

USTR Identifies Barriers to U.S. Exports in the 2020 National Trade Estimate Report

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On March 31, 2020, the Office of the U.S. Trade Representative (USTR) released the 2020 National Trade Estimate Report on Foreign Trade Barriers (NTE Report). USTR highlights an array of trade barriers in more than 60 countries, including China, the European Union (EU), India, Russia, and Turkey, and flags particular barriers affecting steel, wood products, and digital trade in its comprehensive report.

The NTE Report surveys trade barriers in the 63 largest export markets for the United States, and classifies foreign trade barriers into 11 categories of government-imposed measures that inhibit international trade, including:

- Import policies;
- Technical barriers to trade;
- Sanitary and phytosanitary measures;
- Subsidies, including export subsidies;
- Government procurement;
- Intellectual property protection;
- Services barriers;
- Barriers to digital trade and electronic commerce;
- Investment barriers;
- Competition; and
- Other barriers that encompass more than one category.

Of the 63 markets covered, the 2020 NTE Report pays particular attention to Argentina, Brazil, China, EU, India, Japan, Korea, Russia, and Vietnam. China is the country of greatest concern.

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Practice Areas

International Trade

The NTE Report notes that the U.S. goods trade deficit with China decreased 17.6% to \$345.6 billion in 2019, however, U.S. goods exports in 2019 also decreased 11.3% to \$106.6 billion. U.S. exports of services with China were an estimated \$56.7 billion in 2019, which represents a \$38 billion surplus. Nevertheless, USTR says trade barriers continue to keep the U.S. share of China's services market well below the U.S. share of the global services market. In addition to the NTE Report, USTR recently released its annual report to Congress on China's WTO compliance, which documents in greater detail U.S. concerns with China's trade policies and practices.

Steel Industry

The NTE Report highlights China's tariffs on variety of U.S. products—including agricultural, steel, and aluminum products—that were established in retaliation to the United States' implementation of tariffs under Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962. The NTE Report also discusses China's creation of excess capacity in several industries, including steel, and notes that although China has publicly acknowledged excess capacity in certain industries, it has failed to seriously address the causes of its over-production.

In addition to China, USTR identifies several other markets—the EU, India, Russia, and Turkey—that have adopted tariffs on an array of U.S. products in retaliation to the Section 232 tariffs. USTR also highlights a number of market-specific obstacles for U.S. steel exporters, including: import licenses and entry point restrictions in Argentina; high tariffs in Brazil; rebar regulations in the Dominican Republic; export subsidies in India; import licensing in Mexico and Paraguay; subsidies and government procurement restrictions in Russia; anticompetitive practices in Tunisia; and high tariffs in Turkey and Vietnam.

Wood Products Industry

The NTE Report highlights a variety of global import and export barriers to trade in the wood industry as well as a few specific barriers to the U.S. wood industry that USTR is working to eliminate.

USTR notes that the EU and Japan have high tariffs on wood products despite otherwise maintaining relatively low tariffs on non-agricultural goods. Bolivia also has high tariffs on certain wood products—30% for wooden doors, and 40% for wooden furniture. Other barriers to U.S. wood exports include: Algeria's import license requirements on various types of wood; Argentina's certificate of origin requirement for wood fiberboard; and government subsidies to the domestic industry in India and Japan.

USTR says it is actively monitoring Japan's disbursement of numerous subsidy programs designed to enhance its forestry production. The NTE Report notes that the United States is also urging Korea to recognize the North American standard for oriented strand board and to pass legislation that would allow U.S. conformity assessment bodies to become accredited in Korea. In addition, USTR is monitoring the implementation of the EU's revised Renewable Energy Directive (RED II) as well as EU member state regulations that impact U.S. imports of sustainable wood pellets.

Digital Trade

The NTE Report calls for eliminating barriers to digital trade, which can limit the ability of firms of all size to benefit from the growing digital economy. Specifically, the report highlights data localization requirements—or laws that require citizens’ personal data to be collected, processed, and/or stored in country—in China, India, Indonesia, Kenya, Nigeria, Russia, Saudi Arabia, Turkey, and Vietnam. Other digital barriers include limits on cross-border data flows, cloud computing, online video services, web filtering and blocking of legitimate websites, local software requirements, and tariffs on digital products. Additionally, USTR emphasizes the rise of digital service taxes in France and across the EU, which it says are discriminatory to U.S. suppliers.

To combat digital trade barriers, USTR says it aims to achieve strong, binding rules on digital trade in all of its negotiations, such as those included in the U.S.-Mexico-Canada Agreement (USMCA) and the U.S.-Japan Digital Trade Agreement.

2019 Success Stories

In addition to outlining existing trade barriers, the NTE Report also details USTR’s recent successful negotiations and enforcement efforts around the world. USTR highlights new and updated trade agreements such as the USMCA and the “Phase One” agreement with China, as well as other efforts to open markets to U.S. exports, such as securing export certificates for U.S. agricultural products in North Africa, working with USAID to ensure that sub-Saharan African countries can meet their WTO obligations, and obtaining exemptions from onerous EU technical standards for heavy electrical products.

Paul Coyle and Nicole Hager, Law Clerks in Wiley's International Trade Practice, contributed to this alert.