INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was $9.5 billion in 2010, up $1.7 billion from 2009. U.S. goods exports in 2010 were $6.9 billion, up 35.9 percent from the previous year. Corresponding U.S. imports from Indonesia were $16.5 billion, up 27.3 percent. Indonesia is currently the 32nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Indonesia were $1.4 billion in 2009 (latest data available), and U.S. imports were $425 million. Sales of services in Indonesia by majority U.S.-owned affiliates were $2.4 billion in 2008 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $69 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was $16.0 billion in 2009 (latest data available), down from $16.3 billion in 2008. U.S. FDI in Indonesia is primarily concentrated in the nonbank holding companies and mining sectors.

IMPORT POLICIES

Tariffs

In 2010, Indonesia's average MFN applied tariff was 7.6 percent. Over the past two years, Indonesia has raised tariffs on a number of products. In 2010, Indonesia increased applied tariffs for products including medicines, cosmetics, and energy efficient lights. In 2009, Indonesia raised rates on a number of goods that compete with locally manufactured products, including certain chemicals, electronic products, electrical and non-electrical milling machines, iron wire and wire nails, and a range of agricultural products including milk products, animal or vegetable oils, fruit juices, coffee, and tea. Indonesia's simple average bound tariff, *i.e.*, the rate which generally cannot be exceeded under WTO rules, is 37 percent. 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. 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.

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 25 percent. Indonesia's applied tariff on imported spirits is a prohibitive 150 percent, which is its bound rate. U.S. companies report that the reduction or elimination of tariffs on a wide range of products including beef, cheese, cooking appliances, cookware, and beverage systems would result in tens of millions of dollars in increased sales to Indonesia.

Indonesia has extensive preferential trade relationships with other Asian countries. Under the ASEAN Free Trade Agreement (FTA), import duties from ASEAN countries are applied at zero percent to five percent, except for products specified on an exclusion list. In addition, Indonesia accords preferential market access to Australia, China, Japan, Korea, India, and New Zealand (under ASEAN FTAs) and to Japan (under a bilateral Economic Partnership Agreement). Implementation of the ASEAN-China FTA has been contentious, with domestic industries pressing for more time to implement tariff commitments as well as for the imposition of new non-tariff barriers to offset the reduction in tariff protection. Indonesia also is currently negotiating bilateral agreements with Iran, India, and Australia.

Import Licensing

Exporters to Indonesia must comply with numerous and overlapping import licensing requirements that impede access to Indonesia's market. In 2009, the Indonesian government implemented a sweeping regulation imposing non-automatic import licensing procedures on a broad range of products, including electronics, household appliances, textiles and footwear, toys, and food and beverage products. The measure, known as Decree 56, was extended by Ministry of Trade Regulation 57/2010 in December 2010, and it will remain in effect until December 31, 2012. The extended decree includes a requirement for preshipment verification by designated surveyors at importers' expense and a restriction that limits entry of imports to five designated ports and airports. The Indonesian government was considering extending these licensing provisions to additional products; however, it has informally limited application of the decree to "final consumer goods." The Indonesian government also appears to be exempting select registered importers from certain requirements of this decree. However, the approval process to qualify as a registered importer is opaque, ill-defined, and potentially discriminatory. The United States and other WTO Members have expressed concern about the decree and are seeking its withdrawal.

Effective January 1, 2011, Ministry of Trade Regulation 45/2009 and Regulation 17/2010 introduce a requirement that companies can only import goods for further distribution or goods for their own manufacturing, but not both. The rationale for this policy is unclear, though importers report that it is being applied more stringently on imports destined for distribution than on imports used in the production process, raising concerns that its application is restricting imports.

Since 2002, Indonesia has continued to maintain 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 covered by this regulation, 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.

Additional burdensome product-specific import licensing and registration requirements apply to agricultural products, including beef, sugar, and dairy.

Pharmaceutical Market Access

The United States continues to have serious concerns about barriers to entering Indonesia's pharmaceuticals market. Ministry of Health Decree 1010 requires foreign pharmaceutical companies operating in Indonesia to manufacture locally in order to be considered domestic manufacturers and be qualified to apply for drug approvals. Under this policy, companies can be barred from the Indonesian market even if they are market leaders in globally recognized good manufacturing and distribution practices and provide high quality pharmaceuticals to Indonesian patients in the same manner that Indonesian manufacturers do. An amendment to Decree 245/1990 was signed into law in December, 2010 altering the definition of local manufacturing in Indonesia to include domestic packaging and labeling facilities. The market impact of this revised policy is unclear, as discriminatory aspects of Decree 1010 remain. Of note, Decree 1010 includes a requirement for local manufacturing of all pharmaceutical products that are five years past patent expiration. The U.S. Government has raised its objections to these market access barriers with Indonesia repeatedly and strongly encourages it to resolve these concerns, which restrict market access for U.S. companies, thereby potentially limiting availability of medicines for Indonesian patients.

Quantitative Restrictions

The Indonesian government requires an import permit from the Directorate General of Livestock Services for imports of animal-based food products. In approving import permits, the Indonesian government retains discretion to alter the quantity it allows to enter. U.S. industry estimates the annual trade impact of this restriction to be between $10 million and $25 million. The United States will continue to press Indonesia to address U.S. concerns about these practices.

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.

Indonesia applies quantitative limits to imported wines and distilled spirits. However, companies can now apply to be designated as registered importers authorized to import alcoholic beverages with an annual quota set by the Ministry of Trade.

Mining firms operating in Indonesia are prevented from exporting unprocessed ore. Under mining law, companies are required to process ore locally in Indonesia before shipping it abroad. The United States will closely monitor implementation of the law to ensure that it does not constitute an export ban on raw materials.

Product Registration

Beginning in late 2008 and continuing throughout 2010, Indonesia's food and drug agency (BPOM) slowed its process of reviewing applications for the registration of food, beverages, and other products including health supplements. Combined with an aggressive enforcement campaign in which large quantities of imported products were seized and destroyed for not being properly registered, the process for registering products has become increasingly burdensome, opaque, and costly to U.S. exporters. Some companies have discontinued or reduced sales to Indonesia as a result of the manner in which BPOM is implementing this requirement.

Customs Barriers

U.S. firms continue to report that Indonesia's Customs Service uses a schedule of reference prices to assess duties on some imports, rather than using actual transaction prices as it committed to do under the WTO Customs Valuation Agreement. 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. In addition, the U.S. Government has received complaints from importers about costly delays in customs processing and requests for unofficial payments to customs officers.

In late 2010, the Customs Service changed its procedure for valuing imported motion pictures for customs purposes. Instead of imposing tariffs according to the value of the imported physical media, Indonesian customs is levying duties based on the amounts paid by importers for the exclusive right to distribute films, which results in a dramatic increase in the duties payable and stifles commercial cooperation and trade in this sector. Although the new policy was never publicly announced by the Indonesian Customs Service and its implementation has not been fully explained to traders, the Customs Service is aggressively auditing the accounts of movie companies and imposing severe fines for the underpayment of duties. The United States continues to work with Indonesia to resolve these concerns.

Luxury Taxes

The luxury sales tax on 4,000cc sedans and 4x4 Jeeps or vans is 75 percent, compared with the luxury tax on automobiles with engine capacities of 1500cc or less, which ranges from 10 percent to 30 percent. Passenger cars with engine displacement less than 1500cc comprise 40 percent of the market, including a large group of vehicles predominantly produced in Indonesia that are taxed at a rate of 10 percent.

Indonesia eliminated its luxury tax on imported distilled spirits on April 1, 2010, at the same time that it significantly increased excises taxes on such beverages. The current excise tax regime imposes higher excise taxes on imported spirits than on domestic spirits.

State Trading

In April 2008, the Indonesian government announced that the National Logistics Agency (BULOG) would have exclusive authority to import rice. In doing so, Indonesia cited food security and price management considerations. Imports are not permitted before, during, and immediately after the main harvest period, effectively the first quarter of the year. Private firms can import rice for special purposes only, such as for seed and specialty rice, but they must obtain a special importer identification number issued by the Ministry of Agriculture.

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. In February 2009, the Minister of Industry issued a circular “recommending” that civil servants purchase domestic goods and services in their official capacities, as well as in their private purchasing, in order to “improve domestic product usage.” Foreign firms bidding on high value government sponsored projects report that they have been asked to purchase and export the equivalent value of selected Indonesian products if they are awarded the contract.

Indonesia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Indonesia was placed on the Priority Watch List in the 2010 Special 301 report. Although Indonesia took enforcement efforts against pirated optical disks, other deficiencies in IPR protection and enforcement continue to represent barriers to U.S. exports and investment. Key issues cited in the report include inadequate enforcement against IPR crimes to address continuing widespread copyright piracy and trademark counterfeiting, inadequate numbers of criminal prosecutions, and non-deterrent penalties for those who are convicted.

SERVICES BARRIERS

Indonesia maintains significant and far-reaching trade and investment barriers in many key services sectors. The United States will continue to press Indonesia to address its concerns on these issues.

Legal Services

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

Express Delivery and Logistics Services

In September 2009, the Indonesian legislature introduced a new law with restrictions on postal services, broadly defined to include courier, express delivery, and other logistics services. The law requires that postal service providers be majority-owned by Indonesians and that foreign providers limit their activities to provincial capitals with international airports and seaports.

Health Services

Changes to the negative list of foreign investment restrictions in 2010 allow for 67 percent foreign ownership in all regions of Indonesia, in contrast to the previous regulation which limited foreign investors to the cities of Medan and Surabaya. Indonesia restricts foreign health care professionals from practicing in Indonesia. Foreign trained physicians are only allowed to supervise and perform procedures in the course of educating Indonesian physicians.

Distribution

Some U.S. direct selling companies raised concerns that Indonesia's market is generally closed to investment in the direct selling industry. Although Indonesia allows up to 100 percent foreign equity in the distribution and retail sectors, investors must enter into a "partnership agreement" with a small scale Indonesian enterprise.

Cabotage

Indonesia's new shipping law requires all vessels operating in Indonesia's waters to be flagged domestically and manned by Indonesian crews. The new law does not provide for exceptions. This is a particular problem for foreign investors in Indonesia's energy sector, who will no longer be permitted to bring in the sophisticated rigs and specialized equipment needed to develop large upstream projects. Because of these concerns, the Ministry of Transportation announced a delay in implementation of the new law until May 7, 2011. Nevertheless, foreign investors continue to experience delays in long-term operational planning as it is customary for specialized equipment to be reserved many months in advance. The United States is urging Indonesia to resolve these concerns.

Financial Services

Indonesia allows 99 percent foreign ownership in the banking sector, however, financial service providers may not establish as a branch. In the insurance sector, the 2007 Investment Law introduced a new foreign equity cap of 80 percent for new investors.

Energy Services

In 2009, Indonesia's upstream oil and gas regulator BP MIGAS began requiring bidders for energy services to have local content of at least 35 percent, even though it is unclear whether Indonesia has the capacity to provide the level of domestic content required by the regulation. Foreign energy services companies are concerned that these local preference policies severely undermine their ability to make successful bids on contracts and to make decisions about sourcing and personnel that would allow them to function efficiently and profitably in the Indonesian market.

Audit and Accounting Services

Foreign firms cannot practice under international firms' names, although terms such as "in association with" are permissible. Foreign accounting firms must operate through technical assistance arrangements with local firms. Only Indonesian citizens may be licensed as accountants. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign directors, managers, and technical experts/advisors are allowed a maximum stay of two years, with a possible one-year extension. Auditors practicing in the capital markets are prohibited from delivering specified non-audit services such as consulting, bookkeeping, and information system design.

Film

A September 2009 law provides for screen quotas permitting no more than 60 percent of screen time for foreign films, unspecified import restrictions to achieve that quota, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. In January 2010, following concerns raised by the United States, the Minister of Culture and Tourism issued a two-year suspension of a 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.

Construction, Architecture and Engineering

Foreign construction firms are only allowed to be subcontractors or advisors to local firms in areas where the government believes that a local firm is unable to do the work. In addition, for government-financed projects, foreign companies must form joint ventures with local firms.

Telecommunications Services

Indonesia permits up to 65 percent foreign ownership in value added and mobile telecommunications services and up to 49 percent for fixed networks. While this foreign ownership level goes beyond Indonesia's current commitments in its WTO GATS schedule, the limits on fixed services represent a step backward from recent practice under which up to 95 percent ownership was permitted. A Ministry of Communications and Informatics decree issued in 2008 restricts the construction, management, and ownership of cell towers to domestic companies and forced existing investors to exit the market within two years. The United States has registered its serious concerns to Indonesia about these setbacks in Indonesia's investment climate.

Education

Indonesia's Law on Education Legal Entities does not allow foreign investment in higher education in the form of a limited liability company, which conflicts with provisions of the existing Investment Law. In addition, foreign educational personnel require permission from both the Ministry of Education and the Ministry of Manpower. The permission is granted on a case-by-case basis and is only given when there are no Indonesian instructors capable of filling the position.

INVESTMENT BARRIERS

Indonesia maintains significant and far-reaching foreign investment restrictions. Its investment climate continues to be characterized by legal uncertainty, economic nationalism, and disproportionate influence of local business interests seeking control and ownership of existing enterprises and new market opportunities. Through both formal regulation and indirect guidance, foreign companies are compelled to do business with local partners and to purchase goods and services locally.

In an attempt to improve its foreign investment climate, Indonesia in 2007 introduced a new Investment Law intended to improve transparency, as well as provide a range of improved protections for foreign investors including non-discriminatory treatment, protection against expropriation, and recourse to international arbitration in the event of disputes with the government. At the same time, however, the new law significantly increased the number of sectors in which foreign investment is restricted and increased foreign equity limitations in sectors of interest to U.S. investors. These sectors include telecommunications, pharmaceuticals, film and creative industries, and construction. An ongoing process of decentralization, which is intended to reduce burdensome bureaucratic procedures by moving investment-related decisions to provincial and district level governments, has led to some improvements but has also resulted in new restrictive measures that appear to conflict with national laws.

Indonesia continues to review the 2007 Investment Law and its negative list of restricted sectors. Presidential Regulation 36/2010, signed by President Yudhoyono on May 25, 2010, issued long-awaited changes to its negative list delivering legal clarifications in conjunction with limited liberalization. The clarifications include protections from retroactive implementation and promise a continuous review of closed sectors for increased market access. The revisions include modest changes to investment limits in individual sectors including construction, health care, film technical services, and electricity generation, but the revisions also increase restrictions in other sectors such as postal services and the telecommunications tower sector, which is now closed to foreign investment.

Also in 2010, the Indonesian legislature introduced a new horticulture law, which reduced permissible foreign equity in horticulture-related business activities from 95 percent to 30 percent.

Energy and Mining

Several regulatory changes have recently been introduced to increase government control in the energy and mining sectors and to generate higher royalties for the government.

Indonesia enacted a new mining law in December 2008, replacing a "Contract of Work" system with a system of licensing. The legislation creates new risks and burdens for investors. It subjects investments in the sector to all changes in tax and royalties policy, which have often been unpredictable, and allows central and local governments to cancel licenses. Mining companies must give preference to local subcontractors and service companies and are required to process and smelt ore domestically. The new law also reintroduces divestment requirements that have led to investment disputes in the past. While not requiring the conversion of existing contracts to licenses, the new legislation mandates unspecified changes to existing contracts. The Indonesian government has indicated that it does not intend to honor contractually mandated extensions to contracts of work.

The Indonesian government also has attempted to alter unilaterally the terms of energy and mining contracts in the country's favor. In 2008, certain foreign coal purchasers saw their long-term contracts nullified when the Energy and Mineral Resources Department ordered private Indonesian coal mining firms to renegotiate sales contracts with foreign buyers if the contracts involved long-term fixed price arrangements and if the sale prices were below a government-determined benchmark price. These firms have faced cancelled shipments in cases where foreign buyers have been unwilling or unable to renegotiate their contracts. In addition, throughout the mining sector, companies have reported problems importing exploration and production equipment free of duties or VAT, as provided for in their contracts. Separately, the oil and gas regulator BP MIGAS has threatened to penalize oil and gas firms that do not meet arbitrary production goals.

Telecommunications

In October 2009, the Ministry of Communications and Informatics announced a new decree requiring all telecommunications operators to expend a minimum of 40 percent of their total capital expenditures for network development on locally sourced components or services. The same ministry also issued a decree earlier in 2009 imposing local content requirements of 30 percent to 50 percent on operating and capital expenditures in the wireless broadband sector. The United States continues to press Indonesia to address concerns about these decrees.

OTHER BARRIERS

The Indonesian government and the Corruption Eradication Commission, which coordinates anti-corruption efforts and has the authority to investigate and prosecute high level corruption cases, continue to attempt to address widespread corruption in the country. Still, foreign companies continue to report corruption-related difficulties, including demands for unwarranted fees to obtain required permits or licenses, to expedite processes, or to influence government awards of contracts and concessions. Indonesian courts have a reputation for being inefficient and corrupt, creating serious problems for companies drawn into disputes with local partners and threatening the viability of U.S.-invested enterprises. In some instances, U.S. firms that have sought legal relief after having been allegedly defrauded by local partners or clients have been forced to litigate spurious counterclaims.