FOREWORD

The 1997 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twelfth in an annual series that surveys significant foreign barriers to U.S. exports.

In accordance with section 181 of the Trade Act of 1974 (the 1974 Trade Act), as amended by section 303 of the Trade and Tariff Act of 1984 (the 1984 Trade Act), section 1304 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Trade Act) and section 311 of the Uruguay Round Trade Agreements Act (1994 Trade Act), the Office of the U.S. Trade Representative is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers.

The statute requires an inventory of the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. Such an inventory facilitates negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws, with the goal of expanding global trade, which benefits all nations.

The report provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports. Information is also included on actions being taken to eliminate any act, policy, or practice identified in the report.

SCOPE AND COVERAGE

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

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. This report classifies foreign trade barriers into nine different categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services. They include:

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

- Standards, testing, labeling, and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards);

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

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

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

- Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions,[1] regulation of international data flows, and restrictions on the use of foreign data processing);

- Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded research and development (R&D) programs, local content and export performance requirements, and restrictions on transferring earnings and capital);

- Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices); and

- Other barriers (barriers that encompass more than one category, e.g., bribery and corruption,[2] or that affect a single sector).

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

This report discusses the largest export markets for the United States, including 46 nations,[3] Taiwan, Hong Kong, and two regional bodies. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

In prior reports, most non-market economies also were excluded, since the trade barriers in those countries were qualitatively different from those found in other economies. However, as the economies of the republics of the former Soviet Union and most economies of the countries of Central Europe evolve away from central planning toward a market orientation, some of them have changed sufficiently to warrant an examination of their trade regimes. Where such examination has revealed trade barriers, those barriers have been included in this report.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[4] value, and general U.S. imports, customs value (defined in Section 402, Tariff Act of 1930, 19 U.S.C. 1401a), as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix.) The direct investment data are from the September 1996 issue of the Survey of Current Business and unpublished data from the Bureau of Economic Analysis, Department of Commerce.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

Wherever possible, this report presents estimates of the impact on U.S. exports of specific foreign trade barriers or other trade distorting practices. However, it must be understood that these estimates are only approximations. Also, where consultations related to specific foreign practices were proceeding at the time this report was published, estimates were excluded, in order to avoid prejudice to those consultations.

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

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

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

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

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

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

With respect to investment barriers, there are no accepted techniques for estimating the impact of such barriers on U.S. investment flows. For this reason, no such estimates are given in this report. The NTE report includes generic government regulations and practices which are not product-specific. These are among the most difficult types of foreign practices for which to estimate trade effects.

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

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

March 31, 1997

Endnotes

1. The current NTE report covers only those financial services-related market access issues brought to the attention of USTR by outside sources. For the reader interested in a more comprehensive discussion of financial services barriers, the Treasury Department publishes quadrennially (most recently in 1994) the National Treatment Study. Prepared in collaboration with the Secretary of State, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, the Study analyzes in detail treatment of U.S. commercial banks and securities firms in foreign markets. It is intended as an authoritative reference for assessing financial services regimes abroad.

2. It is difficult to obtain information on specific problems associated with bribery and corruption, particularly since its perpetrators go to great lengths to conceal their activities. Nevertheless, a consistent complaint from U.S. firms is that they have experienced situations that suggest corruption has played a role in the award of foreign contracts.

This is particularly true in large infrastructure projects. Companies located in other countries generally do not face the constraints applied to U.S. firms under the Foreign Corrupt Practices Act (FCPA) in their dealings with government officials in third countries. The result can be a competitive advantage in favor of foreign firms in international transactions, particularly in the developing world.

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Corruption takes many forms. For example, in many countries, it is seen in government procurement and Customs practices. If left unchecked, bribery and corruption can negate market access gained through trade negotiations and could begin to undermine the foundations of the international trading system.

The United States has taken an active role in addressing bribery and corruption in international business transactions. With the strong urging of the United States, at the 1996 OECD Ministerial meeting, Ministers committed to take steps to eliminate the tax deductibility in their countries of bribes to foreign public officials, to criminalize bribery, and to examine methods to accomplish those objectives. We continue to exhort our trading partners to criminalize bribery directly, through national laws, rather than through the time-consuming international treaty process. Finally, the United States is pressing for a strong follow-up OECD recommendation on criminalization at the May 1997 Ministerial meeting, preferably to be based upon a recommendation by the Working Group on Bribery on a common set of essential elements for effective criminalization of foreign bribery.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption. This Convention, a direct result of the Summit of the Americas Plan of Action, includes language modeled on the FCPA, thereby multilateralizing the criminalization of bribery within the region. The Convention entered into force in March 1997 and awaits ratification by the U.S. Senate. Meanwhile, the Organization of American States is working on a set of model laws that ratifying countries can use to implement the Convention.

To complement efforts in these fora, the United States has proposed that the World Trade Organization (WTO) take up work in related areas. Several existing WTO Agreements, such as the Customs Valuation Agreement and the Pre-shipment Inspection Agreement, already address some problems associated with bribery and corruption. At the December 1996 Ministerial meeting in Singapore, the United States succeeded in gaining approval of the formation of a working group to study transparency in government procurement practices, with a view towards developing elements for inclusion in a multilateral agreement. A separate WTO Ministerial decision to undertake exploratory and analytical work on the simplification of trade and customs procedures should provide an opportunity for the WTO to identify and pursue means to reduce the impact of bribery and corruption on international trade, particularly with respect to balance of payments, customs valuation, and pre-shipment inspection provisions.

3. This total includes as one unit the Newly Independent States (NIS), comprising Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

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

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