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U.S. Trade Representative Finds Growing Trend of Localization Barriers to Trade in 2013 National Trade Estimate Report

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The U.S. Trade Representative (USTR) has released its annual National Trade Estimate Report (NTE) on Foreign Trade Barriers, finding that several U.S. trading partners are increasingly distorting global trade by imposing localization barriers, which are designed to protect, favor or fuel domestic industries at the expense of imported goods and services.

The 2013 NTE report, released March 31, surveys significant barriers to foreign trade in 57 countries, the European Union, Taiwan, Hong Kong and the Arab League. According to the NTE, U.S. bilateral trade overall saw an increase in 2012. However, USTR also noted that U.S. trade policy advocates strongly against localization barriers and that removal of these barriers will be a priority for the Administration.

Other common themes in the NTE included trade barriers of labor practices, corruption and piracy. Where these and other government-imposed barriers to U.S. exports are not consistent with applicable trade agreements, they are actionable under U.S. trade law including through the World Trade Organization (WTO).

The report classifies foreign trade barriers into nine categories of government-imposed measures and policies that inhibit international trade, including:

- Import policies, such as tariffs;
- Government procurement, including "buy national" policies;
- Export subsidies;

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International Trade
Trade Policy and Trade Negotiations
World Trade Organization (WTO)

- Lack of intellectual property protection;
- Services barriers, such as barriers to the provision of services by foreign professionals or regulation of international data flows;
- Investment barriers, including limitations on foreign equity participation;
- Government-sanctioned anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign countries' markets;
- Trade restrictions affecting electronic commerce; and
- Other barriers such as bribery and corruption.

Particular countries of focus for the NTE included Argentina, China, India, Indonesia and Japan. By far the country of greatest concern was China. In an analysis seven times the average length of other country reports, the USTR discussed numerous barriers to trade with China including discriminatory policies in the automotive, steel and telecommunications equipment industries; unwarranted and discriminatory capital requirements for foreign investment; excessive antidumping measures and nontransparent, procedurally unfair antidumping investigations; and inadequate protection and enforcement of intellectual property rights. Additionally, China's operation of "the world's most restrictive and comprehensive Internet filtering regime" impacts a broad range of commercial activity conducted via the Internet. Furthermore, China's most recent Five-Year Plan includes policies which indicate discrimination against U.S. firms or their products, would allow excessive government involvement in determining market winners and losers, or could lead to injurious subsidized imports.

USTR also noted concerns that Argentina's government has implemented a growth strategy based heavily on import substitution, including an increasing number of complex customs and licensing procedures and requirements which delay some exports and in other cases halt all exports of certain U.S. goods to Argentina. Restrictions on currency transactions also inhibit U.S. trade with Argentina.

For India, the USTR cited trade barriers of the complex and nontransparent structure of India's customs tariff and fees system, as well as export subsidy programs that India did not report to the WTO Committee on Subsidies and Countervailing Measures. The USTR also found weak protection and enforcement of intellectual property rights and many barriers to services trade ranging from insurance to telecommunications industries.

Barriers to trade with Indonesia included primarily import restrictions and impediments to foreign investment and trade in services, and Japan's barriers to trade in services for telecommunications, information technology and insurance also have limited U.S. export opportunities. The Interagency Trade Enforcement Center, which the President established on February 28, 2012 within the Office of the USTR, has helped to research and move forward multiple enforcement actions, including two actions regarding China and one each against Argentina, India and Indonesia.

The NTE incorporates information from the USTR, the Departments of Commerce and Agriculture, as well as other government agencies, public comment, private sector trade advisory committees and U.S. Embassies. In addition to describing the barriers to trade specific to each foreign country, it also serves to elaborate the enforcement strategy in the President's 2013 Trade Policy Agenda. By statute, the USTR must submit this annual report to the President and certain committees of Congress.

This NTE is one of three reports that provide an inventory of barriers to trade, and two specialized reports accompany the NTE. The 2013 Report on Technical Barriers to Trade is dedicated to identifying unwarranted barriers in the form of standards-related measures (such as product standards and testing requirements). The 2013 Report on Sanitary and Phytosanitary Measures addresses unwarranted barriers to U.S. exports of food and agricultural products that arise from sanitary and phytosanitary measures related to human, animal and plant health and safety.

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