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2011 National Trade Estimate Report

The Office of the U.S. Trade Representative's new "phone book" of trade barriers does much more than compile the trade-restrictive practices of most U.S. trading partners. It also sheds light on which trade disputes may be ripe for World Trade Organization dispute settlement, and makes clear some important reasons why the current WTO Doha Round negotiations are once again stalled.

NTE Identifies Trade Barriers in More Than 60 Countries, as Well as Some Hard Truths About the WTO's Doha Round

 ISSN 1098-4240

By Timothy C. Brightbill

On March 30, 2011, the U.S. trade Representative issued its 26th annual report on foreign trade barriers. The 2011 National Trade Estimate Report on Foreign Trade Barriers, which is required by statute, tracks barriers to trade in 58 countries, the European Union, Taiwan, Hong Kong, and the Arab League.

USTR considers the report 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.'' The report classifies trade barriers into nine categories: import policies, government procurement, export subsidies, lack of intellectual property protection, services barriers, investment barriers, government-tolerated anticompetitive conduct, trade restrictions affecting electronic commerce, and other barriers.

While the report serves as an extremely valuable tool for cataloging trade barriers, it also sharply underscores several other trade-related truths. First, the mere size of each country section in the NTE Report indicates both the importance of the U.S. trade relationship with that country as well as the nature and extent of the trade barriers involved. Not surprisingly, a major focus is on the ''BRIC'' countries: USTR devotes 36 pages to trade barriers in China, 12 pages to India and Russia, and six to Brazil. While the European Union report covers 24 pages, it details specific barriers within each of the EU member states. Other notable sections include Japan (18 pages), and Argentina and Korea (10 pages each).

A Focus on WTO Dispute Issues.

Second, the NTE report highlights several ongoing WTO dispute settlement investigations, as well as others that could merit dispute resolution in the near future. For example, the report discusses China's restraints on the export of raw materials, many of which are of particular interest to U.S. producers and for which China is the leading producer. Antimony, bauxite, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten, yellow phosphorus and zinc are all subject to export quotas. Though WTO rules generally do not allow export restraints, China has shown no signs of stopping the practice, announcing more restrictive export quotas on rare earths for 2011 as well as an increase on export duties. In 2009, the United States, European Union, and Mexico initiated a WTO case against China's export quotas, duties and other restraints on several raw materials. The WTO panel has issued a confidential decision, which is expected to be released publicly in June 2011. News reports have indicated that the panel decision finds China's restrictions in violation of its WTO commitments, which would be a strong victory for the United States.

About the Author: Timothy C. Brightbill is a partner in the International Trade Practice at Wiley Rein LLP in Washington, D.C. He represents clients on all aspects of international trade law and policy, including import trade remedies (antidumping law, countervailing duty law, and safeguards investigations), global trade policy and trade negotiations, customs compliance matters, climate change policy, and international e-commerce issues. He can be reached at (202) 719-3138 or tbrightbill@wileyrein.com. Particular thanks to Cori Lombard of Wiley Rein LLP for her assistance with an initial draft of this article.

Similarly, the NTE report highlights China's lack of transparency in administering its trade remedy laws. China had 113 antidumping measures in place at the end of 2010. However, WTO members continue to raise concerns about China's lack of transparency and procedural fairness in conducting antidumping investigations, and several of China's determinations have been challenged at the WTO.

With regard to India, the report highlights India's extremely high and differential tariff rates on alcoholic beverages. The United States initiated WTO dispute settlement proceedings in 2007. However, India continues to maintain a basic customs duty of 100 to 150 percent on wine and 150 percent on distilled spirits. With regard to subsidies, India continues to maintain several export subsidy programs, which are not permitted by the WTO, and—like China and many other countries—has failed to properly notify the WTO of its existing subsidy programs.

Similarly, the Brazilian government continues to maintain several export subsidy programs—in the form of tax credits, low-interest loans, and even tax holidays for companies that export a certain percentage of their goods and services.

Trade Barriers and the Doha Round.

The NTE report also makes clear those trade barriers that are not being addressed by dispute settlement or WTO negotiations. For a casual observer wanting to understand why the current WTO Doha talks are once again failing, the report provides telling insights:

- **Market access.**

For example, the report highlights the significant differences between ''bound'' and ''applied'' tariff rates for many of the United States' key trading partners. Brazil's average applied (that is, actual) tariff rates are 11.6 percent, but its average bound rate (that is, its WTO commitment) is 31.4 percent, meaning that it could significantly increase import tariffs without violating WTO restrictions. In fact, Brazil did just that in 2009 and 2010, increasing tariff rates in areas such as autos and auto parts, electronics, plastics, chemicals, and textiles and apparel.

India, like Brazil, has a huge gap between its bound and applied tariff rates—an average bound rate of 48.6 percent v. an average applied rate of 12.9 percent. On agricultural products, USTR states that many of India's bound rates are ''among the highest in the world,'' ranging from 100 percent to 300 percent, with an average bound rate of 114 percent.

The NTE report lists particularly high tariff rates on numerous agricultural products and processed foods (potatoes, apples, grapes, chocolate, cookies, coffee, and poultry) as well as manufactured goods (textiles, autos, and motorcycles). These tariffs pose a significant problem in WTO negotiations, because countries like Brazil and India could agree to sizeable reductions in their bound tariff rates without having to change their applied (or actual) tariffs at all. In effect, Brazil and India's tariff structures—like China's—are still that of de-

   ISSN 1098-4240

veloping countries, despite the fact that these countries have huge industry sectors that are as highly developed as any in the world.

Finally, Brazil maintains a complex system of cascading federal and state taxes and charges that can double or triple the actual import tariff rates. For example, Brazil's import tariff on steel is 12 percent—still very high considering that the United States and most major steel producers have zero tariffs on steel. However, additional taxes and other charges in Brazil create a total price gap of more than 30 percent. This gives Brazil a protected home market in steel and a variety of industries, making it extremely difficult to export to or to operate there.

■ **Services.**
The NTE report also details numerous, pervasive barriers to trade in services, which are also unaddressed by the WTO Doha Round. On Brazil, the report notes trade barriers in the areas of audiovisual services, express delivery (a flat 60 percent duty on all goods that use a "simplified customs clearance" process, including all express delivery services), and telecommunications (extremely high mobile termination rates).

India also maintains extremely high barriers to trade in several major services sectors. One of the most notable sectors is legal services, where foreign law firms are prohibited from opening offices in India. Another is the retail store sector, which is nearly entirely closed to foreign investment. India only began allowing foreign direct investment (FDI) in retail stores in 2006, and even these stores are limited to a single brand. FDI in multi-brand retail stores still has yet to be approved. Other sectors where FDI is limited by law include agriculture, insurance, railways, real estate, and several forms of telecommunications.

In the Doha Round, the fundamental problem in negotiations is that services commitments are made according to a "positive list" approach, which means that services sectors are not covered unless a country agrees specifically to do so. (This is the opposite of the "negative list" approach in all other WTO sectors, where countries' commitments are presumed to cover all sectors unless they claim specific exclusions.) As a result, it can be extremely difficult to persuade individual countries to reduce their services trade barriers, particularly if they feel they are not being offered equally meaningful trade concessions in return.

■ **State-Owned Enterprises.**
The NTE report also flags growing concern with state-owned enterprises (SOEs), particularly in China. Though China committed in its protocol of accession to the WTO to not influence commercial decisions by state-owned or state-invested enterprises, the Chinese government continues to play a directing role in numerous Chinese industries.

For example, China's control of steel production, already pervasive, has actually expanded in recent years. In March 2009, China issued a stimulus plan for its steel industry. The plan sought to control steel output, stimulate exports, and create large steel enterprises. In the summer of 2010, the Chinese government released Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector and the accompanying Regulations and Conditions of Production and Operation of the Iron and Steel Industry. The stated goal of these measures was to control growth, promote energy savings and emissions reduction, provide for technical innovation, accelerate mergers, "discipline" access to iron ore imports, and promote iron ore mining in China and abroad. Chinese steel production increased 9 percent in 2010, reaching a record 627 million metric tons, and production is projected to grow substantially through 2012. The USTR claims to be working with U.S. trading partners to "rein in" China's steelmaking capacity.

■ **Russia.**
Russia is in a unique situation among the United States' trading partners because it is the only major country not yet a member of the WTO. Therefore, the United States has an important opportunity through Russia's WTO accession agreement to remove many of the trade barriers that still remain. Some of the most serious barriers listed in the NTE report include market access barriers to pharmaceuticals, a variety of regulatory measures on alcohol, and export taxes that Russia maintains on 386 different types of products. Russia labels some of these export taxes as "strategic," including on scrap metal (to encourage domestic steel production) and crude oil (to encourage refining). Russia also suffers from weak protection of intellectual property rights and widespread Internet piracy. U.S. copyright industries estimate that about 65 percent of sound recordings on the Russian market are pirated. Software piracy has improved considerably in the last five years, but two-thirds of software remains pirated.

Positive Developments.

The NTE report does flag some positive developments in terms of trade barrier removal. For example, the report discusses the United States-Korea Trade Agreement (KORUS). The agreement is expected to enhance market access for U.S. companies, making 95 percent of consumer and industrial products duty-free within five years and eliminating tariffs within 10 years.

In 2011, Japan and the U.S. established the U.S.-Japan Economic Harmonization Initiative in order to harmonize regulatory approaches and facilitate bilateral trade.

Reporting Foreign Trade Barriers.

The last lesson of the NTE report is that USTR remains particularly interested in identifying and resolving trade barriers that affect the ability of U.S. companies and industries to export to, invest in, or trade with particular countries.

The administration's National Export Initiative, with its commitment to double exports over five years, can only be achieved through reduction of trade barriers, and USTR is extremely receptive to U.S. companies and industries in this regard.

Particular issues of interest for USTR include: investment restrictions, trade-distortive laws and regulations, customs restrictions, technical barriers to trade, standards requirements, and other similar types of practices.