

Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers and Reports on Sanitary and Phytosanitary and Standards-Related Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241), the Office of the United States Trade Representative (USTR) is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested persons to submit comments to assist it in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the NTE.

For the first time this year, the TPSC is requesting that comments on standards-related measures and sanitary and phytosanitary (SPS) measures that create barriers to U.S. exports be submitted separately from other NTE comments. This will assist USTR in preparing two new annual reports starting in 2010 highlighting SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports.

The TPSC invites written comments from the public on issues that USTR should examine in preparing the NTE and the new reports on SPS and standards-related measures. Please note that requirements for submitting comments, as set forth below, are different from those in the previous years.

DATES: Public comments are due not later than:

November 4, 2009 for comments concerning SPS or standards-related measures; and

November 18, 2009 for comments concerning all other measures.

ADDRESSES: Submissions should be made via the Internet at www.regulations.gov under the following dockets (based on the subject matter of the submission):

SPS Measures: USTR-2009-0031.

Standards-Related Measures: USTR-2009-0032.

All Other Measures: USTR-2009-0033.

For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, USTR (202-395-3475). The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the NTE or on submitting comments in response to this notice should be

directed to Gloria Blue at (202) 395-3475. Questions regarding the SPS report or substantive questions concerning comments on SPS measures should be directed to Jane Doherty, Director of Sanitary and Phytosanitary Affairs, USTR (202-395-6127). Questions regarding the report on standards-related measures or substantive questions concerning comments on those measures should be directed to Jeff Weiss, Senior Director, Technical Barriers to Trade, USTR (202-395-4498).

SUPPLEMENTARY INFORMATION: The NTE sets out an inventory of the most important foreign barriers affecting U.S. exports of goods and services, U.S. foreign direct investment, and protection of intellectual property rights. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws and strengthening the rules-based trading system. The 2009 NTE may be found on USTR's Internet Home Page (<http://www.ustr.gov>) under the tab ``Reports.''

The Administration has recently announced new initiatives to direct Executive Branch trade priorities to barriers of greatest significance for U.S. exports, investment, and intellectual property rights. To ensure compliance with the NTE's statutory mandate and the Obama Administration's commitment to focus on the most significant foreign trade barriers, USTR will be guided by the existence of active private sector interest in deciding which restrictions to include in the NTE. The two new reports that USTR will initiate in 2010 will draw attention to significant trade barriers in the form of SPS and standards-related measures.

Topics on which the TPSC Seeks Information: To assist USTR in preparing the NTE and the reports on SPS and standards-related measures, commenters should submit information related to one or more of the following categories of foreign trade barriers:

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

(2) SPS measures;

(3) Standards-related measures (including standards, technical regulations, and conformity assessment procedures);

(4) Government procurement restrictions (e.g., ``buy national' 'policies and closed bidding);

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

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

(7) Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals);

(8) Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export

performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties);

(9) Government-tolerated anticompetitive conduct of state-owned or private firms that restrict the sale or purchase of U.S. goods or services in the foreign country's markets;

(10) Trade restrictions affecting electronic commerce (e.g., tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

(11) Other barriers (e.g., barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector).

Reports on SPS and Standards-Related Measures: On July 16, 2009, USTR announced plans to begin publishing two new reports on foreign trade barriers--one on SPS measures and the other on standards-related measures. These reports--to be issued annually starting in 2010--will serve as tools to bring greater attention and focus to resolving SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant foreign barriers to U.S. exports. See

<http://www.ustr.gov/about-us/press-office/fact-sheets/2009/july/trade-policy-breaking-down-barriers-trade>. USTR plans to use comments on SPS and standards-related measures (items 2 and 3 in the list above) submitted pursuant to this notice in developing these two new reports. To help USTR identify SPS and standards-related measures to include in the new reports, comments concerning those measures should be submitted separately from those addressing other foreign trade barriers. (See below).

The following information describing SPS and standards-related measures may help commenters to file submissions on particular foreign trade barriers under the appropriate docket.

SPS Measures: Generally, SPS measures are measures applied to protect the life or health of humans, animals, and plants from risks arising from additives, contaminants, pests, toxins, diseases, or disease-carrying and causing organisms. SPS measures can take such forms as specific product or processing standards, requirements for products to be produced in disease-free areas, quarantine regulations, certification or inspection procedures, sampling and testing requirements, health-related labeling measures, maximum permissible pesticide residue levels, and prohibitions on certain food additives.

Standards-Related Measures: Standards-related measures comprise standards, technical regulations, and conformity assessment procedures, such as mandatory process or design standards, labeling or registration requirements, and testing or certification procedures. Standards-related measures can be applied not only to industrial products but to agricultural products as well, such as food nutrition labeling schemes and food quality or identity requirements.

For further information on SPS and standards-related measures and additional detail on the types of comments that would assist USTR in identifying and addressing significant trade-restrictive SPS and standards-related measures, please see ``Supporting &

Related Materials'' under dockets USTR-2009-0031 and USTR-2009-0032 at www.regulations.gov.

In responding to this notice with respect to any of the three reports, commenters should place particular emphasis on any practices that may violate U.S. trade agreements. The TPSC is also interested in receiving new or updated information pertinent to the barriers covered in the 2009 NTE as well as reports of new barriers. If USTR does not include in the NTE or the reports on SPS and standards-related measures information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

Estimate of Increase in Exports: Each comment should include an estimate of the potential increase in U.S. exports that would result from removing any foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Estimates should be expressed within the following value ranges: Less than \$5 million; \$5 to \$25 million; \$25 million to \$50 million; \$50 million to \$100 million; \$100 million to \$500 million; or over \$500 million. These estimates will help USTR conduct comparative analyses of a barrier's effect over a range of industries.

Requirements for Submissions: Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate submission for each country. Comments addressing SPS or standards-related measures should be submitted separately from comments on other trade barriers.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the www.regulations.gov Web site. Comments should be submitted under one of the following dockets (depending on the subject of the comment):

SPS Measures: USTR-2009-0031.

Standards-Related Measures: USTR-2009-0032.

All Other Measures: USTR-2009-0033.

To find these dockets, enter the pertinent docket number in the ``Enter Keyword or ID'' window at the www.regulations.gov home page and click ``Search.'' The site will provide a search-results page listing all documents associated with that docket number. Find a reference to this notice by selecting ``Notices'' under ``Document Type'' on the search-results page, and click on the link entitled ``Submit a Comment.'' (For further information on using the www.regulations.gov Web site, please consult the resources provided on the website by clicking on the ``Help'' tab.)

The www.regulations.gov Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, please identify the name of the country to which the submission pertains in the ``Comments'' field. For example: ``See attached comment for (name of country)'' . If the comment is related to SPS or standards-related measures, type ``See attached comment on SPS measures for

(name of country)'' or ``See attached comment on standards-related measures for (name of country)''. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ``Comments'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ``BC''. The top of any page containing business confidential information must be clearly marked ``BUSINESS CONFIDENTIAL''. Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character ``P''. The ``BC'' and ``P'' should be followed by the name of the person or entity submitting the comments. If a comment contains no business confidential information, the file name should begin with the character ``P'', followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Carmen Suro-Bredie,
Chair, Trade Policy Staff Committee.
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<http://edocket.access.gpo.gov/2009/E9-23012.htm>