USTR Issues Annual Report on Foreign Trade Barriers, Including Technical and SPS Measures

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Sandler, Travis & Rosenberg Trade Report

The Office of the U.S. Trade Representative issued April 1 its annual National Trade Estimate report, which describes significant foreign barriers to U.S. exports of goods and services, foreign direct investment and intellectual property rights protection as well as the actions being taken to address those barriers. The NTE report covers the most important barriers, including those that may be consistent with international trade rules (e.g., very high tariffs), affecting U.S. exports to 58 countries, the European Union, Taiwan, Hong Kong and one regional body.

This year’s report reintegrates sections on technical barriers to trade, such as product standards and testing and certification requirements, and sanitary and phytosanitary barriers, which include measures used to ensure that foods and beverages are safe for consumers and to protect animals and plants from pests and diseases. These sections had been stand-alone reports from 2010 to 2014.

USTR states that among the most noteworthy changes in the last year, both positive and negative, concerning barriers to U.S. exports are the following.

China

New Information and Communications Technology Barriers. China announced two measures relating to IT equipment used in the banking services sector and in providing Internet- or telecommunications-based services that raise fairness and transparency concerns as well as other industrial policy-related concerns.

Agriculture Market Access. China announced that it would approve the importation of new biotechnology varieties of U.S. soybeans and corn and pursue a regular dialogue with the U.S. focused on the benefits of the increased use of innovative technologies in agriculture. China also approved three biotech traits, removing a key restriction on imports of corn and dried distillers grains from the U.S.
IPR. China agreed to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and that the resulting judgments are published, and to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative and other proceedings.

Innovation Policies. China committed to ensure that its policies and practices treat foreign and domestic IPR holders the same and also agreed to streamline its regulatory processes and cut red tape for imports of new, innovative pharmaceuticals and medical devices.

Competition Policy Enforcement. China recognized that the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries and that enforcement of its competition laws should be fair, objective, transparent and non-discriminatory. It also agreed to provide any party under an Anti-monopoly Law investigation with information about the enforcement agency’s concerns and an effective opportunity to present evidence in its defense.

Duties on U.S. Automobiles. China announced its termination of duties on U.S.-made cars and SUVs after they were found to be inconsistent with its WTO obligations in their calculation, determination and lack of transparency.

East Africa

The U.S. and the East African Community signed a cooperation agreement that will facilitate implementation of critical customs reforms, standards harmonization efforts and international commitments, thus supporting greater EAC regional economic integration and strengthening the EAC’s trade relationship with the U.S. and other global partners.

Ecuador

Ecuador’s imposition of a broad range of tariff and non-tariff restrictions on trade in goods, services and investment accelerated in 2014. For example, Ecuador issued a series of resolutions that effectively restrict imports of a wide range of U.S. products by requiring certificates to demonstrate that products conform to Ecuador’s technical regulations. Ecuador also continued to apply a mandatory and cumbersome process to allocate non-automatic import licenses for various products, including cheese, butter, milk, potatoes (including French fries), beef, pork, chicken, turkey, beans, sorghum and corn. Recently Ecuador implemented a tariff surcharge of 5-45 percent on 2,800 tariff lines, which represents approximately 32 percent of the value of the country’s imports.

India

Packaging and Labeling. Challenges remain concerning food and beverage packaging and labeling but some progress was made, with India noting the potential reconciliation of the definition of wholesale pack and forthcoming rules to allow supplemental labeling of maximum retail prices at the port.

Localized Safety Testing. For certain information and communications technology products, the Indian government mandates that manufacturers register their products with laboratories affiliated or certified by the Bureau of Indian
Standards even if they are already certified by internationally recognized laboratories. An additional 15 categories of electronics and ICT goods were added to the list of goods covered by this requirement, which now totals 30.

**IPR.** India is examining its current IPR environment, including by developing a national IPR policy to provide more clarity for stakeholders, but has yet to undertake substantive amendments to its IPR legal regime that would lead to improvements in its IPR environment. The U.S. and India committed to establish an annual high-level Intellectual Property Working Group and established an IPR work plan for 2015.

**Indonesia**

The U.S. and New Zealand recently requested the establishment of a WTO panel concerning Indonesia's trade restrictive import licensing requirements that impede imports of horticultural products, animals and animal products.

**Kenya**

The Kenyan government issued new regulations increasing local content requirements for foreign contractors. The regulations require joint ventures to recruit from the local labor market and to recruit foreign technical or skilled workers only when such skills are not available locally. The foreign contractor also must agree to transfer technical skills that are not available locally to its local firm or person.

**Korea**

**Origin Rules.** The U.S. worked with Korea to develop a common approach to origin verification procedures that would facilitate trade under their bilateral FTA and resolved origin verification issues for many categories of U.S. exports to Korea.

**Organic Equivalency.** The U.S. and Korea concluded an equivalence arrangement under which U.S. and Korean organic processed products certified as organic under either country’s standards that fall within the terms of the arrangement may be sold, labeled and represented as organic in both countries.

**Kuwait**

The U.S. elevated Kuwait to the Special 301 Priority Watch List as a result of its failure to introduce legislation that would result in a copyright law that is consistent with international standards as well as its failure to effectively prosecute copyright and trademark infringement.

**Malaysia**

Malaysia approved the U.S. as having an equivalent food safety system for pork following a successful audit, meaning that U.S. pork is once again eligible for export to Malaysia.
Mexico

Energy reform legislation opened Mexico’s oil and gas sector to private participation for the first time since 1938 and telecommunications sector reform legislation addressed longstanding market access barriers, such as the dominance of near monopolistic companies in the wireless, fixed telephony and broadcasting markets.

Nigeria

The National Information Technology Development Agency issued guidelines for Nigerian content development in the ICT sector. These guidelines include requirements that multinational companies operating in Nigeria source all hardware products locally; all government agencies source and procure all computer hardware only from NITDA-approved original equipment manufacturers; and ICT companies host all data locally, use only locally manufactured SIM cards for telephone services and data, and use indigenous companies to build cell towers and base stations.

Panama

Panama rescinded certain provisions of a law stipulating that Panamanian nationals must own at least 75 percent of companies or vessels engaged in auxiliary maritime services.

Philippines

Agriculture. The Philippines agreed to reduce tariffs on a variety of agricultural products, including buttermilk, cheese, grapes, poultry and walnuts, in exchange for U.S. support of its request at the WTO to extend its restrictions on rice imports.

IPR. The U.S. removed the Philippines from the Special 301 Watch List as a result of sustained efforts by the Philippine government to improve its IPR laws and enforcement, including amendments to the Intellectual Property Code and legislation addressing cable signal piracy and IPR infringement relating to money laundering.

Saudi Arabia

Saudi Arabia mandated fuel efficiency standards for light-duty vehicle fleets, and the U.S. successfully encouraged Saudi officials to work extensively with private sector stakeholders in developing these regulations.

Singapore

Singapore’s Parliament passed an anti-piracy amendment to its Copyright Act that will enhance right holders’ ability to seek court orders to disable pirate websites.

South Africa

Poultry. South Africa maintains high import duties of 82 percent for whole chickens and 37 percent for imports of frozen bone-in chicken cuts, which are also subject to antidumping duties when imported from the U.S.
Geographical Indications. Under the EU–Southern African Development Community Economic Partnership Agreement, South Africa has agreed to prohibit the use of certain terms as geographical indications in its domestic market.

Turkey

Internet Access Restrictions. Under new legal authorities enacted by Parliament, the government temporarily blocked Turkish users’ access to the YouTube and Twitter websites on the grounds that they constituted a threat to national security. Court orders later reversed these actions and annulled some of the new legal authorities, but Parliament is reportedly considering new legislation that would in part reinstitute the government’s ability to block Internet access.

Local Content. The Turkish government is reportedly reviewing draft legislation that would bar electronic payment companies from the Turkish market if they do not locate personal data banks in Turkey.

Ukraine

Ukraine withdrew its proposal to renegotiate more than 350 tariff bindings but then imposed a one-year tariff surcharge of 10 percent on agriculture products and five percent on non-agriculture products (exempting specified “vital commodities”).

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