FOREWORD

The 2003 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the eighteenth 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), section 311 of the Uruguay Round Trade Agreements Act (1994 Trade Act), and section 1202 of the Internet Tax Freedom 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 ten 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);

- Trade restrictions affecting electronic commerce (e.g., tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); 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: 50 nations, the European Union, 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. Vietnam has been added to the list of countries examined in this year's report in keeping with this approach, in recognition of Vietnam's commitment to economic reform and the implementation of the U.S.-Vietnam bilateral trade agreement.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[3] value, and general U.S. imports, customs value, 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 services data are from the October 2002 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce).The direct investment data are from the September 2002 issue of the Survey of Current Business (collected 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.

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, 2003

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 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. Corruption takes many forms, and can affect trade in many different ways. In many countries, it affects customs practices and decisions on the award of government procurement contracts. If left unchecked, bribery and corruption can negate market access gained through trade negotiations, undermine the foundations of the international trading system, and frustrate broader reforms and economic stabilization programs. U.S. firms also report that demands for "facilitation payments" from foreign customs officials can be an every-day element of the customs importation process.

Information on specific problems associated with bribery and corruption is difficult to obtain, particularly since 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. Since the United States enacted the Foreign Corrupt Practices Act (FCPA) in 1977, U.S. companies have been prohibited from bribing foreign public officials.

The United States Government has been well aware of the discrepancy between U.S. law and that of its competitors, and has taken a leading role in addressing bribery and corruption in international business transactions with its trading partners at the Organization for Economic Cooperation and Development (OECD). 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. In November 1997, negotiators from thirty-four countries (the twenty-nine OECD member states and five other nations (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic)) adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions which criminalized bribery. In 2001, Slovenia, another non-member, became the thirty-fifth signatory. The Convention was signed by representatives of thirty-three participating countries on December 17, 1997 in Paris. The Convention entered into force on February 15, 1999, for twelve of the 34 signatories that had deposited instruments of ratification with the OECD. Thirty-four signatories have adopted legislation implementing the Convention.

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, requires that parties criminalize bribery throughout the region, and describes criminalization using language modeled on the FCPA. The Convention entered into force in March 1997. The United States signed the Convention on June 2, 1996, deposited its instrument of ratification with the OAS on September 29, 2000, and is now a Party to the Convention. Of its twenty-six signatories, the United States was the twentieth to deposit its instrument of ratification. Meanwhile, the Organization of American States is working on a set of model laws that ratifying countries can use to implement the Convention. In addition, the OAS Working Group on Probity and Public Ethics is considering mechanisms to monitor implementation of the Convention.

The United States is an active participant in the Southeastern Europe Stability Pact. Countries in the region have agreed to a Compact and Plan of Action in which they commit themselves to take specific anti-corruption actions, including improving transparency in government procurement.

Corruption takes many forms, and in many countries is a basic element of customs practices and also presents significant problems in decisions on the award of government procurement contracts. Bribery and corruption can negate market access gained through trade negotiations, undermine the foundations of the international trading system, and frustrate broader reforms and economic stabilization programs.

The United States continues to advance an agenda in the World Trade Organization (WTO) for work in related areas that will serve to diminish opportunities for bribery and corruption to flourish. Because corruption in trade transactions often has its genesis in the absence of a rules-based environment when goods cross borders, the United States has been a leader in advancing work in the WTO toward undertaking negotiations in the area of Trade

Facilitation. The Doha WTO Ministerial Declaration establishes a rigorous Trade Facilitation work program leading up to the next WTO Ministerial Conference, at which time such negotiations will commence.

In an important complement to worldwide efforts to combat corruption relating to government procurement, the United States has led the WTO Working Group on Transparency in Government Procurement toward achieving significant progress in the development of elements for inclusion in a multilateral agreement. The Doha Ministerial Declaration includes a mandate for continuing work that will lead to commencement of negotiations at the next WTO Ministerial Conference.

3. 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.