# INDONESIA

## TRADE SUMMARY

U.S. goods exports in 2014 were $8.3 billion, down 8.4 percent from the previous year. Indonesia is currently the 35th largest export market for U.S. goods. Corresponding U.S. imports from Indonesia were $19.4 billion, up 2.6 percent. The U.S. goods trade deficit with Indonesia was $11.0 billion in 2014, an increase of $1.3 billion from 2013.

U.S. exports of services to Indonesia were $2.2 billion in 2013 (latest data available), and U.S. imports were $692 million. Sales of services in Indonesia by majority U.S.-owned affiliates were $3.2 billion in 2012 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $85 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was $12.8 billion in 2013 (latest data available), down from $13.6 billion in 2012. U.S. FDI in Indonesia is led by the mining sector.

### Overview

In recent years, Indonesia has enacted numerous regulations on imports that have increased the burden for U.S. exporters. Import licensing procedures and permit requirements, product labeling requirements, pre-shipment inspection requirements, local content and domestic manufacturing requirements, and quantitative import restrictions impede U.S. exports.

Numerous other measures have been adopted or are being considered in the context of draft legislation, including new food and quarantine laws. In January 2014, Indonesia's legislature, the Dewan Perwakilan Rakyat (DPR), passed a new industry law (3/2014) outlining a master plan for national industrial development and tariff and non-tariff measures to protect domestic industries, citing protection of natural resources, national interest, and strategic importance. In February 2014, the DPR passed a comprehensive trade law (7/2014), which outlines the government's broad powers to oversee trade, including the ability to limit exports and imports in order to protect domestic interests. To date, only some of the implementing regulations had been published for both the trade and industry laws.

The Indonesian government has increasingly adopted such measures as it pursues the objective of self-sufficiency. The United States will continue to press Indonesia to resolve U.S. concerns regarding these measures.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Toys – Standards and Testing Requirements*

In April 2014, Indonesia began enforcing a new mandatory toy regulation – Ministry of Industry Regulation 24 of 2013. Under the regulation, Indonesia will accept test reports from foreign International Laboratory Accreditation Cooperation-accredited laboratories for a two-year period, subject to further registration and sampling requirements, after which the regulation will require a bilateral mutual recognition agreement to avoid in-country testing.

U.S. stakeholders remain concerned about the frequency of testing requirements, which is on a per-shipment basis for imports and every six months for domestic products. They also are concerned about specific technical requirements, such as for formaldehyde, which are not based on the latest ISO standard; as well as burdensome documentation requirements. In addition, U.S. stakeholders are concerned about a lack of coordination of Indonesia National Standard (SNI) registration and pre-shipment inspection. U.S. stakeholders have asked the Ministry of Industry to reduce the inspection frequency once an importer demonstrates a history of compliance along the lines of the U.S. Consumer Product Safety Commission's post-market surveillance approach. Since the regulation came into effect, importers have reported that the import testing and registration process has increased from 15 days to an average of 80 to 90 days. The United States has raised concerns over this regulation bilaterally and in the WTO Committee on Technical Barriers to Trade and will continue to work to address concerns with Indonesia on this issue.

*Cell Phones, Handhelds, Tablets and Laptops*

Indonesia has issued a number of measures that make it more difficult to import cellular and WiFi-equipped products. In late 2012, Indonesia issued Ministry of Trade (MOT) Regulation 82, which was subsequently amended by MOT Regulation 38 in 2013, and Ministry of Industry (MOI) Regulation 108. Under these measures, in order to obtain an import license, companies must provide product identification numbers for each imported item, and receive: (1) an import certification from MOI; (2) a certification for telecommunication device and equipment from the Ministry of Communication and Information Technology; and (3) a label in Bahasa. Companies are unable to provide identification numbers months in advance and, as such, therefore often need to apply for both licenses on a per shipment basis. (*See Import Licensing Section for information on the import licensing requirements in these regulations*.)

*Wireless equipment certification*

The Ministry of Communication and Information Technology published Postel Regulation 5 in 2013, which imposes strict testing requirements on the cellular and WiFi equipped products, as well as notebooks and personal computers. This measure requires imported cell phones, tablets, handhelds, laptops, and other equipment with Bluetooth or wireless LAN features to be tested at the device level rather than the more common modular level. While similar devices produced locally face the same testing requirements, Indonesia requires that tests must be conducted in Indonesian test labs. Since full implementation began in January 2014, U.S. companies have reported some delays in product testing due to testing capacity constraints.

*Bahasa Indonesia Labeling Requirements*

In late 2013, Indonesia's Ministry of Trade issued regulation Ministry of Trade 67/2013 on the "Obligation to Affix Indonesian-Language Labels on Goods." The regulation requires the use of pre-approved Bahasa Indonesia-language labels on a wide range of products, including various information and communications technology products, building materials, motor vehicle goods, household products, and apparel and textiles, that are distributed or sold in Indonesia. The regulation also requires that labels be "embossed or printed on the goods, or wholly attached to the goods" and must be attached "upon entering the customs territory" of Indonesia. The new regulation removed the option of using stickers and attaching them in the customs territory, and as a result significantly increased the costs for foreign goods entering the Indonesian market, without a clear benefit to consumer health or safety. In fall 2014, Indonesian officials clarified that "permanent stickers" are permitted.

*Halal*

In September 2014, Indonesia passed a law governing halal products (33/2014). The law makes halal certification mandatory for all food, beverage, drugs, cosmetics, chemicals, and organic and agricultural biotech products sold in Indonesia, as well as machinery and equipment used in processing these products, subject to further implementing regulations. Companies have three years from October 2014 to comply with the new law. In the meantime, companies have been instructed to follow existing Indonesia Ulama Council (MUI) halal-certification procedures. The new law also states that the Indonesian government will establish a new institution called the Halal Product Guarantee Agency to issue halal certificates. Once formed, this agency will assume the role currently fulfilled by the MUI. As of March 2015, implementation of the halal law remained uncertain, partly due to resource restraints.

Under the Ministry of Agriculture's Regulation 84 of 2013, Indonesia imposed additional regulations that appear to impede imports of poultry products. These include the requirement that all poultry-slaughter facilities in the country of origin meet an Indonesian halal standard in order for facilities to be eligible to export to Indonesia. As a result, even poultry slaughter facilities in the United States that meet a halal standard by a halal certification body in the United States are banned from shipping to Indonesia, as exports are only allowed from countries with 100-percent halal poultry slaughter.

*Prepackaged and Fast Foods – Labeling of Sugar, Salt and Fat Requirements*

In April 2013, the Indonesian Ministry of Health issued Regulation 30/2013 on the inclusion of sugar, salt, and fat content information on labels for prepackaged and fast foods. The regulation also requires inclusion of a health message affixed to labels for processed and fast foods. Indonesia failed to notify the regulation to the WTO TBT Committee until after it was finalized and effective. The United States supports Indonesia's regulatory and public health effort to improve nutritional literacy and raise awareness among Indonesians about healthy lifestyle choices, but is concerned about the lack of an open public consultation process regarding this measure. U.S. stakeholders have raised concerns regarding the need for further technical clarification and implementing guidance -- including acceptable methods for the required nutrient conformity tests -- and whether tests performed by foreign laboratories or by companies' "in-house" laboratories would be acceptable. Indonesia's strict testing procedure may not allow *de minimis* variations between batches and would possibly lead to unnecessary shipment-by-shipment inspections for label conformity. The United States submitted written comments on the regulation and cited concerns with the regulation at all three WTO TBT Committee meetings in 2014 and will continue to engage with Indonesia on it. As much as $418 million in U.S. prepackaged food exports to Indonesia could be affected by the regulation.

**Sanitary and Phytosanitary Barriers**

*Beef and Pork*

Indonesia does not recognize the equivalence of the U.S. food safety inspection system for beef and pork. Instead, Indonesia requires each U.S. meat establishment seeking to export to Indonesia to complete an extensive questionnaire that includes proprietary information, and to be inspected by Indonesian inspectors before it can ship meat to Indonesia. The United States has raised concerns about the establishment questionnaires and approval system with Indonesia repeatedly, including at the WTO Committee on Sanitary and Phytosanitary matters and at meetings of the United States-Indonesia Council on Trade and Investment, and will continue to raise concerns in WTO and bilateral fora.

*Animal-Derived Products*

Indonesia's animal health and husbandry law (Law 18/2009, as amended by Law 41/2014) requires companies that export animal-derived products, such as dairy and eggs, to Indonesia to complete a pre-registration process with the Indonesian Ministry of Agriculture. The law allows imports of these products only from facilities that Indonesian authorities have individually audited and approved. The law and associated implementing regulations, issued in 2011, impose overly-burdensome auditing and inspection requirements. To date, Indonesia has not notified the law to the WTO. Following an audit of the U.S. food safety system as it applies to dairy products in 2011, Indonesia agreed to a simplified questionnaire for U.S. dairy facilities seeking to pre-register for review and approval. The United States is continuing to work with Indonesia to further to improve the system under which U.S. establishments are made eligible to export dairy products to Indonesia.

*Poultry*

In December 2014, Indonesia banned all poultry imports from the United States due to the detection of high pathogentic avian influenza (HPAI) in backyard flocks in Washington and Oregon. This action is inconsistent with World Organization for Animal Health (OIE) guidelines, which recommend that countries take regional approaches to imposing trade restrictions on poultry and poultry products from countries which have detected HPAI in commercial or backyard flocks. The United States will continue to press Indonesia to limit poultry restrictions to only specific zones per OIE guidelines. Due to other restrictions on poultry (*see Import Licensing for Agricultural Products section below*), the United States can only ship live poultry to Indonesia. (*For other restrictions, see information regarding import licensing and halal requirements.*)

*Horticulture*

In 2014, the Ministry of Agriculture notified an amendment to Regulation 88 "Food Safety Control Over Import and Export of Fresh Food of Plant Origin" to the WTO SPS Committee. Under the proposed amended regulation, exporting countries would continue to be required to have a recognized food safety control system or registered food safety testing laboratories to export covered horticulture products. Exporters to Indonesia also would have to use a barcode tracking system. Although Indonesia allows the United States access through Jakarta's Tanjung Priok port, this rule could restrain trade with Indonesia in these products. (*See Customs Barriers section for more information*.)

## IMPORT POLICIES

### Tariffs

In 2013, Indonesia's average most-favored-nation applied tariff was 6.9 percent. Indonesia periodically changes its applied rates. Since December 2011, oilseeds have since alternated between 5 percent and zero, and are currently at zero. As of November 2014, wheat is subject to a 5-percent duty. In 2009, 2010, and 2011, Indonesia increased its applied tariff rates for a range of goods that compete with locally manufactured products, including electronic products, electrical and non-electrical milling machines, chemicals, cosmetics, medicines, iron wire and wire nails, and a range of agricultural products including milk products, animal and vegetable oils, fruit juices, coffee, and tea.

Indonesia's simple average bound tariff of 37 percent is much higher than its average applied tariff. Most Indonesian tariffs are bound at 40 percent, although bound tariff levels exceed 40 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 40 percent. Tariffs on fresh potatoes, for instance, are bound at 50 percent, although the applied rate is 20 percent. The high bound tariff rates, combined with unexpected changes in applied rates, create uncertainty for foreign companies seeking to enter the Indonesian market.

U.S. motorcycle exports remain severely restricted by the combined effect of a 60 percent tariff, a luxury tax of 75 percent, a 10 percent value-added tax, and the prohibition of motorcycle traffic on Indonesia's highways. Indonesia applies a tariff of Rp 125,000 (approximately $15) per liter on distilled spirits.

**Luxury Taxes**

Luxury goods (defined as goods not considered necessities), imported or locally produced, may be subject to a luxury tax of up to 200 percent. Currently, however, there are no luxury goods subject to the 200 percent rate, and the applied luxury tax rates generally range from 10 percent to 75 percent, depending on the product.

According to Indonesian Government Regulation No. 22 of 2014, issued in March 2014, the current highest tax rate applied is 125 percent for special luxury cars. However, under Regulation 41/2013, the luxury goods sales tax base rates are lowered for motor vehicles that meet certain environmental requirements. Luxury sales tax are reduced by up to 100 percent for certain motor vehicles meeting the following criteria: having an internal combustion engine with a cylinder capacity up to 1,200 cc and a fuel consumption rate of at least 20 kilometers per liter of fuel; or having a compression ignition engine (diesel or semi-diesel) with a cylinder capacity of up to 1,500 cc and a fuel consumption rate of at least 20 kilometers per liter of fuel. A luxury tax reduction of 50 percent is granted for motor vehicles using advanced technology diesel or petrol engines, biofuel engines, hybrid engines, or compressed natural gas (CNG) or liquefied gas for vehicles (LGV) dedicated engines, with fuel consumption of more than 28 kilometers per liter of fuel or other equivalent. A luxury tax reduction of 25 percent is granted for motor vehicles that use advanced technology diesel or petrol engines, dual petrol-gas engines (CNG kit converter or LGV), biofuel engines, hybrid engines, or CNG or LGV dedicated engines, with fuel consumption ranging from 20 kilometers per liter to 28 kilometers per liter of fuel.

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise taxes on imported spirits than on domestic spirits.

**Import Licensing**

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede access to Indonesia's market. Under MOT Regulation 27/2012 as amended by Regulation 59/2012, all importers are required to obtain an import license as either importers of goods for further distribution or as importers for their own manufacturing, but they cannot obtain license for both activities. Companies that operate under an import license for their own manufacturing are allowed to import finished products provided they are "market test" products or complementary goods. The decrees also require companies to demonstrate a "special relationship" with the foreign exporting company. The "special relationship" must be consularized by the Indonesian Embassy located in the country in which the foreign company is located. Only then may the companies import products from more than one section of the HS tariff code.

In addition, the Indonesian government imposes non-automatic import licensing requirements on a broad range of products, including electronics, household appliances, textiles and footwear, toys, food and beverage products, and cosmetics. The measure, originally known as Decree 56 in 2009, has been extended twice by the Ministry of Trade, most recently in December 2012 through MOT Regulation 83/2012, which will remain in effect until December 31, 2015. The decree also requires pre-shipment verification by designated companies (known in Indonesia as "surveyors") at the importers' expense and limits the entry of imports to designated ports and airports. Indonesia informally limits application of the decree to "final consumer goods." While the Indonesian government appears to exempt selected registered importers from certain requirements of this decree, the approval process to qualify as a registered importer is opaque, ill-defined, and potentially discriminatory. The United States continues to seek withdrawal of the measure.

In July 2014, MOT issued Regulation 36/2014 which amended Regulation 83/2012 by adding two additional ports in Indonesia (Bitung Seaport and Cikarang Dry Port) to receive the import of food and beverages, apparel, and electronics. The regulation also requires the surveyor to verify the import permit license at the port of origin.

MOT Regulation 82 of 2012, as amended by Regulation 38 of 2013 and Ministry of Industry Regulation 108, in effect since January 2013, imposes burdensome import licensing requirements for cell phones, handheld computers, and tablets. Under Regulation 82, importers of cell phones, laptop computers, and tablets can no longer sell directly to retailers or consumers. In addition, importers must have at least three years of experience and must use at least three distributors to qualify for a MOT importer license. In addition, an amendment issued in 2013 (MOT Regulation 38/2013) requires an importer to commit to establish an "industry" (e.g. manufacturing) within three years of obtaining its import permit. In addition, MOI is informally limiting imports under existing licenses (issued under MOI Regulation 108) to protect locally manufactured cell phones, handheld computers, and tablets. (*See above TBT section for related information*.)

Indonesia maintains other additional non-automatic licensing requirements on textiles, clothing, and other "made-up goods" such as curtains and blankets, which limit market access for a wide range of products. Only approved local producers are authorized to import products, and these products are permitted for use only as inputs in domestic production, not for resale or transfer. Approval must be obtained for both the quantity and timing of imports. The United States continues to press Indonesia to eliminate these requirements.

**Import Licensing for Agricultural Products**

Import licensing requirements also apply to horticultural products. In August 2013, Indonesia adopted two ministerial regulations on the importation of horticultural products. These regulations are Ministry of Agriculture Regulation 86/2013 (replacing Regulation Nos. 47/2013, 60/2012, and 3/2012) and MOT Regulation 47/2013 (amending Regulation No 16/2013, which replaced Regulation Nos. 60/2012 and 30/2012). The regulations require Indonesian importers to obtain three permits in order to import horticultural products: (1) a Registered Importer and/or a Producer Importer designation from MOT; (2) an Import Recommendation of Horticultural Products (RIPH) from the Ministry of Agriculture; and (3) an Import Approval (SPI) from MOT. Additionally, before applying for recognition as a Registered Importer or Producer Importer, an importer must obtain an Importer Identification Number (General or Producer) and must prove that it has met certain criteria set by the Ministry of Trade.

Importer designations and approvals are issued on a biannual basis and are valid for one six-month period. RIPHs specify, *inter alia*, the product name, HS code, country of origin, manufacturing location (for industrial materials), and entry point for all horticultural products the applicant wishes to import. After securing an RIPH, an importer must obtain an SPI from MOT before importing horticultural products. An SPI specifies the total quantity of a horticultural product (by tariff classification) that an importer may import during the period for which the SPI is valid. Importers cannot amend existing SPIs or apply for additional ones outside the application window. Furthermore, importers must import at least 80 percent of the quantity specified on their SPI, or risk losing the right to import in the future.

Indonesia adopted similar rules for the importation of animals and animal products (Ministry of Agriculture Regulation 139/2014 (replacing Regulations 84/Permentan/PD.410/8/2013. 96/Permentan/PD.410/9/2013. and 110/Permentan/PD.410/9/2014) and MOT Regulation 46/2013 (replacing Regulation 22/M-DAG/PER/5/2013)). These regulations require importers seeking to import animals or animal products to obtain: (1) a Registered-Importer Animal and Animal Product determination from MOT; (2) a Recommendation from the Ministry of Agriculture; and (3) an Import Approval from MOT. To obtain a Registered Importer determination, the importer must be certified as a business establishment, possess a trading license and importer identification number, and meet other requirements. In addition, Indonesia requires importers of beef to purchase local beef in order to obtain an import Recommendation from the Ministry of Agriculture.

Recommendations and SPIs for animals and animal products are issued quarterly. Recommendations may be valid for up to the remainder of the current year, and SPIs are valid for a fixed term of three months, which restricts exports of U.S. beef products, as shipping times from the United States to Indonesia are long. The Directorate of Veterinary Public Health and Postharvest issues Recommendations, and importers may apply for SPIs only after obtaining a Recommendation for a given product. Recommendations specify, *inter alia*, the name, tariff category, entry point, country of origin, and intended use (which the regulations limit to certain sectors) of the product(s) to be imported. SPIs specify the quantity of each product that may be imported. Importers must demonstrate actual importation of at least 80 percent of the quantity specified in their SPI from the previous year, or risk losing their Registered Importer designation.

Similar to the prior import regulations, the new import regulations restrict the import of poultry and poultry products. The regulations governing animals and animal products maintain a positive list of products that may be imported with a permit. The regulations provide for the import of whole fresh or frozen poultry (chicken, turkey, or duck) carcasses but not for the import of poultry parts, resulting, in effect, in a ban on the import of poultry parts. Additionally, although the regulations provide for the import of whole chicken carcasses, in practice, Indonesia does not issue import permits covering these products. This practice was expanded to whole duck and turkey carcasses; Indonesia has not issued import permits for these products since December 2013.

The licensing regimes for horticultural products and animals and animal products have significant trade-restrictive effects on imports, and the United States has repeatedly raised its concerns with Indonesia bilaterally and at the WTO. Indonesia failed to address these concerns. As a result, in January 2013, the United States requested consultations with Indonesia under the WTO's dispute settlement procedures. After the consultations failed to resolve the concerns, the United States requested establishment of a WTO dispute settlement panel, and a panel was established in April 2013. In August 2013, New Zealand joined the dispute by filing its own request for consultations to address Indonesia's measures. At the same time, the United States filed a revised consultations request to address recent modifications to Indonesia's measures and to facilitate coordination with co-complainant New Zealand. The United States and New Zealand held consultations with Indonesia in September 2013 and June 2014, but were unable to resolve the issue.

Indonesia imposes additional import licensing and registration requirements apply to other agricultural products, including animals and animal products, sugar, and dairy. In late 2014, the United States learned that the Indonesian Ministry of Agriculture was moving towards issuing regulations regarding import licenses for dairy products. U.S. exporters have expressed concern that this move could result in further limits on dairy imports into Indonesia.

## Pharmaceutical Market Access

The United States continues to have serious concerns about barriers to Indonesia's market for pharmaceutical products. Ministry of Health Decree No. 1010/MENKES/PER/XI/2008 requires foreign pharmaceutical companies either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals on its behalf. Among its requirements, Decree 1010 mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration. It also contains a technology transfer requirement. A subsequent pair of regulations, Regulation 1799 and Indonesian Food and Drug Regulatory Agency's (BPOM) updated regulation on drug registration (most recently revised in Regulation 27 of 2013), provide additional information about the application of the local manufacturing requirements and lay out several exceptions to local manufacturing and technology transfer requirements. The United States remains concerned by Indonesian government statements indicating that Indonesia failed to abide by Indonesian legal procedures in issuing a compulsory license decree in 2012, and indicating that Indonesian patent law does not require individual merits review in connection with the grant of compulsory licenses. The United States will continue to monitor the implementation of these regulations.

The Indonesian Parliament passed a bill requiring Halal certification of pharmaceuticals as well as other products in September 2014. The United States will continue to monitor the status of the implementing regulations for this bill, including the potential impact on market access for affected products.

The innovative pharmaceutical industry has also raised concerns regarding the transparency of and opportunity for meaningful stakeholder engagement regarding the Indonesian pricing and reimbursement system. In particular, stakeholders report a lack of clarity and certainty regarding how pharmaceutical products are selected for listing on the Indonesian National Formulary (FORNAS) and whether and for how long such products will remain on the FORNAS. The United States will continue to follow this issue and request that the Ministry of Health have quarterly meetings with U.S. stakeholders to discuss these issues.

## Quantitative Restrictions on Imports

Under current regulations, when submitting an Import Approval application to MOT, an importer must request the quantity of a product that it will be permitted to import. The Indonesian government has stated that it will approve any quantity requested, with the caveat that an importer must import at least 80 percent of the approved amount or lose the right to import in the future.

The Indonesian government has also stated that the import of many agricultural products, including meat and some horticultural products, will be subject to a reference price system, whereby imports will be permitted as long as domestic prices are above a set target price. In the event that prices fall below a set target price, the Indonesian government reserves the right to stop ("postpone") imports. As of December 2014, Indonesia has not yet suspended imports under this provision.

Since the removal of quotas on meat and horticultural products in August 2013, exporters have reported that meeting the 80-percent import requirement is burdensome and adds unnecessary risk. For example, the Indonesian government has shown little flexibility in accommodating importers that were unable to import their required volume within the duration of the Import Recommendation of Horticultural Products due to acts beyond their control, such as shipping delays and production shortages in the country of origin. In addition, U.S. companies have reported that the import approval process is burdensome and lacks transparency.

Indonesia imposes an "unofficial" restriction on corn imports. Since 2012, only feed millers can import corn. They must apply for an import permit from the Ministry of Agriculture. The import permit specifies the volume of corn that can be imported. The import volume is set based on the level of domestic feed production.

Indonesia bans salt imports during the harvest season. It requires salt importers to be registered and to purchase domestic supplies as well as imports. Indonesia also maintains a seasonal ban on imports of sugar, in addition to limiting the annual quantity of sugar imports based on domestic production and consumption forecasts. Indonesia bans exports of raw and semi-processed rattan.

Indonesia applies quantitative limits on the importation of wines and distilled spirits. Companies seeking to import these products must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota set by the Ministry of Trade.

**Product Registration**

Indonesia's food and drug agency (BPOM) reportedly has improved the efficiency of its product registration system through the implementation of an e-registration system for low-risk products. Still, concerns remain about proposed changes to the registration requirements and submission process that would can further complicate the process. U.S. stakeholders continue to express concern about the process to obtain product registration numbers (known as ML registration numbers). The United States will continue to monitor developments in this area.

**Customs Barriers**

U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports, rather than using actual transactions as required by the WTO Agreement on Customs Valuation. Indonesian Customs makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

U.S. horticulture exports can use Tanjung Priok port, despite an earlier Ministry of Agriculture announcement that the port would be closed to imports, because of U.S.-country recognition status for fresh foods of plant origin. Australia, New Zealand, and Canada have also been allowed to continue using Tanjung Priok. In January 2013, the Ministry of Agriculture renewed the U.S.-country recognition status for two years.

The United States submitted an application for another renewal in December 2014. In February 2015, Indonesia's suspended the renewal process in an overreaction to the *Listeria* outbreak on caramel covered apples in the United States. Further, Indonesia is requiring additional certificates of analysis for U.S. apple products. The United States will continue to work with the Indonesian government to ensure that it completes the renewal of the country recognition in a timely manner and that U.S. exports continue to have access to Indonesia through the Port of Jakarta in the interim.

**State Trading**

The National Logistics Agency maintains exclusive authority to import standard unbroken rice. Indonesia cited "food security" and price management considerations as the principle objectives of the authorization, but the Indonesian government separately detailed its aspirations for food self-sufficiency. The National Logistics Agency is not allowed to import rice before, during, or immediately after the main harvest period (January and February). This requirement effectively prohibits any rice imports during the first quarter of the year. Private firms are only allowed to import broken rice for processing and specialty rice varieties, such as basmati, jasmine, and sushi rice for retail or food service. Importers of broken and specialty rice must obtain a special importer identification number from the Ministry of Agriculture.

## EXPORT RESTRICTIONS AND TAXES

Indonesia's 2009 mining law requires companies to process ore locally before shipping it abroad. Indonesia has implemented this law through a series of regulations, including January 2014 regulations that ban the export of over 200 mineral ores, including nickel and bauxite. U.S. stakeholders have expressed serious concern about the potential impact these measures, which could have on their operations.

Indonesia provisionally allows the export of eight concentrates associated with these mineral ores (including copper, lead and iron), subject to a prohibitive export tax that increases every six months through the end of 2016, at which time the export of the mineral ore concentrate will be banned altogether. Under a regulation issued in July 2014, if a company makes certain commitments with respect to the construction of a smelter in Indonesia, it will be assessed significantly reduced duties during this transition period. Once the smelter achieves an advanced stage of construction, these duties will be eliminated. In addition to these measures, Indonesia has put in place certain verification and inspection procedures with respect to the export of mineral ores. The United States will continue to raise concerns about these issues with the Indonesian government.

Indonesia imposes a progressive export tax on cocoa and palm oil exports. The cocoa export tax rate ranges from a 5 percent to 15 percent and is calculated based on a monthly average of export prices. As of October 2014, the Indonesian government no longer imposes export taxes on crude palm oil. Indonesia also effectively bans the export of steel scrap and bans exports of raw and semi-processed rattan. The Indonesian government is considering imposing export taxes on other products, including coconut, base metals, and coal.

## GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulation 54/2010 requires procuring entities to seek to maximize local content in procurement, use foreign components only when necessary, and designate foreign contractors as subcontractors to local companies. Presidential Regulation 2/2009 stipulates that all state administrations should "optimize" the use of domestic goods and services and give price preferences for domestic goods and providers. Ministry of Industry Regulation 15/2011 provides for the creation of an Accelerated Use of Local Product National Team to optimize local product use in the procurement of goods and services.

Indonesia's 2012 Defense Law mandates priority for local materials and components and requires defense agencies to use locally produced defense and security goods and services whenever available. In addition, when an Indonesian government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for trade balancing, incorporation of local content, and/or offset production. The amount of domestic value or local content required starts at 35 percent, and increases by 10 percent increments every five years until the value of local content is equal to 85 percent. The 35-85 percent domestic value must then be compensated by "counter-trade agreements," incorporation of local content, or offset production. Forthcoming implementing regulations will also include a series of "multipliers" that will increase the calculated final value of a given offset component based on a determination from the Defense Industry Policy Committee. The implementing regulations for the 2012 Defense Law are contained in Presidential Decree 76/2014, but numerous details, including specifics for multiplier values, remain undetermined. Calculations for the value of local content can include design, engineering, intellectual property rights, raw materials, facilities/infrastructure costs, education and training, labor costs, and after-sales service.

Indonesia is an observer but not a member of the WTO Agreement on Government Procurement. Observers have no obligations under the agreement.

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Indonesia remained on the Priority Watch List in the 2014 Special 301 Report. Key concerns in Indonesia include continuing widespread copyright piracy and trademark counterfeiting, an inadequate number of criminal prosecutions, and non-deterrent penalties for those who are convicted. Counterfeiting activity extends to products that present serious risks to human health and safety, such as pharmaceutical products. U.S. stakeholders report that one of its most significant frustrations remains the nontransparent court system, which also impedes the ability of rights holders to obtain information about cases directly affecting their interests. A new law in Indonesia that updates its 2002 Copyright Act includes some positive aspects, such as making duplication by video camera in movie theaters explicitly illegal, providing for the criminalization of illegal uploading and downloading of copyrighted material for commercial purposes, and introducing landlord liability for knowingly allowing the sale of copyright-infringing materials. However, the legislation removes certain key legal authorities that had previously been available to enforcement officials in favor of a complaint-based system. The United States is working with the Indonesian government to develop a mutually agreed Intellectual Property Action Plan to address deficiencies in IPR protection and enforcement, public education and outreach.

## SERVICES BARRIERS

### Legal Services

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

### Express Delivery and Logistics Services

Indonesia maintains restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. The law requires that postal service suppliers be majority-owned by Indonesians and that foreign suppliers limit their activities to provincial capitals with international airports and seaports. Under Regulation No. 15/2013, only an Indonesian legal entity can apply for a license and any foreign ownership of a company offering postal services must be limited to a maximum 49 percent.

### Health Services

The negative list of foreign investment restrictions allow for 67-percent foreign ownership of private specialist hospitals in all regions of Indonesia. However, foreign ownership is prohibited for health research centers, private maternity hospitals, and general or public hospitals.

### Financial Services

Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partially owned by foreigners, but cannot operate in Indonesia as a branch of a foreign entity. A single entity, either foreign or Indonesian, may own no more than 40 percent of an Indonesian bank. The Financial Services Authority (OJK) may grant exceptions and allow for greater than 40-percent ownership of Indonesian banks in certain cases. In December 2013, Bank Indonesia adopted a new regulation, No. 15/49/DPKL, restricting foreign ownership in private credit reporting firms to 49 percent.

In September 2014, the DPR passed the Bill on Insurance. The new law will require all insurance companies to incorporate locally as Indonesian corporate entities (Perseroan Terbatas or 'PT'). All foreign ownership of 'PT' insurance companies will be by publicly traded shares, so there will be no direct foreign ownership of corporate assets. While the Bill on Insurance does not contain an explicit cap on foreign equity ownership, OJK is expected to issue regulations lowering the foreign ownership cap for insurance companies from its current level of 80 percent. All insurers in the Indonesian market will also be required to join the Indonesian deposit insurance agency.

In late 2014, OJK issued a circular letter requiring insurance companies operating in the Indonesian market to cede 100 percent (up from the current 5 percent to 15 percent) of reinsurance to domestic reinsurance companies for all common lines of insurance such as vehicle, homes, business, and life insurance, and at least 25 percent on certain other lines of insurance. The circular also includes requirements for retention and retrocession. According to the circular, these changes were to be made starting January 1, 2015 for all new business, as well as existing contracts that extend beyond 2015. In late December 2014, OJK issued a draft regulation and requested stakeholder comments by January 26, 2015. OJK has indicated that they are planning on finalizing the regulation this year and that it could go into effect January 1, 2016. The United States will continue to engage Indonesia on this issue.

**Energy Services**

Article 79 of Presidential Regulation No. 35/2004, which regulates contractor activities in the upstream oil and gas sector, provides that contractors must "prioritize" the use of domestic services, including energy-related services, as well as technologies and engineering and design capabilities (see below).

**Maritime Cabotage**

Indonesia's 2010 Law No. 17 on Shipping requires all vessels operating in Indonesian waters to be Indonesian flagged. Indonesian law further limits foreign ownership of Indonesian-flagged vessels to 49 percent. However, the Indonesian shipbuilding industry does not have the capacity to build the variety of specialty ships its economy requires and is unlikely to have such capacity in the near to medium term. Full implementation of the law would be particularly problematic for foreign investors in Indonesia's energy and telecommunications sector, which would no longer be permitted to bring in the sophisticated rigs and specialized vessels needed to develop large upstream projects.

In response to concerns raised by the United States and other countries, the Ministry of Transportation issued Regulation No. 48/2011 allowing certain classes of non-transportation vessels to be eligible for a three-month renewable waiver from the domestic flagged-vessel requirements when there is no suitable Indonesian-flagged vessel available. In early 2014, the Ministry of Transportation issued Regulation No. 10/2014 to provide further exemptions to Law 17/2010 through the end of 2014 and extended the waiver period to six months for non-transport foreign vessels engaged in oil and gas surveying, drilling, offshore construction, dredging, salvage, and other under water work. Under the regulation, treatment of other categories of specialty foreign vessels will be decided on a case by case basis for waivers of up to three months. The United States will continue to press Indonesia on this issue to provide a longer-term solution for foreign-flagged specialty ship operators and their customers.

## Audit and Accounting Services

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

## Film

The 2009 Law on Film imposes a 60-percent local content requirement for local exhibitors and, to achieve that quota, also includes the authority to implement unspecified import restrictions, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. The law also restricts vertical integration across segments of the film industry, but the integration restriction has not been fully implemented to date.

The temporary postponement of a 2008 regulation requiring all local and imported movies, both theatrical prints and home video copies, to be replicated locally, with penalties on exhibitors for failing to do so, was replaced by consecutive one-year suspensions issued by the Minister of Culture and Tourism. In January 2015, the Tourism Ministry suspended the regulation for another year. The Indonesian Government has said that film policy will move from the Ministry of Tourism in 2015. However, it remains unclear whether it will fall under the Ministry of Education and Culture or the newly formed Creative Industry Agency. The United States continues to advocate for the permanent suspension and repeal of this regulation.

## Construction, Architecture, and Engineering

Prior to November 2014, foreign construction firms were only allowed to be subcontractors or advisors to local firms in areas where the Indonesian government believed that local firms are unable to do the work. Government Regulation 10/2014 now permits the reverse relationship, *i.e.*, where the Indonesian government believes that a local firm is not capable of managing an entire project on its own, the local firm may now serve as subcontractor or advisor to a foreign construction firm. The foreign firm would work together with a 100 percent locally owned firm, or if it is a joint venture, then the local ownership should be at least 65 percent. There are a number of conditions to this regulation, including that the construction project should be worth at least Rp100 billion (or a minimum of Rp20 billion for a consultation project), that it should be a high-tech construction project, and that the risk ratio should be high.

## Education

Indonesia limits foreign investment in primary, secondary, and tertiary educational institutions through special licenses. Foreign investment in non-formal education is limited to 49 percent. A foreign national may provide educational services at the tertiary level only if authorized by the Ministry of Education and the Ministry of Manpower. Authorization is granted on a case-by-case basis and only when there are no Indonesian instructors capable of filling the position.

Indonesia also issued a regulation overseeing the classification of schools. In May 2014, the Ministry of Education and Culture issued Regulation 31/2014 which provides that, starting December 1, 2014, every international school and National Plus School must become a "Satuan Pendidik Kerjasama" (SPK – 'Education Unit Partnership') which prohibits independent international schools. International schools must now be administered by partner institutions from overseas (or Foreign Educational Institutions already accredited or recognized in Indonesia) and can no longer use the word "international" in their names, among other requirements.

## Franchising

Indonesia's MOT made three major regulatory changes in the franchising sector in recent years that threaten to have a significant chilling impact on future operations of foreign franchisors. In August 2012, Indonesia promulgated MOT regulation No. 53/2012, which establishes a local content requirement obliging an Indonesian franchisee to source 80 percent of its equipment and inventory domestically, unless a waiver is granted. While implementing rules remain vague, this sourcing requirement could have a significant negative impact in the development of new franchising agreements in Indonesia. This new requirement is not expected to be fully enforced against existing licensed franchisees until 2017.

In October 2012, MOT issued Regulation 68/2012 restricting the number of outlets that can be owned by a modern retail franchisee, such as supermarkets, to 150 before it must sub-franchise a portion of additional units to another local sub-franchisee. In February 2013, MOT issued regulation 7/2013 restricting the number of outlets that can be owned by a food and beverage franchisee to 250. In 2014, MOT issued amendments - Regulations 57/2014 and 58/2014 – to the existing franchising requirements. These revised regulations grandfather in franchisors or franchisees of restaurants, cafés, and bars that already have more than 250 outlets, but the existing requirements will still apply to newcomers or those that do not already have more than 250 outlets.

In December 2013, MOT issued Regulation 70/2013, building on the localization requirements of the above regulations and requiring modern retail establishments, such as shopping centers, minimarkets, and hypermarkets, to sell 80 percent domestic product. The regulation also limits the stock of these establishments to a maximum of 15 percent private label products. Retailers must comply with these regulations by June 2016. For stand-alone brand or specialty stores, MOT may provide exceptions to the requirement that retailers sell 80-percent domestic products based on the following criteria: (1) products requiring uniformity of production and sourcing from a global supply chain; (2) products with "world famous" or premium branding that are not yet produced in Indonesia; or (3) products from certain countries sold to meet the needs of their citizens living in Indonesia.

## INVESTMENT BARRIERS

Indonesia's investment climate continues to be characterized by legal uncertainty, economic nationalism, and the disproportionate influence of local business interests. Indonesian government requirements often compel foreign companies to do business with local partners and to purchase goods and services locally.

Indonesia's 2007 Investment Law significantly increased the number of sectors in which foreign investment is restricted and increased foreign equity limitations in sectors such as telecommunications, pharmaceuticals, film and creative industries, and construction. Pursuant to presidential regulation, Indonesia continues to review the Investment Law and its Negative Investment List of restricted sectors.

In April 2014, Indonesia issued a revised Negative Investment List. The new Negative Investment List eases foreign investment restrictions in several sectors, including land transportation, pharmaceutical manufacturing, and infrastructure investments made under public-private partnership agreements, while further closing other sectors, such as e-commerce, distribution and warehousing, and various areas of oil, gas, and mining services.

In early 2014, Indonesia announced it would terminate its bilateral investment treaties (BITs) by permitting the more than 60 agreements to expire as soon as the agreements allow. While Indonesia may seek to renegotiate its agreements, it has not yet determined a timeline or consulted with its partners on this. The United States does not have a BIT with Indonesia.

## Energy and Mining

Over the past several years, the Indonesian government has introduced regulatory changes to increase government control and local-content levels in the energy and mining sectors. The regulatory changes have raised costs for foreign businesses and questions about the sanctity of contracts already in force with the Indonesian government.

In the oil and gas sector for example, Government Regulation 79/2010 allows the Indonesian government to change the terms of certain existing production sharing contracts, eliminate the tax deductibility of certain expenses, change the terms and criteria for cost recovery, and place limits on allowable costs for goods, services, and salaries. Criminalization of the civil production sharing contract added to uncertainty in 2013, as U.S. company contractors and employees were convicted, fined, and imprisoned for doing work that was approved and defended in court by relevant government regulators. In 2014, the Indonesian Supreme Court heard appeals on several of these cases; rather than overturning the lower courts' decisions, the Supreme Court lengthened the imprisonment sentences.

Article 79 of Presidential Regulation No. 35/2004, which regulates contractor activities in the upstream oil and gas sector, provides that contractors must "prioritize" the use of domestic services, including energy-related services, as well as domestic technologies and engineering and design capabilities. Foreign energy and energy services companies have noted that these local preference policies severely undermine their ability to efficiently and profitably operate in the Indonesian market.

In 2011, Indonesia's oil and gas regulator tightened rules relating to how such content is measured with respect to oil and gas projects. Once fully implemented, the new criteria are intended to achieve an average of 91 percent local content by 2025, up from 61 percent in 2012. Moreover, under the new rules, the goods and services of companies without majority Indonesian shareholding can no longer qualify as "local" content. As a result, foreign energy service companies have been placed at a disadvantage *vis-à-vis* majority Indonesian-owned companies, which can more easily meet local content requirements, but are often less able to meet the technical requirements of a project. The Indonesian House of Representatives continues to pressure the oil and gas regulator to maintain or increase the local content requirements, leading to increased uncertainty in the market. The United States will continue to monitor developments in this area.

Since 2013, upstream oil and gas regulator SKK Migas, through policy PTK 51 of 2013, has ceased cost recovery reimbursement to oil and gas companies with whom disputes arise with respect to reimbursement amounts. At the same time, the Indonesian government increased pressure on oil and gas companies to repatriate export earnings into Indonesian state-owned banks, per Bank of Indonesia Regulation 13 of 2011 as amended by Regulation 14 of 2012, subjecting such earnings to Indonesian banking law and regulations despite production sharing contracts that allow companies to retain such earnings abroad. In addition, Regulation 31/2013 promulgated by the Ministry of Energy and Mineral Resources limits the amount of time expatriates can work in Indonesia's oil and gas sector to four years and sets an age limit of those expatriates at 55 years old, requirements that U.S. companies believe will significantly affect staffing patterns and technical capacity.

Indonesia's 2009 Mining Law created a system for granting mining concessions based on licenses, though some companies still operate on existing contracts of work. While the law gives local governments authority to issue mining licenses, Regulation 24/2012 returned authority to the central government for issuing licenses to companies with any foreign ownership. The law and its implementing regulations impose onerous requirements on companies doing business in the mining sector, including local content requirements, domestic sale requirements, and a requirement to process raw materials in Indonesia prior to export. Because the mining licenses are subject to future regulatory requirements, permitting, and tax changes, they provide significantly less certainty than the contract of work system. However, the Indonesian government is requiring companies with contracts of work to renegotiate those existing contracts in order to increase government royalty rates, increase local content requirements, require domestic smelting of minerals, decrease the size of mining areas, and make other changes that significantly alter the economic potential of these projects. An implementing regulation of the law also restricted foreign ownership in the sector to 49 percent within 10 years of the start of production. In October 2014, with Regulation 77/2014, the Indonesian government eased the foreign ownership restrictions to 60 percent for companies that smelt domestically and 70 percent for companies that operate underground mines. The United States will continue to press Indonesia on this range of issues.

In September 2014, the Indonesian legislature passed the Provincial Administration Law. The law greatly reduces the authority of the regional governments in tendering concessions, and issuing licenses and approvals in the mining and oil and gas sectors and thus has the potential to streamline various processes. Several provisions of the law, however, are inconsistent with or contradict the 2009 Mining Law. Until amendments are enacted or other measures taken to clarify these discrepancies, the coexistence of the two laws contributes to regulatory uncertainty for investment in the mining sector.

### Telecommunications

Telecommunications providers face myriad investment restrictions in a regime notable for its confusing system for classifying services and a track record of backsliding from steps toward liberalization. The Negative Investment List, updated through Government Decree No. 39/2014, caps foreign ownership at 65 percent for fixed and wireless network services and 49 percent for Internet and multimedia-based communication service providers (down from 65 percent). Previously, the foreign-ownership limitation on suppliers of fixed services was 95 percent.

U.S. stakeholders have raised concerns about local content requirements in the telecommunications sector. Ministry of Communication and Information Technology regulations, Regulation 07/2009 and Regulation 19/2011, require that equipment used in wireless broadband services contain local content of at least 30 percent for subscriber stations and 40 percent for base stations, and that all wireless equipment contain 50 percent local content within five years. Indonesian telecommunication operators are also required, pursuant to Decree 41/2009, to expend a minimum of 50 percent of their total capital expenditures for network development on locally sourced components or services.

In 2014, the Ministry of Industry adopted Regulation 69/2014 for the 4G spectrum, requiring 30-percent local content for the network base stations and devices that use the spectrum in three years. Ministry of Communication and Information Technology officials have confirmed that Indonesia is pursuing local content requirements for its 4G network and 4G-enabled devices but that the policy is still being developed, which will include revising MOI Regulation 69/2014. Further, under Government Regulation No. 82/2012, Indonesia may require certain companies operating in Indonesia to build or hire data and disaster recovery centers inside Indonesia. The U.S. Government continues to engage the Indonesian government on these issues.

## OTHER BARRIERS

Although the Indonesian government and the Corruption Eradication Commission continue to investigate and prosecute high-profile corruption cases, many investors consider corruption a significant barrier to doing business in Indonesia. Other barriers to trade and investment include poor coordination within government, the slow pace for land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, and lack of transparency in the development of laws and regulations. The ongoing process of transferring investment-related decisions from central to provincial and district governments, while helping reduce some bureaucratic burdens, has led to inconsistencies between national and regional or local laws. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and report growing concern about criminalization of contract issues.