2017 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

Office of the United States Trade Representative

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FOREWORD

SCOPE AND COVERAGE

The 2017 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 32nd in an annual series that highlights significant foreign barriers to U.S. exports. This document is a companion piece to the President's Trade Policy Agenda published by USTR in March.

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

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

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

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

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

- Sanitary and phytosanitary measures and technical barriers to trade;

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

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

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

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

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

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

- Digital trade barriers (*e.g.*, restrictions and other discriminatory practices affecting cross-border data flows, digital products, Internet-enabled services, and other restrictive technology requirements); and

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

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 highlights both ongoing and emerging barriers to U.S. telecommunication services and goods exports used in the review called for in Section 1377.

To highlight the growing and evolving trade using or enabled by electronic networks and information and communications technology, and reflecting input from numerous stakeholders, relevant country chapters include a dedicated section on barriers to digital trade. This section addresses all issues that are integral to the digital economy including those barriers formerly categorized under "electronic commerce." The section will highlight ongoing and emerging barriers such as restrictions and other discriminatory practices affecting cross-border data flows, digital products, Internet-enabled services, and other restrictive technology requirements. This adjustment will ensure that the information presented in the NTE reflects market developments for U.S. exports.

The NTE continues to highlight the increasingly critical nature of standards-related measures (including testing, labeling and certification requirements) and sanitary and phytosanitary (SPS) measures to U.S. trade policy, to identify and call attention to problems and efforts to resolve them during the past year and to signal new or existing areas in which more progress needs to be made. Standards-related and SPS measures serve an important function in facilitating international trade, including by enabling small and medium sized enterprises (SMEs) to obtain greater access to foreign markets. Standards-related and SPS measures also enable governments to pursue legitimate objectives such as protecting human, plant, and animal health, the environment, and preventing deceptive practices. But standards-related and SPS measures that are nontransparent and discriminatory can act as significant barriers to U.S. trade. Such measures can pose a particular problem for SMEs, which often do not have the resources to address these problems on their own.

USTR will continue to identify, review, analyze, and address foreign government standards-related and SPS measures that affect U.S. trade. USTR coordinates rigorous interagency processes and mechanisms, through the Trade Policy Staff Committee and, more specifically, through specialized TBT and SPS subcommittees. These TPSC subcommittees, which include representatives from agencies with an interest in foreign standards-related and SPS measures, maintain an ongoing process of informal consultation and coordination on standards-related and SPS issues as they arise.

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

USTR continues to vigorously scrutinize foreign labor practices and to address substandard practices that impinge on labor obligations in U.S. free trade agreements (FTAs) and deny foreign workers their internationally recognized labor rights. USTR has also introduced new mechanisms to enhance its monitoring of the steps that U.S. FTA partners have taken to implement and comply with their obligations under the environment chapters of those agreements. To further these initiatives, USTR has implemented interagency processes for systematic information gathering and review of labor rights practices and environmental enforcement measures in FTA countries, and USTR staff regularly works with FTA countries to monitor practices and directly engages governments and other actors. The Administration has reported on these activities in the 2016 Trade Policy Agenda and 2015 Annual Report of the President on the Trade Agreements Program.

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

This report discusses the largest export markets for the United States, including 58 countries, the European Union, Taiwan, Hong Kong, and one regional body. The discussion of Chinese trade barriers is structured and focused to align more closely with other Congressional reports prepared by USTR on U.S.-China trade issues. The China section includes cross-references to other USTR reports where appropriate. As always, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

NTE sections report the most recent data on U.S. bilateral trade in goods and services and compare the data to the preceding period. This information is reported to provide context for the reader. The merchandise trade data contained in the NTE are based on total U.S. exports, free alongside (f.a.s.)[ii] value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce (NOTE: These data are ranked in an Appendix according to the size of the export market). The services data are drawn from the October 2015 Survey of Current Business, compiled by the Bureau of Economic Analysis in the Department of Commerce (BEA). The direct investment data are drawn from the September 2015 Survey of Current Business, also from BEA.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

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

With respect to investment barriers, there are no accepted techniques for estimating the impact of such barriers on U.S. investment flows. For this reason, no such estimates are given in this report. The NTE

includes generic government regulations and practices which are not product specific. These are among the most difficult types of foreign practices for which to estimate trade effects.

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

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

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Endnotes:

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

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

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

The United States led efforts to launch the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-bribery Convention). In November 1997, the United States and 33 other nations adopted the Anti-bribery Convention, which currently is in force for 41 countries, including the United States. The Anti-bribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe (for additional information, see http://www.export.gov/tcc and http://www.oecd.org).

The United States also played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anticorruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of December 2016, there were 181 parties, including the United States.

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

The United States continues to push its anticorruption agenda forward. The United States promotes transparency and reforms that specifically address corruption of public officials. The United States led other countries in concluding multilateral negotiations on the World Trade Organization (WTO) Trade Facilitation Agreement which contains provisions on transparency in customs operations and avoiding conflicts of interest in customs penalties. The United States has also advocated for increased transparency of government procurement regimes as a way to fight corruption, including in the WTO Government Procurement Agreement, which contains a requirement for participating governments and their relevant procuring entities to avoid conflicts of interest and prevent corrupt practices. The United States is also playing a leadership role on these issues in APEC and other fora.

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

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $1.8 billion in 2016, a 23.3 percent decrease ($542 million) over 2015. U.S. goods exports to the Philippines were $8.3 billion, up 4.5 percent ($355 million) from the previous year. Corresponding U.S. imports from the Philippines were $10 billion, down 1.8 percent. Philippines was the United States' 31st largest goods export market in 2016.

U.S. exports of services to the Philippines were an estimated $2.5 billion in 2015 (latest data available) and U.S. imports were $5.4 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $3.9 billion in 2014 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $47 million.

U.S. foreign direct investment (FDI) in the Philippines (stock) was $4.7 billion in 2015 (latest data available), a 3.8 percent increase from 2014. U.S. direct investment in Philippines is led by manufacturing, professional, scientific, and technical services, and nonbank holding companies.

The United States and the Philippines meet regularly under the bilateral Trade and Investment Framework Agreement (TIFA) to address issues and consider ways to deepen economic relations. The Philippines has preferential trade agreements with a range of trading partners, including China, Australia, and New Zealand, which have eroded the competitiveness of U.S. products in the Philippines. The Philippines also is party to the ASEAN trade agreement, under which it has eliminated tariffs on approximately 99 percent of all goods from ASEAN trading partners.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Toy Standards

The Philippine Congress has been considering three bills related to toy safety over the last several years, and these bills were reintroduced in August 2016 in the new Congress. Two bills, which are based on earlier legislation previously passed by the Philippines House of Representatives—but not by the Senate—are under consideration by the House of Representatives again. The third bill, under consideration by the Philippines Senate, is based on an earlier draft of the previous legislation passed by the House. The House bills would regulate the importation, sale, and manufacture of children's toys and related products. U.S. stakeholders have expressed concern that the bills do not establish an age limit on "childcare articles," which could potentially extend the application of the regulation to products intended to children of all ages, while international standards limit the definition of childcare articles to children age three and under. The bill would also direct the Philippines Food and Drug Administration to prepare a list of potentially harmful chemicals and substances used in the production of children's products, including antimony, arsenic, cadmium, chromium, lead, mercury, and phthalates. The United States will monitor this issue to determine whether the list developed differs from the international standard (ISO 8124), on which the existing Philippine national standard for toys is based.

Sanitary and Phytosanitary Barriers

Meat Handling Regulations

The Philippines maintains a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local "wet" markets. Under this system, the Philippines imposes more burdensome requirements on the sale of frozen meat, which is primarily imported, than it does on the sale of freshly slaughtered meat, which is only from animals raised domestically. The United States continues to press the Philippine government to remove the unscientific requirements placed on frozen meat.

Import Clearance

The Philippine Department of Agriculture (DA) requires importers to obtain a sanitary and phytosanitary permit prior to shipment of any agricultural product and to transmit the permit to the exporter. This requirement adds costs, complicates the timing of exports, and prevents the transshipment to the Philippines of products intended for other markets. It also prevents an exporter from reselling an imported product if the importer refuses to accept delivery or abandons the shipment. On November 23, 2016, the DA announced that it was revoking existing permits and suspending issuance of new permits. Permit holders were required to go through a lengthy validation process for existing permits. The DA took this action without prior notification or consultation with importers and did not make the details of the validation process available in advance to importers who held existing permits. Starting December 1, 2016, the process for new permits now includes a requirement that permits be signed by the Secretary of Agriculture or his or her Chief of Staff, introducing further delays in issuance. The United States continues to work with the Philippine government to ensure that the new process does not hamper trade.

Agricultural Biotechnology

In December 2015, the Supreme Court of the Philippines struck down a 2002 administrative order that outlined the rules and regulations for importing and releasing into the environment genetically engineered crops. The Court's ruling imposed a temporary ban on biotechnology imports until the Department of Agriculture could draft new regulations conforming to the decision. A Joint Department Circular drafted by an interdepartmental working group was approved in March 2016, and replaced the old biotechnology regulations.

On August 18, 2016, the Philippine Supreme Court reversed its December 2015 decision. However, the Joint Department Circular remains in place and the import of genetically engineered crops requires the approval of five agencies The United States is working the Philippine government to ensure that the process is transparent and the renewals are approved expeditiously.

IMPORT POLICIES

Tariffs

The Philippines' simple average MFN applied tariff is 6.3 percent. Six percent of its applied tariffs are 20 percent or higher. All agricultural tariffs and 61.9 percent of non-agricultural tariff lines are bound under the Philippines' WTO commitments. The simple average bound tariff in the Philippines is 23.5 percent. Products with unbound tariffs include certain automobile, chemical, plastic, vegetable textile fiber, footwear, headgear, fish, and paper products. Applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products, including frozen fries, are between 7 percent and 15 percent (except dates and figs, which have a 3-percent MFN tariff),

whereas bound rates are much higher at 35 percent and 50 percent. Tariffs on fresh potatoes remain applied and bound at 40 percent.

High in-quota tariffs for agricultural products under the Philippines' tariff-rate quota program, titled the Minimum Access Volume (MAV) system, significantly inhibit U.S. agricultural exports to the Philippines. Under the MAV system, the Philippines imposes a tariff-rate quota on numerous agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products. In-quota tariffs range from 30 percent to 50 percent. Sugar has the highest in-quota tariff at 50 percent, followed by rice, coffee, poultry, and potatoes at 40 percent. The in-quota tariff for corn is 35 percent, while pork and raw coffee have in-quota tariffs of 30 percent. Since 2005, the Philippines has maintained MAV levels at its Uruguay Round commitments despite dramatically increasing demand in the Philippine market for products subject to the MAV. The Philippine government increases in-quota volumes of affected MAV commodities in times of shortages, but because of its lack of predictability, the practice does not serve to relax the Philippines' restrictive agricultural import regime.

Quantitative Restrictions

The Philippine National Food Authority (NFA) controls rice imports through quantitative restrictions and provides price support to rice growers. The NFA's stated objectives are to achieve self-sufficiency and to ensure sufficiently high and stable food prices to enhance farm incomes and alleviate rural poverty. The NFA's policies have contributed to the sector's lack of competitiveness by reducing incentives for farmers to minimize production costs and improve efficiency.

Pursuant to Annex 5 of the WTO Agreement on Agriculture, the Philippines had maintained a rice quota of 350,000 metric tons (MT), but that special treatment expired on June 30, 2012. In July 2014, the WTO approved an extension of the Philippine rice quantitative restrictions until 2017. The 2014 to 2017 extension is covered by a waiver of the Philippine obligation to convert quantitative restrictions on agricultural imports into tariff measures. In exchange for the extension, the Philippine cut its MFN rice import tariff from 40 percent to 35 percent, and increased the MAV quota from 350,000 MT to 805,200 MT.

In connection with the WTO approval of the extension of rice special treatment, the United States and the Philippines reached a bilateral agreement on Philippine agricultural concessions in June 2014. As part of this agreement, the Philippines reduced tariffs on a variety of agricultural products, including buttermilk, cheese, grapes, frozen potatoes, poultry, and walnuts, covering over $66 million of U.S. agricultural exports to the Philippines.

Although the Philippine National Economic and Development Authority has announced that the Philippines will not seek to extend the quantitative restrictions on rice beyond the July 1, 2017 expiration date, the Department of Agriculture has stated it will pursue a two-year extension to prepare farmers to compete with other ASEAN rice-producing countries. With expiration of the rice QR, the United States may to lose concessions granted as part of the 2014 bilateral concessions agreement. The United States will continue to closely monitor this situation and the potential impacts on the agricultural trade concessions obtained in 2014

Automobile Sector

The Philippines continues to apply high tariffs on finished automobiles and motorcycles, including a 30-percent tariff on passenger cars; tariffs of 20 percent to 30 percent on vehicles for the transport of goods; and tariffs of 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. New vehicle imports from ASEAN countries and Japan benefit from preferential tariffs under the ASEAN

Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement, respectively. The Philippines continues to extend duty-free treatment on imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments.

Motor vehicle production is a priority sector under the Philippine Motor Vehicle Development Program. This program, implemented by the Board of Investments, is designed to spur exports and encourage local assembly through low tariffs on components. A 1-percent tariff applies to completely knocked-down kits imported by participants registered under the program. The policy also prohibits the importation of used motor vehicles.

The manufacture and assembly of motor vehicles, parts, and components is also a preferred activity under the 2014-2016 Philippine Investment Priorities Plan (*see Subsidies section below*). In 2015, the Board of Investments implemented a six-year Comprehensive Automotive Resurgence Strategy program that aims to revive the automotive industry by providing approximately $600 million worth of fiscal incentives to domestic carmakers and parts manufacturers. Registered participants must comply with performance-based terms and conditions, including minimum output a of 200,000 car units within the program period and domestic production of body shell and large plastic parts assemblies.

Customs Barriers

Reports of corruption and irregularities in customs processing persist, including undue and costly delays (*e.g*., irregularities in the valuation process, 100-percent inspection and testing of some products, and customs officials seeking the payment of unrecorded facilitation fees). In particular, despite a firm commitment to the United States from the Bureau of Customs to use transaction values to assess duties on imports, as provided for in the WTO Customs Valuation Agreement, importers have reported that the Bureau of Customs continues to use reference prices for valuation of meat and poultry. The Bureau of Customs has reportedly assigned a single reference value for all "other" pork offal (jowls, ear base, tongue, etc.), which does not reflect actual prices. Traders have reported that reference prices are frequently well above the transaction prices, which has the effect of imposing an artificially high tariff.

In May 2016, the Philippine Customs Modernization and Tariff Act became law, mandating the automation of nearly all customs transactions and the modernization of customs operations. The law also increased the *de minimis* value to PhP10,000 (approximately $205) from PhP10.00 (approximately $0.20) to minimize importation and customs administration costs.

GOVERNMENT PROCUREMENT

Philippine government procurement law imposes a countertrade requirement of 50 percent of the value of the supplier's supply contract for procurements of imported equipment, materials, goods, and services over $1 million in value, with penalties for nonperformance of these obligations. However, the Philippine government has not enforced this requirement during the past few years.

The Philippines is not a signatory of to the WTO Agreement on Government Procurement.

SUBSIDIES

The Philippines offers a wide array of fiscal incentives for export-oriented investment, particularly investment related to manufacturing. These incentives are available to firms located in designated export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority. The available incentives include: income tax holidays or exemption from corporate income tax for four years, renewable for a maximum of eight years; after the income-tax-holiday

period, payment of a 5-percent special tax on gross income in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts and supplies, and raw materials; domestic sales allowance of up to 30 percent of total sales; exemption from wharfage dues, imposts, and fees; zero VAT rate on local purchases, including telecommunications, electricity, and water; and exemption from payment of local government fees (*e.g*., mayor's permit, business permit, health certificate fee, sanitary inspection fee, and garbage fee). Additionally, under the Export Development Act (Republic Act No. 7844), exporters are entitled to tax credits, starting from 2.5 percent for the first 5-percent increase in annual export revenue, and additional 5 percent and 7.5 percent for the next two succeeding 5-percent increases in annual export revenues. More than 15-percent revenue increase is entitled to 10-percent tax credit. However, this incentive is not available for exporters already receiving an income tax holiday or VAT exemption or whose local VAT rate is below 10 percent.

The Philippine government also offers incentives to companies for investment in less-developed economic areas and in preferred sectors, as outlined in the Board of Investment's Investment Priorities Plan. The incentives include income tax holidays; tax deductions for wages and certain infrastructure investments; tax and duty exemptions for imported breeding stock and genetic materials; and tax credits on local purchases of breeding stock and materials. An enterprise with less than 60 percent Philippine equity may receive incentives if its projects are classified as "pioneer" under the Omnibus Investments Code. Pioneer status can be granted to Board of Investments-registered enterprises engaged in the production of new products or using new methods, producing goods deemed highly essential to the country's agricultural self-sufficiency program, or producing or utilizing non-conventional fuel sources. Firms with more than 40 percent foreign ownership that export at least 70 percent of production and Filipino-owned firms (defined as firms with more than 60 percent Filipino ownership) that export 50 percent of production also qualify for incentives under the Omnibus Investments Code.

The Philippines has not filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures since 1997. The United States has met bilaterally with the Philippines to urge it to submit a WTO subsidies notification and to offer technical assistance. In 2010, the Philippines became subject to the WTO prohibition of export subsidies under Article 3.1(a) of the Subsidies Agreement, having graduated from the Annex VII(b) list of developing countries exempted from the prohibition. In its last WTO Trade Policy Review in 2012, the Philippines maintained that it does not provide export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Philippines was not listed in the 2016 Special 301 Report, and there have been significant improvements in the Philippine IPR environment in recent years. Nonetheless, U.S. rights holders report some concerns, including increasing online piracy, counterfeit drugs, and weak provisions in patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. They have expressed concerns about the continued availability of pirated and counterfeit goods in the Philippines, slow investigation of IPR-related cases by the Department of Justice, and judicial inexperience in handling IPR enforcement cases, both civil and criminal. The United States has also been monitoring the development of new regulations related to geographical indications. The United States continues to engage bilaterally with the Philippines to address these concerns.

SERVICES BARRIERS

Telecommunications

Philippine regulators have defined telecommunications services as a public utility, which under the Philippine Constitution limits foreign-equity ownership in telecommunications companies to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of

foreign directors allowed is tied to the proportion of foreign investment in the company. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. However, efforts to liberalize the foreign investment regime in the telecommunications sector suffered a setback in 2013 when the Philippine Securities and Exchange Commission, based on a 2011 Philippines Supreme Court ruling, upheld an expansive interpretation of what constituted a utility. This action effectively limited foreign ownership to levels set out in the Philippines' GATS schedule.

The Philippines also applies the public utility designation to value-added services, which is particularly burdensome to service suppliers and inconsistent with international practice. Finally, foreign equity in private radio communications is limited to 20 percent, and foreign ownership of cable TV and all other forms of broadcasting and media is prohibited.

Insurance

While the Philippines' GATS commitments only bind foreign ownership in the insurance sector to 51 percent, in practice the Philippines permits up to 100-percent foreign ownership. Regulations issued in January 2015 by the Philippine Insurance Commission that implement revised capital requirements and a phased 2016-2022 capital/net worth build-up program no longer impose higher capitalization requirements based on the degree of foreign equity.

Generally, only the state-owned Government Service Insurance System may provide insurance for government-funded projects. A 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from this insurance system at least to the extent of the government's interest.

The Insurance Code provides that all insurance companies operating in the Philippines, before entering into outward foreign reinsurance arrangements, first seek to cede excess risks to other insurance companies authorized to do business in the country. Insurance companies operating in the country must also cede to the industry-controlled Philippine National Reinsurance Company at least 10 percent of outward reinsurance placements.

Banking

Although qualified foreign banks may own up to 100 percent of domestically incorporated banks or enter the market as foreign branches, ownership restrictions apply to non-bank investors. Foreign individuals and non-bank enterprises may not own more than 40 percent of the total voting stock in a domestic commercial bank, nor own more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five sub-branch offices each. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

Other Financial Services

Republic Act 10881, passed into law in July 2016, lifted the 60-percent foreign ownership ceiling for financing and securities underwriting companies, the 40-percent foreign ownerships cap for insurance adjustment firms, and the majority Filipino ownership requirement under the 2007 Lending Company Regulation Act, which covers credit enterprises not clearly under the scope of other laws.

Audiovisual Services

The Philippine Constitution prohibits foreign investment in mass media.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. Philippine law defines "public utility" to include a range of sectors, including water and sewage treatment, electricity transmission and distribution (not electricity generation), telecommunications, and transport. All executive and managing officers of public utility companies must be Philippine citizens, and foreign investors may serve on governing bodies only in proportion to their equity.

Professional Services

The Philippine Constitution limits licensing for the practice of professions to Philippine citizens. As dictated by the Foreign Investment Negative List, only Philippine citizens can practice in the following professions: pharmacy, radiologic and x-ray technology, criminology, and forestry. Foreigners are allowed to practice those professions not specifically prohibited under the Philippine Constitution, if their country allows reciprocity for Philippine citizens. These include professions such as medicine, nursing, dentistry, accountancy, architecture, engineering, criminology, teaching, chemistry, environmental planning, geology, interior design, landscape architecture, and customs brokerage.

Express Delivery Services

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Retail Trade

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-up capital of $2.5 million or more, an $830,000 minimum investment per store, and parent company net worth of over $200 million. In addition, the retailer must either own at least five retail stores elsewhere or have at least one outlet with capitalization of $25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is $250,000, and the net worth of the parent company must exceed $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

INVESTMENT BARRIERS

The Philippines has significant restrictions on foreign investment. The Foreign Investment Negative List enumerates foreign investment restrictions in two parts: List A details restrictions mandated by the Constitution or in specific laws, and List B sets out restrictions mandated by the government for reasons of national security, defense, public health and morals, and the protection of small- and medium-sized

enterprises. Foreign investment in sectors from the negative list may be prohibited outright (*e.g*., mass media, practice of professions, small-scale mining) or subject to limitation (*e.g*., natural resource extraction and construction or repair of locally funded public works). The current list was issued in May 2015. The Philippine Securities and Exchange Commission monitors corporations' compliance with the foreign equity restrictions mandated under the Foreign Investment Negative List.

The Philippine Constitution prohibits foreigners from owning land in the country, but allows for a 50-year lease, with one 25-year renewal. An ambiguous deed and property system can make it difficult to establish clear ownership of leased land, however, and an inefficient judiciary results in land disputes that can extend indefinitely. U.S. investors report that these disputes can be a particularly significant barrier to investment in mineral exploration and processing sectors.

Trade-Related Investment Measures

The Board of Investments imposes a higher export performance requirement on foreign-owned enterprises (70 percent of production) than on Philippine-owned companies (50 percent of production) when providing incentives under the Investment Priorities Plan.

BARRIERS TO DIGITAL TRADE

Internet Services

Philippine regulators occasionally have required cloud service providers to obtain a value-added telecommunications services license, and these licenses are only available to Filipino companies. Removing limitations on foreign participation in the information communication technology sector has been a longstanding U.S. request, and given the importance of cloud computing to U.S. companies, the restrictions severely limit commercial opportunities for U.S. firms. The United States will continue to press the Philippines to address these issues.

Cloud services companies also may be hampered by government procurement rules. In January 2017, the Department of Information and Communications Technology (DICT) released a circular requiring government agencies to procure cloud services from cloud service providers accredited by *GovCloud*. *GovCloud* is a public service cloud infrastructure set up by DICT for use of Philippine government agencies.

OTHER BARRIERS

Corruption is a pervasive and longstanding problem in the Philippines. Both foreign and domestic investors have expressed concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking, as well as about the lack of transparency in judicial and regulatory processes. Concerns also have been raised about courts being influenced by bribery and their improperly issuing temporary restraining orders to impede legitimate commerce. The United States will continue to urge the Philippines to address these issues.