

Authority No. 523 of December 22, 2021.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0010]

Request for Comments on Significant Foreign Trade Barriers for the 2024 National Trade Estimate Report

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), publishes the National Trade Estimate Report on Foreign Trade Barriers (NTE Report) each year. USTR invites comments to assist it and the TPSC in identifying significant foreign barriers to, or distortions of, U.S. exports of goods and services, U.S. foreign direct investment, and U.S. electronic commerce for inclusion in the NTE Report. USTR also will consider responses to this notice as part of the annual review of the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services that are in force with respect to the United States.

DATES: October 23, 2023 at 11:59 p.m. ET: Deadline for submission of comments.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov> (*Regulations.gov*). The instructions for submitting comments are in sections IV and V below. The docket number is USTR–2023–0010. For alternatives to online submissions, please contact Laura Buffo, Chair of the Trade Policy Staff Committee, at ForeignTradeBarriersReport@ustr.eop.gov or (202) 395–3475 in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Laura Buffo, Chair of the Trade Policy Staff Committee, at ForeignTradeBarriersReport@ustr.eop.gov or (202) 395–3475.

SUPPLEMENTARY INFORMATION:

I. Background

Section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241), requires USTR annually to publish the NTE Report, which sets out an inventory of significant foreign barriers to, or distortions of, U.S. exports of goods and services, including agricultural commodities and U.S. intellectual property; foreign direct investment by U.S. persons, especially if such investment has implications for trade in goods or services; and U.S. electronic commerce. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers and is a valuable tool in enforcing U.S. trade laws and agreements and strengthening the rules-based trading system. You can find the 2023 NTE Report on USTR's website at <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>. To ensure compliance with the statutory mandate for the NTE Report and the Administration's commitment to focus on significant foreign trade barriers, USTR will take into account comments in response to this notice when deciding which significant barriers to include in the NTE Report.

II. Topics on Which the TPSC Seeks Information

To assist USTR in preparing the NTE Report, commenters should submit information related to one or more of the following categories of foreign trade barriers:

1. *Import policies.* Examples include tariffs and other import charges; quantitative restrictions; import licensing; customs barriers, pre-shipment inspection, and trade facilitation or customs valuation practices; and, other market access barriers.

2. *Technical barriers to trade.* Examples include unnecessarily trade restrictive or discriminatory standards, conformity assessment procedures, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products.

3. *Sanitary and phytosanitary measures.* Examples include measures relating to food safety, or animal and plant life or health that are unnecessarily trade restrictive, discriminatory, or not based on scientific evidence.

4. *Government procurement.* Examples include closed bidding and bidding processes that lack transparency.

5. *Intellectual property protection.* Examples include inadequate patent,

copyright, and trademark regimes; trade secret theft; and, inadequate enforcement of intellectual property rights.

6. *Services.* Examples include prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or standards, local-presence requirements, and unreasonable restrictions on what services may be offered.

7. *Digital trade.* Examples include restrictions on the supply of internet-enabled services, and other restrictive technology requirements.

8. *Investment.* Examples include limitations on foreign equity participation and on access to foreign government-funded research and development programs, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties.

9. *Subsidies.* Examples include subsidies contingent upon export performance, and agricultural export subsidies that displace U.S. exports in third country markets.

10. *Competition.* Examples include government-tolerated anticompetitive conduct that restricts the sale or purchase of U.S. goods or services in the foreign country's markets.

11. *State-owned enterprises.* Examples include actions by state-owned enterprises (SOEs) and by governments with respect to SOEs involved in the manufacture or production of non-agricultural goods or in the supply of services that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investments, or U.S. electronic commerce, which may negatively affect U.S. firms and workers. These actions include subsidies and non-commercial advantages provided to and from SOEs; and practices with respect to SOEs that discriminate against U.S. goods or services, or actions by SOEs that are inconsistent with commercial considerations in the purchase and sale of goods and services.

12. *Labor.* Examples include concerns with failures by a government to protect internationally recognized worker rights or to eliminate discrimination in respect of employment or occupation, in cases where these failures influence trade flows or investment decisions in ways that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers. Internationally recognized worker rights include: the right of association; the

right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children, and a prohibition on the worst forms of child labor; and, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

13. *Environment.* Examples include concerns with a government's levels of environmental protection, unsustainable stewardship of natural resources, and harmful environmental practices that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms or workers.

14. *Other barriers.* Examples include significant barriers or distortions that are not covered in any other category above or that encompass more than one category, such as bribery and corruption, or that affect a single sector.

Please provide, if available, the titles of relevant laws or measures and a description of the concerns with which the laws or measures relate to the significant foreign barriers or distortions identified. Commenters should place particular emphasis on any practices that may violate U.S. trade agreements. USTR also is interested in receiving new or updated information pertinent to the barriers covered in the 2023 NTE Report as well as information on new barriers. If USTR does not include in the 2024 NTE Report information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

Commenters should submit information related to one or more of the following export markets to be covered in the report: Algeria, Angola, the Arab League, Argentina, Australia, Bahrain, Bangladesh, Bolivia, Brazil, Brunei, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, the European Union, Ghana, Guatemala, Honduras, Hong Kong, India, Indonesia, Israel, Japan, Jordan, Kenya, Korea, Kuwait, Laos, Malaysia, Mexico, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, the Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Ukraine, the United Arab Emirates, the United Kingdom, Uruguay, and Vietnam. Commenters may submit information related to significant barriers or distortions in

export markets other than those listed in this paragraph.

In addition, section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (section 1377) requires USTR annually to review the operation and effectiveness of U.S. telecommunications trade agreements that are in force with respect to the United States. The purpose of the review is to determine whether any foreign government that is a party to one of those agreements is failing to comply with that government's obligations or is otherwise denying, within the context of a relevant agreement, "mutually advantageous market opportunities" to U.S. telecommunication products or services suppliers. USTR will consider responses to this notice in the review called for in section 1377 and highlight both ongoing and emerging barriers to U.S. telecommunication services and goods exports in the 2024 NTE Report.

III. Estimate of Increase in Exports

To the extent possible, each comment should include an estimate of the potential increase in exports of goods or services of the United States, U.S. foreign direct investment, or U.S. electronic commerce that would result from removing any significant foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Commenters should express estimates within the following value ranges: less than \$25 million; \$25 million to \$100 million; \$100 million to \$500 million; and over \$500 million.

IV. Requirements for Submissions

To be assured of consideration, submit your written comments by the October 23, 2023 11:59 p.m. ET deadline. All submissions must be in English. USTR strongly encourages submissions via *Regulations.gov*.

To submit via *Regulations.gov*, use Docket Number USTR-2023-0010 in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.' *Regulations.gov* allows users to make submissions by filling in a 'type comment' field, or by attaching a document using the 'upload file' field. USTR prefers that you provide submissions in an attached document and note see attached comments with respect to (name of country) in the 'comment' field on the online submission form. The first page

of the submission must identify 'Comments Regarding Foreign Trade Barriers to U.S. Exports for 2023 Reporting—[name of country or countries discussed].' Commenters providing information on foreign trade barriers in more than one country should provide a separate attachment for each country as part of the same submission. USTR strongly encourages commenters to provide only one submission. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received your submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*.

For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page. USTR may not consider submissions that you do not make in accordance with these instructions.

If you are unable to provide submissions as requested, please contact Laura Buffo, Chair of the Trade Policy Staff Committee, in advance of the deadline at

ForeignTradeBarriersReport@ustr.eop.gov or (202) 395-3475 to arrange for an alternative method of transmission. USTR will not accept hand-delivered submissions.

General information concerning USTR is available at <https://www.ustr.gov>.

V. Business Confidential Information (BCI) Submissions

If you ask USTR to treat information you submit as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' on the top of that page. Filers of submissions containing BCI also must submit a public version that will be placed in the docket for public inspection. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments.

VI. Public Viewing of Review Submissions

USTR will post written submissions in the docket for public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR–2023–0010 in the search field on the home page.

Laura Buffo,

*Chair of the Trade Policy Staff Committee,
Office of the United States Trade Representative.*

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Extension for Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: In prior notices, the U.S. Trade Representative modified the actions in the section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding from additional duties certain products of China, including medical-care products needed to address COVID. In December 2022, the U.S. Trade Representative determined to extend 352 previously reinstated exclusions through September 30, 2023 and in May 2023 determined to extend 77 COVID-related exclusions through September 30, 2023. This notice announces the U.S. Trade Representative's determination to further extend the 352 reinstated exclusions and 77 COVID-related exclusions until December 31, 2023.

DATES: The extensions in this notice extend the 352 reinstated exclusions and 77 COVID-related exclusions through December 31, 2023. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Edward Marcus at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions, contact traderemedycbp@dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In the course of this investigation, the U.S. Trade Representative has imposed additional duties on products of China in four tranches. *See* 83 FR 28719 (June 20, 2018); 83 FR 40823 (August 16, 2018); 83 FR 47974 (September 21, 2018), as modified by 83 FR 49153 (September 28, 2018); and 84 FR 43304 (August 20, 2019), as modified by 84 FR 69447 (December 18, 2019) and 85 FR 3741 (January 22, 2020).

Reinstated Exclusions

For each tranche of additional duties, the U.S. Trade Representative established a process by which U.S. stakeholders could request the exclusion of particular products subject to the action. Starting in November 2019, the U.S. Trade Representative established processes for submitting public comments on whether to extend particular exclusions. *See, e.g.*, 85 FR 6687 (February 5, 2019) and 85 FR 38482 (June 26, 2020). Pursuant to these processes, the U.S. Trade Representative determined to extend 549 exclusions. With the exception of certain exclusions related to the U.S. response to COVID, all of these 549 exclusions expired.

On October 8, 2021, the U.S. Trade Representative invited the public to submit comments on whether to reinstate certain exclusions previously granted and extended. 86 FR 56345 (October 8, 2021) (the October 8 notice). On March 28, 2022, the U.S. Trade Representative determined to further modify the action by reinstating 352 of the 549 expired exclusions. The reinstated exclusions applied as of October 12, 2021, and extended through December 31, 2022. *See* 87 FR 17380 (March 28, 2022).

In accordance with section 307(c)(3) of the Trade Act of 1974, on September 8, 2022, USTR announced that it would be conducting a review of the July 6, 2018 and August 23, 2018 actions, as modified. *See* 87 FR 26797 (May 5, 2022); 87 FR 55073 (September 8, 2022).

On December 21, 2022, based on continued consideration of the factors and criteria set forth in the October 8 notice, and in light of the ongoing statutory four-year review, the U.S. Trade Representative determined to extend the 352 reinstated exclusions through September 30, 2023 to allow the U.S. Trade Representative to consider and align, as appropriate, the reinstated exclusions with the results of the statutory four-year review. *See* 87 FR 78187 (December 21, 2022) (December 21 notice).

COVID-Related Exclusions

On March 25, 2020, USTR requested public comments on proposed modifications to exclude from additional duties certain medical-care products related to the U.S. response to COVID. 85 FR 16987 (March 25, 2020).

On December 29, 2020, USTR announced 99 product exclusions for medical-care products and products related to the U.S. COVID response. These 99 exclusions were later extended until September 30, 2021. *See* 86 FR 13785. On August 27, 2021, USTR published a notice requesting public comments on whether any of these exclusions should be further extended for up to six months. *See* 86 FR 48280. On November 16, 2021, USTR announced the U.S. Trade Representative's determination to extend 81 of these exclusions for an additional six months. *See* 86 FR 63438 (November 16, 2021). These 81 exclusions were subsequently extended through February 28, 2023. *See* 87 FR 33871 (June 03, 2022); 87 FR 73383 (November 29, 2022).

On February 7, 2023, USTR published a notice requesting public comments on whether to further extend any of the COVID-related exclusions for up to six months. *See* 87 FR 8027 (February 7, 2023).

On May 17, 2023, based on evaluation of the public comments, the factors set out in the February 7 notice, and to allow the U.S. Trade Representative to consider and align, as appropriate, the exclusions with the results of the statutory 4-year review, the U.S. Trade Representative determined to extend 77 of the COVID-related exclusions through September 30, 2023. *See* 88 FR 31580 (May 17, 2023).

B. Determination To Further Extend Reinstated and COVID-Related Exclusions

To provide a transition period for the expiring exclusions and to allow for further consideration under the four-year review, and pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, the U.S. Trade Representative has determined that it is appropriate to further extend the 352 reinstated exclusions and the 77 COVID-related exclusions, as set out in the Annex A and Annex B to this notice, until December 31, 2023.

The exclusion extensions are available for any product that meets the description in the product exclusion. Further, the scope of each exclusion and modification is governed by the scope of the ten-digit Harmonized Tariff Schedule of the United States (HTSUS)