

**2019 Coalition of Services Industries (CSI) Submission:  
Comments for the National Trade Estimate Report on Foreign Trade Barriers  
Docket Number USTR-2019-0012**

**Overview**

The Coalition of Services Industries (CSI) appreciates the opportunity to submit comments identifying significant barriers to U.S. exports services and U.S. foreign direct investment to the Office of the United States Trade Representative to assist in the preparation of the National Trade Estimate Report on Foreign Trade Barriers (NTE).

Services account for over 75 percent of the American workforce and nearly 80 percent of U.S. gross domestic product (GDP) and are a major input in manufacturing to agriculture.<sup>1</sup> U.S. services exports and investment support nearly 10 million U.S. services jobs as well as the many more U.S. services jobs resulting from global supply chains.<sup>2</sup>

Moreover, the number of jobs in the United States related to services exports has grown sharply in recent years, rising by 40 per cent between 2005 and 2015, according to the OECD's Trade in eEmployment (TiM) Database.<sup>3</sup>

CSI, established in 1982, is the leading U.S. industry association devoted exclusively to ensuring America's services businesses, which are increasingly digitally enabled, and workers compete in world markets. CSI member companies represent a broad spectrum of the U.S. services sector including distribution services, express delivery, financial services, media and entertainment, telecommunications, information and communication technology services, and professional services.

These services allow all businesses to be more productive, reach more customers in more foreign markets, and ultimately, support a better livelihood through higher wages and greater opportunities. A 2019 report published by the World Trade Organization (WTO) concluded that services trade can substantially boost the productivity of firms that use services as inputs, while raising the quality of production factors by improving education and the performance of financial markets. In addition, services trade improves welfare, income and growth.<sup>4</sup>

The economic importance of services trade has been magnified by the internet, the rise of digital technologies and software, and the explosion of cross-border data flows. Digital trade, services, and data flows have enabled businesses of all sizes and in all sectors to expand their global reach by integrating staff around the world, building global customer networks, and securing global payments.

Data flows now hold more economic value than the global goods trade, having grown by 45 times since 2005, and are projected to grow by another nine times by 2020. All current digital technologies such as cloud computing, artificial intelligence (AI), Internet of Things (IOT) and related digital services, as well as future technologies, depend on reliable and secure cross-border data flows.<sup>5</sup>

Digital services and platforms are also a major democratizing force in global trade. Online marketplaces give small businesses access to customers around the world, and digital technologies, software and services make them more efficient. By enhancing the ability of medium and small size companies to participate in trade, digital services and platforms are making trade more inclusive and ensuring a broader distribution of the benefits of globalization. For example, the WTO has projected that by

adopting digital technologies, developing countries could increase their share of global services trade by about 15 per cent.<sup>6</sup>

In the United States, a recent study by the Boston Consulting Group found that if more small and medium-size enterprises used the full range of available digital tools, these businesses could create 2.1 million new U.S. jobs and inject \$357 billion into the economy.<sup>7</sup> While the United States has enjoyed consistent global services trade surpluses and is the world's leading exporter of services, this advantageous competitive position is not guaranteed.

Significant barriers remain for U.S. services firms. These barriers include equity cap limitations, licensing restrictions, and outright bans on foreign investment. Further, because of the important role that data plays in a modern, competitive economy, restrictions on data flows, ICT technologies, and related services also obstruct U.S. services firms from effectively accessing foreign markets. Forced data localization requirements are on the rise globally, with increasingly negative developments in China, India, Indonesia, Russia, Vietnam Tanzania, and other markets that promote local providers and restrict access by U.S. services. Other governments, including the EU, have proposed unilateral tax measures that would discriminate against U.S. companies and violate treaties against double taxation. An increasing range of countries are implementing measures to regulate online communications and video services as traditional public utilities.

These policies impede the ability of all U.S. services firms to supply cross-border services and make investments. The inability to operate cross-border, the loss of efficiency, and increase in costs, ultimately reduce U.S. competitiveness.

Looking ahead, addressing these services and investment barriers is necessary to advance the U.S. economy. Eliminating such barriers could increase U.S. services exports by as much as \$1.4 trillion and support as many as three million new jobs in the United States.<sup>8</sup> Current and prospective trade and investment agreements and negotiations, to which the United States is and/or could be party to, represent a significant opportunity to eliminate these barriers and to boost U.S. services trade and investment worldwide and more U.S. jobs.

The WTO has been and continues to be a critically important foundation for global trade in services rules, commitments and dispute settlement which are central to transparent, fruitful trading relationships and the continued growth of services trade. CSI Members are longstanding supporters of the WTO, including the General Agreement on Trade in Services (GATS), which created a minimum level of market access that has been the starting point for deepening trade relations through bilateral and multilateral trade agreements. Ideally, negotiations undertaken as part of the WTO Joint Statement Initiative on E-commerce will lead to a high-standard digital trade agreement with a broad, globally diverse base of signatories.

Pursuant to the Federal Register Notice, CSI is providing summaries for trade partners of the United States.<sup>1</sup> We present services trade and investment data to outline the related benefits for U.S. services firms and the overall U.S. economy, while also highlighting the barriers that remain.

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<sup>1</sup> CSI is submitting comments for the following countries: Argentina, Australia, Bangladesh, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, the European Union (which includes Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary,

## Argentina

In 2018, the United States exported \$9.1 billion in services to Argentina, and imported \$2.6 billion in services from Argentina, creating a services trade surplus of \$6.5 billion.<sup>9</sup> Sales of services in Argentina by majority U.S.-owned affiliates were \$9.6 billion in 2015.<sup>10</sup> U.S. foreign direct investment (FDI) in Argentina was \$13.7 billion in 2016, a 0.9 percent increase from 2015. U.S. direct investment in Argentina is led by manufacturing, information, and mining.<sup>11</sup>

A bilateral investment treaty between the United States and Argentina went into force in 1991. Under the BIT, U.S. investors have brought forward 20 cases against Argentina, seven of which were decided in favor of the United States, five were settled, and the rest of which are either pending or have been discontinued.<sup>12</sup>

However, several remaining barriers exist:

- **Customs:** Argentina does not have a centralized platform for, and does not allow the use of, electronically-produced airway bills, which would accelerate customs processing and the growth of electronic commerce transactions. Argentina also has not yet ratified the WTO Trade Facilitation Agreement.
- **Government Procurement:** Argentine law establishes a national preference for local industry for most government procurement if the domestic supplier's tender is no more than five percent to seven percent higher than the foreign tender. On November 16, 2016, the government passed a private-public partnership law (No. 27,328) that regulates public-private contracts. The law lowers regulatory barriers to foreign investment in public infrastructure projects with the aim of attracting more foreign direct investment. However, the law contains a "Buy Argentina" clause which mandates at least 33 percent local content for every public project.
- **Audiovisual:** The Argentine government imposes restrictions on the showing, printing, and dubbing of foreign films in Argentina. Argentina charges duties on U.S. film exports based on the estimated value of the potential royalty, rather than the value of the physical materials. The National Institute of Cinema and Audiovisual Arts taxes foreign films screened in local movie theaters. The Media Law, enacted in 2009 and amended in 2015, requires companies to produce advertising and publicity materials locally or to include 60 percent local content, among other local content requirements.
  - In July, INCAA (the National Film and Audiovisual Arts Institute) published Resolution 1050/2018 regulating content quotas for movie theaters. Domestically produced films must represent 30 percent of the volume of content shown, for the entirety of one week per quarter where there is a dedicated screen (that 30 percent content quota was in effect previously, however, the screen could be shared with another film). Under the current regulation, should the exhibitor share the screen with another movie, the local production must be shown for two weeks, or until the quota is fulfilled. Also, in July 2018, ENACOM (National Communications Agency) announced via Resolution 4513 that a 30 percent local content quota would be enforced on free-to-air TV in urban areas (10-15 percent for lesser populated markets). The status of content quotas for Pay TV and streaming services remains unconfirmed in the vacuum left by the delayed Convergence Communications Law.

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Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom), Ghana, Guatemala, Honduras, India, Indonesia, Israel, Jamaica, Japan, Jordan, Kenya, the Republic of Korea, Malaysia, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Poland, Russia, Saudi Arabia, Singapore, Sri Lanka, Switzerland, Taiwan, Thailand, Turkey, Uruguay, Vietnam, and Zambia.

- **Insurance:** Beginning in early 2011, the Argentine insurance regulator (SSN) prohibited cross-border reinsurance. Restrictive reinsurance regulations have been relaxed, but not eliminated fully.
- **Telecommunications:** The Argentinian presidential administration has been considering reforms that would help provide parity in regulatory treatment for offerings from telecom service providers, cable TV providers and satellite pay TV providers, which for legacy reasons have remained subject to different laws. Closer alignment of the nation’s telecom and media regulatory frameworks would serve to ease confusion, promote competition and expand consumer options.
- **Import policy:** In recent years the government of Argentina (“GOA”) has sought to reform the customs agency and has made positive strides. In 2016, the GOA implemented the Comprehensive Import Monitoring System (SIMI) in order to promote competitiveness and facilitate trade, while maintaining sufficient controls to manage risks. The SIMI established three different low-value import regimes (Postal, Express, and General). However, given the challenges that persist in clearing goods through the General import regime, only the Express Courier regime works functionally for e-commerce transactions. Thus, the limits within the Express regime creates serious roadblocks for U.S. companies seeking to export to Argentina. The Express regime limits shipments to packages under 50 kilograms and under \$1000, with a limit of three of the same items per shipment, with duties and taxes assessed. While import certificates/licenses for products are not required, the government limits the number of shipments per year per person to five, which is strictly enforced. U.S. companies have had to stop exporting to Argentina altogether given the complexities within the General regime and the inability to know how many shipments a customer has already received.
- **Taxes on Electronically Supplied Services:** Numerous countries in the Latin America region have already implemented or are in the process of putting place indirect taxes (VAT/GST) on cross border supplies of electronically supplied services (“ESS”). However, in stark contrast to the dozens of other jurisdictions in the world, countries in Latin America are not leveraging global best practices or incorporating the key OECD principles of neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility. Through a newly invented process they are creating an unlevelled playing field. Specifically, governments should utilize the “Non-resident Registration” Tax Collection Model, instead of attempting to implement the “Financial Intermediary” Tax Collection Model that was recently created by the Argentine government and is potentially being replicated in Colombia, Chile, Costa Rica, and other countries.

## Australia

The United States' free trade agreement with Australia entered into force in 2005, leading to greatly increased exports in services and a widening services surplus.<sup>13</sup> In 2018, services exports to Australia reached \$21.9 billion, while services imports from Australia amounted to \$8.2 billion, creating a surplus of \$13.7 billion.<sup>14</sup> Services investment in Australia totaled \$122 billion in 2015, led by nonbank holding companies, mining, and finance/insurance.<sup>15</sup>

The agreement also set up a joint committee for regular review of implementation of the agreement, the overall trade and investment relationship, and committees on specific industries including financial services.<sup>16</sup>

Specific benefits of this trade deal include:

- **Government Procurement:** Under the agreement, the Australian government opened its market for covered government procurement to U.S. suppliers, eliminating preferences for domestic suppliers and committing to use fair and transparent procurement procedures. Since 2015, the Australian government has been negotiating to accede to the WTO's plurilateral Agreement on Government Procurement.<sup>17</sup>

However, barriers for services firms in Australia remain, including:

- **Access and Assistance Bill:** Australia's recently introduced Access and Assistance Bill stands is a significant barrier to trade for U.S. technology companies. The bill's obligations would impose are unprecedented and unworkable. If the bill became law, it would negatively affect the ability of businesses to safely and securely rely on any digital service, the internet, or technology more generally. Legally introduced security vulnerabilities, "backdoors," and other "secret access" capabilities designed to overcome encryption and other security features would have a material impact on any industry relying on technology. Given that the same technology can be sold and used globally, the introduction of such capabilities would not only put at risk the privacy and security of Australian citizens, businesses, and governments, it would undermine privacy and security globally. With this bill, Australia introduces significant risk that may compel foreign technology providers to cease operations in and exports to Australia.
- **Investment:** All non-greenfield investments above \$1.1 billion are screened by the Foreign Investment Review Board. U.S. investors must notify the Australian government and receive prior approval to make investments of five percent or more in the media sector. In addition, state and territorial governments have recently canceled existing foreign investment projects.<sup>18</sup>
- **Customs:** The Australian Parliament passed a GST Low Value Goods bill, which took effect on 1 July 2018. Under this legislation, US business selling as little as AUD\$75,000 as well as platforms of any size, platforms are responsible for registering and collecting and remitting GST. These requirements pose a barrier for US businesses, particularly small businesses.
- **Broadcast Quota:** Under Section 9 of the Australian Broadcasting Authority's Content Standards, and as reaffirmed in the March 2016 Broadcasting Services Standard, 55 percent of all free- to-air television programming broadcast between 6:00 a.m. and midnight must be of Australian origin. In addition, under Section 102 of the Broadcasting Services Amendment Act, pay television channels which include more than 50 percent drama programs in their schedules are required to spend 10 percent of their total drama programming expenditures on new Australian/New Zealand programs. Although the U.S.-Australia Free Trade Agreement capped broadcast quotas for analog TV at the existing 55 percent level, and capped sub-quotas at existing levels, these limitations still pose a barrier to market entry. Moreover, Australia reserved the right to extend these quotas to digital

broadcast TV, though the obligation can apply to no more than three multiplexed channels of any current broadcaster.

## Bahrain

The United States-Bahrain Free Trade Agreement entered into force in August 2006. In 2017, the most recent data available, the United States exported \$344 million and imported \$1 billion in services from Bahrain, creating a deficit of \$700 million.<sup>19</sup> U.S. foreign direct investment in Bahrain in 2016 (latest date available) was \$548 million.<sup>20</sup>

Under the agreement, Bahrain opened its services market wider than any previous free trade agreement (FTA) partner, creating important new opportunities for U.S. financial service providers and companies that offer telecommunications, audiovisual, express delivery, distribution, healthcare, architecture, and engineering services.

Specific benefits through the FTA include:

- **Financial Services:** Parties may not impose limitations on financial institutions based on the number of institutions, value of transactions or assets, total operations, or the composition of persons employed by the institution. Parties also may not restrict the types of entity through which an institution can provide a service. Parties committed to transparent regulations and comment periods whenever possible.<sup>21</sup>
- **Express Delivery:** Parties agreed to maintain open market access for express delivery at a minimum as it existed when the agreement was signed, with opportunities for consultation if necessary. Parties agreed that where a monopoly supplier of postal services competes in providing express delivery, it not act inconsistently with obligations on market access, national treatment, and MFN.<sup>22</sup>
- **Telecommunications:** Covered under broad Cross-Border Trade in Services Chapter. Parties ensured full access and use of public telecommunications networks, and measures preventing anti-competitive practices. The agreement included commitments ensuring fair interconnection of networks, and transparency in telecommunications rulemaking and licensing.

However, despite the success of the trade deal, barriers remain, including:

- **Direct Selling:** Direct selling and multi-level marketing organizations are prevented from operating in Bahrain.

## Bangladesh

The United States' bilateral investment treaty with Bangladesh entered into force in 1989. U.S. foreign direct investment (FDI) in Bangladesh (stock) was \$460 million in 2017, a 0.4% increase from 2016.<sup>23</sup> As a result of this BIT, U.S. companies are allowed to provide services in most sectors in Bangladesh, except in sectors subject to administrative licensing processes.<sup>24</sup> However, barriers remain, including:

- **Investment:** There are significant restrictions on entering highly regulated markets (telecommunications, banking, and insurance); lack of transparency in awarding licenses, transfer of control from domestic to foreign shareholders requires approval by the Bangladesh Bank. The United States and other international companies have raised concerns that the National Board of Revenue has arbitrarily reopened sometimes decades-old tax cases, with particular targeting of cases involving multinational companies.<sup>25</sup>
- **Government Procurement:** The Government of Bangladesh publicly subscribes to principles of international competitive bidding; however, charges of corruption are common. U.S. companies have raised concerns over outdated technical specifications, favoring preferred bidders, and lack of transparency.<sup>26</sup>
- **Telecommunications:** Bangladesh imposes the highest taxes on mobile services of any country in South Asia and a series of taxes imposed at various levels of operation. The Bangladesh Telecommunication Regulatory Commission (BTRC) is in the process of drafting new mobile network tower guidelines. However, the process for drafting these guidelines has been delayed for nearly three years, and draft guidance would impose a cap of 49 percent on foreign ownership of mobile network towers. National Board of Revenue has sought to apply new telecommunication tax policies retroactively.<sup>27</sup>
- **Insurance:** U.S. companies have reported that permission to open branch offices can be politically influenced and, at present, the government of Bangladesh is not permitting new exclusively foreign-owned companies into the insurance market.<sup>28</sup>
- **Electronic Payment Services:** As the Bangladesh Bank prioritizes the adoption of digital payments to facilitate financial inclusion and e-commerce, we urge USTR to ensure that that accompanying policy framework enables the full participation of U.S. firms on a level playing field. One concern is Bangladesh Bank's position as both regulator and market participant in the National Payment Switch (NPSB), a unifying platform for all electronic payments. The NPSB's requirement to route all transactions through this switch creates a formidable barrier for competitors, and hinders security and innovation. Also of concern is a proposed regulation that would require all cards in the market, including U.S.-branded cards, to simultaneously bear the logo of the NPSB's brand. Implementation of these regulations is currently on pause, and CSI urges USTR to ensure that Bank of Bangladesh engages in a consultative process with industry on this regulation and any other potential policies related to digital payments. Fundamental to the uptake of digital financial services is the ability of financial institutions, merchants, ATM operators, and consumers to choose their payment service provider on the basis of value.

## Brazil

In 2018, the most recent data available, the United States exported \$28.3 billion and imported \$6.1 billion in services from Brazil, creating a surplus of \$22.1 billion.<sup>29</sup> U.S. direct investment in Brazil in 2016 totaled \$64.4 billion, a 11.9 percent increase from 2015.<sup>30</sup>

Barriers experienced by U.S. services suppliers operating in Brazil include:

- **Customs:** Brazil's de minimis threshold (Decree No. 1804 of 1980 and Ministry of Finance Ordinance No. 156 of 1999) — for which no duty or tax is charged on imported items — only applies to C2C transactions under \$50. The current level, along with its limited application, is not commercially significant and serves as a barrier to e-commerce, increasing the time and cost of the customs clearance process for businesses of all sizes. In its current form, Brazil's de minimis policy increases transactional costs for Brazilian businesses and restricts consumer choice and competition in the market. We encourage the removal of this barrier to trade by extending the de minimis threshold to both B2C and B2B transactions and increasing the de minimis threshold to a commercially meaningful level.
- **Government Procurement:** Presidential Decree 8135 of November 5, 2013 and subsequent Ordinances (No. 141 of May 2, 2014, and No. 54 of May 6, 2014) required that federal agencies procure e-mail, file sharing, teleconferencing, and VoIP services from Brazilian "federal public entities" such as SERPRO, Brazil's Federal Data Processing Agency. Such measures disrupt the global nature of the ICT industry and disadvantage both access to technology in Brazilian and the ability of U.S. ICT companies to do business in Brazil. Brazilian Government (through the Ministry of Planning and the Ministry of Communications, Science and Technology) announced in August 2016, that Decree 8135 would be revoked. However, actual revocation of such legal imposition has not yet taken place, creating substantial uncertainty.
- **Audiovisual Restrictions:** Government Transparency/Regulatory Streamlining & Modernization: The current regulatory framework includes long and complex decision-making processes that negatively impact telecom operators by increasing technical, marketing, sales, and IT costs. The government should be challenged to enhance the Brazilian economy through the promotion of a digital single market that better harmonizes federal, state, and municipal policies and practices to foster Brazilian competitiveness at a global level. For example, under Brazil's current legal framework and its implementing regulations, companies that have telecoms licenses and their affiliates are subject to certain restrictions on their ability to engage in the following activities (under Brazil's SeAC law):
  - I. Controlling or holding more than 30% of Brazilian broadcasters, programmers or producers;
  - II. Hiring national artistic talent or works of Brazilian authors, with the purpose of producing content for distribution by pay tv or broadcasting providers; and
  - III. Acquiring rights to "events of national interest", also with the purpose of producing content for distribution by pay tv or broadcasting providers.Such prohibitions can not only entail restrictions on FDI, but also harm competition and consumers' welfare. CSI urges USTR to request the Brazilian government to modernize the SeAC law by means either of a legislative process or the issuance of an Executive measure that eliminates Articles 5 and 6 of the Law.
- **Telecommunications:** Brazil has put in place requirements that effectively require in-country testing for almost all information technology and telecommunications equipment sold into the market. These policies layer on additional costs and significantly delay time-to-market for U.S. providers. A mutual recognition agreement (MRA) for telecom equipment would help solve this problem by allowing labs in each country to conduct testing according to the other country's regulations, precluding the need for localized testing. Brazil also maintains a number of local content

requirements related to telecom equipment, including preferential tax exemptions for locally-made products, government procurement preferences for local technology, and requirements that participants in spectrum auctions use telecom equipment with specified portions of local content. We would urge the government to dismantle such industrial policies, which unfairly hamper the competitiveness of U.S. companies in the Brazilian market. The Brazilian National Telecommunications Agency (ANATEL) employs a policy restricting the use of permanent roaming by international machine-to-machine or Internet of Things service providers, with the result that U.S. providers must either invest in local service infrastructure or stay out of the market. This policy puts Brazil out of alignment with other major regulatory regimes that have opted to allow for M2M permanent roaming, with the goal of enabling globally harmonized service provision and avoiding fragmentation of the fast-developing M2M and IoT markets. Despite industry objections, after a public consultation process, ANATEL decided in 2018 that it would continue to prohibit permanent roaming.

- **Media and Entertainment:** Brazil continues to maintain local content quotas for pay television. This is an outdated approach given the wide variety of consumer content choices available through cable and satellite.
- **Data Localization:** Brazil maintains a variety of localization barriers to trade in response to the weak competitiveness of its domestic tech industry. It provides tax incentives for locally sourced information and communication technology (ICT) goods and equipment (Basic Production Process (PPB) – Law 8387/91, Law 8248/91, and Ordinance 87/2013); it offers government procurement preferences for local ICT hardware and software (2014 Decrees 8184, 8185, 8186, 8194, and 2013 Decree 7903); it does not recognize the results of conformity assessment procedures performed outside of Brazil for equipment connected to telecommunications networks (ANATEL’s Resolution 323).
  - The GSI (Institutional Security Office) revised its cloud guidelines and determined that Government data should have some types of data localized. While this is only applicable to government data and these are just guidelines this precedent raises serious concerns.<sup>31</sup>

## Canada

Services have consistently yielded a positive trade balance with Canada. The most recent data places U.S. services exports at \$64.1 billion and imports at \$35.9 billion, producing a \$28.2 billion services trade surplus.<sup>32</sup> U.S. foreign direct investment in Canada was \$363.9 billion in 2016 (latest date available), a 5.0 increase from 2015. U.S. direct investment in Canada is led by manufacturing, nonbank holding companies, and finance/insurance.<sup>33</sup>



### **North American Free Trade Agreement (NAFTA)**

Since its implementation in 1994, NAFTA has afforded U.S. services providers significant market access, particularly in cross-border services and investment, and strong investment protections. These rules and market access commitments have allowed U.S. firms to gain market access particularly in financial services, telecommunications, information technology and retail. NAFTA 1.0 also enabled U.S. services providers to participate in government procurement opportunities in both Canada and Mexico especially in financial and ICT services.

These services sector benefits have produced a bilateral services trade surplus with both Canada and Mexico, and further support a significant number of U.S. jobs. In 2017, U.S. services exports to Canada and Mexico totaled \$91.3 billion and supported nearly 600,000 jobs.

### **U.S.-Mexico-Canada Free Trade Agreement (USMCA)**

The recently negotiated USMCA contains a number of positive elements including a financial services data localization provision, a strong cross border commitment for electronic payment services including national treatment and market access, a strong annex on delivery services, streamlined customs procedures, a strong telecommunications chapter and digital trade provisions. While CSI has concerns with certain USMCA provisions, including ISDS, de minimis and procurement, CSI is supportive of USMCA overall.

The agreement does not, however, remove all trade impediments. We recognize in some instances, impediments listed may be reduced or eliminated if USMCA is enacted and implemented. Impediments include:

- **Broadcast:** The Canadian Radio-television and Telecommunications Commission imposes two types of quotas that determine both the minimum Canadian programming expenditure and the minimum amount of Canadian programming that licensed Canadian television broadcasters must carry. Such quotas are discriminatory and artificially inflate the amount expended on, or the time allocated to, Canadian programming. Moreover, Canadian broadcasting distribution undertakings, such as cable and direct-to-home satellite, must offer more Canadian than non-Canadian services. These protectionist measures inhibit the export of U.S. media and entertainment services. In addition, Canada currently limits foreign ownership in the pay-television market to 20 to 46.7 percent, depending on the specific circumstances.
- **Data:** In 2019 the Office of the Privacy Commissioner (OPC) proposed revising its policy position on transborder data flows under the Personal Information Protection and Electronic Documents Act (PIPEDA), to assert that a company that is disclosing personal information across a border, including for processing, must obtain consent. Although the OPC ultimately withdrew its proposal, it did so with the caveat that it would maintain the status quo only “until the law is changed.”<sup>34</sup> The OPC, and other likeminded regulators and third party groups, continue to advocate within Ottawa for a protectionist approach to privacy legislation that would hinder the cross-border movement of data, and we expect to encounter a similar proposal again in the near future.  
A Canadian legal requirement to obtain consent for the processing of data outside of Canada would impede the flow of data across borders and cause great harm to US businesses. Such a rule would serve as a de facto data localization requirement, as obtaining consent from all Canadian customers, employees, or contractors, or customers would often not be possible. Placing such a restriction on cross-border transfers of data runs counter to Canada’s commitments under the United States-Mexico-Canada Agreement (“USMCA”), which generally prohibits the parties from restricting the flow of personal information between one another (Art. 19.11).
- **E-Commerce:** Any goods valued at over \$20 shipped via an express delivery services company to Canada are subject to cumbersome customs and duty verification, even if no customs and duties are applicable. Additionally, the de minimis threshold remains \$20 for goods shipped through the postal system, which poses a barrier for e-commerce businesses, particularly small businesses.
- **Insurance:** Canada’s regulator OSFI is threatening to severely limit cross-border reinsurance by placing limits on reinsurance cessions to non-Canadian reinsurers. In addition to expected limits on cessions to foreign reinsurers, OSFI will generally not recognize or grant credit for a foreign insurer’s reinsurance arrangement(s) when risks insured in Canada are ceded back to the insurer’s group through affiliated reinsurers. This provision is highly discriminatory against non-Canadian groups and may not be consistent with Canada’s international commitments.
- **Telecommunications:** U.S. firms depend on Canadian facilities-based operators for component parts and critical services, which limits U.S. firms and effectively renders them as resellers.<sup>35</sup>

## Chile

The United States-Chile Free Trade Agreement entered into force in January 2004. The United States-Chile FTA reduces barriers for trade in services, ensures regulatory transparency, guarantees nondiscrimination in the trade of digital products, and commits the Parties to maintain competition laws that prohibit anticompetitive business conduct.<sup>36</sup> U.S. direct investment in Chile is mostly in the finance, insurance, and manufacturing sectors. U.S. services investment in Chile in 2015 was \$9.3 billion.<sup>37</sup>

U.S. exports of services to Chile were an estimated \$5.2 billion in 2018 and U.S. imports were \$1.9 billion, creating a services trade surplus of \$3.3 billion.<sup>38</sup> Sales of services in Chile by majority U.S.-owned affiliates were \$10.4 billion in 2015, while sales of services in the United States by majority Chile-owned firms were \$203 million.<sup>39</sup>

This FTA has yielded a number of benefits, including:

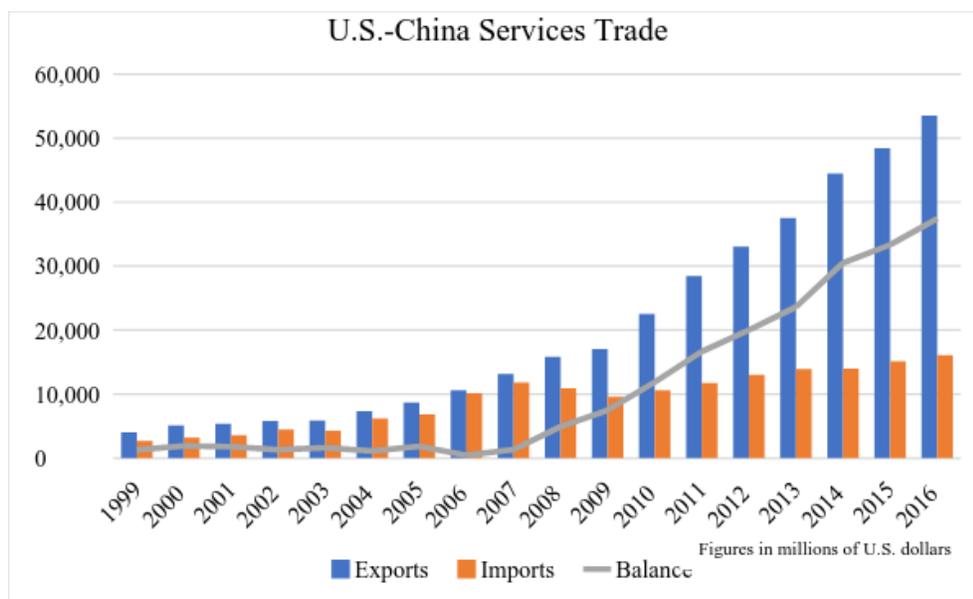
- **Financial Services:** U.S. firms may offer financial services to participants in Chile's highly successful privatized pension system.
- **Transparency:** The Agreement includes transparency rules to ensure that service regulators operate fairly.<sup>40</sup>

There are some industry concerns relating to Chilean requirements in the telecom space, however, as detailed below.

- **Telecommunications:** Chile maintains requirements that two mobile phones out of every shipment must be tested in a Chilean-based lab to ensure compliance with earthquake notification standards. The mandate is unduly burdensome and costly, while imposing a particular burden on SMEs that import in smaller quantities and lack resources to establish local testing facilities. In addition, Chilean regulators created a requirement for country-specific labeling of mobile phones, which must now indicate on their packaging and certain types of advertising material their compatibility with different generations of mobile networks and other highly specific information. The requirement is costly, needlessly detailed and burdensome, as it is required even for phones that operate across all bands and because packaging is often prepared for use across a region and not just in an individual country.
- **Data:** Under Chile's Comision para los Mercados Financieros, its compilation of updated rules (Recopilacion Actualizada de Normas Bancos or "RAN") Chapter 20-7 requires that "significant" or "strategic" outsourcing data be held in Chile. The same requirement is outlined in Circular No. 2, which is addressed to non-banking payment cards issuers and operators. In effect, these regulations can apply to any confidential records. In the case of the international transfer of such data, transfer may occur but duplicate copies of such records must be held in Chile.

## China

In 2017, China was the third largest services export market for U.S. services suppliers. The United States has maintained a services trade surplus with China since 1999 (first data available). In 2018, U.S. services exports to China were \$57.1 billion, while the United States imported \$18.3 billion, resulting in a \$38.9 billion trade surplus in services.<sup>41</sup> Total U.S. services exports to China have seen a 13-fold increase since 1999, which has resulted in the services trade surplus growing from \$1.3 billion to \$37.4 billion, a growth rate of nearly 2,800 percent, in under two decades.<sup>42</sup>



Looking at specific sectors, U.S. services have seen strong performances in the transport, financial services, licensing and intellectual property fees, travel, and business services. These areas represent over 90 percent of the services exports to China. Over the last decade, the United States has increased its financial services exports to China by 347 percent, hitting \$3 billion in 2015. Transport services exports have increased by over 613 percent since 1999, spurred on by extremely strong growth in both air and sea transport. Exports on licensing fees and other charges on intellectual property have increased by 1,291 percent, amounting to \$5.9 billion in 2015. Business services exports, which includes advertising, consulting, legal, and other professional services, has grown by about 112 percent, with over \$3.7 billion worth of business services being exported in 2015.<sup>43</sup>

As a result of GATS, China:

- Committed to national treatment in most services sectors.
- Increased market access on cross border supply (Mode 1) of professional, data processing, information & shipping services.
- Created no significant restrictions on consumption abroad (Mode 2).
- Has pledged to allow commercial presence (Mode 3), but thus far this is generally limited, though various limitations will be phased out in some sectors.
- Limited temporary entry (Mode 4).

U.S. direct investment in China was \$92.5 billion in 2016, a 9.4 percent increase from 2015. U.S. direct investment in China is led by manufacturing, wholesale trade, and nonbank holding companies.<sup>44</sup>

Despite this growth, significant impediments to services trade exist. China has imposed a number of severe restrictions on foreign firms. This includes restrictions on data flows, equity cap limitations, and outright bans on foreign investment. In many instances, China uses national security concerns as a justification, providing an unfair advantage to domestic versus foreign companies.

Other impediments include:

- **Data:** Over the last decade, China has taken wide-ranging steps to ensure that data is locally stored; this includes on e-commerce, insurance, internet-based mapping, and cloud computing, among other areas.<sup>45</sup> Moreover, China's Cyber Security Law and proposed implementing regulations create additional, discriminatory barriers to U.S. services providers. Of particular concern is China's requirement that all Chinese personal data be stored domestically, subjecting U.S. companies to security reviews, including review of proprietary source code for ICT companies, and government review and approval of encryption measures.

In 2019 Chinese regulators proposed two problematic measures that would require network operators to first obtain administrative approval before transferring important or personal data abroad. In addition, a draft cybersecurity review measure also issued in 2019 could potentially be used to hinder the sale of U.S. products and services used in China's critical information infrastructure (CII). The cyber review policy could serve as a significant market access barrier given signs the Chinese government is inclined to broadly define the scope of CII.

- **Cloud Computing:** Draft Chinese regulations, if implemented, combined with existing Chinese laws, would force U.S. cloud service providers to transfer valuable U.S. intellectual property, surrender use of their brand names, and hand over operation and control of their business to a Chinese company in order to operate in China. To address this, the United States should secure China's commitment that it will issue any guidelines necessary to allow U.S. cloud service providers to obtain and hold all necessary licenses for the operation and provision of cloud services in China, including related to software, hardware, facilities, and infrastructure; allow foreign investment in Chinese companies established to provide cloud services in China; allow U.S. cloud service providers to sign contracts for the provision of cloud services in China and use their trademarks and brands to market their cloud services; and allow U.S. cloud service providers to procure telecommunication services (including bandwidth) for the provision of cloud services on the same terms available to Chinese companies.
- **Electronic Payment Services:** U.S. payment firms remain unable to process domestic transactions in China. This is despite China's commitment to open the sector upon joining the WTO in 2006, and agreement to comply with a WTO panel ruling that China must open the market for foreign EPS providers in 2012. CSI urges USTR to hold China accountable to this longstanding commitment, and advance the applications of all U.S. payment companies through the Bank Card Clearing Institution (BCCI) licensing in good faith and in accordance with the timelines established by the People's Bank of China (PBOC)'s own BCCI licensing guidelines.
- **Express Delivery:** China has blocked foreign companies' full access to China's domestic letter and document market, also applying overly burdensome regulatory approaches in China's domestic express delivery market. One such example is the requirement for 100 percent open box inspection, x-ray inspection and shipper ID check for all express shipments. Additionally, express operators are required to have registrations with Post authorities at the local city level. It is very burdensome for

operators to obtain and maintain the registrations, given the number of cities in the express network.

- **Insurance:** China has begun to take steps to open its insurance and retirement securities markets, but access still remains difficult. Foreign insurers have less than a 5 percent cumulative market share in the third largest market in the world. Restrictions include: a 50 percent cap on foreign equity in life, health and pension companies; not yet authorizing any U.S. investment in enterprise annuity; as well as a recent proposal of new regulations to restrict domestic shareholding in foreign-invested insurance companies (both life and property casualty), which will diminish the value of existing investments. Further to equity restrictions in China, there is a 33 percent cap in the securities sector. Furthermore, with the exception of aviation, aerospace, nuclear, oil and credit reinsurance contracts, the amount of proportional business ceded to any one reinsurer in respect of any one risk may not exceed 80% of the sum insured or liability limit of the direct insurance policy. The amount of each facultative cession to an affiliated company of the cedant may not exceed 20% percent of the sum insured or limit of liability of the direct insurance policy.
- **Telecommunications:** China's accession to the WTO permitted it to maintain foreign equity limits on value-added and basic telecommunications services that restricted market access for foreign suppliers. Although there was expectation that China would eventually open up the sector to greater foreign participation, that has yet to occur, and, in fact, China has classified a number of new services as telecommunications services and limit foreign participation in emerging digital services. China's publication of a Telecom Services Catalog in December 2015 expanded regulation and market access barriers to a host of new services not typically regulated, including cloud computing, content delivery networks, and online platforms (under a broadly written provision for Information Services). China's FDI limitations and expansive definition for on value-added services' FDI limitations and high capitalization requirements for basic telecommunications services, and lack of an independent regulator remain key outstanding issues. For example, China imposes a 50 percent equity cap on foreign investment in value-added telecommunications services and limits foreign equity to 49 percent in basic telecommunications services.
- **Securities:** While China has stated that it will increase the ownership cap to 51 percent in securities joint ventures (JVs), U.S. firms are not realizing this opening. It is key to ensure that foreign-owned securities JVs can operate and compete in China on equal terms as domestic firms. Licensing approvals are delayed without transparency. Licensing conditions between existing and new foreign-owned securities firms should be equalized by allowing existing JVs to receive the same number of licenses in one tranche as new JVs. At present old JVs can apply for 2 new licenses every 6 months whilst new JVs can only apply for 4 new licenses in one tranche.
- **Regulation of "Over-the-Top" Providers:** There is increasing interest by foreign governments in subjecting U.S. online services and applications to heavy-handed regulations that impede their cross-border delivery. These measures – often called "Over-the-Top" or "OTT" regulations in foreign markets – take different forms globally. However, it is increasingly common for regulators to seek to impose regulations on online services and applications that only serve to impede development of the digital economy. Some of these objectionable proposals include local presence, and local data storage and/or data retention requirements. Governments should reduce or streamline regulations, where appropriate, on OTT services in order to stimulate competition and greater investment in broadband infrastructure while enabling innovative new services to reach consumers. Additionally, governments should reduce or streamline regulations, where appropriate, on traditional services

providers as markets become more competitive due to the introduction of new digital services and other technological changes. In many cases, the rationale behind these legacy regulations has become obsolete due to technologically-driven changes to the marketplace.

- **Audiovisual:** Despite having an agreement relating to the access of foreign films to the Chinese market, China has artificially impaired the opportunities for U.S. films to China’s growing market, though the renegotiation of the 2012 MOU provides an important opportunity for progress.<sup>46</sup> China blocked foreign investment in online video delivery, recently created a new quota limiting access of U.S. entertainment content, and imposed a new onerous content registration and approval system that disadvantages U.S. TV shows in the market. In addition, China restricts the ability of foreign video-on-demand providers to operate and distribute content in-country.
  - **Import Quotas/Revenue Share:** While China has consistently allowed in a total of 34 foreign revenue-sharing films per year (some must be “enhanced format”) since the U.S.-China Film MOU, China still maintains an official quota of 20 foreign revenue sharing films per year. China restricts U.S. share of revenue to 25 percent.
  - **Government Film Importation and Distribution Monopoly:** The newly-formed China Film Administration (CFA), which replaced the State Administration of Press, Publication, Radio, Film and TV (SAPPRFT), permits only one film importer and two distributors of foreign films, which are both state owned companies, China Film Group and Hua Xia Film Distribution Company Ltd. While China affirmed in the Film MOU that any properly licensed Chinese enterprise may distribute imported films, CFA has yet to approve any new distributors. China Film Group also dictates the release dates and length of theatrical runs of foreign films, often restricting the ability of the U.S. producer to obtain the full value of the film.
  - **Blackout Periods During Peak Seasons:** Historically, the Chinese Government has decreed blackout periods, during which no new foreign imported films may be released, to prevent competition against Chinese films released during the same period. Such blackouts typically occur during summer and Lunar New Year holidays or coincide with political events. Restricting the release of new foreign imported titles during peak season and day-and-date releases not only drives down theatrical revenues, but also contributes to increased unauthorized consumption, as piracy websites and services meet consumer demand for foreign blockbuster titles.
  - **Screen Quota:** Under State Council regulations, public screening of foreign films must not exceed one-third of the total annual screen time. The same screen quota, unfortunately, is maintained in the final Film Promotion Law which took effect on March 1, 2017.
  - **Online Video Restrictions:** China prohibits foreign investment in online video platforms. In recent years, the Chinese Government has issued a number of regulations that further restrict the online media space. In September 2014, the former SAPPRFT issued regulations requiring that websites obtain permits, limit online distribution of foreign content to 30 percent, and modified the content review process. The content review process allows only two windows for approval of content and prohibits provincial authorities from being used for content review. Further, it requires the submission of full seasons of foreign TV series, compared to the previous practice of submitting TV shows on a per-episode basis, which was consistent with international market practice. These rules have substantially cut down on the number of U.S. TV programs licensed in China and resulted in delays in the availability of TV series, effectively curtailing day-and-date releases. The range of policies has undoubtedly led to increased online piracy. Furthermore, in 2016, the government instructed video websites to allow state-owned media enterprises to own “Special

- Management Stakes,” including voting powers in decision making; thus far, platforms have refused to comply.
- On top of the 2014 regulations issued by the former SAPPFT, the new National Administration of Radio and TV is soliciting public opinion on Administrative Rules on the Introduction and Dissemination of Foreign Audio- Visual Programs. These rules propose not only a generic 30 percent cap on foreign content, but also stipulate that the quota be further applied to on a category-by-category basis to genres of film, TV, animation and documentaries and “other” programs, such as education, science and technology, culture, variety and sports. China’s online video policies create uncertainties and have disrupted the growth of China’s online video market.
  - **Restriction on Foreign Participation in Domestic Content Production:** Another draft regulation, Administrative Rules of Foreigners’ Participation in the Production of Domestic Radio and TV Programs, which is currently soliciting public opinion, stipulates that foreigners are not allowed to be hired as radio and television hosts except for gala performances co-produced with foreign broadcasters as well as for international channels. Foreigners employed in the production team in a domestic TV drama, variety show or talk show are not allowed to exceed one-fifth of the total personnel in the same category. Both the screenwriter and the director of a TV drama may not be held by foreigners at the same time, and both the male and female leading roles in a domestic play may not be held by foreigners at the same time. Such rules would limit producers’ rights to employ foreign talent.
  - **Film Development Fund:** In March 2016, the former SAPPFT issued a notice allowing the refund of a certain percentage from the Film Development Fund collection to cinemas that report favorable annual box office receipts from the screening of Chinese films. Under the notice, if 66 percent of a cinema’s total annual gross box office comes from Chinese films, that cinema will receive a 50 percent refund of the money generated from Chinese films within the five percent of box office that the cinema contributed to the Film Fund. This incentivizes cinemas to screen more Chinese domestic films, further disadvantaging foreign films’ ability to compete in the Chinese market.
  - **Censorship:** The China Film Administration (CFA) and the State Administration of Radio and Television (SART), their local branches at the provincial level, and Chinese Central Television perform various censorship functions related to film, video, television and online content. Piracy websites and services freely and easily move unauthorized content into the market with no censorship concerns or delays. China should adopt a voluntary, age-based classification system that would help eliminate this disparity, or ensure that its censorship process is transparent, predictable, and expeditious.
  - **Foreign Investment Restrictions:** China limits foreign investment in cinemas, film production companies and in-home video distribution companies to 49 percent. These restrictions effectively require U.S. companies to partner with Chinese entities, which can create uncertainties about ownership of IP and creative control. China prohibits all foreign investment in television, including for television production companies. Foreign investments are also prohibited in pay-TV and online video platforms. Such discriminatory foreign investment restrictions limit the ability of U.S. content creators and distributors to compete in large swaths of China’s audiovisual market and inhibit growth in these sectors.
  - **Television Quotas:** China limits foreign TV and film programming to no more than 25 percent of total airtime. China bans foreign programming during prime time between 7:00 and 10:00 p.m. Foreign TV series and movies are limited to 50 episodes. China restricts foreign animation to no more than 40 percent of total airtime, and importers of foreign animation must produce a like amount of domestic animation. Furthermore, foreign content

- on pay-TV cannot exceed 30 percent of daily programming on a domestic pay-TV channel. China further prohibits the retransmission of the entirety of a foreign channel on pay-TV.
- **Retransmission of Foreign Satellite Signals:** The U.S. motion picture industry is almost totally excluded from China's pay-TV market. Local cable networks are prohibited from carrying foreign satellite channels without government approval or landing permits, which are limited to Guangdong province and a handful of foreign channels. Furthermore, foreign satellite channels beaming into China are required to downlink from a government-owned encrypted satellite platform, and these channels may only be shown in three-star hotels and above, and in foreign expatriate compounds. The annual fee for each channel remains excessively high at \$100,000.
  - **Regulations on Home Video Licensing Agreements:** The government requires that copyright owners enter into home-video license agreements of not less than three years' duration with their licensees in China – an unnecessary intrusion into copyright owners' contractual rights.
  - **Video Rights:** When Chinese entities contract for the rights to distribute film and television titles in various home video formats, the differentiation between rights for home-use or public use are often ignored. As a result, U.S. content is frequently used for unauthorized public performance. For example, some Chinese pay-TV operators or digital licensees distribute U.S. content to hotels or to increasingly popular VOD mini-cinemas and chains for public viewing, without permission. In March 2018, China's regulations on VOD mini cinemas and chains came into effect. Rather than trying to legitimize the operations of these VOD mini cinemas and chains which regularly screen U.S. content without authorization, China should severely penalize or shut down these businesses if they are found to have violated the copyright law.
  - **Local Printing/Duplication Requirement:** China continues to require that digital film prints be replicated in local laboratories. This scenario impedes U.S. rights holders' ability to control the print quality or to trace the source of camcording piracy.

## Colombia

U.S. exports of services to Colombia were an estimated \$7.0 billion in 2018 and U.S. imports were \$3.7 billion, creating a services surplus of \$3.3 billion.<sup>47</sup> Sales of services in Colombia by majority U.S.-owned affiliates were \$5.3 billion in 2015 while sales of services in the United States by majority Colombia-owned firms were \$91 million.<sup>48</sup> U.S. direct investment in Colombia was \$6.2 billion in 2016, a 4.7 percent decrease from 2015. U.S. direct investment in Colombia is led by mining, manufacturing, and finance/insurance.<sup>49</sup>

The United States-Colombia Trade Promotion Agreement entered into force in May 2012. That year, services represented about \$166 billion of the Colombian economy.<sup>50</sup> Colombia agreed to exceed commitments made at the WTO, provide new market access in professional services, and match the United States' openness in financial services and distribution, among others.<sup>51</sup> Colombia agreed to eliminate measures that prevented U.S. firms from hiring U.S. professionals, and to phase-out market restrictions in cable television.<sup>52</sup>

Colombia also provides substantially improved market access for U.S. service suppliers under the agreement. In addition, the trade deal includes disciplines on customs administration and trade facilitation, technical barriers to trade, government procurement, investment, electronic commerce, telecommunications, intellectual property rights, transparency, labor, and environmental protection.

However, trade barriers for services firm remain, including:

- **Telecommunications:** Operators have expressed concern about the technical and financial aspects of their roaming arrangements over the past several years impede its ability to compete in the market. The United States is monitoring developments surrounding 700 MHz spectrum allocation to ensure Colombia implements its commitments, especially that procedures be timely and non-discriminatory.
- **Trade Facilitation:** Colombia has not yet ratified the WTO Trade Facilitation Agreement.
- **Regulation of "Over-the-Top" Providers:** There is increasing interest by foreign governments in subjecting U.S. online services and applications to heavy-handed regulations that impede their cross-border delivery. These measures – often called "Over-the-Top" or "OTT" regulations in foreign markets – take different forms globally. However, it is increasingly common for regulators to seek to impose regulations on online services and applications that only serve to impede development of the digital economy. Some of these objectionable proposals include local presence, and local data storage and/or data retention requirements. Governments should reduce or streamline regulations, where appropriate, on OTT services in order to stimulate competition and greater investment in broadband infrastructure while enabling innovative new services to reach consumers. Additionally, governments should reduce or streamline regulations, where appropriate, on traditional services providers as markets become more competitive due to the introduction of new digital services and other technological changes. In many cases, the rationale behind these legacy regulations has become obsolete due to technologically-driven changes to the marketplace.
- **Customs Facilitation and Administration:** Colombia has not implemented the \$200 de minimis threshold on duties or taxes commitment provided for in the US Colombia Trade Promotion Agreement (CTPA). On July 2, 2019, the Colombian government published Decree 1165 of 2019, which established Colombia's New Customs Regime. The new regime combined all relevant decrees and regulations issued over the last few years and by doing so, scrapped Decree 349, and removed any specific timeline to implement the de minimis provision of the CTPA. In addition, Colombia has

also significantly delayed implementation of customs reforms that would allow traders to submit electronic copies of invoices instead of physical copies.

## Costa Rica

U.S. exports of services to Costa Rica were an estimated \$2.11.9 billion in 2017, and U.S. imports were \$3.52.7 billion, creating a services deficit of \$1.4800 million.<sup>53</sup> Sales of services in Costa Rica by majority U.S.-owned affiliates were \$1.9 billion in 2015, while sales of services in the United States by majority Costa Rica owned firms were \$50 million.<sup>54</sup>

U.S. direct investment in Costa Rica was \$1.6 billion in 2016, a 10 percent increase from 2015. U.S. direct investment in Costa Rica is led by manufacturing, information, and professional, scientific, and technical services.<sup>55</sup>

In 2006, CAFTA entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua; in 2007 for the Dominican Republic; and in 2009 for Costa Rica. The agreement's benefits apply to myriad service sectors, including professional services, distribution, tourism, express delivery, financial services, telecommunications, computer and related services, audiovisual and entertainment, energy, transport, construction and engineering, advertising, and environmental services. Notably groundbreaking, the agreement contains language on e-commerce.<sup>56</sup>

In Costa Rica, CAFTA-DR significantly liberalized trade in services, and included important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and transparency.<sup>57</sup> However, a number of issues remain, including:

- **Government Procurement:** Bids are often due within three to six weeks of the procurement announcement, making it difficult for U.S. company representatives to compete in Costa Rica.
- **Insurance:** Mandatory insurance categories such as worker's compensation and basic automobile liability are still serviced only by the National Insurance Institute (INS), despite being open to new entrants.
- **Investment:** Investors experience inconsistent actions between central and municipal levels of government, creating inefficiency in regulatory decision-making, especially in infrastructure projects.

## Dominican Republic

U.S. exports of services to the Dominican Republic were an estimated \$2.01.9 billion in 2018 and U.S. imports were \$5.2 billion, creating a services deficit of \$3.21 billion.<sup>58</sup> Sales of services in the Dominican Republic by majority U.S.-owned affiliates were \$1 billion in 2015.<sup>59</sup>

U.S. direct investment in the Dominican Republic was \$1.4 billion in 2016, a 7.9 percent increase from 2015. U.S. direct investment in the Dominican Republic is led by wholesale trade, information, and nonbank holding companies.<sup>60</sup>

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There are issues that unfortunately remain:

- **Government Procurement:** Transparency and conduct remain issues of concern in government procurement within the Dominican Republic.
- **Telecommunications:** Concerns exist with the perceived timeliness and effectiveness of the telecommunications regulator in the Dominican Republic, INDOTEL, including ensuring that its major suppliers offer a cost-based termination rate, timely allocation of spectrum in an objective and transparent manner, facilitation of roaming arrangements, and prompt decisions on the renewal of operators' concessions agreements. In May 2017, the Dominican Republic's Chamber of Deputies approved a tax of \$0.02 on international voice minutes to finance the expansion of its 911 national emergency system. This fixed tax is to be paid by all operators registered at the Dominican Telecommunications Institute (Indotel) and is assessed per minute of international voice traffic, with \$0.0025 also payable for each international SMS received by the operators. The Dominican Republic's high termination rates are not in accordance with its obligations under the WTO or CAFTA, which require the provision of interconnection services by major suppliers be at cost-oriented rates. Further, the discriminatory application of the tax to only international traffic places the cost burden to build out the national 911 system on foreign consumers, rather than on the domestic consumers who will benefit from this new service.

## Ecuador

The U.S.-Ecuador BIT was signed in 1997. While data on services are unavailable, sales of services in Ecuador by majority U.S.-owned affiliates were \$1.01 billion in 2016, while sales of services in the United States by majority Ecuador-owned firms were \$2 million.<sup>63</sup> U.S. foreign direct investment in Ecuador was \$509 million in 2016, a 3.7 percent increase from 2015. Investment picked up in the ten years following implementation of the BIT.<sup>64</sup>

U.S. direct investment in Ecuador was \$509 million in 2016, a 3.7 percent increase from 2016. U.S. direct investment in Ecuador is led by mining, manufacturing, and finance/insurance.<sup>65</sup>

However, following cries of corruption and other charges, investment has slowed. Ecuador ranked in the bottom third of countries surveyed for Transparency International's Corruption Perceptions Index.<sup>66</sup> At the same time, Ecuador's investment climate remains marked by uncertainty, owing to the government's unpredictable and frequently restrictive economic policies. Under the BIT and ISDS, U.S. investors have brought forward 15 cases against Ecuador, five of which were decided in favor of the United States.<sup>67</sup>

As of May 2017, Ecuador's National Assembly voted to terminate 12 of its bilateral investment treaties, including its agreement with the United States.<sup>69</sup> Article 12 of the U.S.-Ecuador BIT clarifies that the treaty is terminated 12 months after a side provides notices of its intent to withdraw; the treaty further specifies that all U.S. investments in place at the date of termination receive the benefits of the deal for the subsequent ten years.<sup>68</sup>

Remaining barriers include:

- **Financial Services:** In September 2014, Ecuador enacted the Monetary and Financial Code, which regulates the financial, insurance, and capital markets. Article 357 of the law established the National Data Registry as the only depository of credit information to be allowed in Ecuador. While this hasn't been put into effect, the law as written would force U.S. and other foreign credit agencies to close upon 90 days' notice from the government.
- **Media:** the 2013 Communications Law introduced a requirement that advertising disseminated in Ecuador must have 80 percent domestic content. It also requires that television and radio frequencies are distributed 33 percent to private media, 33 percent to public media, and 34 percent to community media.<sup>69</sup>
- **Telecommunications:** The National Assembly passed a law in 2015 that requires telecommunications companies with at least a 30 percent market share to pay 0.5 percent of their revenue to the government.<sup>70</sup>

## Egypt

In 1992, the U.S.-Egypt BIT entered into force. In the decade before its implementation, U.S. FDI into Egypt was relatively stable. However, post 1992, U.S. FDI increased from \$1.5 billion in 1993 to \$22.2 billion in 2016, a 4.4 percent decrease from 2015.<sup>71</sup> Sales of services in Egypt by majority U.S.-owned affiliates were \$1.1 billion in 2016, while sales of services in the United States by majority Egypt-owned firms were \$5 million.<sup>72</sup>

This BIT provides for fair, equitable, and nondiscriminatory treatment for investors, and includes provisions for international legal standards on expropriation and compensation, free financial transfers, and procedures for the settlement of investment disputes, including international arbitration.<sup>73</sup> Under the BIT and ISDS, U.S. investors has brought five cases against Egypt.<sup>74</sup>

Yet barriers remain, as detailed below:

- **Banking:** Foreign banks are able to buy shares in existing banks but are not able to secure a license to establish a new bank in Egypt.<sup>75</sup>
- **Customs:** Egypt has not ratified the WTO Trade Facilitation Agreement.
- **Foreign Ownership:** Labor rules require that for companies, at least 90 percent of employees are Egyptian citizens (75 percent in Free Zones), and foreigners are not allowed to operate sole proprietorships or partnerships.<sup>76</sup> Egypt restricts foreign equity in construction and transport services to 49 percent. In computer-related industries, Egypt requires that 60 percent of senior executives be Egyptian citizens within three years of the startup date of the venture.<sup>77</sup> Egypt's trade regulations prohibit a foreign company from importing; this must do so through an Egyptian importer.
- **Insurance:** As a member country of the African Union, local insurance companies are required to cede a minimum of 5% of each reinsurance treaty to Africa Re.
- **Procurement:** A preference is granted to Egyptian companies whose bids are within 15 percent of the price of other bids. Also, in the 2004 Small and Medium Sized Enterprises (SMEs) Development Law, Egyptian SMEs were given the right to supply 10 percent of the goods and services in every government procurement contract.<sup>78</sup>

## El Salvador

U.S. exports of services to El Salvador were an estimated \$1.3 billion in 2018, and U.S. imports were \$724 million, creating a services surplus of \$561 million.<sup>79</sup> Sales of services in El Salvador by majority U.S.-owned affiliates were \$1.5 billion in 2016. In 2016, U.S. FDI in El Salvador was \$2.7 billion, a 2.7 percent increase from 2015.<sup>80</sup>

U.S. direct investment in El Salvador was \$2.7 billion in 2016, a 2.7 percent increase from 2015.<sup>81</sup>

In 2006, CAFTA entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua; in 2007 for the Dominican Republic; and in 2009 for Costa Rica. The agreement's benefits apply to myriad service sectors, including professional services, distribution, tourism, express delivery, financial services, telecommunications, computer and related services, audiovisual and entertainment, energy, transport, construction and engineering, advertising, and environmental services. Notably groundbreaking, the agreement contains language on e-commerce.<sup>82</sup>

CAFTA-DR resulted in many benefits for U.S. services, including:

- **Entertainment, including Audiovisual and Broadcasting:** Under the GATS, there were no benefits to American content providers in El Salvador. The CAFTA-DR improved market access over a variety of media for U.S. films and television programs.<sup>83</sup> El Salvador waives its local content quota for commercials advertising imported U.S. goods and services.<sup>84</sup>
- **Investment:** Companies have benefitted from the investment dispute resolution and the general investment chapter.<sup>85</sup>
- **Government Procurement:** American companies can compete on a level playing field with Salvadoran suppliers on most contracts; notably, El Salvador is not a signatory to The WTO Agreement on Government Procurement, which further highlights the importance of the procurement chapter in CAFTA-DR.<sup>86</sup>

Other issues include:

- **Telecommunications:** El Salvador's five percent tax on telecom services and equipment is problematic and in the court system now.<sup>87</sup>
- **Foreign Presence:** American companies benefit from the foreign presence provision, including SMEs, which may not have the capacity or resources to locate an office abroad.<sup>88</sup>
- **Investment Climate:** El Salvador is working to improve its climate by streamlining regulations and building capacity.<sup>89</sup>
- **Judiciary:** Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador."<sup>90</sup>

## Ethiopia

Total U.S. exports to Ethiopia in 2017, consisting primarily of aircraft and aircraft components from Boeing, were valued at \$857.4 million, whereas Ethiopian exports to the U.S. totaled \$292.4 million, of which only about 30 percent was exported under the African Growth and Opportunity Act (AGOA).<sup>91</sup> Ethiopia's trade deficit is high, standing at 16.1 percent of GDP in FY2017.

Ethiopia is eligible for preferential trade benefits under the AGOA. U.S. exports to Ethiopia include aircraft, wheat, machinery, low-value shipments and repaired products, and vegetables.

U.S. imports from Ethiopia include coffee, oil seeds, textiles and garments. The United States has signed a trade and investment framework agreement with the Common Market for Eastern and Southern Africa, of which Ethiopia is a member.

Barriers experienced by U.S. services suppliers operating in Ethiopia include:

- **Insurance and Reinsurance:** Ethiopia prohibits foreign ownership of insurance and reinsurance companies entirely, even in minority shares. Ethiopia also imposes mandatory reinsurance cession requirements, limiting the ability of insurers in Ethiopia to diversify the country's risks into global reinsurance markets. A minimum 25 percent of all treaty cessions and 5 percent of each reinsurance policy must be ceded to a local reinsurer. These restrictions harm Ethiopia. Reinsurance – often described as insurance for insurance companies – is a global risk transfer mechanism. It diversifies the costs of losses to global markets. Allowing greater foreign participation in Ethiopia's insurance markets will help Ethiopia become a more resilient economy and society.

## European Union (EU)

U.S. exports of services to the EU were an estimated \$256 billion in 2018, and U.S. imports were \$196 billion, creating a services surplus of \$60 billion. Sales of services in the EU by majority U.S.-owned affiliates were \$651.2 billion in 2015, while sales of services in the United States by majority EU-owned firms were \$485 billion.<sup>92</sup> U.S. FDI in the EU was \$2.9 trillion in 2016, a 9.2 percent increase from 2016. U.S. direct investment in the EU is led by nonbank holding companies, finance/insurance, and manufacturing sectors.<sup>93</sup> U.S. FDI is robust, with 70 percent of total U.S. FDI outflows globally going to Europe in 2016. Comparatively, 21 percent went to the Asia-Pacific region.<sup>94</sup> Trade with Europe also supports jobs. European majority-owned foreign affiliates directly employed roughly 4.1 million U.S. workers in 2014 – roughly 400,000 workers less than U.S. affiliates employed in Europe.<sup>95</sup>

Looking specifically at the United Kingdom, the UK is the United States' largest services trading partner, accounting for close to one-tenth of U.S. total trade in services. In 2017, U.S. services exports to the UK totaled \$69.6 billion, while imports totaled \$56.9 billion, resulting in a U.S. services trade surplus of \$12.7 billion.<sup>96</sup> Since 1999, growth of U.S. services exports to the UK have outpaced growth of U.S. services imports by a margin over 20 percent. At the same time, U.S.-UK investment is significant, totaling \$1.1 trillion in 2015. As a result of Brexit, U.S. services to the EU will decrease by nearly 30 percent, and U.S. investment in EU will decrease by nearly 40 percent.

US firms' presence in Europe is impressive when considering the myriad regulations and bureaucracy that our companies encounter. The current process means that "U.S. stakeholders often do not have the opportunity to comment on critical technical elements of proposed technical regulations and conformity assessment procedures contained in EU directives nor the standards that may be used to fulfill directives' essential requirements."<sup>97</sup> U.S. firms are further disadvantaged by a lack of a voice in these regulations when the EU requires the supremacy of its standards in other markets as well (e.g., insurance Solvency II regime).<sup>98</sup>

As a result of GATS, the EU:

- Has undertaken a wide range of commitments in many services sectors.
- Increased market access in cross-border supply, specifically in business services and tourism.
- Opened consumption abroad, in most sectors, faces few restrictions.
- Substantially increased commercial presence, even though limitations remain on foreign investment ownership.
- Has opened temporary entry.

### **U.S.-EU Negotiations**

Negotiation of a trade agreement with the EU presents an opportunity to solidify the relationship between the globe's two dominant leaders in trade and investment, the United States and EU. Primary areas that the agreement can address include the increase of market access through the elimination of barriers to trade and investments in services and the further opening of capital and government procurement markets; enhancing regulatory coherence and cooperation; and establishing global rules and standards in areas including trade in service, foreign direct investment, intellectual property rights, labor, the environment, and emerging areas of trade (e.g. regulating data flows, trade facilitation in a supply chain economy and the role of state-owned enterprises). The current business environment in the EU and its member states for U.S. firms is promising, as shown by the trade in services balance and strong surplus the United States holds, yet barriers remain.

Barriers regarding specific sectors and countries include:

- **Audiovisual:** The EU recently extended content quotas and levies from traditional broadcasters to VOD providers. In November 2018, the EU agreed on a new obligation for all video-on-demand (VOD) service providers, falling under the jurisdiction of a European Member State, to reserve at least a 30 percent share in their catalogues for EU works, and ensure adequate prominence of such works. In addition, every Member State will have the possibility to impose financial contributions (direct investments or levies allocated to national film funds) to media service providers under their jurisdiction and, under certain conditions, to media service providers established elsewhere but targeting their national audience. This new Directive has been published in the official journal of the EU on 28 November 2018 and must be transposed by member states by 19 September 2020.
- **Data:** The General Data Protection Regulation went into effect in May 2018. As the Commission and Member States continue implementation, they should take care to consult carefully with stakeholders to ensure that those measures continue to foster growth of the Transatlantic Digital Economy while protecting privacy.
- **EU's Digital Single Market (DSM):** The DSM strategy spans three pillars: improving access to digital goods and services, creating an environment where digital networks and services can prosper, and making digital technologies a driver for growth. CSI strongly supports the DSM's overarching objective of easing impediments to digital trade across the EU. The Commission and Member States should ensure that measures taken under the DSM create an inclusive environment for innovative products and services originating within and outside Europe. Issues within the DSM's purview remain contentious – some members (such as France, Greece, and Germany) push for data restrictive policies, while others (such as the United Kingdom and Sweden) advocate for the free flow of data across borders.
- **Regulation of "Over-the-Top" Providers:** There is increasing interest by foreign governments in subjecting U.S. online services and applications to heavy-handed regulations that impede their cross-border delivery. These measures – often called "Over-the-Top" or "OTT" regulations in foreign markets – take different forms globally. However, it is increasingly common for regulators to seek to impose regulations on online services and applications that only serve to impede development of the digital economy. Some of these objectionable proposals include local presence, and local data storage and/or data retention requirements. Governments should reduce or streamline regulations, where appropriate, on OTT services in order to stimulate competition and greater investment in broadband infrastructure while enabling innovative new services to reach consumers. Additionally, governments should reduce or streamline regulations, where appropriate, on traditional services providers as markets become more competitive due to the introduction of new digital services and other technological changes. In many cases, the rationale behind these legacy regulations has become obsolete due to technologically-driven changes to the marketplace.
- **Express Delivery & E-Commerce:** There is significant potential to further streamline transatlantic customs by raising the de minimis level for duties and taxes in the EU to \$800 (from the current level of 150 euro for duties and 22 euro for value added taxes) and providing trade facilitation measures for legitimate traders.
- **Investment:** In Bulgaria, non-payment of contractual obligations remains a significant deterrent to investment.<sup>102</sup> Cyprus maintains significant restrictions on the foreign ownership of real property and construction-related businesses.<sup>99</sup>

- **Legal Services:** U.S.-based legal services face greater challenges in Austria, Belgium, Bulgaria, Cyprus, Greece, Hungary, Lithuania, Malta, and Slovakia – countries that require European Union or European Economic Area citizenship for full admission to the bar.<sup>100</sup>
- **Digital Services Tax:** Several European governments continue to consider new revenue taxes targeting U.S. digital companies that conflict with international trade commitments and Member States’ double taxation treaties, as well as undermine the process at the G20/OECD level to achieve a consensus-based solution. While the European Union ultimately decided not to pursue an EU-level digital tax, the new Commission President has promised to reintroduce a digital tax in late 2020 if the OECD does not reach a solution before. Some Member States are moving ahead to enact national taxes. For example, in July 2019 France introduced a digital services tax (DST) on revenue -- not income -- generated from “digital interface” services (e.g., e-marketplaces for goods and services) and certain Internet advertising services. The tax applies only to companies with annual revenues from the covered services of at least €750 million globally and €25 million in France. The tax applies retroactively beginning January 1, 2019. CSI believes that the most appropriate U.S. response is to take steps to challenge unilateral and discriminatory measures such as the French DST and to intensify its leadership in the existing multilateral discussions at the OECD, while examining all options available to the administration, in addition to considering potential WTO dispute settlement should it conclude from the Section 301 review that WTO obligations have been violated.
- **VAT:** Complex VAT registration and compliance requirements in intra-EU trade: The cost of compliance with VAT requirements when selling into the EU Single Market is higher for non-EU businesses than for EU businesses and constitutes a significant non-tariff barrier. The current EU VAT registration system is generally found to be fragmented, complex and particularly costly for SMEs. This in effect restricts access to EU trade.
- **Goods Package:** The European Commission introduced a pair of proposed regulations (collectively, the Goods Package) on December 19, 2017. The Goods Package includes a Proposal for a Regulation on Enforcement and Compliance in the Single Market for Goods (the Enforcement Regulation). The Enforcement Regulation is aimed at increasing enforcement of existing EU product legislation and advancing customer safety. However, as currently drafted, the Goods Package will do little to improve overall customer safety, and the unintended effects may actually increase overall risk for EU customers. The current proposal includes burdensome requirement for a dedicated “responsible person for compliance information” that will significantly limit access to the EU marketplace for U.S. small businesses. More specifically, the manufacturers of all goods sold into the EU must appoint a person located in the EU to hold compliance documentation and who will likely be accountable for non-compliance more broadly with liability for sellers who offer a product where such Responsible Person has not been appointed. The requirement does not distinguish between types of goods, nor does it provide any waivers for SMEs or small volume sellers. The Responsible Person requirement will hurt U.S. resellers particularly hard because, in many cases, manufacturers of low-risk merchandise that aren’t focused on the EU won’t appoint a Responsible Person, making resale into the EU virtually impossible. As a whole, the proposed legislation could be inconsistent with the EU’s TBT obligations on conformity assessment measures, as well as have the effect of creating unnecessary obstacles to international trade.
- **Telecommunications:** There has been a growing tendency by telecom operators in EU member states to charge higher rates to end calls initiated outside the EU than for calls originating inside the EU. It is not clear that the higher rates are based on an actual higher operating cost associated with terminating calls for the former group. This has raised questions about whether

such policies are inconsistent with the EU's obligations under the General Agreement on Trade in Services.

Countries with operators that assess higher fees for telecom traffic initiated in the U.S. include: Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, and Slovenia.

**Cloud Services Providers:**

- Sweden: There is uncertainty surrounding the use of US cloud service providers (CSPs) because of negative legal analysis about the impact of the U.S. CLOUD Act. A quasi-governmental groups (eSam) has published a series of legal analyses deeming the use of American CSPs incompatible with Swedish/EU law, suggesting that Swedish organizations are prohibited from using and procuring cloud services from foreign (mostly US) providers. The effect of these statements and the associated backlash has led to a slowdown of U.S. CSPs use in the Swedish public sector. The Swedish government should issue a public statement clarifying that public sector bodies may use U.S. cloud technology in Sweden.
- Germany: The German Ministry for Economic Affairs works on a concept to promote a European alternative to the large U.S. cloud services providers (CSPs) for the German economy. In a first draft concept, the Ministry writes that it wants to address dependency on foreign cloud providers. The project is called GAIA-X, and would connect existing central and decentral infrastructure solutions via open source applications and interoperable standards. An official release is currently scheduled for German Digital Summit on October 29th. We are concerned this project could lead to protectionist limitations for cloud public sector entities in Germany for U.S. CSPs.
- France: France adopted a 'Cloud First' policy last year. This momentum has been followed rapidly by a tender to reference public CSPs. The outcomes regarding the decision of the French procurement office will be known in December 2019. However, despite this good momentum, cloud adoption is still fragile in France from a US CSP perspective. Indeed, the French Minister of Finance recently announced France's intention to build a national "trusted cloud". This is for now a political announcement, but we already know that domestic CSPs have been requested by the government to invest in such project. This could constitute a protectionist obstacle to the use of U.S. CSPs cloud in the public sector in France.

## Gabon

- **Insurance:** Local insurers are required to cede 15% of non-life premium and 5% of all treaty and facultative reinsurance to the state-owned reinsurer Societe Commerciale Gabonaise de Reassurance (SCG-Re). Gabon also prohibits Difference-in-Conditions and Difference-in-Limits (DIC/DIL) insurance trade, which is an important type of insurance for facilitating U.S. exports by multinational enterprises by covering their unique risks.

## Ghana

In 1999, the U.S. and Ghana signed a TIFA. In 2017, U.S. foreign direct investment (FDI) in Ghana (stock) was \$1.7 billion.<sup>101</sup> Foreign investors face red tape in Ghana and face minimum capital requirements.<sup>102</sup> There is also corruption within Ghana that affects foreign investors.

There is no data on U.S. services trade with Ghana.

Barriers experienced by U.S. services suppliers operating in Ghana include:

- **Electronic Payment Services:** On February 7, 2018, the Bank of Ghana issued a letter instructing all banks and specialized deposit institutions that "all domestic transactions, including International Scheme Cards transactions, are to be processed by the National Switch with effect from July 02, 2018." The letter also indicated that "Banks and Specialized Deposit Taking Institutions are also required to issue local EMV cards to all domestic currency account holders." The national switch referenced in the letter appears to be Ghana Interbank Payment and Settlement Systems Limited ("GhIPSS"), which is a wholly owned subsidiary of the Bank of Ghana. GhIPSS operates e-zwich, which is the brand name for the national switch and smart card payment system. The e-zwich card can be used for both online and offline transactions involving cash deposits or withdrawals ("ATM") and purchases ("POS"). In April 2018, the Bank of Ghana revised the Guideline on Operations of Electronic Payment Channels in Ghana introducing a 2-year timeframe for entities to comply with an onshore switching mandate, meaning that international payment networks would be required to establish a local entity/infrastructure, licensed by the BOG to process domestic transactions. The BOG's revised guidelines does not explicitly require transactions to be processed by GhIPSS.. This is a more open model compared to the National Switch mandate in the BOG circular of February 7, 2018. In March 2019, the Ghanaian Parliament passed the Payments Systems & Services Bill introducing a legal requirement for all persons engaged in regulated services for payments to obtain a "payment system license" from BOG. The Bill outlines requirements to qualify for the license, which include: an equity requirement ("at least 30% equity participation of a Ghanaian company or person"), governance arrangement (Board must have five directors, three of which, including the CEO must be Ghanaian residents), and a minimum capital requirement (to be set forward in the operational guidelines). The President signed the Bill into law in May 2019. Under the GATS, Ghana has made full market access and national treatment commitments with respect to "payments services" provided on a cross-border basis. Ghana's mandate to require international payment suppliers to establish a local entity/infrastructure in order to process all transactions, including those involving international scheme cards, is inconsistent with Ghana's cross-border market access obligation. In addition, requiring local presence to process domestic payment transactions provides less favorable treatment for U.S. providers of EPS and other foreign EPS schemes.
- **Insurance:** Ghana also prohibits Difference-in-Conditions and Difference-in-Limits (DIC/DIL) insurance trade, which is an important type of insurance for facilitating U.S. exports by multinational enterprises by covering their unique risks.

## Guatemala

According to the latest data available, in 2017 U.S. services were an estimated \$1.7 billion and imports were \$1.3 billion, yielding a \$412 million services surplus.<sup>103</sup> Sales of services in Guatemala by majority U.S.-owned affiliates were \$796 million in 2015, while sales of services in the United States by majority Guatemala-owned firms were \$5 million.<sup>104</sup> U.S. FDI was \$1 billion in 2016, a 6.3 percent decrease from 2015.<sup>105</sup>

In 2006, CAFTA entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua; in 2007 for the Dominican Republic; and in 2009 for Costa Rica. The agreement's benefits apply to myriad service sectors, including professional services, distribution, tourism, express delivery, financial services, telecommunications, computer and related services, audiovisual and entertainment, energy, transport, construction and engineering, advertising, and environmental services. Notably groundbreaking, the agreement contains language on e-commerce.<sup>106</sup>

Specific benefits of CAFTA-DR for Guatemala include:

- **Investment:** American companies benefitted from Guatemala's removal of restrictions on U.S. services suppliers in construction and engineering.<sup>107</sup>
- **Entertainment, including Audiovisual and Broadcasting:** Under the GATS, there were no benefits to American content providers in Guatemala, Costa Rica, and other CAFTA-DR signatories. The CAFTA-DR's market access improvements positively affected U.S. companies over several types of media.<sup>108</sup>

However, barriers remain, including:

- **Non-tariff Barriers:** There is concern that the customs administration "might be denying CAFTA-DR preferential tariff treatment to qualifying U.S. exports, as a means of increasing revenue."<sup>109</sup>
- **Investment Barriers:** Dispute settlement can draw out for years in Guatemala's judiciary.<sup>110</sup>
- **Transparency:** The lack of objectiveness of government institutions has been called into question.<sup>111</sup>

## Honduras

U.S. exports of services to Honduras were an estimated \$1.3 billion in 2018, and U.S. imports were \$731 million, creating a services surplus of \$562 million.<sup>112</sup> Sales of services in Honduras by majority U.S.-owned affiliates were \$534 million in 2015.<sup>113</sup> U.S. FDI in Honduras was \$1.1 billion in 2016, a 0.6 percent decrease from 2015. U.S. direct investment in Honduras is led by manufacturing, nonbank holding companies, and information.<sup>114</sup>

In 2006, CAFTA entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua; in 2007 for the Dominican Republic; and in 2009 for Costa Rica. The agreement's benefits apply to myriad service sectors, including professional services, distribution, tourism, express delivery, financial services, telecommunications, computer and related services, audiovisual and entertainment, energy, transport, construction and engineering, advertising, and environmental services. Notably groundbreaking, the agreement contains language on e-commerce.<sup>115</sup>

CAFTA-DR has brought many benefits to Honduras, including:

- **Entertainment, Audiovisual and Broadcasting:** Under the GATS, there were no benefits to American content providers in Honduras. The CAFTA-DR addressed this, as outlined earlier in this document.<sup>116</sup>

Nevertheless, barriers for services firms remain, like:

- **Regulatory Barriers:** There are problems with government permits, including with regulatory requirements in a number of sectors and in real estate transactions.<sup>117</sup>

## India

In 2018, the most recent data available, the United States exported \$25.2 billion and imported \$29.6 billion in services from India, creating a services trade deficit of \$4.4 billion.<sup>118</sup>

Sales of services in India by majority U.S.-owned affiliates were \$24.5 billion in 2015, while sales of services in the United States by majority India-owned firms were \$14.7 billion. U.S. FDI in India was \$32.9 billion in 2016, a 10 percent increase from 2015. U.S. direct investment in India is led by professional, scientific, and technological services, manufacturing, and wholesale trade.<sup>119</sup> India's ranking in the World Bank's Ease of Doing Business index is 130 out of 189 total countries because of "unnecessary costs, difficulty in complying with regulations, and frequent delays in regulatory decisions."<sup>120</sup> Improvements are also required in starting a business, contract enforcement, and tax payments.<sup>121</sup>

As a result of GATS, India:

- Increased market access in cross-border supply, but many restrictions remain, especially in business services, financial services, construction, and tourism.
- Opened consumption abroad, in most sectors, faces few restrictions.
- Increased commercial presence, even though there are a few limitations on foreign investment ownership, especially in telecom.
- Opened temporary entry in some sectors, like transport, but with limitations.

Nevertheless, there are significant barriers for services firms, such as:

- **Data:** India is taking two approaches to requiring data onshore. First, on April 6, 2018, the Reserve Bank of India ("RBI") released a Directive requiring that "all system providers ... ensure that the entirety of data relating to payment systems operated by them are stored in a system only in India." Payment networks were required to comply by October 15, 2018.

On June 27, 2019, RBI further clarified its previous position to say that the requirement to store payments data also applies to banks operating in India and RBI released a set of FAQs regarding its stance on the applicability to banks. The FAQ states that the April 2018 payments circular is applicable to all banks operating in India because banks function as operators of a payment system or as participant in a payment system. The FAQ stated that banks are participants in payment systems operated by RBI and other Indian systems and in card schemes. Banks perform a variety of functions and provide a broad range of services in a highly regulated environment under an already stringent licensing regime. This distinction is important because within this highly regulated environment banks have a long and accountable record of meeting the regulatory objectives of security and data integrity and ensuring access to data by regulators to perform their regulatory and supervisory functions. Currently, banks in India process or store information across jurisdictions in line with RBI's outsourcing policy of 2006. The framework requires banks to establish robust contracts and processes with service providers that permit RBI or persons authorized by it to have access to the bank's documents, records of transactions, and other necessary information given to, stored or processed by the service provider within a reasonable time.

Data localization policies, whether in payments or other areas of banking, undermine rather than support policy objectives of privacy and security. In fact, the Financial Stability Board in its June 2019 G20 paper highlighted that data localization policies as one of three areas of most concern in regulatory fragmentation and undermining the ability of regulators to perform the jobs. From a

security standpoint, data localization multiplies entry-points for bad actors to target while negatively impacting threat visibility and responsiveness. In addition, transferring data across borders is crucial for the financial services industry to: (i) provide core products and services to customers; (ii) manage risk on a holistic basis across affiliates and borders; and (iii) comply with financial regulatory requirements in various jurisdictions, including Know Your Customer (KYC) and Anti-Money Laundering (AML) regulations. Limitations on cross-border data access inhibit firms' cybersecurity controls (and ability to monitor and prevent cyber-attacks), and they further hamper sharing of cyber threats within firms and with law enforcement. As data localization policies are inconsistent with regulatory objectives, we urge the Indian government to eliminate the requirement for banks to localize payments data and refrain from imposing such requirements in the financial sector in the future.

Second, India's Personal Data Protection Bill released by the Shrikrishna Committee in 2018, if implemented, will impose another layer of restrictions on the cross-border transfer and processing of certain personal information, including financial information. The Bill specifies that every data fiduciary shall ensure the storage, on a server or data center located in India, of at least one serving copy of personal data. It also says that the Central Government shall notify categories of 'critical personal data' that shall only be processed in India.

The only exception for transfer of critical personal data is for sensitive personal data notified by the Central Government which may be transferred outside the territory of India— (a) where such transfer is strictly necessary for prompt action, to a particular person or entity engaged in the provision of health services or emergency services; and (b) where the Central Government is satisfied that such transfer or class of transfers is necessary for any class of data fiduciaries or data principles and does not hamper the effective enforcement of this Act, to a particular country, a prescribed sector within a country or to a particular international organization that has been prescribed as permissible by the Central Government.

The Bill sets out very limited bases on which personal data (other than sensitive personal) can be transferred outside of India. On one interpretation the only permissible bases appear to be: (a) transfers subject to standard contractual clauses or intra-group schemes approved by the DPA, (b) transfers to 'whitelisted' countries, or (c) transfers that the Data Protection Authority approves on the basis of necessity.

The draft Personal Data Protection Bill is currently undergoing inter-ministerial consultations and is expected to be introduced in Parliament in the upcoming winter session of Parliament, which will be held in December 2019. Industry interactions with regulators suggest that despite strong pushback against localization of personal data by several stakeholders, MEITY will also consider the perspective of the Department for the Promotion of Industry and Internal Trade (DPIIT) and the Ministry of Home Affairs (MHA), who have called for the inclusion of data sharing and localization clauses in the bill. Data localization and restrictions on cross border data flows will dramatically impact multinational companies who use cloud and conduct business in India, as well as cloud service providers themselves. India also imposes localization measures on cloud service providers that are procured by the Indian government. Further, the lack of an encryption policy has created barriers to services.

While not a substitute for addressing India's data localization barriers directly, we encourage USTR to work with the U.S. Department of Justice and the State Department to develop a strategy for

addressing India's concerns on law enforcement requests to data. The Clarifying Lawful Overseas Use of Data Act (CLOUD Act) allows for the U.S. to enter into executive agreements with foreign governments to provide a mechanism for solving potential conflicting legal obligations. We would support the opening of a dialogue on CLOUD Act issues between the U.S. and India and would also support exploring alternative frameworks for cooperation to enable efficient requests for user data in criminal proceedings. Continued engagement over time may be necessary for India to meet standards under the CLOUD Act; however, constructive work toward an agreement may be useful in alleviating tension on this issue.

Most recently, the Ministry of Electronics and Information Technology (MEITY) in September constituted a committee to deliberate on a data governance framework for non-personal data. The notification of the newly constituted committee states that there is a "need to recognize the economic dimension of data," which includes "aggregated data, derived data, anonymous data, e-commerce data, AI Training Data, etc." The committee will be headed by Kris Gopalakrishnan, co-founder of the Indian IT giant Infosys. Other members of the committee include representatives from the government and individuals from organizations that are considered inward-looking/protectionist in nature. This committee is expected to recommend a framework that facilitates the sharing of community/non-personal data, which has so far been undefined in IN, but is intended to cover digitized proprietary aggregate data held by private corporations. This data is proprietary to corporations, and a policy mandating its sharing would amount to a violation of our constitutionally protected right to hold property and conduct business.

- **Electronic Payments Services: Electronic Payments Services:** On April 6, 2018, the Reserve Bank of India ("RBI") released a Directive requiring that "all system providers ... ensure that the entire data relating to payment systems operated by them are stored in a system only in India." The RBI issued the directive abruptly and without any industry consultation, with a six-month deadline for compliance by October 6, 2018. U.S. payment companies ultimately made significant investments to adhere to the regulator's demands. Meanwhile there is growing evidence that the Government of India is creating an un-level playing field for U.S. firms operating in the market both through overt political statements of support for "homegrown" providers, and policies and projects designed to promote the use of domestic payment solutions in lieu of U.S. branded solutions. One such example, is the National Common Mobility Card (NCMC where the Ministry of Housing and Urban Affairs (MoHUA) has issued directives limiting participation to card networks that use RuPay's proprietary specifications, effectively shutting out global payment networks. As GOI continues to develop policies and projects intended to spur the use of digital payments, it is imperative that U.S. firms remain eligible to compete for these opportunities on a level-playing field with their domestic counterparts.

In addition, India's Personal Data Protection Bill, 2018, will (if implemented) impose another layer of restrictions on the cross-border transfer and processing of certain personal information, including financial information.

**Cloud:** Cloud computing services require a highly reliable, low latency underlying network. Cloud service providers face significant regulatory challenges in operating and managing data centers in India: (1) an inability to buy dark fibre in order to construct and configure their own networks; (2) a prohibition on the purchase of dual-use equipment used to manage and run those networks; (3) an inability to own and manage a network to cross-connect data centers and connect directly to an Internet Exchange Point (IXP); (4) high submarine cable landing station charges; (5) and duties of up

to 20% on certain networking equipment and other hardware that should be duty-free under the Information Technology Agreement (ITA) These restrictions significantly impact the ability of cloud service providers to configure and manage its own network to optimize access by customers, to minimize latency and downtime by choosing ideal routing options, and to reduce the capex and opex costs incurred in offering cloud services in India.

- **Express Delivery:** India displays a lack of predictability in application of customs regulations across airport gateways, severe and arbitrary restrictions imposed by customs authorities for infringement of regulations, and a slow pace of dispute resolution. Additionally, while India did increase the duty-free allowance for gifts recently from Rs. 10,000 to Rs. 20,000 in February 2016, the country should introduce a de minimis regime that also lifts all duties and taxes for all goods, including low value commercial shipments and business to consumer shipments, in the same manner currently applied to gifts or samples. Along the same lines, India should follow through on the proposal of the Special Secretary for Logistics, Ministry of Commerce, to remove the commodity restrictions on couriers. In addition, India should eliminate its value limitation for exports in the express delivery mode and implement an Electronic Data Interchange for exports. More generally, the recent customs improvements in India (e.g., single window clearance) should be expanded to all courier clearance ports. India should also improve pre-arrival processing (e.g., by separating release from final clearance) and strive toward clearance off a single, consolidated document such a manifest with minimal data fields. Among other things, such an outcome will facilitate e-commerce exports and simplify the return process.
- **Insurance:** We commend the Indian Finance Minister's recent comments during her budget speech that the GOI is examining suggestions for further opening up foreign direct investment in the aviation, media, and insurance sectors in consultation with stakeholders. We urge the GOI to address the following restrictions in the insurance sector as part of this announced review.

First, India's 2015 Insurance Law was implemented through rules that are trade restrictive and ultimately stand in the way of India's desired outcome of attracting foreign direct investment into the Indian market to help make India a \$5 billion economy.

Specifically, although India raised the cap on foreign investment from 26% to 49% in 2015, it introduced strict guidelines requiring Indian management and control of Indian insurers. These management and control guidelines apply to all existing joint ventures (including those who do not intend to increase their foreign investment beyond 26%) and require modification of existing joint venture contracts to comply with the new requirements. India's adoption of restrictive management and control guidelines is at odds with its legislative reforms intended to attract new investment and is seemingly motivated by special interests. In the near term, we urge the GOI to eliminate the management and control regulations imposed pursuant to the 2015 amendments. More broadly, we urge the GOI to eliminate its FDI caps in the insurance sector entirely.

Second, India provides a right of first preference on all reinsurance transactions to the state-owned General Insurance Corporation of India, which subverts the political intent to fully upon market. To address this restriction, the Government of India should use its waiver process to add property/casualty and health to the list of products exempt from the right of first preference, along with life insurance, which was granted a waiver earlier this year.

Third, India's insurance regulator imposes stringent data localization requirements, most notably in the IRDAI (Maintenance of Insurance Records) Regulations, 2015 and the IRDAI (Outsourcing of

Activities by Indian Insurers) Regulations, 2017. Under the IRDAI's rules, insurers are required to store all customer data and business data on servers in India and obtain express consent from the data subject to transfer data outside India. These regulations apply in addition to the aforementioned draft bill on data protection and should be eliminated.

- **Banking:** India requires priority sector lending with specific targets in certain sectors. In the past, India permitted banks to meet their priority sector lending requirement through export credits. Ending this practice led to a decrease in the availability of financing and consequently an increase in financing costs for several industries like Textiles, Chemicals, Engineering, Small IT / ITeS. It would benefit both banks and India to permit exports credit as PSL for all entities having exports turnover of less than 100 crs. This approach will help identify and provide incentives to export oriented entities who are in the process of achieving scale in their export business. Access to concessional credit will encourage adoption of advanced technologies and increase productivity, which in turn will also generate employment opportunities. In addition, for foreign banks should be permitted to count exports financing to meet priority sector lending requirements.

Separately, Indian regulators have been introducing new mandatory cybersecurity regulatory requirements that will increase cyber risk to all participating institutions. Previous voluntary programs in the banking sector, led by RBI, which requires participating firms to lower firewalls and allow RBI to conduct simulated cyber-attacks on live bank systems, are now becoming mandatory. Participation in this program would introduce potentially vulnerable equipment to business-critical systems, would not provide any greater defense against external threats, and would raise cyber risks to more participating institutions.

- **Telecommunications:** The telecom sector, particularly the provision of new IP-based productivity and communications tools, including those that connect Internet-delivered VoIP applications and services with traditional PSTN voice services, is subject to outdated regulatory provisions that are impeding competition, the introduction of new and innovative communications capabilities, and the fuller participation of a wider variety of providers in the Indian market.

We continue to draw USTR's attention to the fact that certain elements of the May 31, 2011 amendment to the telecommunications service provider licenses deviate from global practice, while others require clarification to understand how they will be implemented to ensure that these elements do not become barriers or have unintended consequences. While the most egregious provisions of the May amendments were rescinded by the Indian government, there remain problematic legacy provisions that could undermine the ability of U.S. ICT companies to compete fairly in India's telecommunications sector.

Most concerning is the mandatory requirement to test certain ICT technology (the exact scope and coverage of this testing requirement remains unclear) in Indian labs by October 1, 2018 (now extended to April 1, 2019)

The mandatory testing and certification scheme requires all telecom products capable of connecting the public network (directly or indirectly) to be tested and certified in India by the Telecommunications Engineering Center of the Ministry of Communications. This scheme would cover nearly every product and is highly unusual. Furthermore, India does not have the laboratory capacity to even undertake these tests. The regulation, if enforced in its current form will create challenges for the entire IT and Telecom Sector, which is already burdened with

regulatory and policy obstacles, including numerous other compliance obligations. The Ministry of Communications should work with industry to improve the ease of doing business in India by eliminating this requirement. This would reduce the number of redundant testing and certification of the products in India, and, thereby, reducing the costs of technical and/or regulatory barriers to trade.

- **ICT Tariffs:** India joined the Informational Technology Agreement (ITA) in 1997, but in recent years has accelerated a protectionist campaign to sharply curtail telecom equipment imports, negatively impacting the U.S. telecom sector. Most recently, in October 2018 New Delhi announced significant duty increases on a host of telecom products it had committed in its WTO schedule to treat as duty free. Since July 2017, India has levied tariffs five times on ICT goods with tariffs bound at zero. This is in addition to an earlier round of WTO-violating duties in 2014. India maintains that many or all of these tariffs were imposed on products that were not captured by or contemplated under the ITA, as IT technology has evolved dramatically over the past two decades. New Delhi has clearly outlined its protectionist intentions. In August 2018, the national telecom regulator announced a goal to slash imports of telecom equipment to “net zero” by 2022. India’s national Digital Communications Policy released in September 2018 calls openly for “rationalising taxes and levies and differential duties to incentivize local manufacturing of [digital communications] equipment, networks and devices.” Unfortunately, India’s subsequent actions make U.S. products more expensive and less competitive in the marketplace, effectively shrinking American market access.
- **Investment Impediments:** India’s FDI cap hinders U.S. companies attempting to do business in India, including insurance companies, which are subject to a 49 percent equity cap and severe restrictions on management control. Similarly, foreign banks face restrictions on FDI in Indian banks. India also restricts foreign ownership on business-to-consumer retail. The FDI regulations also weaken U.S. investors’ authority and role.
- **Broadcast:** The Indian government regulates the uplink and downlink of satellite signals beaming into India. Foreign broadcasters are required to set up offices in India licensed by the government and must pay prescribed fees per channel beaming into India. More generally, India’s Telecom Regulatory Authority (TRAI) imposes an onerous set of regulations on the broadcast sector, stifling innovation and hindering competition. For example, TRAI proposes to issue tariff orders that establish the amounts, by genre, that broadcasters can charge satellite and cable platforms for content. Local stakeholders are challenging the order before the Madras High Court, which upheld the impugned regulations of TRAI’s authority to regulate content tariffs for TV services. The Madras High Court order has now been challenged in the Supreme Court and a hearing on the matter has been deferred to Q4 of 2018. Further, India prohibits broadcasters from granting exclusive contracts with any distributors and imposes “must provide” channel programming requirements to all requesting distributors on a non-discriminatory basis. Combined, the exclusive contract prohibition and the “must provide” requirements eliminate all potential for competition among distributors and chill any incentive to develop exclusive programming. Separately, India’s draft Data Protection bill is far more restrictive than the EU’s recently enacted GDPR. Along with data localization requirements addressed above, other excessive restrictions in the Bill include discretionary powers to local DPAs to suspend data transfers and impose draconian penalties on foreign companies, onerous obligations on ‘significant data fiduciaries,’ criminal penalties and non-bailable offenses, and other unreasonably burdensome requirements.

- **E-commerce:** India restricts foreign ownership in large segments of online business-to-consumer retail. India's Goods and Services Tax (GST) also discriminates against e-commerce providers by requiring online marketplaces to withhold and remit taxes while the law does not impose similar requirements on offline retailers.
- **Amendments to the Information Technology Act:** The Indian Government is contemplating amending its Information Technology Act of 2000 to impose greater liabilities on cloud service providers, that will require them to meet nearly impossible-to-meet standards related to data protection, privacy and assurance of non-interference of data.
- **Procurement:** There is no centralized procurement policy which means myriad regulatory bodies promulgate procedures, guidelines, and rules. The current government e-marketplace portal has loopholes that could lead to irregular pricing and other errors. A newer portal has not yet been created and as such there is no transparent process for products and services by vendors.
- **Regulation of "Over-the-Top" Providers:** At the behest of the domestic industry, the Telecom Regulatory Authority of India (TRAI) in November 2018 released a "Consultation Paper on Regulatory Framework for Over-the-top (OTT) Communication Services." In the consultation paper, TRAI raised questions on: (i) regulatory arbitrage between OTTs and Telecom Services Providers (TSPs); (ii) similar regulatory treatment of OTTs and TSPs providing 'substitutable' services; (iii) lawful interception requirements on OTTs; (iv) interoperability of OTT services; and (v) licensing of OTT services. TRAI will likely announce its recommendations on the consultation in the coming weeks; law enforcement access to encrypted content and data localization measures are expected to feature prominently in TRAI's recommendations.
- **Duties on Electronic Transmissions:** India has called for a re-examination of the WTO Moratorium for customs duties on electronic transmissions and questioned other Members' attempts to extend or make it permanent. (It is worth noting that India's FTA with Singapore prohibits the imposition of customs duties on electronic transmissions.) In an official communication to the WTO in the September round of the US-India ICT Dialogues, India underscored the importance of empowering developing countries with the right to impose levies as a tool for economic development. The Government also stated that removing the moratorium will enable the growth of domestic businesses which are currently unable to attain competitiveness and economies of scale because of overseas companies. Levying customs duties on electronic transmissions will hurt e-commerce companies as it will be a deterrent for buyers and sellers to transact on online platforms. It will also create barriers for India in the global ecommerce market thus adversely impacting the country's economy as well. Due to India adopting different standardization norms, smaller players may find it difficult to enter the market.

## Indonesia

In services, the United States has maintained a services trade surplus with Indonesia since 1999 (first data available). In 2018, U.S. services exports to Indonesia were \$2.6 billion, while U.S. imports were \$1.2 billion, resulting in a \$1.4 billion trade surplus in services.<sup>122</sup>

Sales of services in Indonesia by majority U.S.-owned affiliates were \$3 billion in 2015, while sales of services in the United States by majority Indonesia-owned firms were \$114 million.<sup>123</sup> U.S. FDI in Indonesia was \$14.6 billion in 2016, a 9.1 percent increase from 2015. U.S. direct investment in Indonesia is led by mining, nonbank holding companies, and manufacturing.<sup>124</sup>

Looking at specific sectors, U.S. services have seen strong performances in transport, financial services, licensing and intellectual property fees, telecommunications, and business. A few years ago, the United States exported no financial services to Indonesia; now the U.S. exports over \$277 million. The growth is even more stark with business services, which includes accounting, architectural services, consulting, and other professional services. In 2015, the U.S. exported \$652 million worth of business services, making it one of the largest types of U.S. service export in Indonesia, only behind intellectual property fees, which amounted to \$266 million. Services exports in the telecommunications and computer sectors, maintenance sector, and transport sector were also strong, in 2015.<sup>125</sup>

Sales of services in Indonesia by majority U.S.-owned affiliates were \$3.3 billion in 2014, and U.S. FDI in Indonesia was \$13.5 billion in 2015, led by mining, nonbank holding companies, and finance/insurance.<sup>126</sup>

As a result of GATS, Indonesia:

- Increased market access in cross-border supply, specifically in business services and tourism.
- Opened consumption abroad and, in most sectors, there are few restrictions.
- Substantially increased commercial presence, even though there are a few limitations on foreign investment ownership, especially in telecom.
- Lifted temporary entry barriers.

Despite this promising picture, impediments to services trade exist. They include the following:

- **Data:** The government of Indonesia has introduced a series of forced data localization measures through Ministry of Communication and Informatics Regulation 82/2012. The October 2012 Regulation 82 requires “electronic systems operators for public service” to store data locally, mandating that all operators come into compliance by October 2017. Following amendments in June 2019, the updated GR, which has not yet been finalized, would create a system classifying data into two categories, public electronic system operators and private electronic system operators. The revised policy would allow private operators to store data outside of Indonesia, but in that case their data would still be subject to monitoring by Indonesian authorities. Moreover, a 2016 regulation requires electronic system providers to process protected private data only in Indonesian data centers. We are concerned that Indonesia has no clear commitments to allow the storage and processing of data offshore, creating tremendous business uncertainty and increased compliance risks. Indeed, data localization will have a negative impact on Indonesia’s economy as well as open U.S. companies to additional cyber risks.

- **Advertising Restrictions:** Indonesia’s Broadcasting Law (No. 32 Year 2002) includes a requirement that any free-to-air TV and pay-TV advertising aimed at the local market must be locally produced. Such a rule, if implemented, would be burdensome and the additional associated costs could be passed on to consumers. The timeline for revising the Broadcasting Law remains unclear.
- **Film Law:** The Ministry of Culture and Education has been drafting implementing regulation to enforce the 2009 Film Law. The latest 2018 draft regulations do not include the provision on the 60 percent screen quota for Indonesian films. However, the prohibition on dubbing of imported films remains in the draft. Content owners should be given the flexibility to dub films into a local language based on market demand. Furthermore, the Film Law contains ambiguous provisions that purportedly aim to limit unfair trade practices or monopolistic conduct, such as restrictions on vertical integration. Indonesian authorities should remove these provisions, as they could have unintended consequences such as restricting foreign participation in the market and curbing business efficiency. Indonesia should amend the Film Law and incorporate international best practices, notably recognizing the exclusive right of rights owners to determine whether, how and where their works are made available. Doing so will avoid creating new barriers that could undermine Indonesia's plan to attract foreign direct investment in the film sector.
- **Censorship Restrictions:** In October 2015, the Indonesian Broadcasting Commission (KPI) notified platform operators regarding pre-censorship and classification requirements for programs on all TV channels. KPI suggested that non-compliance may violate the Broadcasting Ethics and Broadcast Program Standard, thus subjecting operators to fines and imprisonment. If implemented, these requirements would negatively impact the pay-TV industry by raising costs, creating new barriers to entry, and reducing consumer choice.
- **Electronic Payment Services:** Over the past several years, Indonesia has adopted a series of measures that prohibit cross-border electronic payment systems and require payment processing to take place locally. These measures, including BI Circular 17/52/2015, BI Regulation 18/40/2016, BI 19/8/2017 and POJK no. 38, present substantial challenges to the continuation of U.S. electronic payment companies’ business in Indonesia. Moreover, the recently passed National Payment Gateway regulation, which caps foreign ownership at 20 percent, will make it economically infeasible for U.S. payments companies to compete with local companies for domestic business, and would effectively require U.S. companies to relinquish control over ownership, pricing, branding, and rules to local entities.
  - **Payment Transaction Processing Regulation:** (PBI 18/40/2016) BI released the Payment Transaction Processing regulation in November 2016. This regulation introduces licensing requirements for e-wallets and payment gateways. This regulation also requires all domestic transactions to be processed domestically and introduced a foreign equity cap of 20% on all payment system providers. Existing payment system providers were grandfathered out of this local ownership requirement provided they do not change equity structure or apply for any new license.
  - **National Payment Gateway Regulation:** The National Payment Gateway (NPG) regulation (PBI 19/8/2017) issued on July 6, 2017 established the “NPG” and 3 new institutions: a switching body; a services body and a standards body. The NPG regulation requires any entity wishing to process domestic transactions to apply for a new NPG switching license. Criteria to obtain a new license include i) onshore processing of transactions and ii) a cap of 20% on foreign ownership. Obtaining an NPG switching license would processing of all domestic transactions according to pricing and rules as set out by a new NPG “Services

Institution”, comprising the domestic switches and banks and adopting standards set out by the Standards Body (this role is fulfilled by the Indonesian Payment System Association, ASPI). The new Services body, PT Penyelenggara Transaksi Elektronik Nasional (PT PTEN) is a consortium made up of the 4 domestic switches (Artajasa, Rintis, ALTO, Jalin) and the 4 largest banks (BCA, Mandiri, BRI and BNI).

On September 20, 2017, Bank Indonesia (BI) released implementing guidelines (PADG 19/10/2017) for the National Payment Gateway (NPG) regulation (PBI 19/8/2017) along with three appendices (including pricing guidelines which sets a cap on the Merchant Discount Rate for regular domestic debit transactions of 100 bps).

The September guidelines establish high-level criteria for commercial partnerships between NPG and non-NPG switches, subject to approval by BI. The published criteria establish that, if a foreign payments company enters into a commercial partnership with maximum 2 out of 4 local NPG players and has on shore processing capabilities, it would be allowed to process its own branded domestic transactions on behalf of its NPG switching partners.

- **E-money regulation:** On May 7, 2018 Bank Indonesia issued a new regulation on e-money (PBI 20/06/2018). The regulation defines e-money as closed-loop or open-loop, server-based or chip-based, and unregistered or registered. The regulation requires non-bank electronic money issuers to have at least 51% local Indonesian ownership. To become a principal/switch, payment service provider must oblige to two requirements (i) maximum 20% foreign equity cap as defined in BI regulation no 18/40/PBI/2016, and (ii) on-soil processing capability as defined in BI regulation no 19/08/PBI/2017 on NPG.

The regulation also states that a payment system operator cannot control both back end (defined as principal, switching, clearing and settlement) and front end (defined as issuer, acquirer, payment gateway, e-money issuer, and fund transfer operator).

The regulation requires all e-money providers to route transactions over the NPG (including cross-border).

BI regulation no 21/18/PADG/2019 requires Indonesia’s Standards of QR code (QRIS) for payment be used for all QR domestic as well for inbound cross-border. The regulation also specifies parties involve in QRIS transaction: front-end provider, NPG switches, Merchant Aggregator and National Merchant Repository, sidelining any roles of foreign principal/switching. For the in-bound cross-border, the regulation only allows issuing and/or acquiring Banks in Category IV to establish partnership to enable foreign-managed sources of funds and/or foreign-issued payment instruments. As existing local QR code payment providers are making their adjustments to adopt QRIS by latest 31 Dec 2019, BI has indicated it will set the MDR of 70 bps per transaction.

The Government of Indonesia recently issued its new regulation no 71/2019 replacing GR82/2012 on data localization. The new regulation simplifies data categories into public and private sector data, allowing the last to be kept either off-soil or on-soil. For financial sector data including payment system, this regulation gives a leeway for BI and OJK as financial sector authorities to further define their requirements creating continued uncertainties of doing business in Indonesia.

- **Express Delivery:** The postal law of 2009 restricts courier services to JVs with a maximum of 49 percent foreign ownership and further prevents foreign express delivery firms from conducting the last-mile delivery unless they outsource to a third party. “Postal services” is overly broad – it includes the transport and delivery of written and/or electronic communication services, packages delivery services, logistics services, financial transactions services and postal agency services. Under Indonesia’s foreign ownership regulations, a Foreign Investment Company (Perusahaan Penanaman

Modal Asing or “PMA Company”), in which a foreigner can legally hold shares and engaging in domestic postal services activities/ courier services, has a 49 percent Foreign Ownership Restriction. This requires “Indonesian parties” (i.e., Indonesian nationals or Indonesian, non-PMA Companies wholly owned by Indonesian nationals) to own not less than 51 percent of the issued shares of a PMA Company providing domestic courier services/postal services without regard to the voting and dividend rights attached to the issued shares held by the Indonesian parties.”

- **Insurance:** Indonesia has recently imposed many new trade restrictive measures on foreign insurers and reinsurers, including 100 percent mandatory cessions to the state- owned reinsurer, the implementation of forced localization of data processing in October 2017, and the recent announcement that they will no longer respect the acquired ownership rights of foreign insurers who have received regulatory approval to own more than 80 percent equity.
- **Legal Services:** Only Indonesian citizens may be licensed as lawyers in Indonesia.
- **Transport:** The foreign ownership limit for freight forwarding is 67 percent, while express delivery is restricted to 49 percent.
- **Regulation of “Over-the-Top” Providers:** There is increasing interest by foreign governments in subjecting U.S. online services and applications to heavy-handed regulations that impede their cross-border delivery. These measures – often called “Over-the-Top” or “OTT” regulations in foreign markets – take different forms globally. Indonesia plans to revive its draft regulation on Over-the-Top (OTT), renaming as a “Digital Platform” regulation. The ICT Ministry plans to issue the policy by first half of 2020. They have begun policy research to develop a definition of “digital platform”, with the intent to classify e-commerce, fintech, healthtech, transport and travel apps, and cloud services as digital platforms. The regulation will seek to create an equal playing field between local and foreign platform, likely requiring foreign providers to locally register, submit to screening of content, providing law enforcement access, and respecting local taxation laws and regulations. We strongly recommend you to urge the Indonesian government to cease efforts on this regulation, which would create a new precedent for imposing regulation on internet-based services and limit access for foreign providers. Governments should reduce or streamline regulations, where appropriate, on this and other OTT services in order to stimulate competition and greater investment while enabling innovative new services to reach consumers. Additionally, governments should reduce or streamline regulations, where appropriate, on traditional services providers as markets become more competitive due to the introduction of new digital services and other technological changes. In many cases, the rationale behind these legacy regulations has become obsolete due to technologically-driven changes to the marketplace.
- **Potential – Excessive Government Access on Cybersecurity:** Indonesia has shown clear intention to pass two policies: Cybersecurity law and cybersecurity regulation. Both policies are driven by the new Cybersecurity and Crypto Agency, that is struggling to improve their competencies to understand how digital technology work. The Agency is heavily influenced by how China and Russia runs their cybersecurity operations, which is inspiring Indonesian government to have direct access to intervene and access private communications in the internet. In addition to that the Cybersecurity law plans to impose 50% local content requirement for cybersecurity equipment that is being used in Indonesia, and also additional licensing for public and private sector cybersecurity operators.

- **Telecommunications:** Indonesia maintains foreign ownership caps for telecommunications network and service provider of 49-65%, substantially hindering U.S. participation in the market.
- **Duties on Electronic Transmissions:** Indonesia recently issued Regulation No.17/PMK.010/2018 (Regulation 17), which amended Indonesia’s Harmonized Tariff Schedule (HTS) Chapter 99 to add: “Software and other digital products transmitted electronically.” Chapter 99 effectively treats an electronic transmission as a Customs “import,” which triggers a number of negative implications including: the imposition of Customs import requirements (including declaration and other formalities) that will be impossible to meet for certain intangible products, the imposition of import duty and taxes on each electronic transmission, the creation of U.S. technology and security risks, and constraint of the free-flow of communication into Indonesia. The inclusion of “[s]oftware and other digital products transmitted electronically” in Indonesia’s HTS skirts Indonesia’s commitment under the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions, a commitment that Indonesia reaffirmed as recently December 2017. Indonesia’s actions will establish a dangerous precedent and will likely have the effect of encouraging other countries to violate the WTO Moratorium. In order to eliminate this barrier, Indonesia must rescind Regulation 17 and remove Chapter 99 from its HTS.
- **Investment:** Indonesia currently imposes restrictions on foreign direct investment related to e-commerce. This impairs the ability of U.S. firms to invest in Indonesia and provide local e-commerce offering. Non-Indonesian firms are prevented from directly retailing many products through electronic systems and limited to 67 percent of ownership for warehousing, logistics or physical distribution services provided that each of these services is not ancillary to the main business line. Indonesia should liberalize its FDI restrictions related to e-commerce, which limit the ability of Indonesia to grow its digital economy.

## Israel

The U.S.-Israel FTA is the first FTA into which the United States entered. Since the FTA went into force in 1985, U.S. trade with Israel has increased ten-fold to over \$40 billion annually.<sup>127</sup> In 2018, U.S. services exports to Israel were \$6.1 billion, while U.S. imports were \$8.1 billion, resulting in a \$2.0 billion trade deficit in services.<sup>128</sup> FDI in Israel was \$10.3 billion. Israel is also a party to the Trade in Services Agreement (TiSA) talks.

U.S. exports of services to Israel were an estimated \$5.1 billion in 2016 and U.S. imports were \$6.6 billion.<sup>129</sup> Sales of services in Israel by majority U.S.-owned affiliates were \$4.2 billion in 2015, while sales of services in the United States by majority Israel-owned firms were \$2.3 billion.<sup>130</sup>

U.S. FDI in Israel was \$9.7 billion in 2016, a 6 percent increase from 2015. U.S. direct investment in Israel is led by manufacturing, professional, scientific, and technological services, and information.<sup>131</sup>

While limited in scope, the FTA did include the following benefits and initial reference to services:

- **Market Access:** The FTA recognized the importance of trade in services and the need to maintain an open system of services exports which would minimize restrictions on the flow of services between the two nations.
- **Joint Committee on Services:** To this end, both parties agreed to form a Joint Committee on Services, a step taken to establish a mechanism to continue the dialogue as trade (and technology and services) continued to progress over time.

Outstanding issues:

- **Government Procurement:** Foreign companies in the services sector face localization commitments.<sup>132</sup>
- **Telecommunications:** Advertising is restricted in Israel, though foreign channels can advertise, provided they broadcast through Israeli networks.<sup>133</sup>
- **Digital Trade:** E-commerce businesses face a disadvantage due to Israel's electronic signature law, which requires a physical signature.<sup>134</sup>
- **Trade Facilitation:** Israel has not ratified the WTO Trade Facilitation Agreement.

## Jamaica

The U.S.-Jamaica BIT went into force in 1997. Through 2004, U.S. investment in Jamaica increased from 1.95 billion in 1997 to \$3.55 billion.<sup>135</sup> However, since then, investment has declined drastically, hitting \$204 million in 2015. This could be a result of crime, one of the primary investment barriers in Jamaica.

This BIT has provided clear, transparent, and nondiscriminatory treatment of investors. Jamaica has embraced open investment policies, particularly as a manner to stimulate economic growth and curb crime. As such, Jamaica has few barriers to investment in place. One such barrier that does exist is that under the Companies Act, investors are required to either establish a local company or register a branch office of a foreign-owned enterprise; Further, branches of companies incorporated abroad must also register with the Registrar of Companies if they intend to operate in Jamaica<sup>136</sup>

## Japan

In 2017, Japan was the fourth-largest services export market for the United States. The United States has maintained a services trade surplus with Japan since 1999 (first data available). In 2018, U.S. services exports to Japan were \$45.2 billion, while U.S. imports were \$34.7 billion, resulting in a \$10.5 billion trade surplus in services.<sup>137</sup>

Sales of services in Japan by majority U.S.-owned affiliates were \$68.8 billion in 2015, while sales of services in the United States by majority Japan-owned firms were \$152.8 billion.<sup>138</sup> U.S. FDI in Japan was \$114.6 billion in 2016, a 10.1 percent increase from 2015. U.S. direct investment in Japan is led by finance/insurance, manufacturing, and information.<sup>139</sup>

Looking at specific sectors, U.S. services have seen strong performances in the transport, financial services, licensing and intellectual property fees, telecommunications, and business services, with these areas representing over two-thirds of the services exports to Japan. Over the last decade, the United States has increased its financial services exports to Japan by 45 percent, hitting \$3.5 billion in 2015. Transport services exports have increased by over 50 percent since 1999, buoyed by strong growth in sea transport. With the fast-growing digital nature of the global economy, the telecommunications and computer services sector has unsurprisingly been one of the areas of strongest growth. U.S. business services, which include advertising, consulting, legal, and other professional services, have grown by about 50 percent, with over \$7.5 billion worth of business services being exported in 2015.<sup>140</sup>

As a result of GATS, Japan:

- Increased market access in cross-border supply and commercial presence in certain sectors. In Mode 3, there are limitations on foreign investment ownership.
- Opened consumption abroad; most sectors face few restrictions.
- Has lifted some temporary entry barriers, though many remain.

Sales of services in Japan by majority U.S.-owned affiliates were \$70.6 billion in 2014. U.S. FDI in Japan was \$108.5 billion in 2015.<sup>141</sup>

CSI welcomed the announcement in September 2019 that the U.S. and Japan had signed an agreement on digital trade. The agreement contains provisions to promote the flow of cross-border data; prohibit data localization, including in financial services; ban customs duties on digital products; prohibit forced access to computer source code and algorithms; and ensure the ability to use innovative encryption technology.

At the same time, CSI urges the Administration to pursue a comprehensive, high-standard free trade agreement with Japan that includes fully enforceable market access commitments and disciplines on services, telecommunications, financial services, digital trade and customs and trade facilitation-all sectors critical to U.S. economic growth.

Among the services issues of U.S. industry concern, some of which may have contributed to the slowing rates of American services exports to Japan, are the following:

- **Express Delivery:** Japan is privatizing Japan Post Holdings, which owns postal, insurance, banks, and other subsidiaries. With this privatization and postal reform efforts, there are added concerns over unequal treatment between Japan Post and private international express delivery companies. For example, Japan Post's Express Mail Service (EMS), which it considers part of

their Universal Service Obligation (USO), enjoys preferences in customs, security, quarantine, parking, and other protocols.

- **Insurance:** Japan's cooperative-run insurance, called kyosai, are not regulated by the standard Japanese financial services regulatory agency, resulting in an uneven playing field and lack of transparency of the regulatory environment.<sup>142</sup>
- **Legal Services:** Japan imposes cumbersome and time-consuming procedures for the registration of foreign lawyers to provide international legal services in Japan and prohibits foreign lawyers from establishing branch offices in Japan.

## Jordan

The U.S.-Jordan FTA went into effect in 2010. According to the latest data in 2017, the U.S. exported \$721 million in services to Jordan, and Jordan exported \$849 million in services to the U.S., resulting in a \$128 million services trade surplus.<sup>143</sup>

Sales of services in Jordan by majority U.S.-owned affiliates were \$51 million in 2015 (latest data available), while sales of services in the United States by majority Jordan-owned firms were \$3 million.<sup>144</sup> U.S. FDI was \$213 million in 2016 (latest data available), a 6.6 percent decrease from 2015.<sup>145</sup> Jordan and the United States are also party to the United States-Jordan Joint Principles on International Investment and Joint Principles for Information and Communication Technology Services.<sup>146</sup>

The goal of this and other engagement with Jordan has been to improve transparency and openness between the government and private sectors.<sup>147</sup>

Specific benefits include:

- **Market Access:** The FTA gave American services providers access to Jordan's financial, education, audio-visual, courier, and other services. Both parties also agreed to bind their GATS commitments under this FTA.

## Kenya

Kenya enjoys preferential trade benefits under the African Growth and Opportunity Act, and in late 2018 the two countries launched a U.S.-Kenya Trade and Investment Working Group to expand trade and investment. U.S. exports to Kenya include agricultural products, aircraft parts, and machinery. U.S. imports from Kenya include apparel, coffee, and tea. U.S. business investment is primarily in services, information technology, and the tourism industry. The United States also has signed trade and investment framework agreements with the East African Community and with the Common Market for Eastern and Southern Africa.

Kenya is a member of both regional organizations. U.S. foreign direct investment (FDI) in Kenya (stock) was \$405 million in 2017.<sup>148</sup>

Barriers experienced by U.S. services suppliers operating in Kenya include:

- **Insurance and Reinsurance:** Kenya maintains substantial insurance trade and investment barriers that hurt U.S. insurers and our ability to contribute to Kenya's development goals. Kenya maintains restrictions on cross-border reinsurance whereby a minimum of one-third of the equity of an insurance company is required to be held by Kenyans or citizens of East African Community countries. Furthermore, in Kenya local insurers are legally bound to offer state-owned Kenya Re 20 percent of all their outward reinsurance treaties. These discriminatory restrictions prevent U.S. insurers from accessing fully an important market like Kenya. Restrictions on who an insurer can buy reinsurance from make it more difficult to operate in Kenya as part of a larger global insurance group. It also makes it harder for U.S. insurance groups to stitch together coverage for global corporate clients in all the markets where they operate. Kenya also prohibits Difference-in-Conditions and Difference-in-Limits (DIC/DIL) insurance trade, which is an important type of insurance for facilitating U.S. exports by multinational enterprises by covering their unique risks.

## Republic of Korea

U.S. exports of services to Korea were an estimated \$22.3 billion in 2018, up from \$20.8 billion in 2015. U.S. imports from Korea totaled \$12.3 billion in 2018, for a U.S. services surplus of \$10.0 billion.

While the United States maintains an overall trade deficit with Korea (\$9.8 billion in 2017), the United States has a bilateral services trade surplus with Korea of \$13.3 billion, in large part due to the U.S.-Korea Free Trade Agreement (or, KORUS).<sup>149</sup>

Sales of services in Korea by majority U.S.-owned affiliates were \$14.1 billion in 2015, while sales of services in the United States by majority Korea-owned firms were \$24.1 billion.<sup>150</sup> As for investment, Korean investment to the United States was \$39.1 billion in 2016, a 5.8 percent increase from 2015.<sup>151</sup>

Looking at specific services exports sectors, financial and insurance services are particularly notable. The United States has consistently held a trade surplus in both sectors. In 2016, U.S. financial services providers held a surplus of \$684 million, while U.S. insurance providers held a surplus of \$166 million. U.S. telecommunications, computer and information services providers also boasted a \$264 million trade surplus.<sup>152</sup>

Since its implementation in March 2012, KORUS has been instrumental in reinforcing the bilateral trading relationship and strength of the U.S. services industries in Korea, including through increased market access and greater regulatory transparency. Between 2011 and 2015, levels of trade in services across the board grew by an average 3.3 percent, with a greater 15 percent increase in U.S. exports of telecommunications and computer and information services.

KORUS benefits include:

- **Financial Services:** KORUS established ongoing, regulatory dialogues between the United States and Korea to further regulatory cooperation and avoid discriminatory actions. KORUS also clarifies the right of U.S.-based financial services firms to provide back-office support for their Korean operations on a cross-border basis, through transfer of customer data in and out of country. There are no restrictions on foreign ownership of financial institutions in Korea and there is freedom to choose the form of legal establishment. Additionally, KORUS leveled the competitive playing field for U.S. insurers competing with Korea Post Insurance and the four largest government-affiliated cooperative insurers, so that they are now subject to independent prudential supervision by the same Korean regulators as is the private sector.
- **Express Delivery Services:** KORUS implemented a modern customs chapter that elevated Korea's de minimis threshold to \$200, though it has applied the increased level only to U.S.-origin and not all imports, which adds complexity for service providers.
- **Telecommunications:** KORUS allows U.S. telecommunications firms to own up to 100 percent of Korean-based telecommunications firms.
- **E-commerce:** KORUS contains an e-commerce chapter including provision of non-discriminatory treatment for digital products.
- **Investment:** U.S. investors in non-financial services are provided national treatment and most favored nation treatment under KORUS.
- **Legal Services:** KORUS includes a commitment to allow U.S. firms to enter into joint ventures in Korea, which became effective in March 2017.

While KORUS has improved the business environment for U.S. services companies operating in Korea, there remain obstacles to access and ease of doing business, which include the following areas:

- **Screen Quota:** In 2006, prior to the KORUS negotiations, the Korean government agreed to reduce by half its screen quota requiring exhibition of Korean films, to 73 days per year. Over a decade later, amidst rapid development of its cultural industries and the success of many Korean films internationally, now is the time for Korea to show leadership in the region, trust the choices of its consumers, and further reduce or eliminate its screen quota.
  - In 2016, lawmakers proposed amendments to the Motion Pictures and Video Products Act that would restrict vertical integration of film distribution and exhibition and would “fairly” allocate screens to all movies. The focus of the amendments appears to have shifted to market dominance by conglomerates, with proposals to restrict conglomerate-owned or -operated multiplexes from allocating more than 40 percent of screens to the same film at any given time. The amendments fail to clarify how the proposal would promote the diversification of the Korean film industry. Lawmakers should avoid any unintended consequences from such proposals that could be inconsistent with South Korea’s international obligations.
- **Advertising Restrictions:** In July 2015, Korea introduced an advertising cap that limits the maximum total duration of advertisements aired, regardless of the type of advertisement, to an average 17 percent of program duration and no more than 20 percent of any specific program’s duration. In- program advertising, in particular, is limited to one minute of advertisement per airing of the program, with the balance of advertising appearing prior to and following the program. Additionally, Korea maintains a protectionist policy that prohibits foreign retransmitted channels from including ads for the Korean market.
- **Data:** Data localization barriers continue to exist in Korea, such as geospatial data restrictions preventing internet service suppliers from offering online maps, navigation tools, and related applications, as well as in health care and financial services, including cross-border reinsurance. In addition, a new bill would require online service providers to establish local servers in order to ensure user protection from deliberate diversion of traffic and slowed service, or face penalties up to a 3 percent fine based on revenue for not complying with this requirement.
- **Brokerage Services:** Express delivery services companies would like to do stand-alone brokerage, but this is not possible today. Based on current laws, express companies can only clear the shipments that they handle. To clear third-party shipments and provide other ancillary services, a company must obtain a customs services corporation (CSC) license. However, express companies cannot obtain this CSC license according to current laws. CSC licenses are only granted to licensed customs brokers, and 100 percent of the staff customs brokers of the company must be licensed customs brokers. In fact, KORUS accepts this condition. Under KORUS Service Annex I, Korea opens customs clearance services to foreign investors, but the licensing requirements are subject to domestic laws, which we hope to see change.
- **Express Delivery Services:** Korea only applies the \$200 de minimis mentioned above to imports from the United States and has not implemented it globally on a most-favored nation (MFN) basis. This has undermined the main benefit of a higher de minimis level, namely a streamlined process for rapid border clearance of these goods. Conversely, Korea's interpretation has added to the complicated web of regulatory restrictions that inhibit trade facilitation, while requiring the dedication of more automated resources to distinguish shipment values for separate customs procedures according to origin. For instance, Korea requires both foreign and domestic carriers, with the exception of Korea Post, to send shipments selected for inspection to a Common Express Terminal (CET) operated by Korea Customs Service (KCS). The unique treatment of Korea Post is at odds with KORUS, under which Korea is to provide non-

discriminatory opportunities to all postal and express delivery service suppliers in Korea. Korea's position also requires more administrative resources by the Korean Customs Service (KCS) to ensure low value goods are moving through the right channel. The result has been service delays and higher costs for both the private sector and the government.

- **Information Technology Equipment** – Cybersecurity Testing Requirements: Network equipment such as routers or switches procured by Korean government entities in Korea are still subject to further in-country testing requirements despite the fact that Korea is a member of the Common Criteria Recognition Arrangement (CCRA).
- **Electronic Payment Services:** Since 2008, Korean financial authorities have required Korean payment card issuers to offer and operate a local brand card product for use only in Korea, with identical services for each foreign card launched in Korea. Also, regulators have mandated that the annual fee for domestic cards be less than that for foreign cards. These provisions have led to the drop of foreign cards' market position share from 76 percent in 2008 to 52 percent in 2014. The ability for U.S. payment card companies to offer creative card products based on free market principles would help to restore the U.S. companies' market position, thereby increasing direct exports, and it would facilitate additional indirect U.S. exports of other goods and services through e-commerce, which would help to reduce the U.S. trade deficit with Korea.  
There is also an ongoing practice by Korea's financial institution regulatory authorities in which pressure is exerted on financial institutions to direct customers towards using domestic, Korean-branded payment cards as opposed to international brands, thus discriminating against U.S.-branded card services in practice.
- **Telecommunications:** Foreign satellite services providers in Korea must go through a company established in Korea when selling services to end-users.
- **"Reverse Discrimination":** The idea of "reverse discrimination" should essentially be seen as conscious efforts by the Korean Government to tilt the playing field in favor of Korean businesses to address a perceived unfair environment in which they operate in competition with global technology companies. This derives in part from growing anti-foreign sentiment from Korean market players and policy makers. It traces back in September 2017 when the Korean government established a pan-governmental task force on reverse discrimination to investigate issues where domestic companies are unfairly disadvantaged compared to multinationals, covering issues such as tax evasion, network fees, and personal information protection. The founder of Naver, a leading domestic portal and search engine company, has been vocal that domestic tech companies suffer from "reverse discrimination" in Korea – whereby domestic tech companies (such as Naver) argue they face a higher tax burden than global tech companies (whether corporate tax or inter-connection fees compared to foreign counterparts like Google and Facebook, who have been described as free riders who heavily rely on local telco networks but do not pay "enough" network usage fees).

The Korean government is exploring new legislation to tax global tech companies with cross-border digital businesses in response to claims that these companies have unfairly evaded their tax responsibilities. The Korea National Tax Service (NTS) has been investigating AWS since 2018. A significant escalation of this investigation occurred in February 2019. This follows a similar large scale on-site audit of Google Korea in November 2018, and Oracle Korea in March 2019 respectively. Another area where the issue of reverse discrimination has come up is network usage fees. This has been a hot issue during the National Audit where country managers of Google Korea and Facebook Korea being called to the hearing sessions. This has been directly linked to unfair competition, an allegation amplified by local companies, with the Korea Fair Trade Commission (KFTC) taking the

lead on exploring new regulation to induce global tech companies to pay more network usage fees based on competition concerns. KFTC has launched a study into the issue and a review is 'under way' as to whether to introduce new regulation, and Ministry of Science and ICT (MSIT) has set up a joint working group with Korea Communications Commission (KCC) to explore the ways to raise the network usage fees to be charged on global tech companies.

## Malaysia

The United States has maintained a services trade surplus with Malaysia since 1999 (first data available). And since then, U.S. services exports to Malaysia have increased by over 150 percent, which has resulted in the services trade surplus having grown by nearly 40 percent, even in the face of weak trade flows owing to headwinds from the Great Recession.

In 2017, U.S. services exports to Malaysia were \$3.5 billion, while U.S. imports were \$2 billion, resulting in a \$1.5 billion trade surplus in services.<sup>153</sup>

U.S. exports of services to Malaysia were an estimated \$3.1 billion in 2016 and U.S. imports were \$1.9 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were \$7.6 billion in 2015, while sales of services in the United States by majority Malaysia- owned firms were \$472 million.<sup>154</sup> U.S. foreign direct investment (FDI) in Malaysia (stock) was \$13.9 billion in 2016, a 7.2 percent decrease from 2015.<sup>155</sup> U.S. direct investment in Malaysia is led by manufacturing, finance/insurance, and mining.<sup>156</sup>

The United States' strong and growing services surplus with Malaysia has been buoyed by strong performances in transportation, financial services, licensing and intellectual property fees, telecommunications, and business services. A few years ago, the United States exported no financial services to Malaysia; the United States now exports over \$270 million. The growth is similarly impressive with business services, which includes accounting, architectural services, consulting, and other professional services. In 2015, the U.S. exported \$599 million in business services, making it one of the largest types of U.S. services exports to Malaysia, only behind intellectual property fees, which amounted to \$663 million. Services exports in telecommunications and computers were also robust, totaling \$169 million in 2015.

On top of this, majority U.S.-owned affiliates in Malaysia have been successful, totaling \$7.8 billion in sales in 2014. U.S. FDI in Malaysia was \$14 billion in 2015, and led by manufacturing, finance and insurance, and professional, scientific, and technical services.

As a result of GATS, Malaysia:

- Increased market access in a number of areas of cross-border supply, specifically in business services.
- Allows consumption abroad in most sectors.
- Substantially increased commercial presence, even though there are a few limitations on foreign investment ownership (in telecommunications).
- Opened temporary entry.

Despite this promising picture, many impediments to services trade exist. For instance:

- **Customs:** Foreign companies are not allowed to conduct customs clearance services unless they meet a range of criteria, including the need to establish regional headquarters in Malaysia.
- **Broadcast Quota:** Malaysia requires that broadcast stations, through broadcast licensing agreements, devote 80 percent of terrestrial airtime to local Malaysian programming. Broadcast stations are also banned from broadcasting foreign programming during prime time. Such quotas fail to incentive investment in quality content and unfairly restrict U.S. exports of television programming.

- **Cinema Entertainment Tax:** The entertainment tax for theater admissions imposed at the state government level, at 25 percent of the gross ticket price, is among the highest in the region, and limits the growth of the theatrical industry by artificially increasing box office prices.
- **Foreign Ownership Restrictions:** Malaysia strictly prohibits foreign investment in terrestrial broadcast networks. The Malaysian government also imposes a 30 percent limit on foreign investment in cable and satellite operations through licensing agreements.
- **Digital:** Malaysia established a law in 2010 requiring local data servers.<sup>157</sup> Further, concerns remain on intellectual property issues, including the availability of pirated copyright and counterfeit trademark products as well as the lack of appropriate U.S.-style safe harbors to ensure efficient removal of infringing or problematic content.<sup>158</sup>
- **Financial Services:** Malaysia also maintains a “national interest test” on the operation of financial institutions writ large, including for investments and licensing in the insurance sector, and uses that test to maintain de facto FDI caps in the insurance sector. Additionally, while Malaysia did allow a higher than 70 percent foreign ownership of insurers (which at times was necessitated by Malaysia’s mandatory tender rules for acquisitions), Bank Negara Malaysia recently announced that it will apply a hard 70 percent FDI equity cap to existing acquisitions, and no longer respect the acquired ownership rights of foreign insurers who have received regulatory approval to own more than 80 percent equity.<sup>159</sup>
- **Legal Services:** Malaysia has established limits on the number and how long foreign business professionals, like lawyers, engineers, and accountants, can work and live in Malaysia.<sup>160</sup>
- **Domestic Preference:** Foreign-owned stores are required to reserve at least 30 percent of shelf space for goods and products manufactured by Malaysian-owned businesses.<sup>161</sup>
- **Outsourcing:** Bank Negara is in the process of proposing new and revised regulations related to outsourcing. For several years Bank Negara has maintained a moratorium on outsourcing hindering financial institutions’ ability to utilize their global digital platforms. Concerns remain about Malaysia’s approach to outsourcing, including the potential for Malaysia to seek to impose data localization requirements.
- **Electronic Payment Services:** Bank Negara Malaysia’s Interoperable Credit Transfer Framework (“ICTF”) was finalized in March 2018 and came into effect on 1 July 2018. The ICTF applies to certain credit transfers, specifically payment services that allow a consumer to instruct the institution with which the consumer’s account is held to transfer funds to a beneficiary, also known as push payments. Under the ICTF, a single operator PayNet (partially owned by Bank Negara Malaysia) has been appointed to process all domestic credit transfer transactions. The ICTF is inconsistent with Malaysia’s obligations under the WTO General Agreement on Trade in Services (“GATS”). In October 2018, the industry was told by the newly appointed Bank Negara Malaysia Governor (at an industry meeting with US companies) that the ICTF will be reviewed. Malaysia has made full market access and national treatment commitments under the GATS with respect to the cross-border supply of payment and money transmission services and charge cards services. The ICTF is inconsistent with these commitments in that it: requires that all credit transfers be processed locally (thus prohibiting the cross- border supply of services by foreign service suppliers, and treating domestic service suppliers more favorably than foreign service suppliers); designates PayNet as the country’s sole operator of the “shared payment infrastructure” for processing credit transfers<sup>2</sup> (thus designating a local monopoly supplier of services, prohibiting the cross- border supply of services by foreign service suppliers, prohibiting foreign service suppliers from providing services through a locally established branch or subsidiary, and treating domestic service suppliers more favorably than foreign service suppliers); and requires that “a financial institution which is not a banking institution...ensure

that its customer data in relation to credit transfer services are stored securely within Malaysia” (thus treating domestic service suppliers, who are more likely to have domestic facilities readily available, more favorably than foreign service suppliers).

## Mexico

The United States has enjoyed a steady and healthy trade surplus in services with Mexico for the past decade. As of 2017, U.S. exports of services to Mexico were an estimated \$33.8 billion, while imports were \$25.8 billion, producing a services trade surplus for the United States of \$8 billion.<sup>162</sup>

Since 2007 (when U.S. exports of services totaled about \$25 billion), services exports have grown by 24 percent. In comparison, imports of Mexican services have remained low with slight growth.<sup>163</sup>

Sales of services in Mexico by majority U.S.-owned affiliates were \$42.8 billion in 2015, while sales of services in the United States by majority Mexico-owned firms were \$8.6 billion – an exemplary display of U.S. strength in the services trading relationship.<sup>164</sup>

### **North American Free Trade Agreement (NAFTA)**

Since NAFTA was implemented in 1994, this trade deal has integrated the services markets of Canada, Mexico, and the United States. Through the creation of common and non-discriminatory trade rules, NAFTA has opened the North American markets to a diverse array of services providers and has strengthened the U.S. services trade relationship with our North American neighbors. From 1999 to 2015, the United States has doubled its bilateral services trade surplus with Mexico U.S. services exports to Mexico and Canada tripled from \$27 billion in 1993 to \$91 billion in 2017, leading to a \$32.8 billion trade surplus in services with the two countries. NAFTA will continue to support U.S. competitiveness and provide substantial benefits to the U.S. services sector.

Please refer to the section on Canada for further discussion on NAFTA and the USMCA.

While we wait for USMCA's passage, we want to highlight the following trade impediments. We recognize in some instances, impediments listed may be reduced or eliminated if USMCA is enacted and implemented. Impediments include:

- **Digital:** It is critical to develop clear and enforceable rules in areas that have become increasingly important since the agreement was negotiated, such as cross-border data flows. It is also important to ensure that market access covers innovative services, such as blockchain and other machine-to-machine negotiated transactions, artificial intelligence, and other internet-enabled technologies (including those that enable intelligent devices) and ensuring market access covers all services will emerge in the future.
- **Regulatory Coherence:** Enhance cross-border consultations in order to more effectively pursue regulatory coherence.
- **Express Delivery & E-Commerce:** In 2016, the United States raised its de minimis threshold to \$800, setting itself as an international leader on this issue. In contrast, Mexico lowered its de minimis threshold for low value postal imports from \$300 to \$50, to match the \$50 threshold it has maintained for express shipments since 2005. Stemming from the USMCA negotiation, Mexico has prepared a newly bifurcated system that mandates different floors for customs duty and tax exemption. Unless they are raised to match or at least approach the \$800 threshold enjoyed by Mexican and Canadian exports into the U.S. for both customs duties and taxes, the current thresholds constitute a barrier to US e-commerce businesses, particularly small businesses. We are disappointed that Mexico ignored calls by the U.S. and their domestic stakeholders to raise both their duty and tax de minimis levels to more commercially meaningful thresholds.

- **Telecommunications:** Telecommunications reform has brought about new investments and improved services and reduced prices for consumers in Mexico. However, these developments are threatened by the still very high participation of the preponderant economic agent in the telecommunications sector, which remains in 59.7% percent as of the end of 1Q 2019. The participation of this agent only in mobile services remains very high at levels of 63.2 per cent in mobile telephony and of 69.6 in mobile broadband. Accordingly, it is necessary to maintain and reinforce the asymmetric measures to the preponderant economic agent to promote effective competition conditions in the sector, allow the development of competitors and provide more and better services to consumers.
  - **CFE Telecomunicaciones e Internet para Todos:** On July 19, during his morning conference, President AMLO announced the creation of a non-profit telecommunications state-owned operator (CFE Telecomunicaciones e Internet Para Todos) that would connect the entire country to the internet. This operator is a subsidiary of CFE, Mexico's government-operated electric utility. According to the license granted by IFT, CFE Telecom is able to provide wholesale and retail services; however, retail services can be offered only in locations where no other carrier offer services, as determined by IFT. It is important that CFE comply with the latter condition in order to assure that the objective of expanding rural connectivity does not displace private investment from the market, which already allows connectivity for 86% of Mexican population.
  - **Biennial Review of Preponderance Obligations:** The IFT began its second biennial review of AMX's asymmetric regulatory obligations in March 2019 with a public consultation of the measures. In May 2019, AT&T submitted a White Paper with the message to strengthen some of the asymmetric regulations imposed on AMX, which are critical for AT&T's performance. The public consultation period ended on May 27. AMX continues to hold a wireless market share of 63.2%, while Telefónica and AT&T – by subscriber - only hold 19.9% and 14.9% respectively. AMX's market share will likely provide support for the continued regulatory asymmetries. In case, the preponderant agent is granted access to video or bundling restrictions are not imposed, there could be a significant impact to consumer's benefits in the long-term. IFT leadership will be renewed by February 2020. CSI request that USTR keep enforcing the independent role of the Regulator and the completion of its mandate to promote competition and enforce the preponderant player comply with asymmetric regulation.
  - **Functional and Legal Separation of Telmex:** Telmex was required to propose plans for its division into three components divided between two companies: (1) a legally separate New Local Access Company (separate brand, locations, management, business practices, etc.) holding local loop, dedicated link, and other passive infrastructure assets, and (2)(a) a Telmex Wholesale Services Division responsible for providing wholesale services with the ning Telmex assets, which will be owned by the same company and (2)(b) a Telmex Retail Services Division composed of the remaining Telmex assets, responsible for providing retail services. Once complete, the wholesale assets (i.e., components 1 and 2a above) will be required to provide access to their assets or services on a non-discriminatory (equivalence of inputs) basis to both internal and external clients. On March 31, 2018, IFT released the public version of the order establishing the definitive conditions to restructure Telmex as in the following two years. Both the New Local Access Company and the Telmex Wholesale Services Division will be obliged to provide quarterly compliance reports; separate management teams; the New Local Access Company must have an independent board of directors, with a

majority being independent; separate office locations; separate trademarks; separate systems for customers; and, separate employee bases (no co-employment). It's important to ensure the full implementation of functional separation by 1Q20. CSI requests that USTR continue to encourage Mexico to continue enforcing its policies to promote competition in the telecommunications market as set forth in the 2013 Constitutional Reforms.

- **Barriers for Telecommunications Infrastructure Deployment:** The deployment of telecommunications infrastructure is critical to closing the digital connectivity gap for consumers and positioning Mexico competitively. Without the proper support to facilitate infrastructure and extensive deployment of fibre throughout the country, it will not be possible to bring leading, high-speed connectivity to many areas of Mexico. Government bureaucracy and corruption have represented challenges and difficulties to timely, expanded deployment of fibre. Being FCPA-Compliant, U.S. telecommunications companies can be allies to Mexican Government in terms of fighting corruption practices in the telecommunications sector to facilitate the efficient deployment of infrastructure.
- **Security Concerns:** Beyond barriers to U.S. exports and U.S. foreign direct investment in Mexico, public security concerns have eroded business environment not only for foreign but also domestic firms. In turn, this situation may impact negatively investment (including foreign), growth, employment and consumption in the country.
- **Fiscal Reforms:** Some fiscal measures proposed by the Executive and that are being discussed in Congress as part of the Economic Package for 2020 could also have a negative effect on investment. In particular, the initiative that proposes to consider fiscal felonies as organized crime. This initiative could become a potential threat to future foreign investment, because; even though foreign companies do comply with their fiscal responsibilities, there is always the risk that a slightly mistake could become a serious crime with severe consequences.

## Morocco

The U.S.-Morocco FTA entered into force in 2006.<sup>165</sup> The FTA committed Morocco to a liberalization in services and exceeding Morocco's commitments in the General Agreement on Trade in Services except with respect to financial services.<sup>166</sup> The FTA subsumed much of the BIT, which went into effect in 1991, save certain provisions that preceded the FTA. The United States also signed a bilateral Trade Facilitation Agreement with Morocco in 2013.

In 2017, U.S. services exports to Morocco were \$965 billion, while U.S. imports were \$969 million, resulting in a \$4 million trade deficit in services.<sup>167</sup>

Sales of services in Morocco by majority U.S.-owned affiliates were \$152 million in 2015, while sales of services in the United States by majority Morocco-owned firms were \$27 million.<sup>189</sup> U.S. foreign direct investment in Morocco (stock) was \$288 million in 2016, a 19.1 percent decrease from 2015.<sup>168</sup>

Specific benefits of this trade deal include:

- **Insurance:** American companies receive national treatment, though the authorization process with Morocco's regulatory body could be improved.<sup>169</sup>
- **Banking:** Morocco's banking system is highly liberalized compared to its neighbors.<sup>170</sup>
- **Customs and Supply Chain:** Morocco has invested billions of dollars in physical infrastructure dedicated to trade with the goal of establishing itself as a hub.<sup>171</sup>
- **Audiovisual:** American firms are treated as domestic firms due to the FTA.<sup>172</sup> Morocco has yet to ratify the WTO Trade Facilitation Agreement.
- **Computer and Related Services:** The agreement is comprehensive and covers electronic delivery of services.<sup>173</sup>
- **Investment:** The FTA facilitates a four-year phased removal of Morocco's restrictions on investors' foreign accounts.<sup>174</sup>
- **E-Commerce:** The FTA contains a comprehensive e-commerce chapter.<sup>175</sup>

## Nicaragua

Nicaragua joined CAFTA-DR in 2006. U.S. services exports to Nicaragua totaled \$424 million in 2018, while imports totaled \$492 million, resulting in a \$71 million services trade deficit.<sup>176</sup> Sales of services in Nicaragua by majority U.S.-owned affiliates were \$315 million in 2015, while sales of services in the United States by majority Nicaragua-owned firms were \$52 million.<sup>177</sup> U.S. foreign direct investment in Nicaragua (stock) was \$117 million in 2016, a 36.4 percent decrease from 2015.<sup>178</sup>

While data is scant, from 2013 to 2016, U.S. services exports to Nicaragua have increased by over 10 percent, perhaps having been spurred on by CAFTA-DR.

As for investment, U.S. foreign direct investment in Nicaragua was \$183 million in 2015.<sup>201</sup> However, since CAFTA-DR went into effect, Nicaragua received, on average, over \$250 million annually in U.S. investment. In the ten-year period before CAFTA-DR entered into force, the average level of U.S. investment in Nicaragua was about \$160 million.

In 2006, CAFTA entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua; in 2007 for the Dominican Republic; and in 2009 for Costa Rica. The agreement's benefits apply to myriad service sectors, including professional services, distribution, tourism, express delivery, financial services, telecommunications, computer and related services, audiovisual and entertainment, energy, transport, construction and engineering, advertising, and environmental services. Notably groundbreaking, the agreement contains language on e-commerce.<sup>179</sup>

As a result of CAFTA-DR, specific sector benefits in Nicaragua include:

- **Advertising:** Nicaragua completely opened its advertising market to foreign companies.
- **Banking:** U.S. financial services companies are now allowed to establish subsidiaries, joint ventures, or bank branches in Nicaragua. These commitments cover most banking services but exclude the management of assets or securities.<sup>180</sup>
- **Investment:** CAFTA-DR, on top of existing Nicaraguan laws, allows for 100 percent foreign ownership in most industries.<sup>181</sup>
- **Procurement:** U.S. companies are allowed to compete with local companies for Nicaraguan government procurements, with some exceptions.
- **Telecommunications:** Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers, under CAFTA-DR.

However, barriers to services trade and investment remain in Nicaragua. For instance:

- **Broadcast:** Television broadcasting has certain limits on foreign ownership.
- **Investment:** Nicaragua allows foreigners to be shareholders of local companies, but a company representative must be a national or a foreigner with legal residence in the country. Further, while Nicaraguan law provides equal treatment for domestic and foreign investment, there's certain exceptions, such as the Border Law (2010/749), which prohibits foreigners from owning land in certain border areas.
- **Telecommunications:** In May 2015, the government proposed a law that would authorize TELCOR to set the maximum rates for telecommunication services, introduce a service regulation tax to be paid by Internet service providers, and establish a single Internet exchange point for the country. The proposed legislation also would require telecommunication service providers to grant the government regulator access to confidential client information.<sup>182</sup>

## Oman

The United States-Oman Free Trade Agreement entered into force in January 2009.<sup>183</sup>

In 2018, U.S. services exports to Oman were \$532 million, while U.S. imports were \$185 million, resulting in a \$347 million trade surplus in services.<sup>184</sup> Sales of services in Oman by majority U.S.-owned affiliates were \$446 million in 2015, while sales of services in the United States by majority Oman-owned firms were \$0 million.<sup>185</sup> U.S. foreign direct investment in Oman was \$1.2 billion in 2015.<sup>186</sup>

With the implementation of the United States-Oman FTA, U.S. firms have received a number of benefits.

- **Investment:** For instance, U.S. firms are allowed to establish and fully own a business in Oman without a local partner. In contrast, non-American service providers must be at least 30 percent (and in most cases at least 51 percent) owned by an Omani who is currently practicing in the specialized field.<sup>187</sup>
- **Procurement:** Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services.<sup>188</sup> However, Oman may not apply such price preferences to tenders offering goods and services from the United States, owing to the FTA.<sup>189</sup>

However, Oman has many barriers, including:

- **Banking:** Oman does not permit representative offices or offshore banking.<sup>190</sup>
- **Investment:** Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. Oman has an exception in the FTA for legal services, limiting U.S.-ownership in a legal services firm to no more than 70 percent. Further, although U.S. investors are permitted to purchase freehold property in designated residential developments, businesses must adhere to more restrictive guidelines when acquiring real estate. Only companies with at least 51 percent Omani shareholding are permitted to own real estate for commercial purposes.<sup>191</sup> Further, customs brokerage activities are limited to Omani nationals.
- **Procurement:** Oman is an observer to the WTO Committee on Government Procurement. Oman began negotiations to accede to the WTO Agreement on Government Procurement in 2001, but it has not completed the process.

## Panama

Panama has one of Latin America's few predominantly services-based economies, with services representing roughly three-quarters of Panama's GDP.<sup>192</sup>

Entering into force on October 31, 2012, the U.S.-Panama Free Trade Agreement improved U.S. firms' access to Panama's services sector. In 2018, U.S. exports of services to Panama were an estimated \$1.7 billion, and U.S. imports were \$1.5 billion, resulting in a services trade surplus of \$223 million.<sup>193</sup>

U.S. exports of services to Panama were an estimated \$1.5 billion in 2016 and U.S. imports were \$1.3 billion.<sup>194</sup> Sales of services in Panama by majority U.S.-owned affiliates were \$1.2 billion in 2015, while sales of services in the United States by majority Panama-owned firms were \$91 million. U.S. foreign direct investment (FDI) in Panama (stock) was \$4.4 billion in 2016, a 16.7 percent increase from 2015.<sup>195</sup> U.S. direct investment in Panama is led by nonbank holding companies, finance/insurance, and wholesale trade.<sup>196</sup>

Specific sector benefits include:

- **Financial Services:** The financial services chapter provides extensive market access into Panama for U.S. financial services firms and commits Panama to treat U.S. financial companies comparably to their competitors.
- **Investment:** The trade deal granted new access in certain areas previously reserved for Panamanian nationals, including on the board of directors of financial institutions. Foreign entities, including the United States, have the right to establish, own, and dispose of business interests. Further, under the trade deal, direct U.S. ownership of consumer retail is allowed, in some circumstances.
- **ITA:** As part of the free trade deal, Panama agreed to become a full participant in the Information Technology Agreement (ITA).<sup>197</sup>
- **Market Access:** All services sectors are covered and provide U.S. investors better access to Panama than other countries receive through the General Agreement on Trade in Services.

However, despite this trade deal, barriers remain.

- **Investment:** Panama imposes limitations on foreign ownership in the retail and media sectors. Foreign investors can continue to use franchise arrangements to own retail within the confines of Panamanian law.<sup>198</sup> Fifty-five professions, like medical professionals, lawyers, accountants, and customs brokers, are reserved for Panamanian nationals. The Panamanian government also requires foreigners in some sectors to obtain explicit permission to work.<sup>199</sup>

## Peru

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009. The PTPA is a comprehensive free trade agreement that resulted in the significant liberalization of trade in services.

U.S. exports of services to Peru were an estimated \$3.3 billion in 2018, and U.S. imports were \$2.1 billion, resulting in a \$1.2 billion services trade surplus.<sup>200</sup>

Sales of services in Peru by majority U.S.-owned affiliates were \$3.3 billion in 2015, while sales of services in the United States by majority Peru-owned firms were \$6 million.<sup>201</sup> U.S. foreign direct investment (FDI) in Peru (stock) was \$6.2 billion in 2016, a 7.7 percent increase from 2015.<sup>202</sup> U.S. direct investment in Peru is led by mining, manufacturing, and wholesale trade.<sup>203</sup> However, U.S. investment in Peru since PTPA was implemented has averaged \$6.5 billion annually; in the 6 years before it was implemented, U.S. investment averaged \$4.9 billion.

Specific sector benefits include:

- **Banking:** U.S. portfolio managers can provide portfolio management services in Peru.
- **Financial Services:** Under the PTPA, U.S. financial service suppliers have full rights to establish subsidiaries or branches for banks and insurance companies. As of December 2013, foreigners had significant shares in thirteen banks, of which they were majority owners of 11 (including one of the country's largest banks) and operator of one of the largest commercial banks.
- **Investment:** Under the PTPA, Peru made concessions beyond its commitments to the WTO, eliminating investment barriers such as the requirement for U.S. firms to hire nationals rather than U.S. professionals, and measures requiring the purchase of local goods. While Peru has a number of nationality-based hiring requirements (outlined below), most are not applied to the United States.

However, barriers remain. These include:

- **Broadcast:** Foreigners are legally prohibited from owning a majority interest in radio and television stations in Peru.<sup>204</sup>
- **Customs:** U.S. investors have expressed concerns about the interpretation of rules and imposition of fines by Peru's customs and tax agency, which have been perceived to be disproportionate for foreign versus domestic investors.
- **Investment:** Foreign investment is restricted and Peruvians must maintain majority ownership in certain strategic sectors, like media, air, land and maritime transportation infrastructure, and private security surveillance services. Related, foreign companies cannot acquire or possess under title to mines, lands, forests, waters, or fuel or energy sources near Peru's international borders.<sup>205</sup>
- **Foreign Ownership:** Current laws limits foreign employees to 20 percent of the total number of employees in a local company (whether foreign or Peruvian owned), and the combined salaries of foreign employees are cannot exceed 30 percent of the total company payroll. However, there are a number of exceptions to these limits.<sup>206</sup>

## Poland

The U.S.-Poland BIT went into effect in 1994. Outside of the European Union, the United States is Poland's top investor.<sup>207</sup> American firms are doing well in Poland and make up the lion's share of Poland's foreign investors.<sup>208</sup> In 2018, U.S. services exports to Poland were \$3.1 billion, while U.S. imports were \$2.9 billion, resulting in a \$207 million trade surplus in services.<sup>209</sup>

While direct U.S. FDI in Poland is \$11 billion, but if including U.S. subsidiaries, it is nearly \$40 billion.<sup>210</sup> Growth sectors in Poland include business services, information services, and research and development.<sup>211</sup> However, under the BIT and ISDS, U.S. investors have brought forward four cases against Poland.<sup>212</sup>

Like other members of the European Union, Poland's data localization requirements are not ideal for American businesses. Currently, American companies' servers must be based in the European Union if those companies do businesses in Poland.<sup>213</sup>

Additional impediments:

- **Investment:** A 49 percent equity cap for non-EU citizens in the broadcasting, air transport, and other sectors.<sup>214</sup> Broadcasting, along with other sectors, is subject to The Law on Freedom of Economic Activity, which requires government permission through licenses or concessions to conduct business.<sup>215</sup> There are also a number of recently levied taxes on retail and financial services.<sup>216</sup>
- **Postal:** Polish Postal Act regulatory requirements on courier services that restrict various forms of driver release. The definition of courier shipments and value-added delivery service offerings (allowing customers to select a preferred delivery mode, for instance) should be more flexible to reflect the fast-growing e-Commerce segment.
- **Broadcast Quotas:** Poland's broadcasters must dedicate at least 33 percent of their quarterly broadcasting time to programming produced originally in Polish. This provision, which goes beyond what is prescribed in the EU's AVMS Directive, impedes market access for U.S. industry.
- **Video-on-Demand (VOD):** On-demand services shall promote European works, including those originally produced in Polish language, in particular by: 1) giving prominence by identifying the origin of works, creating a search option for European works and providing information and materials, and 2) reserving at least 20 percent of their catalogues for European works.
- **Discriminatory Tax Treatment of U.S. Audiovisual Works:** The 2005 Film Law includes taxes on box office and on DVD sales to finance subsidies for Polish and European films. Further, the language of the text appears to allow a double taxation burden on distributors.
- **Foreign Ownership Restrictions:** Poland limits foreign ownership in a broadcasting company to 49 percent.

## Russia

In 2018, U.S. services exports to Russia were \$4.9 billion, while U.S. imports were \$2.1 billion, resulting in a \$2.8 billion trade surplus in services.<sup>217</sup> Sales of services in Russia by majority U.S.-owned affiliates were \$9.8 billion in 2015, while sales of services in the United States by majority Russia-owned firms were \$679 million.<sup>218</sup> U.S. foreign direct investment (FDI) in Russia (stock) was \$10.6 billion in 2016, a 23.8 percent increase from 2015.<sup>219</sup> U.S. direct investment in Russia is led by manufacturing, information, and wholesale trade.<sup>220</sup>

After 18 years of negotiation, Russia joined the WTO in 2012—an act aimed to “[integrate] Russia into a system of fixed rules governing trade behavior and providing the means to enforce those rules and its market access commitments.”<sup>221</sup> The expected benefits from Russia’s entry into the included “improved market access for U.S. exports of goods and services and Russia’s implementation of established, enforceable, multilateral trade rules.”<sup>222</sup>

As part of accession, Russia agreed to provide new opportunities in several services sectors:<sup>223</sup>

- **Financial Services:** Russia agreed to allow full foreign ownership of most banks, securities firms, and nonlife insurance firms.
- **Telecommunications:** Russia agreed to grant access to the telecommunications market to all foreign suppliers.
- **Computer Services:** Russia agreed to grant U.S. providers access in hardware and software installation, data processing, and database services.
- **Audiovisual Services:** Russia agreed to allow U.S. motion picture distribution and projection services access to the market.
- **E-Commerce:** Russia agreed to Internet sales and cross-border wholesale and retail distribution.
- **Distribution:** Russia allowed U.S. retailers and other distributors to operate wholly- owned subsidiaries to distribute most products.

Although there has been progress in many services sectors, implementation issues remain regarding audiovisual services, data localization, national treatment, and encryption. The latter is an issue that USTR’s report has highlighted in the past.<sup>224</sup> Russia does recognize any products as “mass market,” which prevents American companies from freely exporting certain products with encryption to Russia. Also, in the import licensing process itself, Russia does not observe the time-limited nature of the process (no more than 90 days). Other impediments include:

- **Audiovisual Services:** Russia applied new restrictions on foreign providers of audiovisual or online video on demand services (the “VOD Law”) effective July 1, 2017. The VOD Law applies to video on demand services that: (1) distribute audiovisual works via the Internet; (2) require customers to pay a fee or view ads in order to access audiovisual content targeted to Russian end-users; and (3) are accessed by more than 100,000 users located in Russia within a 24-hour period. The VOD Law also introduces foreign ownership restrictions on VOD services in Russia. Under the law, non-Russian entities are not allowed to own, manage or control more than 20 percent of the equity share in a regulated VOD service, unless (i) fewer than 50 percent of the end users of the service globally are Russian, and (ii) the service obtains a discretionary exemption from a Russian government commission established under the law. The VOD Law states that such exemptions would be granted based on the commission’s determination as to whether the given VOD service “will facilitate the development of the audiovisual services market in [Russia].”

- **Foreign Ownership Restrictions:** The Mass Media Law, as amended, imposes a ban on establishing mass media activities, including broadcasting, with respect to the following categories of investors: 1) foreign States, international organizations, as well as organizations under their control; 2) Russian legal entities with a foreign participation (regardless of the participation percentage); 3) Foreign citizens, individuals without citizenship, or Russian citizens with an additional citizenship. In addition, none of the above has the right to own, directly or indirectly control (including through a third party) more than 20percent of the capital of a person who participates (as a member or shareholder) in the founding of a mass media entity or in the organization acting as a broadcaster. Breach of the above restrictions is sanctioned by denying the violating individuals/entities the rights to own, control or participate in the business of a corporation. MPAA opposes these types of restrictions which reduce consumer choice and unreasonably favor domestic investors.
- **Advertising Ban on Pay-TV:** Russia has legislation that bans advertising on pay- and scrambled-signal channels. While the law has no practical effect on state-owned television channels, it has a significant impact on cable and on-demand services, including those operated by foreign companies. MPAA opposes such laws, as they interfere with the market and hinder the growth of the pay-TV industry.
- **Theatrical Exhibition Restrictions:** As of October 2018, the Ministry of Culture is reportedly considering a measure that would limit the percentage of screens that can be occupied by a single foreign film. MPAA supports maintaining the full flexibility of distributors and exhibitors to serve Russian audiences.
- **Discriminatory VAT:** The 1996 Law on State Support of Cinematography provided a VAT exemption for films granted a national film certificate. National film certificates are granted to Russian-made films. The RF Tax Code (Article 149 p. 21) specifies VAT is exempt for works (services) on film production by cinematography organizations, as well as exploitation rights (including distribution and exhibition) of film products that are granted the national film certificate. Thus, any legal entity distributing a domestic film is exempt from VAT, provided that such entity is a cinematography organization. As part of its accession to the WTO, Russia obligated itself to provide national treatment for taxes on similar products. Therefore, the Government of Russia appears to be in violation of this WTO obligation, as it is currently applying a value-added tax to non-Russian films and not to domestic films.
- **Data:** Several laws and regulations hamper American firms. This includes:
  - Federal Law 242-FZ affects the normal business operations of all industries in Russia by imposing inefficient operational rules, particularly the requirement in Article 18 to store personal data concerning Russian citizens in data centers located in Russia. It appears that Roskomnadzor, the federal regulator responsible for implementing this law, has accepted mirroring of data— keeping copies of data within Russia rather than the more extensive requirements of processing it in-country—to be compliant with the law. However, the vague language in the law could allow for blocking cross-border data flows in future, lending to an uncertain business environment in Russia. Furthermore, even mirroring of data can be very costly to businesses, particularly Small and Medium Size Enterprises (SME), increasing barriers to entry for the Russian market. In addition, the federal media regulator has been empowered to block local access to the websites of non-compliant companies. Given the law’s expansive scope, foreign companies without a legal presence in Russia, which might pay only a cursory attention to the Russian market, can be labelled data protection violators and blocked.
  - The “Yarovaya Amendments,” 374-FZ and 375-FZ require “organizers of information distribution on the internet” to store the content of communications that they enable

within Russia for 6 months. In addition, telecommunications companies must store metadata of all communications within Russia for three years, whereas “organizers,” referring to internet providers, must store metadata for one year. If any of this data is encrypted, then companies must also provide encryption keys to the implementing agency, the Federal Security Service (FSB). These requirements will be costly for American companies operating in Russia and expose them to serious security risks.

- Article 10.1 of Federal Law 149-FZ (“On Information, Information Technologies and the Protection of Information”) requires “organizers of the distribution of information on the internet” to retain all metadata within Russia for six months and provide access to that data to security agencies. This applies to an incredibly wide range of companies that facilitate the receiving, transmitting, delivery, and or processing of electronic messages—including any email and internet-based messaging services. Further, Article 10.2 requires bloggers with more than 3,000 daily users to register with Roskomnadzor and places restrictions on what they can and cannot post to their website. This law not only has significant free speech and human right implications, but it also creates costly barriers for U.S. companies who wish to do business in Russia.

The Kremlin’s 16-point Plan for improving the competitiveness and security of the Russian ICT sector through import-substitution, increased surveillance capabilities, and increased education on issues related to cyber. The plan is focused on import substitution and has generally been talked about in the context of “internet sovereignty.” Two new executive decrees associated with this plan call for ministries to create plans that: prioritize Russian-produced software and equipment for government purchases, create additional obligations for how the personal information of Russian citizens is processed, regulate the encryption of data, reorganize federal cyber-threat monitoring, and establish a Center of Import Substitution for Information and Communication Technologies.

- **Insurance:** It is mandatory to offer up to 10% of any reinsurance cession to the national reinsurer, NRC. NRC is not obliged to accept the offer. They can also accept a lower share or decline the offer.

## Saudi Arabia

In 2018, U.S. services exports to Saudi Arabia were \$9.1 billion, while imports were \$1.6 billion, resulting in a \$7.5 billion trade surplus in services.<sup>225</sup> Sales of services in Saudi Arabia by majority U.S.-owned affiliates were \$5.1 billion in 2015 , while sales of services in the United States by majority Saudi Arabia-owned firms were \$3.5 billion.<sup>226</sup> U.S. foreign direct investment (FDI) in Saudi Arabia (stock) was \$9.8 billion in 2016, a 1.6 percent increase from 2015.<sup>227</sup> U.S. direct investment in Saudi Arabia is led by nonbank holding companies, mining, and manufacturing.<sup>228</sup>

Barriers experienced by U.S. services suppliers operating in Saudi Arabia include:

- **Customs:** In Saudi Arabia, a new product compliance regulation (IECEE certification – International Electrotechnical Commission for Electrotechnical Equipment) was enforced at all borders in 2018 by the Saudi Standards, Metrology and Quality Organization (SASO). It requires importers to register, upload several technical documents from foreign manufacturers (test reports, manufacturer certifications, translations etc.) into an online portal, obtain prior authorization, submit several types of government and external lab company fees and provide authorities with legal declarations. The regulation imposes an additional set of permits from the Saudi Telecom regulator (CITC) for specific product categories such as wireless electronic devices. All these measures constitute restrictions imposed to importers further complicating the ability to grow and thrive in the Saudi market. KSA also requires the provision of several sets of original signed and stamped international shipping and Customs documents. Whereas in most “developed” countries Customs formalities are completed with commercial invoice copies only, Saudi Arabia still imposes importers to provide original copies from origin shippers signed, stamped and legalized by origin Chamber of Commerce offices, failure to do so results in fines and shipment delays at borders.

## Senegal

- **Insurance:** Local insurers face a compulsory cession of 6.5% of premiums plus 15% of treaties to the state-owned reinsurer, SEN-Re. Senegal also prohibits Difference-in-Conditions and Difference-in-Limits (DIC/DIL) insurance trade, which is an important type of insurance for facilitating U.S. exports by multinational enterprises by covering their unique risks.

## Singapore

The United States-Singapore Free Trade Agreement (FTA), which has been in effect since 2004, has been widely successful. In 2018, U.S. exports of services to Singapore stood at \$21.7 billion while U.S. imports were \$9.4 billion, resulting in an overall U.S. services trade surplus of \$12.3 billion.<sup>229</sup>

The United States has regularly maintained a services trade surplus with Singapore. It has grown by 191 percent since 1999. Sales of services in Singapore by majority U.S.-owned affiliates were \$80.0 billion in 2015, while sales of services in the United States by majority Singapore-owned firms were \$9.4 billion.<sup>230</sup> U.S. foreign direct investment (FDI) in Singapore (stock) was \$258.9 billion in 2016, a 3.2 percent increase from 2015.<sup>231</sup> U.S. direct investment in Singapore is led by nonbank holding companies, manufacturing, and wholesale trade.<sup>232</sup>

Specific sector benefits because of this trade deal include:

- **Banking:** A number of restrictions on foreign banks have been eased, including the removal of a 40-percent ceiling on foreign ownership of local banks and a 20-percent aggregate foreign shareholding limit on finance companies.<sup>233</sup> U.S. financial institutions enjoy phased-in benefits, and since 2006, U.S.-licensed full service banks that are also qualified have been able to operate at an unlimited number of locations (branches or off-premises ATMs) versus 25 for non-U.S. full service foreign banks that hold qualified status.<sup>234</sup>
- **Investment:** While non-nationals face a stamp duty on purchasing homes in Singapore, U.S. citizens are afforded the same treatment as Singaporeans.<sup>235</sup>
- **Telecommunications:** Users are guaranteed non-discriminatory access to the network, which prevents local firms from having preferential access to telecom networks.

However, barriers still exist.

- **Broadcast:** In 2011, Singapore created regulations requiring pay TV providers to cross-carry exclusive broadcasting content, ultimately requiring a pay TV company with an exclusive contract for channels/content to offer that content to other pay TV companies for their subscribers at the same rates.<sup>236</sup>
- **Media:** Distribution, importation, or sales of any offshore or foreign newspaper must be approved by the Singaporean government.
- **Legal Services:** U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singapore law by hiring or entering into partnership with Singapore-qualified lawyers. In order to advise on Singaporean law, foreign firms must either form a joint venture with a Singapore law practice or get licensed. No foreign university law degrees are recognized for purposes of admission to practice law in Singapore, with few exceptions under the trade agreement.<sup>237</sup>
- **Banking:** Unless they have been awarded Qualifying Full Bank (QFB) privileges, foreign banks and other financial institutions that issue credit cards in Singapore are permitted to provide ATM services to locally issued credit card holders only through their own networks or through a foreign bank's shared ATM network. QFBs, however, can negotiate with local banks on a commercial basis to let their credit card holders obtain cash advances through the local banks' ATM networks
- **Professional Services:** Engineers and architects are required to register to practice in Singapore.<sup>238</sup>

## Sri Lanka

The United States is the largest single market for Sri Lankan exports, capturing over \$2.8 billion of the total.<sup>239</sup> U.S. FDI in Sri Lanka was \$117 million in 2016, a 3.5 percent increase from 2015.<sup>240</sup> Under the BIT and ISDS, a U.S. investor brought forward a case in 2000 against Sri Lanka, which was ruled in favor of the U.S.<sup>241</sup>

The levels of investment in Sri Lanka are relatively low. This could be due to the number of barriers that exist.

- **Insurance:** Foreign insurance companies that provide health insurance services to Sri Lankans must sell through an insurance broker registered in Sri Lanka and sell products not sold by local insurance companies. Branch offices are not permitted. There is a mandatory 30% cession of non-life reinsurance to state owned insurance and reinsurance company, the National Insurance Trust Fund (NITF). Aviation and energy risks are exempt from this rule.<sup>242</sup>
- **Broadcast:** Sri Lanka imposes taxes on foreign films, programs, and commercials shown on television. The 2017 budget proposed to extend the tax to cover foreign commercials on cable and satellite television networks, and also proposed increasing the tax on foreign films dubbed into Sinhala and Tamil from Rs 90,000 per 30-minute episode to Rs 300,000 per 30-minute episode.<sup>243</sup> Government approval is required for all foreign films and programs shown on television.
- **Investment:** Sri Lanka maintains foreign investment restrictions in a wide range of sectors. For example, foreign investment is not permitted in certain sectors, like money lending. In other sectors, foreign investment is subject to case-by-case screening and approval when foreign equity exceeds 40 percent.<sup>244</sup> These sectors include shipping, travel agencies, freight forwarding, and mass communications. Sri Lanka prohibits the sale of public and private land to foreign nationals and to enterprises with foreign equity exceeding 50 percent.
- **Banking:** A 2.5 percent stamp duty applies to usage of credit cards issued by Sri Lankan banks for transactions entered in foreign currency.<sup>245</sup> The 2.5 percent is an increase, in effect since January 1, 2016, from a previous level of 1.5 percent. Beginning on January 1, 2016, transactions in local currency have been exempted from this duty.

## Switzerland

In 2006, the United States ran a \$1.3 billion services trade deficit with Switzerland.<sup>246</sup> The following year, the United States reported a services trade surplus on the strength of rapidly increasing exports in business services and licensing fees for industrial processes and software.

The results continue to improve. By 2018, the United States exported \$39.3 billion in services and imported \$21.5 billion, resulting in a \$17.8 billion services trade surplus.<sup>247</sup> U.S. services exports to Switzerland have grown six-fold since 1999, which has resulted in the services trade surplus being the largest it has ever been.<sup>248</sup> Sales of services in Switzerland by majority U.S.-owned affiliates were \$76.6 billion in 2015, while sales of services in the United States by majority Switzerland-owned firms were \$48.9 billion.<sup>249</sup> U.S. foreign direct investment (FDI) in Switzerland (stock) was \$172.6 billion in 2016, a 10.9 percent increase from 2015.<sup>250</sup> U.S. direct investment in Switzerland is led by nonbank holding companies, manufacturing, and finance/insurance.<sup>251</sup>

Looking at specific sectors, U.S. services have seen strong performances in licensing and intellectual property fees, financial services, business services, telecommunications, and transport. The United States exported \$11 billion in licensing fees and charges for intellectual property to Switzerland in 2015, an 11-fold increase since 1999. U.S. financial services exports have also grown. Since 2006, the United States has increased its financial services exports to Switzerland by 48 percent, reaching \$1.3 billion in 2015. The business services growth is also impressive, which includes accounting, advertising, consulting, research, and other professional services. In 2015, the U.S. exported \$12.3 billion worth of business services, making it the largest type of U.S. service export to Switzerland. Services exports in the telecommunications and computer sectors, and transport also performed well in 2015.<sup>252</sup>

As a result of GATS, Switzerland:

- Has undertaken a wide range of commitments covering nearly all services sectors.
- Increased market access in a number of areas of cross-border supply, specifically in construction, financial services, and tourism.
- Opened consumption abroad in most sectors.
- Substantially increased commercial presence, even though there are a few limitations on foreign investment ownership.
- Lifted temporary entry barriers.

Despite this promising picture, existing and potential impediments to services trade exist. For instance:

- **Data:** Switzerland has enabled other countries to erect services barriers. For instance, Bulgaria established a law in 2012 that required applicants for a gaming license to store all data related to operations in Bulgaria locally, but a gaming company's operations may be housed in Switzerland.<sup>253</sup>
- **Film Act Amendment:** Effective since 2016, a Film Act provision known as the "unique distributor clause" has been extended to all forms of exploitation, including DVD/physical home entertainment and all forms of video-on-demand/online distribution, with the exception only of linear television (broadcasters' ancillary on-demand rights are excepted only for 7-day Catch-up). Exploitation of a film in any media in Switzerland now requires exclusive control over all language versions exploited in Switzerland (whether or not actually exploited), in the hands of a single distributor. This is accompanied by laborious registration and reporting duties, which address foreign entities owning and exploiting rights in Switzerland. The provision lacks clarity

and has caused several areas of dispute and uncertainty. In sum, this amendment's provisions interfere with internationally established licensing practices.

## Taiwan

The United States has enjoyed a steady surplus in its services trade with Taiwan since 2009. Before 2009, the United States held a marginal services deficit, with the services trade deficit amounting to \$1.1 billion in 2007 and \$27 million in 2008. However, there was a sharp turnaround with services, and by 2009, the services trade surplus registered \$2.1 billion. In 2018, U.S. services exports to Taiwan were \$10.0 billion, while U.S. imports were \$8.3 billion, resulting in a \$1.8 billion trade surplus in services.<sup>254</sup>

Sales of services in Taiwan by majority U.S.-owned affiliates were \$7.6 billion in 2015, while sales of services in the United States by majority Taiwan-owned firms were \$2.4 billion.<sup>255</sup> U.S. foreign direct investment (FDI) in Taiwan (stock) was \$16.2 billion in 2016, a 5.7 percent increase from 2015.<sup>256</sup> U.S. direct investment in Taiwan is led by manufacturing, depository institutions, and wholesale trade.<sup>257</sup> Charges for intellectual property and travel are the largest type of service export, followed closely by transport, and then financial services and telecommunications.

As a result of GATS, Taiwan:

- Increased market access in a number of areas of cross-border supply, specifically in business services, financial services, and transport services.
- Opened consumption abroad.
- Increased commercial presence, even though there remain a few limitations on foreign-invested ownership on telecom.
- Generally limits temporary entry.

While U.S. services trade with Taiwan has been a steady and positive story for the United States, impediments remain which restrict further growth, especially in investment.

- **Investment:** Taiwan imposes limitations on investment in certain sectors, such as the telecommunications sector, which has a limitation of 49 percent for direct investment in Taiwan.
- **Foreign Investment Restrictions:** The Cable Radio and Television Law limits foreign direct investment in a domestic cable television service 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. Such investment restrictions limit the ability of U.S. companies to compete fairly and inhibit the pay-TV industry's potential growth.
- **Pay-TV Price Cap:** In 1990, Taiwan set a rate cap for cable TV service of NT \$600 (US\$20) per month per household. The price cap has never been adjusted, although the consumer price index has risen substantially since 1990. The rate cap has hindered the development of the cable TV industry, satellite operators, and content providers.
- **Local Content Quotas:** In January 2017, new quotas for broadcast and satellite TV took effect in Taiwan. These rules require that, 1) terrestrial TV stations to broadcast at least 50 percent locally-produced drama programs between 8:00 pm and 10:00 pm, and 2) local satellite TV channels broadcast at least 25 percent locally-produced children's programs between 5:00 pm to 7:00 pm and at least 25 percent locally-produced drama, documentary and variety programs between 8:00 pm and 10:00 pm. Locally produced programs broadcasting during these periods are required to have no less than 40 percent newly produced programs. Furthermore, a cable TV service must provide at least 20 percent local programming in its channel lineup. These discriminatory conditions limit consumer choice, undermine the growth of the pay-TV sector in Taiwan, and restrict U.S. exports.

- **Customs:** Taiwan also has established a quota on de minimis shipments and has proposed to reduce its de minimis threshold from 3000 NTD (~\$98 USD) to 2000 NTD (~\$65 USD). This change was to take effect starting September 1, 2017, but the government is now considering delaying its plan to January 2018, subject to approval from the Ministry of Finance. Since July 1, shipments below Taiwan's de minimis are subject to duties and taxes if consignees are deemed "frequent importers," which is defined as a business or individual that imports more than six shipments in a six-month period. Customs is now exempting business frequent importers of samples and non-commercial shipments, but individual frequent importers still have to pay duties and taxes for their de minimis shipments.

## Tanzania

- **Insurance:** Local insurers must give local reinsurers a mandatory preferential offer before seeking reinsurance in global markets. Tanzania also requires mandatory cessions to state-owned Tan Re (20%), including on the underlying policies, Africa Re (5%) and Zep Re (10%). For each overseas facultative risk approved by the supervisory authority TIRA, the insurer must pay a levy of 3% of the applicable gross premium (subject to a minimum of USD \$200). Additionally, a payment of 20% of any fronting fee or reinsurance commission in excess of 12% must be paid.
- **Banking:** On March 3, 2014, the Bank of Tanzania (BoT) issued Circular No. FA.56/293/043/Vol.III/28 directing all banks to maintain either their primary or secondary data center in Tanzania. Like other regulators, BoT seeks to ensure access to data for its regulatory and supervisory purposes. Banks were given two years to comply with the circular (2016), however the deadline later was extended to 2017. On-shoring of data introduces a new point of vulnerability making it easier for cyber criminals to attack global systems undermining security and privacy objectives. We request that USTR seek elimination of this requirement in the banking sector and work with the government to share best practices on how to meet their objectives without requiring data localization.

## Thailand

U.S. services exports to Thailand totaled \$3.0 billion in 2018, while imports from Thailand were \$4.3 billion in 2017, reflecting a services trade deficit of \$1.2 billion.<sup>258</sup> Sales of services in Thailand by majority U.S.-owned affiliates were \$5.3 billion in 2015, while sales of services in the United States by majority Thailand-owned firms were \$147 million.<sup>259</sup> U.S. foreign direct investment (FDI) in Thailand (stock) was \$11.8 billion in 2016, a 11.1 percent increase from 2015.<sup>260</sup> U.S. direct investment in Thailand is led by manufacturing, mining, and wholesale trade.<sup>261</sup>

The United States and Thailand meet regularly under a bilateral Trade and Investment Framework Agreement (TIFA), which has led to further engagement on trade ties and investment openings for the two countries.

As a result of GATS, Thailand:

- Committed to national treatment in a number of services sectors.
- Increased market access in a number of areas of cross-border supply, especially in business services, financial services, and transport services.
- Lists few restrictions on consumption abroad in most sectors.
- Increased commercial presence, but there's a number of limitations on foreign-invested ownership, especially in construction, telecom, and financial services.
- Has generally limited temporary entry.

Current impediments include:

- **Digital Trade:** Thailand retains several cybersecurity-related provisions across the technology and internet services sectors that include censorship of content and movement of data per government discretion.<sup>262</sup>
- **Electronic Payment Services:** Since 2013, Thailand's mandate that all debit card transactions be processed locally has led to a decline in U.S. exports of electronic payment services to Thailand. In 2016, additional regulations required all domestic debit transactions to be conducted by Thai payments networks using a Thai security chip specification, which limited the ability of U.S. payment companies to provide services in Thailand and created an unfair playing field. Any expansion of local processing requirements to credit card transactions would have a significant negative impact on the ability of U.S. companies to provide electronic payments in Thailand. Several other measures under consideration by the Bank of Thailand, such as the draft Payment System Act, would have a significant impact on the ability of U.S. payment companies to exports services to Thailand.
- **Financial Services:** There are limitations for licenses given for foreign bank branches and subsidiaries.
- **Express Delivery and Logistics:** U.S. investors are only permitted to own up to 51 percent equity in express delivery and freight forwarding services, according to the U.S.- Thailand Treaty of Amity, and 49 percent equity in road transport and customs clearance services, according to Thailand's Foreign Business Act. Express delivery services are inhibited by the Postal monopoly on letters and are fined for delivering letters and commercial invoices. Customs officials continue to be financially incentivized to conduct more inspections under Customs Law resulting in inefficient border clearance.
- **Telecommunication:** Additional foreign investment limitations exist in the telecommunications services sector, where foreign companies face an equity cap of 49 percent.

- **Screen Quota:** Section 9(5) of the Motion Picture and Video Act (MPVA) allows the Film Board to establish ratios and quotas against foreign films. If implemented, such restrictions would create new barriers and reduce consumer choice.

## Turkey

In 2018, U.S. services exports to Turkey were \$3.1 billion, while U.S. imports were \$1.8 billion, resulting in a \$1.3 billion trade surplus in services.<sup>263</sup> Sales of services in Turkey by majority U.S.-owned affiliates were \$5.1 billion in 2015, while sales of services in the United States by majority Turkey-owned firms were \$75 million.<sup>264</sup>

U.S. foreign direct investment (FDI) in Turkey (stock) was \$3.1 billion in 2016, a 1.7 percent increase from 2015.<sup>265</sup> U.S. direct investment in Turkey is led by manufacturing, wholesale trade, and prof., scientific, and tech. services.<sup>266</sup> The U.S.-Turkey BIT went into effect in 1990 and maintained most provisions in the U.S. model text. The latest data places U.S. FDI, which includes the professional and technical services sectors, at Turkey in \$3.7 billion.<sup>267</sup> However, the current political climate, regional disputes, weakened judiciary, and red tape provide challenges to all sectors seeking to do business in Turkey.<sup>268</sup> Under the BIT and ISDS, U.S. investors have brought forward two cases against Turkey, one of which was decided in favor of the U.S. while the other case was settled.<sup>269</sup>

Investor benefits from the BIT include:

- **Dispute Settlement:** Streamlining of the dispute process allowing companies to proceed immediately to third-party arbitration.<sup>270</sup>
- **State-Owned Enterprises:** Privatization of state-owned enterprises during Turkey's 2013 initiative was a positive step.<sup>271</sup> The continuation of privatization along with several qualitative improvements such as stronger fiscal controls and the reduction of the informal economy will incentivize further investment in Turkey.<sup>272</sup>

However, obstacles remain, including:

- **Investment:** Lifting its State of Emergency would alleviate concerns about stability among investors.<sup>273</sup> Additional measures to increase FDI include a more transparent regime of trade rules and judicial orders.<sup>274</sup>

More generally, the obstacles for foreign firms operating in Turkey include the following:

- **Data Localization:** Since there is no specific regulation dealing with the provision and exploitation of the cloud services, the Law on the Protection of Personal Data No. 6698 is considered to provide for the main regulatory framework in this respect. In addition to the data protection regulations, there are certain sector specific regulations scattered amongst diverse regulations which, in general, require entities operating in such sectors to use localized information systems.

The Presidential Circular on Information and Communication Security Measures No. 2019/12 published on 6 July 2019 introduces important security measures, restrictions and obligations to be implemented with the aim of mitigating and removing security risks and maintaining the security of certain critical types of data as well as their entirety, confidentiality and accessibility; deterioration of which may otherwise jeopardize public order and national security. Article 3 of the Circular states that data of public institutions and organizations shall not be stored in cloud storing services, except for the private systems institutions or local service providers under the control of public institutions, therefore blocking our government vertical in public sector. In addition to this, critical information (which will be defined gradually by the Digital Transformation Office) and data; such as population, health and communication registration information; and genetic and biometric data shall be stored domestically in a safe environment.

Another sector specific regulation that will bring localization requirements for companies in financial services industry is also expected to be enacted in 2019. The draft regulation on the Information System of Banks and Electronic Banking Services prepared by the Banking Regulation and Supervision Agency is currently in the final review process before to be enacted. This regulation required banks and financial services to keep their primary information systems (production data) within the country.

- **Digital Service Tax:** The Ministry of Finance and Treasury is planning to send a digital service tax bill to the Turkish Parliament in 2019. The alleged digital service tax of 7.5% is expected to be applied to the companies that do not have a permanent establishment in Turkey which provide their services through internet. The bill does not distinguish between digital and non-digital companies, but rather taxes all digital services. According to our sources, the Ministry does not plan to wait for OECD negotiations to conclude.

## Uruguay

The U.S.-Uruguay BIT went into effect in 2006 and was the first BIT to use the revised U.S. model text to comply with the Trade Promotion Act of 2002.<sup>275</sup> The United States also has a Trade and Investment Framework Agreement (TIFA) with Uruguay, which was signed in 2007.<sup>276</sup> The BIT has an escape clause allowing measures to address national security or essential interests.<sup>277</sup> In the year before the BIT went into effect, trade between the United States and Uruguay was \$582 million.<sup>278</sup>

The BIT granted investors access to binding international arbitration in certain circumstances, national treatment, speedy investment funds transfer, among other benefits.<sup>279</sup> However, some in the business community did not support the prudential measures carve-out.<sup>280</sup> There were also improvements from previous bits to ISDS.<sup>281</sup> Under the BIT and ISDS, a U.S. investor brought forward a case against Uruguay in 2016 which is still pending.<sup>282</sup>

## Vietnam

The United States continues to maintain a trade surplus in services with Vietnam. In 2018, the United States exported \$2.5 billion in services to Vietnam, while it imported about \$1.3 billion worth of services, yielding a \$1.2 billion services trade surplus.<sup>283</sup> Vietnam is widely seen as a growth market with great potential for large and small U.S. exporters.<sup>284</sup> Sales of services in Vietnam by majority U.S.-owned affiliates were \$624 million in 2015, while sales of services in the United States by majority Vietnam-owned firms were \$1 million.<sup>285</sup> U.S. foreign direct investment (FDI) in Vietnam (stock) was \$1.5 billion in 2016, a 17.7 percent increase from 2015.<sup>286</sup>

The United States has a bilateral agreement with Vietnam (including a Trade and Investment Framework Agreement, TIFA) where both parties engage in regular dialogue. While Vietnam was poised to further open its market through its international trade negotiations, gaps still exist with regard to market access, and generally opening the Vietnamese market to greater U.S. participation.

Services impediments that currently exist in Vietnam include:

- **Audiovisual:** Restrictions on pay-TV are a continuing problem in Vietnam.<sup>287</sup> Vietnam imposes a 30 percent cap on the total number of foreign channels that a pay-TV service may carry. Vietnam also requires all pay-TV operators to work through local agents, most foreign programming must be edited by a licensed local agent, and commercial ads airing on pay-TV must be produced in Vietnam. In August 2018, the Ministry of Information and Communications issued draft amendments to Decree 06 with intent to expand the scope to encompass OTT services. If implemented, the industry will face further restrictions on OTT services.
- **Screen Quotas:** Under Cinema Law/Decree 54, Vietnam requires that at least 20 percent of total screen time be devoted to Vietnamese feature films. Vietnam should remove this quota, which is currently not enforced. Vietnam is producing more local films, which now command over 20 percent market share in Vietnam, rendering this quota irrelevant.
- **Broadcast Quotas:** In the television sector, foreign content is limited to 50 percent of broadcast time, and foreign programming is not allowed during prime time. Broadcast stations must also allocate 30 percent air time to Vietnamese feature films. These restrictions limit U.S. exports of filmed entertainment.
- **Data and Service Providers' Requirements:** Impediments to the cross-border delivery of services, such as local presence requirements or outright prohibitions on the ability to supply the service on a cross-border basis, can act as restrictions on digital trade in two respects. First, Vietnam prevents the actual supply of the cross-border service itself and in doing so, has in effect prohibited the cross-border flow of data that would accompany the supply of the service. Pursuant to Decree 72 (2013), imposing onerous local server requirements and restrictions on cross-border data flows, suppliers of certain online services are required to establish a local entity in Vietnam.<sup>288</sup> Vietnam requires general news website operators, social network service providers, search engines and online applications to locate a server in Vietnam as a condition of supplying the service.<sup>289</sup> It also requires that certain digital services establish local entities in Vietnam.<sup>290</sup> Further, Vietnam's 2015 Law on Network Information Security (and the various implementing decrees issued thereunder) impose burdensome requirements on service providers, including obligations to disclose proprietary information as a condition to enter the market, overly broad definitions of personal information, and overly broad provisions requiring "cooperation with the Government" regarding access to data and requirements to decrypt encrypted information held by third parties.

Finally, Vietnam's Ministry of Public Security (MOPS) has introduced a new draft Guiding Decree for the Law on Cyber Security (LOCS) that subjects almost all online services to a requirement to store a broad range of user data in Vietnam and requires online services to disclose that data in unencrypted form to MOPS. It is important to take immediate steps to reform this decree before the law takes effect.

- **Cybersecurity Law:** The Law on Cybersecurity was passed by the National Assembly (NA) on 12 June 2018 containing vague data localization and representative office requirements. Vietnam's Ministry of Public Security have issued multiple draft versions of the Implementing Decree of the Cybersecurity Law that will specify which companies must locate their data in Vietnam. Under the latest draft, there are clauses requiring all companies to comply with data handover, content takedown and domain name seizure requests. Companies who do not make efforts to comply could be served a data localization notice by the Ministry of Public Security (MPS). These requirements are concerning for service providers such as data processors, ISPs who do not have visibility into data stored on their platform, putting assets and data held by US companies at risk of seizure, infringement of trade secrets and intellectual property rights, loss of personal data of US persons. The US Government should encourage Vietnam not to use "data localization" as the punishment for non-compliance, to have law enforcement requests only apply to data controllers and must be served through existing international legal processes.
- **Electronic Payment Services:** In 2016, the State Bank of Vietnam (SBV) issued burdensome regulations (Circular 19/2016/TT-NHNN) that would dramatically disrupt and inhibit the ability of U.S. electronic payment services providers to continue operating in Vietnam. Set to take effect in January 2018, Circular 19 would require U.S. electronic payment service providers to route all payment transactions through a national payment gateway operated by a switch which is licensed by SBV, the National Payments Corporation of Vietnam (NAPAS), a commercial entity in which SBV is the majority shareholder. Since NAPAS is a direct competitor to American electronic payment firms, inserting NAPAS between U.S. electronic payment providers and their bank clients will significantly disrupt the normal and smooth functioning of electronic payment in Vietnam and will likely inhibit the pace and extent to which Vietnam can continue developing its payments system.  
Vietnam's approach is unprecedented, as it distorts market competition and creates barriers for U.S. companies. In June 2018, the State Bank of Vietnam issues a draft Decree (Article 7) and the Proposal Letter (Policy No. 2) regarding the regulation of non-cash payments. The proposal continues the policy of fragmenting the payments system between, e.g., intermediary payment services and international card organizations.
- **Internet Services:** Vietnam limits access to the Internet through state-controlled companies (or those with majority state-control), restricting access to websites that are deemed politically or culturally inappropriate.<sup>291</sup>
- **Telecommunications:** There are varying levels of equity limitations in the telecommunications sector in Vietnam. Foreign ownership in facilities-based services is generally limited to 49 percent and must be majority-state owned, while non-facilities based services are permitted up to 65 percent.
- **Regulation of "Over-the-Top" Providers:** There is increasing interest by foreign governments in subjecting U.S. online services and applications to heavy-handed regulations that impede their cross-border delivery. These measures – often called "Over-the-Top" or "OTT" regulations in foreign markets – take different forms globally. However, it is increasingly common for regulators to seek to impose regulations on online services and applications that only serve to impede development of the digital economy. Some of these objectionable proposals include local presence, and local data storage and/or data retention requirements. Governments should

reduce or streamline regulations, where appropriate, on OTT services in order to stimulate competition and greater investment in broadband infrastructure while enabling innovative new services to reach consumers. Additionally, governments should reduce or streamline regulations, where appropriate, on traditional services providers as markets become more competitive due to the introduction of new digital services and other technological changes. In many cases, the rationale behind these legacy regulations has become obsolete due to technologically-driven changes to the marketplace.

## Zambia

In 2017, U.S. foreign direct investment (FDI) in Zambia (stock) was \$58 million.<sup>292</sup> There is no services trade data available for Zambia.

In 2001, the U.S. and Zambia signed a TIFA.

Barriers experienced by U.S. services suppliers operating in Zambia include:

- **Electronic Payment Services:** In 2018, the Bank of Zambia issued a framework for the implementation of the National Payment System (see National Payment Systems Vision and Strategy 2013-2017). According to this framework, Zambia intends to establish a Zambia Electronic Clearing House Limited “through which all retail payment systems are connected to each other will be implemented to ensure that interoperability is achieved efficiently.” The new clearinghouse will disintermediate foreign suppliers of electronic payment services, making it impossible for them to process domestic transactions in Zambia.

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