27, 2023, imposed tariffs on selected dairy products, including cheeses and fresh cream; reduced tariffs on nuts; and, increased tariffs on nut flour.

### Non-Tariff Barriers

#### **Import Licensing**

Approximately 3 percent of imported goods, including agricultural products, automobiles, and textiles, require an import license issued by the Tunisian Ministry of Trade and Export Development. Tunisia also imposes certain quotas, especially for imported consumer goods that compete with local products. Importers of these goods must request an allotment from the Tunisian Government to receive an import license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade and Export

Development. Several agricultural products are also subject to burdensome technical import requirements established in a Book of Specifications.

Tunisia maintains a control system on imports of consumer goods, under which the importer must provide several documents in order to acquire an import license. The required documents include an invoice from the exporting factory, a certificate from an official authority in the exporter's country attesting to the factory's legal status, proof of product trademark, and documents affirming the product's safety and quality. The list of controlled products includes fragrances, cosmetics, underwear, shoes, household appliances, vegetables and fruits, spices, flour, chocolate, and non-alcoholic drinks. Imports of raw materials; semi-finished products; and, equipment and spare parts for industries, services, and handicrafts are exempted.

### **Agricultural Subsidies and Domestic Support**

Since 2016, Tunisia has not responded to questions raised by the United States in the WTO Committee on Agriculture in connection with its agricultural domestic support and export subsidy outlays.

### **Customs Barriers and Trade Facilitation**

Customs processing remains cumbersome and, for the most part, reliant on paper documents, despite some steps to digitize certain procedures. Inconsistent application of customs processes within the Tunisian Customs Administration can be a significant obstacle for importers. Although Tunisia expanded its simplified customs clearance process for authorized operators to 152 companies in 2023, risk management and other targets are primarily conducted manually by reviewing large volumes of entry documents in paper form.

Tunisia notified the latest update to its customs valuation legislation to the WTO in May 2011 but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Tunisia ratified the WTO Trade Facilitation Agreement (TFA) in July 2020. Tunisia submitted two transparency notifications related to: (1) import, export, and transit regulations; and (2) customs contact points for the exchange of information on March 9, 2023. Those notifications had been due to the WTO on February 22, 2017, according to Tunisia's self-designated TFA implementation schedule.

## **INTELLECTUAL PROPERTY PROTECTION**

Tunisia has made some progress with respect to intellectual property (IP) protection and enforcement. However, the presence of and trade in counterfeit and pirated goods, including illicit Internet Protocol Television content, remain a concern. Stakeholders have expressed concerns about the lack of an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to engage with Tunisia to improve IP protection and enforcement in the region.

## **BARRIERS TO DIGITAL TRADE**

The Tunisian dinar is convertible for a limited number of current account transactions. This limits Tunisians' ability to purchase goods and services online or receive payments from foreign digital firms. Individual users of "Digital Technology Charge Cards" (the government-approved method for certain firms and entities to make purchases of foreign goods and services online) are limited to the equivalent of 1,000 dinars (approximately \$320) in annual purchases, while companies are limited to 10,000 dinars

(approximately \$3,200) and startups are limited to 100,000 dinars (approximately \$32,000). These relatively low thresholds are fixed in dinars so the actual value of the allotments has been impacted by currency fluctuations.

## **INVESTMENT BARRIERS**

Entering Tunisia's domestic market, particularly the services sector, remains difficult for foreign investors. Foreign ownership is limited to 49 percent in most nonindustrial sectors, and the process of investing is particularly challenging in areas that are not government priorities (*i.e.*, where there are no public tenders). Under Tunisia's investment code, high-value joint ventures with a foreign investor must be approved by the Tunisian Government, which assesses the potential benefit of the investment to the Tunisian economy. U.S. investors in Tunisia frequently raise concerns about delays, lack of transparency regarding rules and fees, unfair competition from state-owned enterprises, and other bureaucratic complications in the process of registering a business. One hundred percent foreign ownership of businesses in the agricultural sector is allowed, although foreign investors do not directly own agricultural land.

## **OTHER BARRIERS**

### **Foreign Exchange**

Tunisian law prohibits the use of foreign currency from export of foreign currency from Tunisia for import payments until the importer's bank receives documents confirming the shipment of merchandise from the country of origin. These requirements remain a source of confusion and difficulty for some U.S. companies.

### **Centralized Control of Imported Pharmaceuticals**

The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports. Some U.S. companies complain that they encounter reimbursement and payment delays of up to one year.



# TÜRKİYE

## TRADE AGREEMENTS

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

The United States and Türkiye signed a Trade and Investment Framework Agreement on September 29, 1999. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Türkiye.

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Türkiye’s average Most-Favored-Nation (MFN) applied tariff rate was 16.8 percent in 2022, up from 10.0 percent in 2019. Türkiye’s average MFN applied tariff rate was 41.6 percent for agricultural products and 13.0 percent for non-agricultural products in 2022. Türkiye has bound 50.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 28.9 percent in 2022. Türkiye has taken advantage of substantial differences between its applied and WTO bound tariff rates to increase tariffs significantly across multiple sectors.

In accordance with its customs union agreement with the European Union (EU), Türkiye exempts from tariffs non-agricultural products imported from the EU and applies the EU common external tariff to non-agricultural products imported from third-countries, including those from the United States. Türkiye also exempts from tariffs non-agricultural products imported from the European Free Trade Association (EFTA) and other trading partners with which it has a free trade agreement and also exempts non-agricultural products from countries with which the EU maintains a free trade agreement.

Despite Türkiye’s use of the EU common external tariff, in 2020, the Turkish Government announced additional temporary tariffs of between 2 percent and 50 percent for more than 4,000 products. Türkiye removed approximately 500 of these 4,000 additional tariffs in February 2022, in response to specific requests from importers. In 2023, Türkiye removed tariffs on 47 products, introduced new tariffs on an additional 38 products, and increased tariffs for 40 products. None of the additional tariffs exceed Türkiye’s WTO bound tariff rates. These additional tariffs are not applied to imports originating in the EU, the EFTA, countries with which the EU maintains free trade agreements, or other countries that have preferential trade agreements with Türkiye.

On May 1, 2023, Türkiye increased tariffs on certain flat steel products, ostensibly to protect Turkish steel producers and encourage local production following Türkiye’s 2023 earthquakes, which disrupted domestic steel production. The tariff on unalloyed hot-rolled sheet increased to 15 percent, and the tariff on alloyed hot-rolled sheet increased to 13 percent. The tariff on plate products increased from 9 percent, 10 percent, and 15 percent, respectively, to between 15 percent to 20 percent. The tariff on unalloyed cold-rolled sheet increased to 17 percent.

In June 2018, Türkiye imposed additional duties on multiple U.S. exports in retaliation for the United States’ March 2018 decision to impose tariffs on imports of Turkish steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The retaliatory duties were levied on 22

goods of U.S. origin, including an additional 60 percent tariff on passenger cars and parts, a 70 percent tariff on distilled spirits, a 30 percent tariff on skin care and make-up materials, a 25 percent tariff on rice, and a 10 percent tariff on wood products and tree nuts. In December 2023, a WTO panel ruling, recognizing that the U.S. Section 232 actions on steel and aluminum are security measures, found that Türkiye violated WTO rules by adopting retaliatory tariffs disguised as safeguard measures.

Türkiye continues to maintain high tariff rates on many imported food and agricultural products. The average tariff on fresh fruit imports is 39.3 percent, with a maximum WTO bound duty of 146.0 percent. Tariffs on imported chicken and chicken products are 65 percent and 121 percent, respectively. Effective June 1, 2023, Türkiye raised the tariff on imported sunflower seeds and sunflower oil from zero percent to 27 percent and 36 percent, respectively. Türkiye's Trade Ministry also instituted a reference price for imports of sunflower seed (\$700 per metric ton) and crude sunflower oil (\$1,350 per metric ton) to protect local sunflower growers during the harvest season.

In November 2023, tariffs for walnuts and almonds from all origins were increased to 15 percent. This tariff is in addition to the 10 percent retaliatory tariff on U.S.-originated walnuts and almonds. The "Additional Financial Liability" (AFL), an additional tax paid by the importer to import shipments, also increased for multiple products on November 1, 2023. The AFL for in-shell walnuts increased to \$416 per metric ton (MT); for shelled walnuts the AFL increased to \$1,099 per MT; for in-shell almonds the AFL increased to \$580 per MT; and the AFL for shelled almonds increased to \$942 per MT. Türkiye has insisted that the AFL is not a separate charge, but rather part of the MFN applied tariff rate. The United States continues to engage on this issue to understand the administration of the tariff for applicable agricultural products. U.S. stakeholders remain concerned about the complex structure of the AFL, its lack of transparency and predictability, and the general level of duty imposed by Türkiye.

In May 2023, the Turkish Government implemented a 130 percent tariff on grains aimed at protecting the local agricultural industry. The tariff on chickpeas and lentils increased to 19.3 percent in July 2023, and the tariff on milled rice increased to 45 percent in September 2023. These tariffs on staple commodities have helped maintain the high domestic cost of food products and persistently high food inflation in Türkiye.

## **Taxes**

Türkiye maintains an excise duty known as a Special Consumption Tax (OTV) that is levied at one stage of the consumption process of luxury products, certain beverages, petroleum products, natural gas, automobiles and other vehicles, as outlined in four lists annexed to Law No. 4760. On May 27, 2022, Türkiye increased the OTV tax on "List 3" items, including alcoholic beverages, fruit juices, and soft drinks, in line with the domestic producer price index (PPI) inflation rate determined by the Turkish Statistical Institute. U.S. stakeholders note that an OTV tax is added to the value-added tax (VAT) and tariffs on imported alcohol, and accounts for approximately 65 percent of the price of beer and distilled spirits in Türkiye. In 2020 the Turkish Tobacco and Alcohol Market Regulatory Authority published a rule requiring importers to pay three months excise taxes in advance of sale to obtain the necessary tax stamp strips (these stamps are applied to bottles by hand), whereas domestic producers need only pay the excise tax within 30 days after sale. U.S. companies have noted a significant increase in the number of counterfeit products on the Turkish market in the last year due to the rapidly increasing cost of alcohol in Türkiye and the additional tariffs on U.S. brands.

Türkiye imposed new OTV rates on electric vehicles (EVs) on March 2, 2023. As with the OTV rates for internal combustion vehicles, the tax rate is determined through a combination of the vehicle's engine size and sale price. EVs with engine power below 160 kilowatts (kW) face a 10 percent OTV rate if their sale price is less than 1,250,000 Turkish lira (TL) (approximately \$40,340), and 40 percent if their sale price

exceeds 1,250,000 TL. EVs with engine power above 160 kW face a 50 percent OTV rate if their sale price is below 1,350,000 TL (approximately \$43,570) and a 60 percent OTV rate if their sales price exceeds 1,350,000 TL (approximately \$43,560). Türkiye's domestically produced TOGG is one of the few EVs that would qualify for the lowest tax threshold.

## **Non-Tariff Barriers**

### **Agricultural Subsidies and Domestic Support**

Although Türkiye has large agricultural support programs in place, which include price supports and input subsidies, Türkiye is significantly overdue on submitting its required WTO notifications regarding agricultural domestic support and export subsidies. Türkiye's most recent domestic support notifications were submitted in 2020, covering the years 2014 to 2016, and raised concerns that Türkiye had exceeded its WTO commitments regarding trade-distorting domestic support in those years. Türkiye's most recent export subsidy notifications were submitted in 2019, covering the calendar years 2010 to 2013. Türkiye has yet to notify changes in export subsidy measures pursuant to the 2015 Nairobi Ministerial Decision on Export Competition (Nairobi Decision). The United States and several other WTO Members regularly raise concerns at the WTO about the accuracy, completeness, and timeliness of Türkiye's domestic support notifications, as well as the amount of Türkiye's domestic support.

U.S. exporters have expressed concerns about Türkiye's subsidies, inward processing program for wheat, and Türkiye's reimbursement of freight costs for certain exports. They report that they do not believe a monitoring system exists to ensure that the quality and characteristics of imported wheat are the same as the domestic wheat used in exported flour and wheat products. Such monitoring is an important component of an inward processing scheme as described by the WTO Agreement on Subsidies and Countervailing Measures.

### **Import Restrictions**

Since 2015, Türkiye has banned the importation of nearly all refurbished parts, which affects products in several sectors, including computer equipment and medical devices. Türkiye also requires that construction equipment, tractors, and agricultural equipment be imported during the year in which individual units are manufactured, effectively limiting the volume of U.S. exports of such equipment to Türkiye, given the long lead times associated with these types of orders.

### **Import Licensing**

Türkiye requires import licenses for some agricultural products and for various products that need after-sales service, such as photocopiers, advanced data processing equipment, and diesel generators. U.S. firms complain that a lack of transparency in Türkiye's import licensing system results in costly delays and demurrage charges.

### **Customs Barriers and Trade Facilitation**

Turkish documentation requirements for many imports are onerous, inconsistent, and non-transparent, often resulting in delayed shipments at Turkish ports. U.S. exporters of certain industrial goods and food products such as rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, have reported concerns regarding decisions by Turkish customs authorities on the valuation of selected products. Further, the Ministry of Trade periodically requires tracking and monitoring of certain imports, which includes an onerous registration process that must be completed annually, with limited guidance for exporters throughout the registration process. In March 2020, the Ministry of Trade expanded its mandatory foreign exporter



registration process to a list of 31 agricultural commodities including almonds, walnuts, peanuts, peanut butter, tea, garlic, bananas, fresh peppers, flaxseed, rapeseed, and sunflower seed products.

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

### **Technical Barriers to Trade**

#### **Food and Feed Products – Traceability Requirements**

Türkiye’s 2010 Biosafety Law mandates traceability procedures for movement of animal feed products produced using agricultural biotechnology, including a requirement that each supply-chain entity maintains traceability records for 20 years. Those that have not kept such records have been prosecuted by Turkish authorities for both criminal and civil violations.

#### **Pharmaceuticals – Good Manufacturing Practices Certification**

Türkiye’s amended Regulation on the Pricing of Medicinal Products for Human Use, which took effect in March 2010, requires foreign pharmaceutical producers to secure a Good Manufacturing Practices (GMP) certificate based on a manufacturing plant inspection by Turkish Ministry of Health (MOH) officials before their products will be authorized for sale in Türkiye. The amended measure requires that Turkish authorities themselves perform the inspections, rather than the previous practice of allowing inspections by authorities from the exporting country, such as the U.S. Food and Drug Administration of the U.S. Department of Health and Human Services or the European Medicines Agency, has led to severe delays in obtaining GMP certifications for many pharmaceutical products. An MOH inspection backlog has prolonged the already lengthy processes for granting final approvals for pharmaceutical products to be sold on the Turkish market.

Since 2016, following repeated U.S. requests to Türkiye that it accelerate approvals, the MOH has authorized parallel (rather than sequential) submissions of GMP inspection and marketing approval applications for MOH-designated “Priority One” (*i.e.*, highly innovative and/or lifesaving) pharmaceutical products imported from U.S. and EU firms. While a positive step, as of December 2023, the MOH had not uniformly applied this approach to all pharmaceutical product applications. As a result, U.S. stakeholders report that GMP inspection-related delays have effectively closed the Turkish market to certain new drugs.

### **Sanitary and Phytosanitary Barriers**

#### **Food Safety Standards**

Türkiye’s national food safety laws are not necessarily based on or aligned with international standards and science-based decision-making. The Ministry of Agriculture and Forestry (MAF) plans to adopt a pesticide reduction schedule outlined in the EU strategies.

The importation of live animals, certain animal-sourced products, and certain plant materials requires a Control Certificate that grants permission for import of the product, obtained from the MAF only after the importer submits an application and provides documents related to the product. The issuance of this certificate is not automatic and has presented challenges for U.S. exports of live cattle, meat products, hides and animal genetics upon arrival at Turkish ports.

## **Plant Health**

Türkiye rejects imports of U.S. unmilled rice (rough or paddy) if white tip nematodes are detected. Türkiye considers the white tip nematode to be a quarantine pest, even though it is widespread in Türkiye. Due to the risk of nematode detection upon arrival and Türkiye's rejection of any available post-entry mitigation, southern U.S. rice exporters have stopped shipping to Türkiye. The United States continues to engage Türkiye on this phytosanitary issue at a technical level and points out that the pathogen is widespread in Türkiye.

## **Animal Health**

Despite guidelines from the World Organisation for Animal Health (WOAH) that countries should limit any trade restrictions on animals and animal products that pose a risk of spreading disease to other animals within a defined region, Türkiye does not accept regionalization at the county level for imports of live poultry or poultry products from the United States, though it implements regionalization within its own territory and for its own poultry exports. Türkiye has banned the import of poultry and poultry meat from an entire U.S. state if high pathogenic avian influenza (HPAI) occurs in a single area of that state, as well as, but also the transit of poultry from HPAI-affected U.S. states, up to six months after regions have been declared disease free. As Türkiye had been an important transit point for U.S. poultry shipped to the broader Middle East region, this policy has inhibited U.S. exports of animals and animal products. The United States has raised this issue extensively with Türkiye. However, Türkiye refuses to alter their interpretation of regionalization.

Türkiye requires certificates for dairy product imports to be signed by a veterinarian. In 2018, U.S. and Turkish officials agreed that Türkiye would accept certificates for a limited number of dairy products signed by inspectors from the U.S. Department of Agriculture Agricultural Marketing Service. However, U.S. exports of other dairy products not covered by these certificates are not allowed by Türkiye, despite commercial demand.

## **Agricultural Biotechnology**

Although Türkiye notified the 2010 Biosafety Law to the WTO Committee on Sanitary and Phytosanitary Measures prior to its enactment, the Turkish Government has failed to notify any subsequent revisions to the law, its implementing regulations or its various regulatory controls. U.S. agricultural biotechnology stakeholders have expressed reluctance to seek regulatory approvals in Türkiye for individual products due to onerous liability requirements imposed by the Biosafety Law, unclear assessment procedures required to receive approval, and concerns regarding the protection of applicants' confidential information.

The agricultural biotechnology oversight authority within the Turkish Government rests with the MAF, which assesses agricultural biotechnology products through both a Scientific Risk Assessment Committee and a Socio-Economic Assessment Committee under the Ministry's Agricultural Research and Policies Directorate General. The Ministry has approved no agricultural biotechnology products for human consumption and rejected several applications for animal feed use without providing scientific justification. As of December 2023, only 36 products produced using agricultural biotechnology can be imported into Türkiye for animal feed use (15 soybean products and 21 corn products). Türkiye has maintained the total number of approved products at 36, without providing justification for that limit. Nine additional applications are outstanding, five of which have been pending since 2015, despite the law's official 270-day review timeline. Several Turkish agricultural associations that previously submitted applications for the approval of these products have declined to sponsor their renewals, citing the challenging and non-science-based review system.

Türkiye's delays in completing science-based reviews are especially burdensome considering its impractical low-level presence policy (LLP). The current zero-tolerance threshold is difficult to meet for food and feed imports. In general, if a shipment tests positive for any amount of unapproved agricultural biotechnology product or ingredient, the cargo is rejected and cannot be used for feed or food. However, there are two exceptions to this prohibition: 1) unapproved products pending biotechnology approval in Türkiye for feed use are allowed to be present in shipments up to a 0.1 percent threshold, and 2) shipments containing up to 0.9 percent presence of approved (but not declared) agricultural biotechnology products intended for feed use. Discriminatory testing requirements for U.S. food and feed imports can lead to entire shipments being rejected when trace amounts of unrelated products such as genetically-engineered soy or corn are found.

## GOVERNMENT PROCUREMENT

Turkish Government contracting officials are authorized to issue tender documents that restrict foreign companies' participation and that provide price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Although the Turkish procurement law requires government contracting agencies to consider best value pricing, the lowest-cost bids are selected in most tenders. In a scenario involving the procurement of highly technical goods or services, this may prevent consideration of bids from firms with the highest capacity and best abilities, including U.S. firms, (*i.e.*, those that provide a greater number of services, lower life cycle costs, and higher quality products).

Other features of the Turkish procurement system severely limit the ability of U.S. companies to participate in government tenders. Turkish procurement law mandates the use of model contracts, which make it difficult for U.S. companies to formulate proposals that are fully responsive to procuring agencies' requirements. In addition, foreign companies, including those with Turkish subsidiaries, have reported difficulties complying with onerous documentation requirements imposed by contracting agencies. Türkiye frequently issues regulations that exempt urgent projects and procurements from requirements of the Turkish Public Tender Law, allowing entities to conduct tenders or negotiations on an invitational basis. While these exempted tenders technically are open to foreign and domestic firms, in practice few of these have been awarded to foreign firms unless they were offering goods or services that were urgently needed and not available in Türkiye.

In the energy generation sector, the Ministry of Energy and Natural Resources requires producers to source most of their equipment from manufacturers located in Türkiye in order to obtain a license to generate solar or wind electricity above five megawatts (MW). Power generation operations producing less than five MW of electricity for consumption within the organized industrial zone are exempt from this requirement.

Türkiye's Industrial Cooperation Program gives civilian ministries the authority to impose commercial offset requirements in procurement contracts. A foreign company awarded a government procurement contract may be required to produce a share of the locally produced products or services with a local partner, or it must transfer technology in order to provide the products or services. The Turkish government has imposed offsets in the transportation, telecommunications, pharmaceuticals, aerospace, and energy sectors, among others. Turkish military procurement policy generally mandates the inclusion of various "commercial offset" requirements in contracts. These specifications typically encourage domestic sourcing commitments by bidding firms, including by requiring foreign investors to partner with local companies and transfer technology.

Since July 2019, the Turkish Government has prohibited public institutions and organizations from using cloud-computing services.

Türkiye is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 1996.

## INTELLECTUAL PROPERTY PROTECTION

Türkiye remained on the Watch List in the [2023 Special 301 Report](#) due to deficiencies in its intellectual property (IP) regime that represent barriers to U.S. exports and investment.

U.S. industry sources report significant problems involving the export from and trans-shipment through Türkiye of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. These sources report that the enforcement system, including judges, prosecutors, and police, fails to adequately address IP-related crime. IP enforcement additionally suffers from a lack of prioritization among government bodies to combat IP crimes. The Tahtakale market in Istanbul is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) as a major transit hub for counterfeit goods coming from China into European and Middle Eastern markets.

Türkiye's 2016 Industrial Property Law consolidated in a single law the provisions for protecting trademarks, designs, utility models, patents and geographical indications, and improved the legal framework for technology commercialization and transfer. The United States encourages Türkiye to fully implement its obligations under the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, and develop effective mechanisms to address online piracy.

U.S. pharmaceutical companies continue to raise concerns that Türkiye does not adequately protect against the unfair commercial use as well as unauthorized disclosure of test or other data submitted to obtain marketing approval for pharmaceutical products. They have also reported concerns about the timing of resolving pharmaceutical patent disputes.

## SERVICES BARRIERS

### Professional Services

Turkish citizenship is required to practice as an accountant, a certified public accountant, or a lawyer representing clients in Turkish courts.

### Audiovisual Services

Türkiye's 2019 Regulation on the Transmission of Radio, Television, and On-Demand Services on the Internet requires providers of Internet streaming services to establish a commercial presence in Türkiye and obtain a broadcasting license. The law also imposes substantial requirements for providers of streaming services to censor content and provide the government with data about their subscribers on request.

### Financial Services

Türkiye's Law on Payments and Security Settlement Systems, Payment Services, and Electronic Money Institutions (E-Payment Law) requires information systems used by financial firms for keeping documents and records to be physically located within Türkiye. Many U.S. firms, which utilize a globally distributed network architecture, view these requirements as unworkable. The implementation of the E-Payment Law has led one prominent U.S. firm to suspend its operations in Türkiye.

## BARRIERS TO DIGITAL TRADE

### Internet Services

The 2022 Law Amending Press Law and Certain Laws criminalizes publishing what the Turkish Government considers disinformation on social media and raises potential privacy concerns and risks for third-party social media companies. The law covers information and communication technology firms, with fines that could reach up to 3 percent of global revenue and throttling of bandwidth by up to 95 percent. As of December 2023, implementing regulations were still being drafted.

The Law on the Regulation of Broadcasts via the Internet and Prevention of Crimes Committed through Such Broadcasts gives the Ministry of Transport and Infrastructure Information and Communication Technologies Authority (BTK) the responsibility to enforce bans on Internet content deemed offensive by the Turkish courts. BTK has used its authority to block access to various Internet-based service suppliers, including U.S. suppliers. Most noticeably, Türkiye restricted access to a social media service provider in the days following the February 2023 earthquakes and pursued expanded limitations on the use and operation of social media services. As of July 2020, Law No. 5651 also requires social media platforms with more than one million daily visits from users in Türkiye to appoint a representative physically located within Türkiye and to rapidly respond to content removal requests. Social media platforms are also required to store user data in Türkiye. BTK issued a new decision in April 2023 updating these requirements, including affirming the requirements for local presence and the storage of user data in Türkiye. Penalties for noncompliance include escalating fines, blocking of advertisement, and restricting bandwidth.

### Digital Services Taxation

Since 2020, Türkiye has implemented a digital services tax of 7.5 percent that applies to companies offering Internet-based services in Türkiye without having a physical presence there. The implementing legislation covers revenue from various digital services and grants the President the power to adjust the tax rate (up to 15 percent) and the revenue level at which the tax is applicable.

The United States and Türkiye are among the 134 jurisdictions to have joined the 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](#) in reaching a political agreement on a two-pillar solution to address tax challenges arising from the digitalization of the world economy. As part of Pillar 1, all parties would remove existing digital services taxes and other relevant similar measures, and would coordinate the withdrawal of these taxes. The United States and Türkiye issued a [joint statement](#) in November 2021 on a transitional approach to existing Unilateral Measures while implementing Pillar 1 of the Two-Pillar Solution. According to the joint statement, digital services taxation (DST) liability that accrues during the transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future income taxes due under Pillar 1. In return, the United States terminated a Section 301 trade action on Turkish goods and committed not to take further trade actions against Türkiye for its existing DST until the date the Pillar 1 multilateral convention comes into force or December 31, 2023. The arrangement set out in the November joint statement was extended to June 30, 2024. In coordination with the U.S. Department of Treasury, USTR continues to monitor implementation of the political agreement and the transitional approach as provided in the joint statement.

## **OTHER BARRIERS**

### **Export Restrictions and Prohibitions**

Türkiye bans exports of sunflower seed oil. Türkiye never notified this export ban to the WTO, despite requests from the United States and other WTO Members to do so.

Türkiye imposed a ban on olive oil exports, initially for three months starting on August 1, 2023, and extended the decision indefinitely on October 18, 2023. The Turkish Ministry of Trade introduced the measure to prevent a price increase in the domestic market as a drought in Europe had caused olive oil production in Mediterranean countries to decrease by 20 percent in the 2022/2023 season. Türkiye's production increased by 62 percent in the 2022/2023 season, but greater demand from Europe drove up prices domestically.

### **Restrictions on Reimbursement and Official Exchange Rate for Government Purchases**

Since 2017, the Turkish Government has instituted a reimbursement regime for pharmaceutical products that substantially decreased reimbursements. U.S. pharmaceutical companies have raised concerns that they are unable to market next-generation drugs in Türkiye due to the government's maintenance of an artificially low official exchange rate for reimbursement for pharmaceutical products.

The Turkish Government maintains two lists totaling approximately 200 pharmaceuticals for which government reimbursement is denied unless the products are manufactured in Türkiye. Since government reimbursement covers most pharmaceutical products sold in Türkiye, U.S. firms have raised concerns that denying reimbursement has undermined their ability to market their products in Türkiye because they are not manufactured locally. The Turkish Government has previewed plans to “delist” three tranches of products, but has not specified a timeline nor taken any action to implement these further measures.

### **Delayed Reimbursement for Medical Devices and Pharmaceuticals**

The lack of prompt payments by Turkish hospitals (ostensibly due to budgetary restraints) remains a concern for U.S. pharmaceutical and medical device companies.

The Turkish Government has tasked the State Procurement Institute (DMO) with the authority to open tenders to procure pharmaceuticals, as well as medical and laboratory disposables for public hospitals. According to U.S. stakeholders, DMO has honored its commitment to make payments within 90 days, and delayed payments are no longer an issue with public hospitals. However, some stakeholders have reported that, as of December 2023, university hospitals that make direct purchases from medical device manufacturers still had payments outstanding for over 12 months.



# UKRAINE

**NOTE:** *This chapter of the National Trade Estimate Report inventories primarily the significant trade and investment barriers in Ukraine before Russia’s full-scale invasion of Ukraine in February 2022. The U.S. Government recognizes that the ability of the Government of Ukraine and the U.S. Government to engage on or address these barriers remains limited and unpredictable.*

## TRADE AGREEMENTS

### The United States–Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ukraine.

## IMPORT POLICIES

### Tariffs and Taxes

#### Tariffs

Ukraine’s average Most-Favored-Nation (MFN) applied tariff rate was 4.4 percent in 2022 (latest data available). Ukraine’s average MFN applied tariff rate was 9.1 percent for agricultural products and 3.7 percent for non-agricultural products in 2022 (latest data available). Ukraine has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 5.8 percent.

#### Taxes

The standard value-added tax (VAT) rate in Ukraine is 20 percent, which applies to all transactions subject to VAT except specific transactions subject to a 14 percent VAT rate (applies to import and supply of certain agriculture products including soybeans, corn, and sunflower seeds), a 7.0 percent VAT rate (applies to supply and import of qualifying medicines and specific medical goods), and a zero percent VAT rate (applies to export and re-export of goods). Ukraine employs an automated VAT refund system, but the efficacy of that system has been inconsistent, and U.S. companies continue to report that the State Tax Service delays or rejects VAT refunds. In addition, the State Tax Service continues to request original documents confirming business transactions within very short deadlines. Companies also report requests for documentation that go beyond what is required by law. The United States has raised concerns about such delays and requests.

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

While Ukraine’s MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that Ukraine’s State Customs Service (SCS) assigns higher and seemingly inconsistent customs values to imports than are reflected in the transaction price as provided in the import documentation. Such practices may raise concerns under WTO rules and appear contrary to the Ukrainian law that requires the SCS to rely primarily on the transaction price in determining customs value. Furthermore, it appears that the SCS uses its internal valuation database as a mechanism to establish the minimum values of the goods, rather than



for risk analysis purposes only. Specifically, even a slight decrease in the invoice value (as compared to historical prices), or the mere fact that the declared value is lower than the “risk indicators” (which are not publicly available), may result in an increased declared value of the goods. U.S. businesses also report that the SCS has been sending goods for laboratory tests or additional risk audits more frequently, delaying shipments and raising costs. The United States has frequently raised concerns about these practices with the SCS.

### **Other Market Access Barriers**

Importers of U.S. products have complained about inspection officials at ports of entry taking larger numbers of samples than needed for laboratory testing due to a faulty and arbitrary definition of “uniform allotment” (*i.e.*, batches identified for sampling). Sampling and testing, particularly of expensive products, such as caviar, fish, or chilled meat, and the associated testing fees, poses a significant burden on importers. In 2018, Ukraine adopted legislation establishing the main principles for a governmental food and feed control system, including rules governing sampling at the border. Nevertheless, stakeholders claim that testing continues to be excessive. The United States has asked that Ukraine ensure these regulations are consistent with Ukraine’s WTO obligations.

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

### **Technical Barriers to Trade**

#### **Conformity Assessment Procedures – European Union Technical Regulations and Regimes**

As part of its Association Agreement with the European Union (EU), including the provisions to establish a Deep and Comprehensive Free Trade Area since being granted candidate status for EU membership in June 2022 and opening EU accession negotiations in December 2023, Ukraine is moving to approximate EU technical regulations and the EU’s regulatory regime (including the EU’s conformity assessment procedures). Some U.S. industry stakeholders have expressed concerns that this process may lead Ukraine to adopt measures that raise technical barriers to trade. U.S. trade could be negatively affected if Ukraine follows EU practice by refusing to accept any standards as a basis for technical regulations except unique EU regional standards. The United States continues to press Ukraine to ensure that, as it approximates its legislation to that of the EU, it does so in a manner that is consistent with its WTO obligations. Further, the U.S. Government has urged Ukraine to make full use of the WTO notification procedure to ensure that new regulations and conformity assessment practices are transparent and comply with Ukraine’s international obligations. Separately, Ukraine has launched a pilot program to create an electronic platform to publicize draft regulatory measures, accept public comments, and provide its responses to those comments.

### **Sanitary and Phytosanitary Barriers**

#### **Import Certification**

To enforce import requirements for food products of animal origin, Ukraine maintains requirements for 72 generic veterinary certificates for the relevant products. The certificates capture product-specific requirements that do not appear to be science-based and require the exporting country’s regulators to certify that exports are in compliance with “Ukrainian regulatory provisions” rather than in compliance with the attestations contained within the certificate itself. While the Government of Ukraine accepts previously-negotiated U.S.–Ukrainian export certificates for products of animal origin, these certificates can no longer

be amended, new certificates cannot be negotiated, and generic certificates cannot be modified. The United States continues to work with Ukraine to ensure that market access for U.S. agricultural exports is not disrupted as Ukraine continues to implement its import regulations.

### **Approved Exporters List**

Under Article 61 of the Law On State Control over Enforcement of Regulations on Food and Feed Safety, Animal Byproducts, Animal Health and Wellbeing, U.S. establishments (*e.g.*, facilities, farms, genetics centers) can export animal-based products (including live animals, reproductive materials, composite products, animal feed, and seafood) to Ukraine only if they are on Ukraine's Approved Exporters List. Only those facilities that exported to Ukraine historically (between 2013 and 2018) or are approved to export to the EU are included on the list. Ukraine has cited the need to harmonize its legislation with that of the EU, as well as its preference to maintain its trading relationship with historical exporters, as the rationale. However, Ukraine's procedure for adding "historical exporters" is lengthy and problematic, requiring establishments to collect and confirm data on historical exports between 2013 and 2018. In order to add a new-to-market establishment to Ukraine's list, that establishment must undergo an audit. Although basic principles of foreign individual audits are published, specific rules and requirements for the procedure are unclear, and the process itself is cost-prohibitive for small and medium-sized producers. As a result, some U.S. establishments will be unable to export to Ukraine until they complete an expensive and time-consuming EU approval process, or the United States undergoes a country-wide food safety systems audit. The United States has engaged Ukraine on this topic in various meetings and continues to work with Ukraine to resolve this issue.

### **Food Safety Standards**

Ukraine has adopted food safety requirements that mimic EU standards as it deepens its economic relationship with the EU. These measures were notified to the WTO between 2018 and 2023. U.S. exporters (primarily exporters of products of animal origin) are concerned that Ukraine's adoption of EU standards as its national standards, particularly those that are not in line with international standards or based on a risk assessment, could make it significantly more difficult to export certain products to Ukraine. Many of these Ukrainian requirements are related to agrochemicals, veterinary drugs, and hygiene requirements, among others. The United States is working with Ukraine to introduce science-based international practices into Ukraine's rule-making process. In addition, the United States has encouraged Ukraine to make full use of the WTO sanitary and phytosanitary (SPS) notification procedure to ensure that Ukraine's process for adopting new SPS measures is transparent and complies with Ukraine's international obligations.

U.S. industry has raised concerns with the Government of Ukraine about Ukraine's biotechnology regime, largely due to the fact that Ukraine's regulatory system for biotechnology products is still in development. Ukraine has not yet implemented a holistic regulatory regime for registration of biotechnology products either for cultivation or trade of food and feed. Without a fully developed regulatory system, U.S. biotechnology and biotechnology-derived products that could benefit Ukrainian farmers, such as U.S. seeds and genetics, cannot be imported into Ukraine. By law, cultivation of biotechnology products is limited to only registered agricultural biotechnology products. As of December 2023, Ukraine's official registry of biotechnology products did not contain any entries. As a result, no biotechnology product can be legally cultivated in Ukraine or imported into Ukraine from the United States or any other third country. Ukraine committed to moving towards regulating its biotechnology sector in line with EU norms by adopting in August 2023 the Law of Ukraine #3339-IX On State Regulation of Genetic Engineering Activities and State Control of the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Safety (GE Law). The law will enter into force in September 2026. The law contains provisions noting that cultivation of genetically engineered (GE) rapeseed and GE sugar will be postponed

until after five years of the GE Law's entry into force, while totally banning GE corn. The steps related to GE product registration and implementation of GE trade are unclear at this stage, and new specific regulations and guidelines will need to be developed.

The United States continues to work with the Government of Ukraine to facilitate the development and implementation of an effective, science and risk-based regulatory framework for products of biotechnology, and to help meet Ukraine's economic and sustainability goals since biotechnology crops can help farmers adapt to climate change, increase yields on existing farmland, and strengthen global food security.

## **GOVERNMENT PROCUREMENT**

On July 14, 2022, amendments to Ukraine's law on public procurement entered into force, establishing local content requirements in public procurement of urban transport, utility equipment, railway transport, aerospace products, and energy engineering products by giving preference to domestic producers in government tenders. Following consultations with the U.S. Government, and consistent with Ukraine's WTO commitments, the law exempts from the preference provisions those procurements subject to the WTO Agreement on Government Procurement (GPA). U.S. stakeholders remain concerned that the opaque mechanism for determining compliance with the preference provisions could increase the risk of corruption in the procurement process.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Due to Russia's full-scale invasion of Ukraine in February 2022, the 2022 and 2023 Special 301 reviews of Ukraine were suspended. During 2021, the United States had engaged with Ukraine on concerns regarding Ukraine's intellectual property (IP) regime, including in the areas of: (1) the administration of the system for collective management organizations that are responsible for collecting and distributing copyright royalties to right holders; (2) the use of unlicensed software by government agencies; and (3) the implementation of effective means to combat widespread online copyright infringement. The United States continues to monitor Ukraine's IP regime and welcomes opportunities to engage with Ukraine on the protection and enforcement of IP.

## **INVESTMENT BARRIERS**

While Ukraine generally affords foreign investors the same treatment as domestic investors, foreign investors are prohibited from owning agricultural land, producing bioethanol, engaging in certain publishing activities, and investing in certain energy sector assets, such as gas transmission systems, electricity grids, and various plants and factories.

## **OTHER BARRIERS**

### **Bribery and Corruption**

The United States will continue to work with Ukraine to establish strong anticorruption institutions, drive law enforcement reform, and create a business environment that is transparent and firmly grounded in the rule of law. Although Ukraine's judiciary has in the past been regarded as one of the country's least trusted institutions, Ukraine in 2023 undertook important steps to reform its judiciary, including the reestablishment of key judicial institutions for vetting, evaluating, and disciplining judges.

# UNITED KINGDOM

## TRADE AGREEMENTS

Following a June 2016 referendum, the United Kingdom (UK) formally left the European Union (EU) on January 31, 2020 (“Brexit”). To avoid any break in existing legal coverage and mechanisms, the UK Government enacted the European Union (Withdrawal) Act 2018 to incorporate EU laws and regulations into domestic UK law, replacing references to EU entities and laws and regulations with corresponding UK references. As a result, beginning January 1, 2021, the UK and EU had virtually identical legal and regulatory structures, although the UK is now generally free to change its laws and regulations independent of the EU.

The UK and EU negotiated a new trade agreement, the United Kingdom–European Union Trade and Cooperation Agreement (TCA), which, as of January 1, 2021, continues tariff-free and quota-free access to each other’s markets without binding each other’s regulatory regimes. Under the TCA, if domestic regulatory systems diverge in ways that significantly affect trade, either side may seek to rebalance the agreement by modifying market access commitments.

On December 31, 2020, the United States and the UK completed the transition of five existing United States–European Union agreements to new United States–United Kingdom agreements. These five agreements covered areas of bilateral trade in wine, distilled spirits, marine equipment, telecommunication equipment, electromagnetic capability, pharmaceutical products (good manufacturing practices), and covered insurance and reinsurance. Additional information about the agreements can be found on the Office of the United States Trade Representative’s [website](#). The United States and the UK have also ensured the transition of mechanisms supporting trade in organic products and recognition of veterinary health certificates.

## IMPORT POLICIES

### Tariffs

#### **United Kingdom Global Tariff**

The UK’s average Most-Favored-Nation (MFN) applied tariff rate was 3.8 percent in 2022 (latest data available). The UK’s average MFN applied tariff rate was 9.4 percent for agricultural products and 2.9 percent for non-agricultural products in 2022 (latest data available). The UK has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 5.1 percent.

The UK has duties on approximately 5,000 tariff lines, including on certain agricultural products, ceramics, chemicals, bioethanol, and vehicles. Tariffs on some products such as bananas, raw cane sugar, and apparel, which tend not to be import sensitive for the UK, have been maintained to provide for preferential access for imports from certain developing countries into the UK compared to the MFN rate. The UK has some high tariffs that affect U.S. exports, such as rates of up to 25.0 percent for some fish and seafood products, 10.0 percent for trucks, 10.0 percent for passenger vehicles, and up to 6.5 percent for certain mineral or chemical fertilizers.

## **Tariff-Rate Quotas**

Under the UK Global Tariff, some products are covered by a tariff-rate quota (TRQ). TRQs apply to a variety of agricultural products that the United States exports in significant quantities, including beef, pork, cereals, and rice.

## **Non-Tariff Barriers**

### **Northern Ireland-Specific Border Controls**

Northern Ireland is subject to separate arrangements under the Windsor Framework – formerly known as the Protocol on Ireland/Northern Ireland (the Protocol) – that forms part of the agreement between the UK and the EU that addresses the UK’s withdrawal from the EU. On February 27, 2023, the UK and the EU jointly announced the Windsor Framework to address certain issues regarding the Protocol. The introduction of new trade easements for goods moving from Great Britain to Northern Ireland under the Windsor Framework began on October 1, 2023, and will continue to be implemented in phases through 2025. When fully implemented, the Windsor Framework will apply UK regulations regarding food safety, value-added tax and excise rates, and medical licensing for goods and services remaining within Northern Ireland.

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

### **Technical Barriers to Trade**

Upon withdrawal from the EU, the UK transposed existing EU technical regulations into UK law in 2021, thus creating close initial alignment between UK and EU technical regulations and requirements. Several specific trade concerns outlined in the technical barriers to trade (TBT) section of the EU Chapter in this National Trade Estimate Report therefore remain with respect to the UK. Additional divergences between the two regimes will likely continue because changes to some EU regulations have not been, or will not be, automatically reflected in the UK regulatory regime and vice versa.

### **Sanitary and Phytosanitary Barriers**

Upon withdrawal from the EU, the UK transposed existing EU sanitary and phytosanitary (SPS) measures into UK law in 2021, thus creating close initial alignment between UK and EU SPS measures. Some trade concerns outlined in the SPS section of the EU Chapter in this National Trade Estimate Report therefore remain with respect to the UK. The United States is concerned that these measures may unnecessarily restrict trade without furthering safety objectives, because they appear to be applied beyond the extent necessary to protect human, animal, or plant life or health, not based on science, or maintained without sufficient scientific evidence. Specifically, the UK remains closely aligned to EU policy on pesticide approvals, regulation, and maximum residue limits (MRLs). However, there have been divergences between the two regimes as changes to some EU SPS measures have not been automatically reflected in the UK SPS measures (with the exception of Northern Ireland) and vice versa.

### **Agricultural Biotechnology**

U.S. exports of processed foods and beverages to the UK have been constrained in part by local legislation pertaining to genetically modified (GM) food products. Due to long-standing negative perceptions in the UK of agricultural biotechnology, UK supermarkets and food manufacturers formulate their grocery

products to exclude GM ingredients. The UK retained EU legislation post-Brexit, and there has been no attempt to amend the legislation to allow GM products into the UK market, with the exception of specific agricultural biotechnology products for animal feed that require approval. The UK now has the autonomy to establish its own regulatory and policy approach for agricultural biotechnology products, including crops and animals. The UK is working to transition away from the retained EU policy approach for agricultural biotechnology products, beginning with genome-edited products, with the intention of subsequently addressing GM products.

In March 2023, the Genetic Technology (Precision Breeding) Act received Royal Assent, confirming it as an Act of Parliament. The Act intends to simplify the process by which precision breeding technologies (*i.e.*, targeted genetic changes to produce beneficial traits that can also occur through traditional breeding and natural processes) can be authorized and brought to market more easily. This approach paves the way for the modernization of the UK's full suite of agricultural biotechnology regulations. The next stage in the implementation of the new legislative framework began in November 2023 with a consultation on proposals for a new framework for the regulation of precision-bred organisms used for food and animal feed.

### **Agricultural Chemicals, Pesticide Regulations**

In May 2021, UK officials indicated that the UK would follow a risk-based approach to reviewing and approving agricultural chemicals and pesticides, when they established their post-Brexit regulatory policies. In November 2022, the UK noted it will continue to follow the EU's hazard-based approach to MRLs while it develops its own regulatory processes. In August 2023, the UK notified to the WTO Committee on Sanitary and Phytosanitary Measures a proposed measure to reduce the MRL for chlorpropham for fresh and frozen potatoes. In this case, rather than relying on risk assessments that were completed while the UK was a member of the EU, the UK's approach appears even more restrictive than the EU's.

U.S. agricultural exporters are increasingly concerned that the UK might retain the EU's approach to regulating agricultural chemicals and pesticides, which often results in restrictions that do not appear to be science-based and that could result in reductions of MRLs important to U.S. growers, creating excessive barriers to trade and disrupting U.S. crop, food, and agriculture exports to the UK.

## **GOVERNMENT PROCUREMENT**

The UK is a Party to the WTO Agreement on Government Procurement.

### **UK Space Agency**

Participation in European Space Agency (ESA) procurements, to which the UK contributes funding, is generally only open to economic operators in ESA Member States. U.S. companies are generally prohibited from competing on ESA contracts. A significant amount of money is allocated by the UK to ESA. For example, the UK Space Agency allocated £553 million (approximately \$681 million) to ESA in its 2022–2023 budget, which is approximately 85 percent of the UK Space Agency's total budget.

## **INTELLECTUAL PROPERTY PROTECTION**

The UK generally maintains high levels of intellectual property (IP) protection and enforcement. However, U.S. stakeholders have expressed concern that the UK music copyright collective fails to remunerate U.S. artists for radio broadcasts and public performances of their music in the UK. The United States will continue to monitor developments with the UK's IP system.

## **Geographical Indications**

The UK geographical indications (GI) program limits the use of the geographical names for food, drink, and agricultural products (including beer, cider, and perry), spirit drinks, wine, and aromatized wine. The UK schemes use the following designations: Protected Designation of Origin (PDO); Protected Geographical Indication (PGI); and Traditional Speciality Guaranteed (TSG).

The UK schemes are open to producers from the UK and other countries. All existing products that were registered under the EU GI schemes as of December 31, 2020, remain covered under the UK GI schemes, including both UK and EU GIs.

The United States is monitoring the impact of the UK's schemes for the protection of GIs on prior trademark rights and on market access for U.S. goods that rely on the use of common names.

## **SERVICES BARRIERS**

### **Professional Qualifications**

Permission to act as a chartered accountant requires the applicant to have professional experience in the UK, thus limiting experienced U.S. certified public accountants (CPAs) from obtaining authorization to practice in the UK. Efforts are being made to address this through professional bilateral arrangements.

## **BARRIERS TO DIGITAL TRADE**

### **Digital Services Taxation**

The United States and the UK are among the 137 member jurisdictions to have joined the October 8, 2021 OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy](#), which called for all Parties to commit not to introduce digital services taxes (DSTs) in the future. On October 21, 2021, the United States, Austria, France, Italy, Spain, and the UK issued a [joint statement](#) “on a transitional approach to existing Unilateral Measures while implementing Pillar 1.” According to the statement, DST liability that accrues to Austria, France, Italy, Spain, or the UK during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods with respect to each country and committed not to take further trade actions against each country with respect to existing DSTs, provided that the country follows through on the agreement described in the joint statement, until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. The arrangement set out in the October 21 joint statement was extended to June 30, 2024, according to a [joint statement](#) issued on February 15, 2024. In coordination with the U.S. Department of Treasury, USTR continues to monitor implementation of the political agreement and the transitional approach as provided in the joint statement.

## **SUBSIDIES**

### **Government Support for Airbus**

In October 2019, after 15 years of litigation, the WTO authorized the United States to take \$7.5 billion in countermeasures in the dispute against the EU, France, Germany, Spain, and the UK regarding their illegal subsidies for the Airbus consortium.

On June 17, 2021, the United States and the UK announced a cooperative framework to address the large civil aircraft disputes and agreed to future cooperation to overcome any disagreements in the sector. Over many years, the UK, together with France, Germany, and Spain, provided subsidies to Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. As part of the cooperative framework, the United States and UK will not impose countermeasures in the form of tariffs for five years and will work together to address nonmarket practices in the aircraft sector. The United States and the UK established a working group to address these issues on an ongoing basis.





# URUGUAY

## TRADE AGREEMENTS

The United States and Uruguay signed a Trade and Investment Framework Agreement on January 25, 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Uruguay.

## IMPORT POLICIES

### Tariffs

Uruguay's average Most-Favored-Nation (MFN) applied tariff rate was 10.1 percent in 2022 (latest data available). Uruguay's average MFN applied tariff rate was 10.0 percent for agricultural products and 10.1 percent for non-agricultural products in 2022 (latest data available). Uruguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.5 percent.

Uruguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also includes Argentina, Brazil, and Paraguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Uruguay (not including free trade zones) is subject to the payment of the CET to Uruguay's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not taken effect.

### Non-Tariff Barriers

#### **Customs Barriers and Trade Facilitation**

Uruguay charges a consular fee on imports, currently at 5 percent *ad valorem*, up from 2 percent in 2018. The imposition of consular fees disadvantages U.S. exports to Uruguay by increasing costs and imposing additional formalities that are unrelated to the services provided by the customs authority.

U.S. poultry exporters have reported serious challenges in receiving necessary import documentation from Uruguay, effectively closing the market to U.S. poultry exports for most of 2023.

## INTELLECTUAL PROPERTY PROTECTION

The United States urges Uruguay to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Uruguay proceeds with the European Union–MERCOSUR Trade Agreement.



# VIETNAM

## TRADE AGREEMENTS

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

The United States and Vietnam signed a Trade and Investment Framework Agreement in June 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Vietnam.

## IMPORT POLICIES

### Tariffs and Taxes

#### **Tariffs**

Vietnam's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2022 (latest data available). Vietnam's average MFN applied tariff rate was 17.1 percent for agricultural products and 8.4 percent for non-agricultural products in 2022 (latest data available). Vietnam has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.7 percent. Vietnam also maintains import tariff-rate quota regimes for salt, eggs, and sugar.

Although the majority of U.S. exports to Vietnam face tariffs of 15 percent or less, consumer-oriented food and agricultural products continue to face higher rates. In recent years, Vietnam has increased MFN applied tariff rates on a number of products, including: sweeteners (such as fructose and glucose); shelled walnuts; ketchup and other tomato sauces; inkjet printers; soda ash; and, stainless steel bars and rods. Most of the products for which tariffs have increased are also produced by companies in Vietnam.

In May 2023, Vietnam enacted Decree 26/2023/ND-CP, which updated detailed tariff rates for each Harmonized System code, effective July 15, 2023. The primary change from the decree was a reduction in ethanol tariffs from 15 percent to 10 percent. Despite this decrease, the tariff on ethanol continues to be significantly higher than Vietnam's tariffs on other substitutable fuel additives, which are either zero percent or 3 percent.

#### **Taxes**

In 2016, Vietnam's Law 106/2016/QH13 increased the special consumption taxable base for imported alcoholic beverages from the import price to the sales price received by the importer, thereby significantly increasing the tax burden on importers relative to domestic producers.

### Non-Tariff Barriers

#### **Import Bans and Restrictions**

Vietnam prohibits the commercial importation of some products, including: certain children's toys; second-hand consumer goods; used parts for vehicles; used internal combustion engines of less than 30 horsepower; certain encryption devices and encryption software; refurbished medical devices; and certain cultural products.

Vietnam maintains import prohibitions on certain used information technology (IT) products. Decision 18/2016/QĐ-TTg eases import prohibitions on some used IT products, if these products meet various technical regulations and standards. The products covered under the decision include used IT goods that are: (1) imported in conjunction with the relocation of means of production of a single organization; (2) imported for the control, operation, and inspection of activities in one or all parts of a system or production line; (3) imported for software production, business outsourcing, or data processing for foreign partners; or, (4) reimported after overseas repairs under warranty. The decision also covers refurbished goods and components no longer in production that are imported to replace or repair those being used domestically.

### **Product Registration Requirements – Imported Pharmaceuticals**

Decree No. 54/2017/ND-CPD, which came into effect in July 2017, permits foreign pharmaceutical companies to establish importing entities. The international business and pharmaceutical communities welcomed this step but continue to have concerns about warehousing, distribution, and licensing requirements.

Circular 08/2022/TT-BYT, effective on October 20, 2022, regulates drug registration and Certificate of Pharmaceutical Product (CPP) content requirements and harmonizes with international practice, specifically following the World Health Organization's CPP template. Under Circular 8, the Vietnam Ministry of Health (MOH) no longer has a blanket requirement to verify CPP authenticity. Instead, a risk-based approach is applied and that verification can be done via different channels and in parallel with the market authorization (MA) review process. The Circular also simplified several administrative procedures following international practices. Some challenges remain as, in practice, the MOH requires foreign competent authorities and Vietnam's diplomatic missions to authenticate or consular legalize electronic CPPs. Companies can amend the dossier for product registration up to three times the maximum; otherwise, the dossier is rejected. This is in order to meet the MOH's objective of ensuring the dossier quality. However, submissions of quality application dossiers will require regulator-industry consultations to ensure Circular 8 regulatory requirements are understood.

In response to the ongoing backlog of drug registration renewals and applications, the Vietnam National Assembly issued Resolution 80/2023/QH15 in January 2023. This measure allows MAs of drugs and drug raw materials that are expiring between January 1, 2023, and December 31, 2024, and MAs that have been previously extended, to continue until December 31, 2024, if those drugs and drug raw materials meet certain requirements. The MOH is responsible for reviewing and publicizing the list of MAs that meet the requirements in a public and transparent manner. The United States will continue to monitor the implementation of the drug registration process in Vietnam.

### **Medical Devices**

In March 2023, Vietnam issued Decree 07/2023/ND-CP (Decree 07), amending and supplementing Decree No. 98/2021/ND-CP. Decree 07 allows all existing import licenses to be automatically extended to December 31, 2024, and regulates outstanding lodged dossiers for import licenses to be reviewed and approved under the legal framework of this new decree. The United States will continue monitoring developments related to the implementation of the new decree.

### **Ethanol**

Vietnam currently only allows blends of 5 percent ethanol in one of its three grades of gasoline. Vietnam's Ministry of Industry and Trade (MOIT) is the lead ministry on ethanol policy. The United States continues to seek the expansion of ethanol blending to all grades of gasoline sold in Vietnam, the reduction of tariffs on ethanol to at least match tariff rates on other fuel additives currently used in Vietnam, as well as the

eventual migration to a 10 percent ethanol blend (E10). The MOIT had previously sought to expand to E10 in all grades of gasoline, but this has not occurred.

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

### **Technical Barriers to Trade**

#### **Labeling**

Decree 111/2021/ND-CP, which revised Decree 43/2017/ND-CP on Goods Labeling and became effective on February 15, 2022, requires imported goods to have a label added by merchants. The updated decree requires significantly more information to appear on all labels and imposes a range of additional specific requirements that vary depending on the product category. Importers have reported challenges to entering imported goods due to uncertainty and inconsistency in product classifications, which make it difficult for importers to comply with labeling requirements.

### **Sanitary and Phytosanitary Barriers**

#### **Approvals for the Importation or Commercialization of Genetically Engineered Products**

In 2023, after several years of inactivity, Vietnam resumed its acceptance of new applications of genetically engineered (GE) products for cultivation. As of December 31, 2023, Vietnam had approved 10 GE corn hybrids for cultivation; made progress on an application for a GE corn product (MIR162) that is resistant to Fall Army Worm; and was actively reviewing seven new applications of biotechnology corn, soybean, canola, and cotton. Vietnam remains a major importer of biotechnology products and a key market for cultivation approvals as part of the commercialization process. The United States will continue to engage with Vietnam on the approval of pending applications.

#### **Imports under the Food Safety Law**

In February 2018, as part of enforcement of its Food Safety Law, Vietnam adopted Decree 15/2018/ND-CP (Decree 15), which provides guidance on self-declaration, labeling, import inspection, and registration for export to Vietnam of food products of plant and animal origin. Although Decree 15 simplified self-declaration for importation of food products, some aspects of the decree created uncertainty, with different line ministries, and even departments within the Ministry of Agriculture and Rural Development (MARD), appearing to have contradictory interpretations. For example, the MARD and the MOH have provided contradictory interpretations regarding Vietnam's definition of "processed products," which are exempt from the facility registration process under Decree 15. Despite requests by the United States and other trading partners, Vietnam refused to notify Decree 15 to the WTO.

In March 2021, Vietnam issued a draft decree that would revise Decree 15. The new draft decree covers foods and agricultural products and would create a two-step registration for import inspection by merging the self-declaration (for food safety) and conformity announcement (for quality inspection) into the registration for import inspection. Vietnam notified the draft decree to the WTO in July 2021. As of December 31, 2023, the draft decree remains under review by the Government of Vietnam and has not been finalized.

In 2023, the MOH was assigned to collaborate with the MARD and the MOIT on the review of the Food Safety Law's implementation. According to Decision 426/DQ-TTg, the Food Safety Law's review will be

conducted from 2023 to 2025, after which line ministries will draft proposals to amend and supplement the law. The MOH was also assigned to review the implementation of Decree 15 in coordination with MARD and MOIT. The United States will continue to monitor Vietnam's review of its Food Safety Law and Decree 15 to avoid any potential disruptive effects on U.S. agricultural exports.

### **Ban on Offal Products**

Despite the MARD lifting Vietnam's ban on the importation of so-called "white offal," such as poultry gizzards and beef and pork stomach and intestines, Vietnam has not approved new U.S. facilities to export these products since September 2013. The United States continues to raise concerns about Vietnam's lack of a science-based justification for not approving new U.S. facilities seeking to export offals. Plans for Vietnam to conduct onsite audits of U.S. facilities were indefinitely postponed purportedly due to the outbreak of African Swine Fever in Vietnam. The United States will continue to discuss this issue with Vietnam.

## **GOVERNMENT PROCUREMENT**

Vietnam's 2013 Law on Procurement provides the basic framework for government procurement and generally promotes the purchase of domestic goods or services in government procurement when they are available. U.S. exporters do not receive any guaranteed access to the Vietnamese Government procurement market.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Vietnam remained on the Watch List in the 2023 Special 301 Report. Despite positive developments, such as reported improvements on border enforcement in some parts of the country and the amended Law on Intellectual Property, which took effect in January 2023, the United States remains concerned about intellectual property (IP) protection and enforcement in Vietnam, including in the digital environment.

Capacity and resource constraints, corruption, and poor coordination among enforcement agencies continue to pose challenges to effective IP enforcement. Piracy and sales of counterfeit goods online and in physical markets continue to be a concern. Two physical markets in Vietnam—Saigon Square Shopping Mall in Ho Chi Minh City, and Tan Thanh Market and the sub-market Viet Trung Trade Center, both in Lang Son Province—are included in the [2023 Review of Notorious Markets for Counterfeiting and Piracy \(Notorious Markets List\)](#). There are almost no criminal investigations or prosecutions, even though Vietnam has criminal laws imposing substantial fines and years of incarceration for copyright and trademark infringement. Vietnam continues to rely heavily on administrative actions and penalties to enforce IP, but these have failed to deter counterfeiting and piracy. In addition, the United States has concerns about the lack of clarity in Vietnam's system for protecting against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

The United States continues to discuss these issues with Vietnam. The United States also continues to monitor the implementation of IP provisions pursuant to Vietnam's commitments under trade agreements with third parties.

## SERVICES BARRIERS

### Audiovisual Services

Decree 71/2022 (Decree 71), amending Decree 06/2016 on the Management, Provision and Use of Radio and Television Services, was enacted on October 1, 2022. Decree 71 expands the scope of regulation of Decree 06 from traditional broadcasting services to Internet-enabled subscription video services. Decree 71 imposes new licensing requirements, with forced local presence or forced joint venture, on online, over-the-top (OTT) radio and television services, the definition of which includes films. The Authority of Broadcasting and Electronic Information (ABEI) has requested certain U.S. platforms, in the absence of a local office or a submitted licensing plan, to leave the market. The Law on Cinema and its implementing decree allow foreign OTT suppliers to offer films without having to obtain a license or establish locally. However, under pressure from the ABEI, the Ministry of Culture, Sports, and Tourism is developing a system to classify online content with a specific focus on “sensitive categories” that would require operating licenses.

### Financial Services

Foreign investors may establish 100 percent foreign-owned bank subsidiaries and may take ownership interests in domestic “joint stock” banks (*i.e.*, commercial banks with any percentage of private ownership) or “joint venture” banks (*i.e.*, banks set up by joint venture agreement, typically between domestic and foreign partners). Total equity held by foreign institutional and individual investors in domestic joint stock banks is limited to 30 percent, while total equity held by a foreign strategic investor (defined as a foreign credit institution meeting certain criteria related to capacity to help develop the Vietnamese banking partner) is limited to 20 percent. Foreign equity in joint venture banks is limited to 50 percent. Over the last two years, foreign banks have raised concerns about provisions in the Law on Credit Institutions, which limits the lending of foreign bank branches in Vietnam based on their local charter capital, rather than the global capital of the parent bank. The State Bank of Vietnam has also proposed amendments that would lower the limits for ownership by individual and institutional shareholders in banks.

### Electronic Payment Services

In 2016, two Vietnamese payment processing networks were consolidated into a *de facto* monopoly, the National Payments Corporation of Vietnam (NAPAS), which is partially owned by the State Bank of Vietnam. Since January 2021, Circular 28 requires that domestic retail electronic payment transactions be processed through NAPAS when a payment card, including an internationally-branded payment card, is presented at the merchant point of sale. This requirement does not apply to online transactions.

### Telecommunications Services

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. According to the Law on Telecommunications (Telecom Law) 41/2009/QH12, for domestic companies that provide basic telecommunication services with infrastructure, foreign ownership is generally capped at 49 percent; for companies that supply telecommunications services without infrastructure, foreign ownership is capped at 65 percent. Vietnam allows foreign ownership of up to 70 percent for virtual private network (VPN) services suppliers. Facilities-based operators are required to be state-controlled firms, meaning that the state, through the relevant line ministry, must hold 51 percent or more of equity. The revised Telecom Law was passed by Vietnam’s National Assembly on November 24, 2023. The final draft submitted to the National Assembly’s approval session seems to address some



U.S. concerns but may still raise uncertainty around the scope of the law. The United States will continue to monitor the issue.

## **BARRIERS TO DIGITAL TRADE**

### **Law on Cybersecurity**

Vietnam's Law on Cybersecurity (No. 24/2018/QH14) took effect in June 2018, and Decree 53/2022/ND-CP on Implementing the Law on Cybersecurity (Cybersecurity Decree) became effective on October 1, 2022. This law and regulation create uncertainty around the scope of specific requirements for businesses as they apply broadly to domestic and foreign enterprises that provide services on telecommunications networks or the Internet, or that provide other value-added services in cyberspace in Vietnam. The Cybersecurity Law requires foreign service suppliers to establish a branch or representative office in Vietnam. The Ministry of Public Security is also drafting a Decree on Administrative Penalties for Violations of Cybersecurity Laws that will impose fines and administrative penalties (including "technical measures," such as bandwidth limits and blocking of sites) for violations of regulations concerning cybersecurity, personal data protection, information security, and network protection. Stakeholders have expressed concern with a lack of certainty with respect to compliance with Vietnamese laws and regulations. The latest draft of this decree was shared with stakeholders in May with a deadline for public comment by June 20, 2023.

### **Internet Services**

#### **Internet-Based Content Services**

Vietnam continues to allow access to the Internet only through a limited number of Internet service providers, all of which are state-controlled companies to some extent. Vietnam restricts or blocks access to certain websites that it deems politically or culturally inappropriate. Decree 72/2013/ND-CP (Decree 72) on the management, provision, and use of Internet services and online information prohibits the use of Internet services to, among other things, oppose the government. In March 2018, Vietnam issued Decree 27/2018/ND-CP (Decree 27) to amend and supplement Decree 72. Decree 27 consolidates existing content, server localization, and data retention requirements for social networks and information websites.

In July 2023, the Authority of Broadcasting and Electronic Information, at the Ministry of Information and Communications (MIC), released a draft measure to replace Decree 72 (and Decree 27) that would impose problematic requirements on a wide range of suppliers of Internet services and content providers. The draft decree contains content censorship measures and data localization requirements that are likely to overlap with the Cybersecurity Decree and the Personal Data Privacy Decree. It also contains a burdensome registration and licensing regime for the electronic gaming and social media industries and would broaden the scope of regulation to include data center and cloud services.

#### **Personal Data Protection Regulation**

Vietnam's Personal Data Protection Decree (Decree 13/2023/ND-CP) was promulgated on April 17, 2023 and went into effect on July 1, 2023. This measure does not provide clear scope of which industries or businesses will be subject to it. Personal data controllers must maintain a log or diary of the cross-border data transfer processes.

## **Electronic Transactions**

Vietnam's Law on Electronic Transactions was passed by the National Assembly on June 22, 2023, as Law No. 20/2023/QH15. The language of the law remains ambiguous concerning compliance obligations for "digital platforms" and registration requirements for cross-border electronic signature and electronic transaction services providers. The MIC is in the process of drafting decrees and circulars to implement the law.

## **INVESTMENT BARRIERS**

Vietnam maintains statutory restrictions on foreign ownership in certain enumerated sectors, such as joint partnerships and projects in banking, network infrastructure services, non-infrastructure telecommunications services, transportation, and energy. Decree 31/2021/ND-CP, promulgated in 2021, lists 25 business sectors in which foreigners are prohibited from investing. It also lists 59 other business sectors subject to market access conditions, which includes: banks and non-bank credit institutions; aviation; land and sea transportation; film production and distribution; and, logistics. The market access conditions may include: foreign ownership caps; joint venture and local partnership requirements; and, other conditions on investments involving foreign investors imposed by the relevant ministry. Certain foreign investments also require the Prime Minister's approval, including: projects involving airports and certain seaports; casinos; oil and gas exploration, production, and refining; telecommunications and network infrastructure; forestry; publishing; and other projects requiring approval from more than one Vietnamese province.

## **ENVIRONMENT**

In October 2020, the U.S. Trade Representative initiated a Section 301 investigation into Vietnam's acts, policies, and practices related to the import and use of illegal timber, and in particular, to examine reports that Vietnam's wood processing industry relies upon imported timber that may have been illegally harvested or traded. On October 1, 2021, the United States and Vietnam signed an agreement (Timber Agreement) that addresses U.S. concerns in the investigation. The agreement secures commitments that will help keep illegally harvested or traded timber out of the supply chain, and protect the environment and natural resources.

The United States held working group meetings with Vietnam in 2022 and 2023 and will continue to monitor Vietnam's implementation of its commitments under the Timber Agreement.

## **OTHER BARRIERS**

U.S. stakeholders continue to have concerns about the lack of transparency and accountability in the Government of Vietnam's regulatory process due to different line ministries' overlapping mandates and other governance issues in Vietnam. The United States will continue to work with Vietnam to support reform efforts and to promote greater transparency.

## **Export Taxes**

Vietnam imposes export taxes (ranging from 5 percent to 40 percent) on goods indicated in Decree 125/2017/ND-CP, which are primarily goods produced from minerals and natural resources in which the cost of energy, minerals, and natural resources is more than 51 percent of the value of the product. These goods include: plants and botanical parts; ore; coal; crude oil; chemicals; skins; wood; charcoal; gems; silver and gold; jewelry; and, metals and metal products. Decree 57/2020/ND-CP, revising and

supplementing Decree 125, increased export tax rates for copper tubes and pipes (Harmonized System heading 7411) from zero percent to five percent.

# APPENDIX I



# APPENDIX I

## **Report on Progress in Reducing Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies**

This Appendix provides an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,<sup>1</sup> the Office of the United States Trade Representative (USTR) prepared a report that identified trade barriers that U.S. exporters of GHGIRTs face in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade. The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first [annual progress report](#) in October 2007. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report,<sup>2</sup> barriers to the exports of GHGIRTs are generally similar to those identified in the NTE Report with respect to other exports to the 25 developing countries, for example: lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, that are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; investment restrictions, including requirements to partner with domestic firms; lack of adequate and effective intellectual property rights protections; and, in some countries, high applied tariff rates. Progress in removing such barriers is noted in the appropriate country chapters of this NTE Report. USTR's Special 301 Report, pursuant to section 182 of the Trade Act of 1974, identifies those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access for persons that rely on intellectual property protection. The [2023 Special 301 Report](#) was published in April 2023.

The global market in environmental goods and services, including GHGIRTs, is estimated to be over \$1.1 trillion annually, and the United States exported \$275 billion of environmental goods in 2023.<sup>3</sup>

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<sup>1</sup> Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. Section 734 calls on the United States Trade Representative “(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers.”

<sup>2</sup> The Department of State's 2006 “Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment” identified the following 25 countries: Algeria; Argentina; Azerbaijan; Bangladesh; Brazil; Chile; China; Colombia; Egypt; India; Indonesia; Iraq; Kazakhstan; Libya; Malaysia; Mexico; Nigeria; Pakistan; Philippines; South Africa; Thailand; Turkmenistan; Uzbekistan; Venezuela; and Vietnam.

<sup>3</sup> Based on 2023 U.S. Bureau of Census data and includes U.S. exports and re-exports. Re-exports are defined as exports of foreign goods without significant modification.

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## APPENDIX II





# APPENDIX II

**U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2022-2023**  
(Values in Millions of Dollars)

| Country              | Goods Balance |            | Change  | Exports   | Exports   | Change 2022-23 |         | Imports   | Imports   | Change 2022-23 |         |
|----------------------|---------------|------------|---------|-----------|-----------|----------------|---------|-----------|-----------|----------------|---------|
|                      | 2022          | 2023       | 2022-23 | 2022      | 2023      | Value          | Percent | 2022      | 2023      | Value          | Percent |
| World                | -1,177,369    | -1,061,667 | 115,702 | 2,065,154 | 2,050,739 | -14,415        | -0.7    | 3,242,523 | 3,112,406 | -130,117       | -4.0    |
| Canada               | -80,109       | -67,861    | 12,248  | 356,453   | 353,235   | -3,218         | -0.9    | 436,562   | 421,096   | -15,466        | -3.5    |
| Mexico               | -130,465      | -152,379   | -21,914 | 324,310   | 323,228   | -1,082         | -0.3    | 454,774   | 475,607   | 20,833         | 4.6     |
| China                | -382,296      | -279,415   | 102,881 | 154,012   | 147,813   | -6,199         | -4.0    | 536,308   | 427,229   | -109,080       | -20.3   |
| Netherlands          | 38,659        | 43,735     | 5,076   | 73,207    | 82,182    | 8,975          | 12.3    | 34,548    | 38,447    | 3,899          | 11.3    |
| Germany              | -74,077       | -83,021    | -8,944  | 72,553    | 76,699    | 4,146          | 5.7     | 146,630   | 159,720   | 13,090         | 8.9     |
| Japan                | -67,884       | -71,175    | -3,292  | 80,180    | 76,165    | -4,015         | -5.0    | 148,064   | 147,340   | -724           | -0.5    |
| United Kingdom       | 12,256        | 9,804      | -2,451  | 76,208    | 74,090    | -2,118         | -2.8    | 63,952    | 64,285    | 333            | 0.5     |
| South Korea          | -43,278       | -51,401    | -8,123  | 72,116    | 64,834    | -7,282         | -10.1   | 115,394   | 116,235   | 841            | 0.7     |
| Brazil               | 14,926        | 5,685      | -9,240  | 53,841    | 44,808    | -9,033         | -16.8   | 38,915    | 39,122    | 207            | 0.5     |
| France               | -11,279       | -13,393    | -2,114  | 46,025    | 44,257    | -1,768         | -3.8    | 57,303    | 57,649    | 346            | 0.6     |
| Singapore            | 14,571        | 2,053      | -12,518 | 46,177    | 42,392    | -3,784         | -8.2    | 31,606    | 40,340    | 8,734          | 27.6    |
| India                | -38,377       | -43,628    | -5,251  | 47,160    | 40,140    | -7,020         | -14.9   | 85,537    | 83,768    | -1,769         | -2.1    |
| Taiwan               | -47,483       | -47,975    | -493    | 44,242    | 39,776    | -4,466         | -10.1   | 91,725    | 87,752    | -3,973         | -4.3    |
| Belgium              | 9,192         | 15,801     | 6,609   | 35,810    | 38,829    | 3,018          | 8.4     | 26,618    | 23,027    | -3,590         | -13.5   |
| Australia            | 14,381        | 17,724     | 3,343   | 30,552    | 33,678    | 3,127          | 10.2    | 16,171    | 15,954    | -216           | -1.3    |
| Italy                | -41,362       | -44,012    | -2,651  | 27,713    | 28,930    | 1,217          | 4.4     | 69,075    | 72,942    | 3,868          | 5.6     |
| Switzerland          | -22,677       | -24,320    | -1,643  | 36,727    | 27,870    | -8,857         | -24.1   | 59,404    | 52,189    | -7,215         | -12.1   |
| Hong Kong            | 21,149        | 23,562     | 2,413   | 25,828    | 27,746    | 1,918          | 7.4     | 4,678     | 4,184     | -494           | -10.6   |
| Spain                | 3,704         | 1,881      | -1,823  | 26,695    | 25,001    | -1,694         | -6.3    | 22,992    | 23,120    | 129            | 0.6     |
| United Arab Emirates | 13,953        | 18,279     | 4,325   | 20,837    | 24,857    | 4,020          | 19.3    | 6,884     | 6,579     | -305           | -4.4    |
| Malaysia             | -36,006       | -26,705    | 9,301   | 18,195    | 19,442    | 1,247          | 6.9     | 54,201    | 46,147    | -8,054         | -14.9   |
| Chile                | 6,689         | 3,182      | -3,507  | 22,257    | 18,724    | -3,533         | -15.9   | 15,568    | 15,542    | -26            | -0.2    |
| Colombia             | 2,335         | 1,394      | -941    | 20,819    | 17,552    | -3,267         | -15.7   | 18,484    | 16,159    | -2,326         | -12.6   |
| Ireland              | -66,558       | -65,342    | 1,216   | 16,011    | 16,949    | 938            | 5.9     | 82,569    | 82,290    | -279           | -0.3    |
| Thailand             | -42,836       | -40,720    | 2,116   | 15,818    | 15,653    | -165           | -1.0    | 58,654    | 56,374    | -2,281         | -3.9    |
| Türkiye              | -3,638        | -805       | 2,833   | 15,194    | 14,694    | -500           | -3.3    | 18,832    | 15,498    | -3,333         | -17.7   |
| Israel               | -7,230        | -6,787     | 443     | 14,199    | 14,034    | -166           | -1.2    | 21,429    | 20,820    | -609           | -2.8    |
| Saudi Arabia         | -11,874       | -2,004     | 9,870   | 11,400    | 13,873    | 2,473          | 21.7    | 23,274    | 15,877    | -7,397         | -31.8   |
| Dominican Republic   | 7,115         | 6,004      | -1,111  | 14,023    | 13,063    | -960           | -6.8    | 6,908     | 7,059     | 151            | 2.2     |
| Peru                 | 4,988         | 3,304      | -1,684  | 13,613    | 12,039    | -1,574         | -11.6   | 8,625     | 8,735     | 110            | 1.3     |
| Argentina            | 6,062         | 5,004      | -1,058  | 12,980    | 11,442    | -1,538         | -11.8   | 6,918     | 6,438     | -480           | -6.9    |
| Panama               | 11,418        | 10,681     | -737    | 11,941    | 11,208    | -734           | -6.1    | 523       | 527       | 4              | 0.7     |
| Poland               | -493          | -2,160     | -1,667  | 11,380    | 11,015    | -365           | -3.2    | 11,873    | 13,174    | 1,301          | 11.0    |
| Indonesia            | -24,743       | -16,863    | 7,880   | 9,802     | 9,944     | 142            | 1.5     | 34,545    | 26,807    | -7,738         | -22.4   |
| Vietnam              | -116,125      | -104,628   | 11,496  | 11,356    | 9,812     | -1,544         | -13.6   | 127,481   | 114,440   | -13,041        | -10.2   |
| Guatemala            | 4,900         | 4,902      | 2       | 10,210    | 9,742     | -468           | -4.6    | 5,310     | 4,840     | -470           | -8.9    |
| Philippines          | -6,825        | -3,981     | 2,844   | 9,331     | 9,288     | -43            | -0.5    | 16,155    | 13,269    | -2,887         | -17.9   |
| Costa Rica           | -240          | -1,315     | -1,075  | 8,499     | 9,144     | 645            | 7.6     | 8,739     | 10,459    | 1,720          | 19.7    |
| Sweden               | -9,346        | -9,788     | -442    | 7,742     | 8,615     | 873            | 11.3    | 17,088    | 18,403    | 1,315          | 7.7     |
| Ecuador              | -2,526        | -652       | 1,874   | 7,875     | 7,948     | 74             | 0.9     | 10,400    | 8,600     | -1,800         | -17.3   |
| South Africa         | -8,068        | -6,814     | 1,254   | 6,516     | 7,156     | 640            | 9.8     | 14,584    | 13,971    | -614           | -4.2    |
| Honduras             | 1,894         | 1,229      | -664    | 7,964     | 6,794     | -1,170         | -14.7   | 6,070     | 5,564     | -506           | -8.3    |
| Bahamas              | 3,822         | 3,757      | -64     | 5,543     | 5,582     | 39             | 0.7     | 1,721     | 1,825     | 104            | 6.0     |
| Austria              | -13,040       | -13,609    | -569    | 4,770     | 5,530     | 760            | 15.9    | 17,810    | 19,139    | 1,329          | 7.5     |
| Denmark              | -8,412        | -6,379     | 2,032   | 4,558     | 5,255     | 697            | 15.3    | 12,969    | 11,634    | -1,335         | -10.3   |
| Norway               | -1,964        | -1,084     | 879     | 4,690     | 5,034     | 344            | 7.3     | 6,653     | 6,118     | -535           | -8.0    |
| Qatar                | 796           | 2,611      | 1,814   | 3,669     | 4,658     | 990            | 27.0    | 2,872     | 2,048     | -825           | -28.7   |
| Czech Republic       | -3,710        | -2,960     | 750     | 3,797     | 4,537     | 739            | 19.5    | 7,507     | 7,497     | -11            | -0.1    |
| Egypt                | 3,565         | 2,103      | -1,462  | 6,369     | 4,494     | -1,875         | -29.4   | 2,804     | 2,391     | -413           | -14.7   |

**U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2022-2023**  
(Values in Millions of Dollars)

| Country             | Goods Balance |          | Change  | Exports | Exports | Change 2022-23 |         | Imports | Imports | Change 2022-23 |         |
|---------------------|---------------|----------|---------|---------|---------|----------------|---------|---------|---------|----------------|---------|
|                     | 2022          | 2023     | 2022-23 | 2022    | 2023    | Value          | Percent | 2022    | 2022    | 2023           | 2022-23 |
| New Zealand         | -1,211        | -1,191   | 19      | 4,164   | 4,359   | 195            | 4.7     | 5,375   | 5,551   | 176            | 3.3     |
| El Salvador         | 2,058         | 1,811    | -247    | 4,957   | 4,266   | -690           | -13.9   | 2,899   | 2,455   | -443           | -15.3   |
| Morocco             | 2,024         | 2,055    | 32      | 3,718   | 3,752   | 34             | 0.9     | 1,694   | 1,697   | 3              | 0.2     |
| Hungary             | -4,834        | -7,712   | -2,879  | 2,872   | 3,120   | 248            | 8.6     | 7,705   | 10,832  | 3,127          | 40.6    |
| Kuwait              | 1,354         | 1,201    | -153    | 3,394   | 2,919   | -475           | -14.0   | 2,040   | 1,718   | -322           | -15.8   |
| Finland             | -6,039        | -4,467   | 1,572   | 2,649   | 2,906   | 257            | 9.7     | 8,688   | 7,373   | -1,315         | -15.1   |
| Lithuania           | 19            | 766      | 747     | 2,603   | 2,875   | 272            | 10.4    | 2,584   | 2,109   | -475           | -18.4   |
| Paraguay            | 1,851         | 2,507    | 656     | 2,121   | 2,765   | 645            | 30.4    | 270     | 259     | -11            | -4.1    |
| Jamaica             | 2,265         | 2,235    | -31     | 2,615   | 2,624   | 9              | 0.4     | 350     | 390     | 40             | 11.5    |
| Nigeria             | -1,424        | -3,097   | -1,673  | 3,360   | 2,599   | -760           | -22.6   | 4,783   | 5,696   | 913            | 19.1    |
| Venezuela           | 1,779         | -1,092   | -2,871  | 2,192   | 2,501   | 310            | 14.1    | 413     | 3,594   | 3,181          | 770.3   |
| Nicaragua           | -3,069        | -2,374   | 696     | 2,655   | 2,371   | -284           | -10.7   | 5,724   | 4,744   | -980           | -17.1   |
| Luxembourg          | 915           | 1,675    | 760     | 1,650   | 2,365   | 715            | 43.3    | 735     | 690     | -44            | -6.1    |
| Portugal            | -3,231        | -4,226   | -994    | 2,927   | 2,282   | -646           | -22.1   | 6,159   | 6,507   | 349            | 5.7     |
| Iraq                | -9,157        | -6,237   | 2,920   | 899     | 2,259   | 1,360          | 151.3   | 10,056  | 8,495   | -1,561         | -15.5   |
| Bangladesh          | -8,191        | -6,030   | 2,162   | 2,962   | 2,252   | -710           | -24.0   | 11,153  | 8,282   | -2,872         | -25.7   |
| Trinidad and Tobago | -1,788        | -909     | 880     | 3,629   | 2,250   | -1,379         | -38.0   | 5,417   | 3,159   | -2,259         | -41.7   |
| Pakistan            | -2,837        | -2,812   | 26      | 3,157   | 2,075   | -1,082         | -34.3   | 5,995   | 4,887   | -1,108         | -18.5   |
| Uruguay             | 2,016         | 1,004    | -1,011  | 2,921   | 1,879   | -1,042         | -35.7   | 905     | 875     | -31            | -3.4    |
| Oman                | -1,224        | 211      | 1,435   | 1,487   | 1,862   | 376            | 25.3    | 2,710   | 1,651   | -1,059         | -39.1   |
| Greece              | 101           | -272     | -373    | 2,382   | 1,785   | -596           | -25.0   | 2,280   | 2,057   | -223           | -9.8    |
| Trinidad and Tobago | -1,788        | -909     | 880     | 3,629   | 2,250   | -1,379         | -38.0   | 5,417   | 3,159   | -2,259         | -41.7   |
| Bahrain             | -952          | 496      | 1,448   | 950     | 1,676   | 726            | 76.4    | 1,902   | 1,180   | -722           | -38.0   |
| Jordan              | -1,463        | -1,382   | 81      | 1,580   | 1,532   | -48            | -3.0    | 3,043   | 2,915   | -128           | -4.2    |
| Georgia             | 896           | 1,400    | 505     | 1,236   | 1,513   | 277            | 22.4    | 341     | 113     | -228           | -66.9   |
| Guyana              | -1,637        | -1,904   | -267    | 1,181   | 1,368   | 187            | 15.8    | 2,818   | 3,272   | 454            | 16.1    |
| Romania             | -2,430        | -2,695   | -265    | 1,350   | 1,304   | -45            | -3.4    | 3,779   | 3,999   | 219            | 5.8     |
| Haiti               | 358           | 471      | 113     | 1,403   | 1,290   | -113           | -8.1    | 1,045   | 819     | -226           | -21.7   |
| Cayman Islands      | 1,426         | 1,252    | -174    | 1,474   | 1,282   | -192           | -13.0   | 48      | 30      | -18            | -37.2   |
| Algeria             | -1,810        | -1,829   | -19     | 1,198   | 1,214   | 16             | 1.3     | 3,009   | 3,043   | 35             | 1.1     |
| Ethiopia            | 366           | 720      | 353     | 1,084   | 1,211   | 127            | 11.7    | 718     | 491     | -227           | -31.6   |
| Kazakhstan          | -1,625        | -1,073   | 552     | 1,080   | 1,160   | 80             | 7.4     | 2,705   | 2,233   | -472           | -17.4   |
| Ukraine             | -69           | -256     | -187    | 1,428   | 1,048   | -380           | -26.6   | 1,498   | 1,305   | -193           | -12.9   |
| Croatia             | 721           | 131      | -590    | 1,581   | 1,032   | -549           | -34.7   | 860     | 901     | 41             | 4.7     |
| Latvia              | -330          | 377      | 707     | 418     | 997     | 579            | 138.7   | 748     | 620     | -128           | -17.1   |
| Antigua and Barbuda | 1,024         | 964      | -60     | 1,033   | 977     | -56            | -5.4    | 9       | 13      | 4              | 47.0    |
| Sint Maarten        | 619           | 761      | 143     | 698     | 851     | 153            | 21.9    | 80      | 90      | 10             | 12.6    |
| Ghana               | -1,793        | -821     | 971     | 975     | 851     | -125           | -12.8   | 2,768   | 1,672   | -1,096         | -39.6   |
| Barbados            | 761           | 668      | -93     | 813     | 716     | -98            | -12.0   | 52      | 48      | -4             | -8.3    |
| Saint Lucia         | 888           | 647      | -241    | 900     | 658     | -242           | -26.9   | 11      | 10      | -1             | -9.4    |
| Belize              | 447           | 593      | 146     | 508     | 649     | 141            | 27.8    | 61      | 55      | -5             | -8.8    |
|                     |               |          |         |         |         |                |         |         |         |                |         |
|                     |               |          |         |         |         |                |         |         |         |                |         |
| European Union - 27 | -202,475      | -208,232 | -5,758  | 350,791 | 368,749 | 17,958         | 5.1     | 553,266 | 576,981 | 23,715         | 4.3     |
|                     |               |          |         |         |         |                |         |         |         |                |         |

Goods trade data on U.S. Census basis.

**U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2021-2022 (latest data available)**  
(Values in Millions of Dollars)

| Country            | Services Balance |         | Change  | Exports | Exports | Change 2021-2022 |         | Imports | Imports | Change 2021-2022 |         |
|--------------------|------------------|---------|---------|---------|---------|------------------|---------|---------|---------|------------------|---------|
|                    | 2021             | 2022    | 2021-22 | 2021    | 2022    | Value            | Percent | 2021    | 2022    | Value            | Percent |
| World              | 241,938          | 231,823 | -10,115 | 801,143 | 928,530 | 127,387          | 15.9    | 559,205 | 696,707 | 137,502          | 24.6    |
| Ireland            | 54,993           | 61,895  | 6,902   | 76,108  | 84,292  | 8,184            | 10.8    | 21,115  | 22,397  | 1,282            | 6.1     |
| United Kingdom     | 5,769            | 8,533   | 2,764   | 68,270  | 81,985  | 13,715           | 20.1    | 62,501  | 73,452  | 10,951           | 17.5    |
| Canada             | 20,029           | 26,621  | 6,592   | 57,093  | 71,268  | 14,175           | 24.8    | 37,064  | 44,647  | 7,583            | 20.5    |
| Switzerland        | 19,817           | 21,541  | 1,724   | 48,846  | 55,643  | 6,797            | 13.9    | 29,029  | 34,102  | 5,073            | 17.5    |
| China              | 17,986           | 14,872  | -3,114  | 39,430  | 41,494  | 2,064            | 5.2     | 21,444  | 26,622  | 5,178            | 24.1    |
| Germany            | -1,866           | -2,153  | -287    | 32,247  | 40,863  | 8,616            | 26.7    | 34,113  | 43,016  | 8,903            | 26.1    |
| Japan              | 5,153            | -2,438  | -7,591  | 36,648  | 38,334  | 1,686            | 4.6     | 31,495  | 40,772  | 9,277            | 29.5    |
| Mexico             | 2,761            | -631    | -3,392  | 31,054  | 37,700  | 6,646            | 21.4    | 28,293  | 38,331  | 10,038           | 35.5    |
| Singapore          | 22,311           | 23,683  | 1,372   | 31,856  | 34,308  | 2,452            | 7.7     | 9,545   | 10,625  | 1,080            | 11.3    |
| Netherlands        | 11,080           | 13,210  | 2,130   | 23,452  | 27,848  | 4,396            | 18.7    | 12,372  | 14,638  | 2,266            | 18.3    |
| India              | -10,516          | -7,366  | 3,150   | 18,491  | 25,881  | 7,390            | 40.0    | 29,007  | 33,247  | 4,240            | 14.6    |
| France             | -1,514           | -4,325  | -2,811  | 17,045  | 22,391  | 5,346            | 31.4    | 18,559  | 26,716  | 8,157            | 44.0    |
| South Korea        | 6,637            | 7,589   | 952     | 19,212  | 22,249  | 3,037            | 15.8    | 12,575  | 14,660  | 2,085            | 16.6    |
| Brazil             | 9,906            | 15,732  | 5,826   | 15,144  | 21,859  | 6,715            | 44.3    | 5,238   | 6,127   | 889              | 17.0    |
| Australia          | 10,251           | 12,721  | 2,470   | 16,497  | 21,550  | 5,053            | 30.6    | 6,246   | 8,829   | 2,583            | 41.4    |
| Hong Kong          | 1,978            | 437     | -1,541  | 13,917  | 13,073  | -844             | -6.1    | 11,939  | 12,636  | 697              | 5.8     |
| Taiwan             | 95               | -3,517  | -3,612  | 10,018  | 10,261  | 243              | 2.4     | 9,923   | 13,778  | 3,855            | 38.8    |
| Saudi Arabia       | 9,072            | 8,571   | -501    | 10,340  | 10,233  | -107             | -1.0    | 1,268   | 1,662   | 394              | 31.1    |
| Luxembourg         | 6,629            | 7,295   | 666     | 9,131   | 9,771   | 640              | 7.0     | 2,502   | 2,476   | -26              | -1.0    |
| Denmark            | -504             | -2,402  | -1,898  | 9,151   | 9,367   | 216              | 2.4     | 9,655   | 11,769  | 2,114            | 21.9    |
| Italy              | 534              | -1,413  | -1,947  | 6,497   | 9,342   | 2,845            | 43.8    | 5,963   | 10,755  | 4,792            | 80.4    |
| Bermuda            | -21,005          | -23,251 | -2,246  | 9,565   | 8,772   | -793             | -8.3    | 30,570  | 32,023  | 1,453            | 4.8     |
| Spain              | 1,374            | 581     | -793    | 5,711   | 8,525   | 2,814            | 49.3    | 4,337   | 7,944   | 3,607            | 83.2    |
| Colombia           | 3,336            | 1,544   | -1,792  | 7,536   | 7,853   | 317              | 4.2     | 4,200   | 6,309   | 2,109            | 50.2    |
| Sweden             | 3,558            | 3,392   | -166    | 6,738   | 7,197   | 459              | 6.8     | 3,180   | 3,805   | 625              | 19.7    |
| Argentina          | 2,941            | 3,983   | 1,042   | 4,905   | 6,670   | 1,765            | 36.0    | 1,964   | 2,687   | 723              | 36.8    |
| Chile              | 2,637            | 2,554   | -83     | 5,300   | 6,651   | 1,351            | 25.5    | 2,663   | 4,097   | 1,434            | 53.8    |
| Israel             | -2,627           | -3,455  | -828    | 4,990   | 5,763   | 773              | 15.5    | 7,617   | 9,218   | 1,601            | 21.0    |
| Belgium            | -678             | -162    | 516     | 4,055   | 5,347   | 1,292            | 31.9    | 4,733   | 5,509   | 776              | 16.4    |
| Türkiye            | 1,238            | 536     | -702    | 3,366   | 4,254   | 888              | 26.4    | 2,128   | 3,718   | 1,590            | 74.7    |
| Peru               | 2,678            | 2,291   | -387    | 3,971   | 3,822   | -149             | -3.8    | 1,293   | 1,531   | 238              | 18.4    |
| Philippines        | -2,774           | -3,613  | -839    | 2,368   | 3,518   | 1,150            | 48.6    | 5,142   | 7,131   | 1,989            | 38.7    |
| Malaysia           | 588              | 855     | 267     | 2,850   | 3,375   | 525              | 18.4    | 2,262   | 2,520   | 258              | 11.4    |
| Dominican Republic | -2,807           | -3,670  | -863    | 2,567   | 2,968   | 401              | 15.6    | 5,374   | 6,638   | 1,264            | 23.5    |
| Russia             | 2,434            | 1,549   | -885    | 4,238   | 2,847   | -1,391           | -32.8   | 1,804   | 1,298   | -506             | -28.0   |
| Poland             | -495             | -340    | 155     | 1,819   | 2,833   | 1,014            | 55.7    | 2,314   | 3,173   | 859              | 37.1    |
| South Africa       | 1,093            | 1,198   | 105     | 2,209   | 2,821   | 612              | 27.7    | 1,116   | 1,623   | 507              | 45.4    |
| Thailand           | 1,406            | 939     | -467    | 2,436   | 2,807   | 371              | 15.2    | 1,030   | 1,868   | 838              | 81.4    |
| Panama             | 887              | 208     | -679    | 2,306   | 2,608   | 302              | 13.1    | 1,419   | 2,400   | 981              | 69.1    |
| New Zealand        | 1,025            | 1,225   | 200     | 1,837   | 2,546   | 709              | 38.6    | 812     | 1,321   | 509              | 62.7    |
| Norway             | -795             | -1,614  | -819    | 1,726   | 2,483   | 757              | 43.9    | 2,521   | 4,097   | 1,576            | 62.5    |
| Vietnam            | 1,460            | 1,553   | 93      | 1,925   | 2,427   | 502              | 26.1    | 465     | 874     | 409              | 88.0    |
| Indonesia          | 1,333            | 1,490   | 157     | 1,851   | 2,299   | 448              | 24.2    | 518     | 809     | 291              | 56.2    |
| Costa Rica         | -1,486           | -2,143  | -657    | 1,670   | 1,965   | 295              | 17.7    | 3,156   | 4,108   | 952              | 30.2    |
| Nigeria            | 1,137            | 1,247   | 110     | 1,577   | 1,854   | 277              | 17.6    | 440     | 607     | 167              | 38.0    |
| Guatemala          | 603              | 549     | -54     | 1,666   | 1,782   | 116              | 7.0     | 1,063   | 1,233   | 170              | 16.0    |
| Finland            | 263              | 72      | -191    | 1,632   | 1,748   | 116              | 7.1     | 1,369   | 1,676   | 307              | 22.4    |
| Greece             | -1,611           | -3,593  | -1,982  | 1,296   | 1,640   | 344              | 26.5    | 2,907   | 5,233   | 2,326            | 80.0    |
| Austria            | 175              | 208     | 33      | 1,091   | 1,630   | 539              | 49.4    | 916     | 1,422   | 506              | 55.2    |
| Venezuela          | 1,393            | 1,505   | 112     | 1,496   | 1,596   | 100              | 6.7     | 103     | 91      | -12              | -11.7   |
| El Salvador        | 267              | 169     | -98     | 1,349   | 1,487   | 138              | 10.2    | 1,082   | 1,318   | 236              | 21.8    |
| Portugal           | 35               | -596    | -631    | 816     | 1,388   | 572              | 70.1    | 781     | 1,984   | 1,203            | 154.0   |

**U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2021-2022 (latest data available)**  
(Values in Millions of Dollars)

| Country             | Services Balance |        | Change  | Exports | Exports | Change 2021-2022 |         | Imports | Imports | Change 2021-2022 |         |
|---------------------|------------------|--------|---------|---------|---------|------------------|---------|---------|---------|------------------|---------|
|                     | 2021             | 2022   | 2021-22 | 2021    | 2022    | Value            | Percent | 2021    | 2021    | 2022             | 2021-22 |
| Honduras            | 584              | 457    | -127    | 1,381   | 1,362   | -19              | -1.4    | 797     | 905     | 108              | 13.6    |
| Czech Republic      | -130             | -73    | 57      | 1,023   | 1,338   | 315              | 30.8    | 1,153   | 1,411   | 258              | 22.4    |
| Cyprus              | -1,307           | -1,033 | 274     | 1,130   | 1,058   | -72              | -6.4    | 2,437   | 2,091   | -346             | -14.2   |
| Hungary             | 359              | 302    | -57     | 934     | 1,010   | 76               | 8.1     | 575     | 708     | 133              | 23.1    |
| Romania             | 94               | 125    | 31      | 619     | 849     | 230              | 37.2    | 525     | 724     | 199              | 37.9    |
| Jordan              | 60               | -102   | -162    | 646     | 775     | 129              | 20.0    | 586     | 877     | 291              | 49.7    |
| Morocco             | 97               | 98     | 1       | 499     | 734     | 235              | 47.1    | 402     | 636     | 234              | 58.2    |
| Oman                | 273              | 305    | 32      | 471     | 539     | 68               | 14.4    | 198     | 234     | 36               | 18.2    |
| Malta               | -322             | -311   | 11      | 355     | 532     | 177              | 49.9    | 677     | 843     | 166              | 24.5    |
| Bahrain             | -145             | -271   | -126    | 558     | 453     | -105             | -18.8   | 703     | 724     | 21               | 3.0     |
| Nicaragua           | 48               | 71     | 23      | 354     | 448     | 94               | 26.6    | 306     | 377     | 71               | 23.2    |
| Bulgaria            | -62              | -115   | -53     | 318     | 381     | 63               | 19.8    | 380     | 496     | 116              | 30.5    |
| Slovakia            | 28               | 126    | 98      | 245     | 356     | 111              | 45.3    | 217     | 230     | 13               | 6.0     |
| Croatia             | -53              | -172   | -119    | 231     | 315     | 84               | 36.4    | 284     | 487     | 203              | 71.5    |
| Lithuania           | 63               | 85     | 22      | 178     | 269     | 91               | 51.1    | 115     | 184     | 69               | 60.0    |
| Latvia              | 37               | 63     | 26      | 114     | 161     | 47               | 41.2    | 77      | 98      | 21               | 27.3    |
| Slovenia            | 50               | 80     | 30      | 121     | 158     | 37               | 30.6    | 71      | 78      | 7                | 9.9     |
| European Union - 27 | 71,184           | 71,153 | -31     | 202,642 | 241,198 | 38,556           | 19.0    | 131,458 | 170,045 | 38,587           | 29.4    |

Services trade data on balance of payments basis.

**U.S. FDI Abroad (Stock) for Select Trade Partners in Rank Order of FDI, 2021-2022 (latest data available)**  
(Values in Millions of Dollars)

| Country              | FDI Stock |           | Percent Change | Leading FDI Categories Reported                                                            |
|----------------------|-----------|-----------|----------------|--------------------------------------------------------------------------------------------|
|                      | 2021      | 2022      | 2021-22        |                                                                                            |
| World                | 6,368,797 | 6,581,044 | 3.3            | Nonbank Holding Companies, Manufacturing, Finance and Insurance                            |
| United Kingdom       | 1,036,753 | 1,077,519 | 3.9            | Nonbank Holding Companies, Finance and Insurance, Information Services                     |
| Netherlands          | 851,236   | 944,604   | 11.0           | Nonbank Holding Companies, Manufacturing, Finance and Insurance                            |
| Luxembourg           | 616,698   | 605,304   | -1.8           | Nonbank Holding Companies, Finance and Insurance, Manufacturing                            |
| Ireland              | 537,239   | 574,323   | 6.9            | Nonbank Holding Companies, Manufacturing, Information Services                             |
| Canada               | 398,548   | 438,766   | 10.1           | Manufacturing, Nonbank Holding Companies, Finance and Insurance                            |
| Singapore            | 284,630   | 309,441   | 8.7            | Nonbank Holding Companies, Manufacturing, Wholesale Trade                                  |
| Switzerland          | 220,435   | 212,235   | -3.7           | Manufacturing, Nonbank Holding Companies, Wholesale Trade                                  |
| Bermuda              | 236,363   | 206,389   | -12.7          | Nonbank Holding Companies, Finance and Insurance, Manufacturing                            |
| Germany              | 174,510   | 190,237   | 9.0            | Nonbank Holding Companies, Manufacturing, Depository Institutions                          |
| Australia            | 176,552   | 173,653   | -1.6           | Nonbank Holding Companies, Mining, Manufacturing                                           |
| Mexico               | 121,114   | 130,274   | 7.6            | Manufacturing, Nonbank Holding Companies, Finance and Insurance                            |
| China                | 115,734   | 126,104   | 9.0            | Manufacturing, Wholesale Trade, Finance and Insurance                                      |
| France               | 107,702   | 112,017   | 4.0            | Manufacturing, Nonbank Holding Companies, Finance and Insurance                            |
| Hong Kong            | 92,479    | 89,437    | -3.3           | Nonbank Holding Companies, Finance and Insurance, Wholesale Trade                          |
| Brazil               | 72,285    | 80,963    | 12.0           | Manufacturing, Finance and Insurance, Nonbank Holding Companies                            |
| Japan                | 109,543   | 77,489    | -29.3          | Manufacturing, Finance and Insurance, Wholesale Trade                                      |
| Belgium              | 64,543    | 61,456    | -4.8           | Manufacturing, Finance and Insurance, Nonbank Holding Companies                            |
| Sweden               | 58,394    | 60,280    | 3.2            | Nonbank Holding Companies, Manufacturing, Finance and Insurance                            |
| India                | 44,793    | 51,553    | 15.1           | Professional, Scientific, And Technical Services, Manufacturing, Information Services      |
| Israel               | 43,475    | 42,521    | -2.2           | Manufacturing, Information Services, Professional, Scientific, And Technical Services      |
| South Korea          | 41,081    | 36,655    | -10.8          | Manufacturing, Finance and Insurance, Wholesale Trade                                      |
| Spain                | 37,549    | 35,625    | -5.1           | Manufacturing, Nonbank Holding Companies, Professional, Scientific, And Technical Services |
| Chile                | 27,473    | 29,160    | 6.1            | Finance And Insurance, Mining, Manufacturing                                               |
| Barbados             | 32,540    | 28,332    | -12.9          | Finance And Insurance, Manufacturing, Mining                                               |
| Italy                | 26,604    | 26,107    | -1.9           | Manufacturing, Wholesale Trade, Finance and Insurance                                      |
| United Arab Emirates | 15,986    | 16,862    | 5.5            | Mining, Manufacturing, Wholesale Trade                                                     |
| Taiwan               | 16,218    | 16,653    | 2.7            | Manufacturing, Finance and Insurance, Wholesale Trade                                      |
| Thailand             | 15,320    | 15,755    | 2.8            | Manufacturing, Depository Institutions, Wholesale Trade                                    |
| Hungary              | 14,043    | 14,354    | 2.2            |                                                                                            |
| Denmark              | 14,508    | 14,016    | -3.4           | Manufacturing, Nonbank Holding Companies, Information Services                             |
| Norway               | 15,802    | 13,484    | -14.7          | Mining, Information Services, Manufacturing                                                |
| Malaysia             | 12,591    | 13,165    | 4.6            | Manufacturing, Wholesale Trade, Nonbank Holding Companies                                  |
| Egypt                | 11,701    | 12,708    | 8.6            |                                                                                            |
| Argentina            | 13,122    | 12,645    | -3.6           | Manufacturing, Information Services, Nonbank Holding Companies                             |
| Saudi Arabia         | 12,453    | 12,212    | -1.9           | Nonbank Holding Companies, Mining, Wholesale Trade                                         |
| Poland               | 12,375    | 11,960    | -3.4           | Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade           |
| Indonesia            | 12,803    | 11,913    | -7.0           | Mining, Manufacturing, Nonbank Holding Companies                                           |
| New Zealand          | 11,861    | 10,630    | -10.4          | Nonbank Holding Companies, Finance and Insurance, Manufacturing                            |
| Cyprus               | 10,381    | 10,408    | 0.3            |                                                                                            |
| Russia               | 12,268    | 9,637     | -21.4          | Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services           |
| Curacao              | 7,822     | 9,236     | 18.1           |                                                                                            |
| Peru                 | 7,244     | 9,125     | 26.0           | Mining, Wholesale Trade, Manufacturing                                                     |
| South Africa         | 6,607     | 7,394     | 11.9           | Manufacturing, Finance and Insurance, Mining                                               |
| Colombia             | 6,748     | 7,074     | 4.8            | Mining, Manufacturing, Finance and Insurance                                               |
| Mauritius            | 6,637     | 6,989     | 5.3            |                                                                                            |
| Philippines          | 5,327     | 6,163     | 15.7           | Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade           |
| Malta                | 3,053     | 5,869     | 92.2           |                                                                                            |
| Türkiye              | 6,223     | 5,761     | -7.4           | Manufacturing, Wholesale Trade, Finance and Insurance                                      |
| Nigeria              | 6,004     | 5,621     | -6.4           |                                                                                            |
| Czech Republic       | 4,951     | 5,386     | 8.8            | Manufacturing, Wholesale Trade, Information Services                                       |
| Finland              | 4,046     | 4,429     | 9.5            | Manufacturing, Professional, Scientific, and Technical Services, Wholesale Trade           |
| Austria              | 4,058     | 4,051     | -0.2           | Manufacturing, Wholesale Trade, Nonbank Holding Companies                                  |
| Qatar                | 3,487     | 3,917     | 12.3           |                                                                                            |
| Portugal             | 1,945     | 3,830     | 96.9           |                                                                                            |

**U.S. FDI Abroad (Stock) for Select Trade Partners in Rank Order of FDI, 2021-2022 (latest data available)**  
(Values in Millions of Dollars)

| Country             | FDI Stock |           | %<br>Change | Leading FDI Categories Reported                                                  |
|---------------------|-----------|-----------|-------------|----------------------------------------------------------------------------------|
|                     | 2021      | 2022      | 2021-22     |                                                                                  |
| Panama              | 3,546     | 3,775     | 6.5         | Nonbank Holding Companies, Wholesale Trade, Manufacturing                        |
| Marshall Islands    | 3,633     | 3,613     | -0.6        |                                                                                  |
| Vietnam             | 2,764     | 3,504     | 26.8        |                                                                                  |
| Equatorial Guinea   | 2,817     | 3,280     | 16.4        |                                                                                  |
| Venezuela           | 3,089     | 3,246     | 5.1         | Manufacturing, Nonbank Holding Companies, Wholesale Trade                        |
| Romania             | 3,487     | 2,925     | -16.1       |                                                                                  |
| Costa Rica          | 2,525     | 2,906     | 15.1        | Manufacturing, Wholesale Trade, Information Services                             |
| Dominican Republic  | 2,440     | 2,531     | 3.7         | Manufacturing, Information Services, Wholesale Trade                             |
| Oman                | 2,104     | 2,269     | 7.8         |                                                                                  |
| Greece              | 782       | 2,245     | 187.1       | Manufacturing, Wholesale Trade, Professional, Scientific, and Technical Services |
| Tanzania            | 1,355     | 1,403     | 3.5         |                                                                                  |
| El Salvador         | 1,399     | 1,390     | -0.6        |                                                                                  |
| Honduras            | 1,064     | 1,371     | 28.9        |                                                                                  |
| Ghana               | 1,407     | 1,265     | -10.1       |                                                                                  |
| Ecuador             | 902       | 1,000     | 10.9        | Finance and Insurance, Manufacturing, Wholesale Trade                            |
| Iraq                | 1,450     | 997       | -31.2       |                                                                                  |
| Algeria             | 2,237     | 963       | -57.0       |                                                                                  |
| Seychelles          | 897       | 902       | 0.6         |                                                                                  |
| Azerbaijan          | (D)       | 748       | -           |                                                                                  |
| Kuwait              | 621       | 685       | 10.3        |                                                                                  |
| Slovakia            | 689       | 661       | -4.1        |                                                                                  |
| Bangladesh          | 671       | 575       | -14.3       |                                                                                  |
| Macao               | 961       | 552       | -42.6       |                                                                                  |
| Bulgaria            | 596       | 514       | -13.8       |                                                                                  |
| Liechtenstein       | 468       | 447       | -4.5        |                                                                                  |
| Serbia              | 412       | 384       | -6.8        |                                                                                  |
| Morocco             | 385       | 379       | -1.6        |                                                                                  |
| Libya               | 325       | 355       | 9.2         |                                                                                  |
| Nicaragua           | 287       | 334       | 16.4        |                                                                                  |
| Lebanon             | 281       | 304       | 8.2         |                                                                                  |
| Bolivia             | 163       | 296       | 81.6        |                                                                                  |
| Kenya               | 306       | 277       | -9.5        |                                                                                  |
| Angola              | -35       | 255       | -828.6      |                                                                                  |
| Lithuania           | 229       | 242       | 5.7         |                                                                                  |
| Zimbabwe            | 345       | 238       | -31.0       |                                                                                  |
| Croatia             | 225       | 234       | 4.0         |                                                                                  |
|                     |           |           |             |                                                                                  |
|                     |           |           |             |                                                                                  |
| European Union - 27 | 2,550,271 | 2,691,329 | 141,058     | Nonbank Holding Companies, Manufacturing, Finance and Insurance                  |
|                     |           |           |             |                                                                                  |

(D) indicates that the data in the cell have been suppressed to avoid disclosure of data of individual companies.





**UNITED STATES TRADE REPRESENTATIVE**

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20508

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