2018 Fact Sheet: National Trade Estimate Report – Major Developments

President Trump is fulfilling his promise to promote fair and reciprocal trade for American farmers, ranchers and manufacturers by enforcing trade laws and holding our trading partners accountable. Under his leadership, USTR will build upon these enforcement efforts and continue to identify and break down foreign trade barriers for American exporters.

The National Trade Estimate (NTE) covers 64 countries, customs territories and regional associations, as well as all 20 of the United States' free trade agreement (FTA) partners.

Among the notable changes in the last year in the U.S. export market:

Africa

South Africa

Conformity Assessment for Information Technology (IT): South African authorities require conformity assessment that demonstrates that IT products imported into that country meet the relevant South African standard. The National Regulator for Compulsory Specifications, part of the South African Bureau of Standards, had been taking nearly a year to issue the required documentation. The resulting delays were especially damaging to U.S. producers of IT goods, since the products are frequently updated to incorporate the latest technological developments. Following direct engagement with South African authorities, the timeframe required to issue the letters has dropped to about 80 days.

Restrictions on U.S. Turkey Meat: Prior to January 2018, South Africa required that exports of U.S. poultry meat to South Africa be produced from U.S. birds hatched and raised within the United States. This requirement restricted exports of U.S. turkey from meat produced from Canadian poults. In January 2018, USDA and South African authorities reached agreement on an amendment to the USDA export health certificate for poultry to allow the importation of U.S. turkey meat produced from turkeys grown from Canadian poults under certain conditions.

Kenya

Import Restrictions: In June 2016, Kenya doubled the import duty rate on articles of used clothing to $0.40/kg or 35 percent *ad valorem*, whichever is higher, as a first step to implement a March 2016 East Africa Community (EAC) decision to eliminate imports of used clothing and footwear within three years. According to the Secondary Materials and Recycled

Textiles Association, a U.S. industry association, shutting this market would negatively impact U.S. exports representing thousands of U.S. jobs. In response to U.S. concerns, in July 2017 Kenya revised down the import duty rate on articles of used clothing back to the pre-June 2016 rates of $0.20/kg or 35 percent *ad valorem*, whichever is higher.

Japan

Autos: In January 2018, Japan recognized a number of U.S. automotive safety standards, including frontal and rear crash standards, thereby reducing the cost and burden for U.S. auto exporters.

Sanitary and Phytosanitary: In September 2017, Japan agreed to expand market access for U.S. chipping potatoes by adding Idaho, starting with the 2018 season, to the list of U.S. states listed as eligible for export to Japan.

Western Hemisphere

Argentina

Enforcement of Intellectual Property Rights: In 2017, Argentine authorities undertook significant enforcement actions against the sale of counterfeit goods. Authorities seized millions of dollars' worth of illicit goods and made key arrests to dismantle organized crime operations in *La Salada,* one South America's largest black markets for counterfeit and pirated goods.

Canada

Supreme Court Strikes Down the "Utility Doctrine": In June 2017, the Supreme Court of Canada rejected lower Canadian courts' rulings that if a patent promised more than it could provide, it could be invalidated for lack of utility. Canadian courts had used this "utility" or "promise doctrine" to invalidate a number of patents held by U.S. pharmaceutical companies. The Supreme Court of Canada struck down this doctrine as "unsound," ruling that it is inconsistent with Canada's *Patent Act.*

Colombia

Movement of Data: In August 2017, following U.S. engagement, Colombia's Superintendency of Industry and Trade (SIC) added the United States to the list of countries that provide an adequate level of data protection. This corrected the original circular which did not include the United States and would have been a significant impediment to digital trade.

Guatemala

Chicken Leg Quarters: The United States gained immediate tariff elimination for U.S. exports of fresh, frozen and chilled chicken leg quarters, zeroing out tariffs five years earlier than planned and creating market opening benefits for U.S. poultry exporters. El Salvador, Honduras and Nicaragua also established duty-free TRQ volumes through 2023, when U.S. poultry will have unlimited duty-free access.

Peru

Enforcement of Intellectual Property Rights: In 2017, the United States worked closely with Peruvian prosecutors and members of the Peruvian National Police to coordinate IPR enforcement, including a September 2017 seizure of the domain for *pelis24.com*, a prolific pirate site, and arrested its administrators in Lima. The site infringed on more than 5,000 properties belonging to U.S. copyright holders and attracted more than 25 million monthly visitors from Latin America.

Europe and the Middle East

Israel

Simplifying Declaration of Origin: Israel required U.S. exporters seeking to claim preferential treatment under the United States – Israel Free Trade Agreement (FTA) to provide an original, consularized form (the "Form A" or UNCTAD green form). For many years, U.S. exporters shipping to Israel wishing to take advantage of these tariff preferences struggled to locate and obtain a hard copy "Form A." To eliminate this barrier to U.S. exports, USTR negotiated an approach with Israel, reflected in a decision of the Joint Committee under the FTA that would allow Israel to accept self-declarations of origin for U.S. exports and to dispense with the use of the UNCTAD green form. The new simplified procedure went into effect on January 10, 2018.

China

Chinese Industrial Plans and Forced Technology Transfer: China uses a range of measures, including industrial plans such as "Made in China 2025," to engineer the transfer of foreign technology to China. Made in China 2025 provides massive subsidies to high technology manufacturing industries, calls for preferences for Chinese goods and services, seeks to extract technologies from other countries and sets explicit goals for dominating China's market and seeking increased market share abroad. To accomplish its industrial policy goals, for example, China denies certain financial or regulatory incentives to companies that do not own their intellectual property (IP) in China, do not conduct large amounts of R&D in China, and/or do not manufacture products in China. China also conditions foreign investment approvals on technology transfers to Chinese entities; mandates adverse licensing terms on foreign IP licensors; uses anti-monopoly enforcement to extract technology on unreasonable terms; and subsidizes acquisitions of foreign high-technology firms to bring technology to Chinese parent companies. Additionally, structural gaps and inconsistencies in intellectual property rights protection and enforcement allow Chinese entities to appropriate foreign IP. For example, misappropriation of trade secrets for the benefit of Chinese companies has occurred both within China and outside of China.

Excess Capacity: Chinese government industrial policies and financial support have contributed to massive excess capacity in China, with the resulting over-production and increased exports distorting global markets and hurting U.S. producers and workers in both the U.S. market and third country markets where U.S. exports compete with Chinese exports. This excess capacity has led to lower global prices and a glut of supply that undermine the viability of even the most competitive manufacturers, and policies like Made in China 2025 call for this pattern of distortion to continue.

Cybersecurity Regime: U.S. and global partners continue to have serious concerns regarding a series of Chinese cybersecurity measures that would impose severe restrictions on a wide range of U.S. and other foreign information and communications technology (ICT) products and services to replace such foreign ICT products and services with Chinese-made ICT products and services in China's market. Concerns center on requirements in sectors that China deems "critical" to ensure that ICT equipment and other ICT products and services be "secure and controllable". In addition, China would impose severe restrictions on cross-border data flows and requirements for data localization. Notwithstanding the negative U.S. and international reaction, China continues to move forward with its cybersecurity regime and problems continue to arise.

Taiwan

Pharmaceuticals: There continues to be a need for greater transparency and predictability in Taiwan's pricing and reimbursement policies for pharmaceuticals, including innovative pharmaceuticals, in Taiwan's health care system. In December 2017, Taiwan's Legislative Yuan passed an amendment to the Pharmaceutical Affairs Act establishing a patent-linkage system that should address patent issues expeditiously in connection with applications to market pharmaceutical products. However, implementation remains incomplete.

Korea

In July 2017, USTR called for a special session under the U.S.-Korea Free Trade Agreement (KORUS) to seek changes to rebalance the agreement in ways that will be more favorable to American workers and businesses. On March 28, 2018, an agreement in principle was announced and the agreement is being finalized.

In its discussions to improve KORUS, the United States achieved steps to improve the large trade deficit in industrial goods with Korea and to address KORUS implementation concerns that have hindered U.S. export growth.

Growing U.S. Auto Exports: Exports of U.S. motor vehicles to Korea will be improved through the following steps:

- **Greater Access for U.S. Exports**: Korea will double the number of U.S. automobile exports, to 50,000 cars per manufacturer per year that can meet U.S. safety standards (in lieu of Korean standards) and enter the Korean market without further modification.
- **Harmonization of Testing Requirements**: U.S. gasoline engine vehicle exports will be able to show compliance with Korea's emission standards using the same tests they conduct to

show compliance with U.S. regulations, without additional or duplicative testing for the Korean market.
- **Recognition of U.S. Standards for Auto Parts**: Korea will recognize U.S. standards for auto parts necessary to service U.S. vehicles, and reduce labeling burdens for parts.
- **Improvements to CAFE Standards**: Korea will expand the amount of "eco-credits" available to help meet fuel economy and greenhouse gas requirements under the regulations currently in force, while also ensuring that fuel economy targets in future regulations will take U.S. regulations into account and will continue to include more lenient targets for small volume manufacturers.

Customs Improvement: Korea will address long-standing concerns with onerous and costly verification procedures through agreement on principles for conducting verification of origin of exports under KORUS and establish a working group to monitor and address future issues that arise.

Pharmaceutical Reimbursements: In 2018, Korea will amend its Premium Pricing Policy for Global Innovative Drugs to make it consistent with Korea's commitments under KORUS to ensure non-discriminatory and fair treatment for U.S. pharmaceutical exports.

South and Central Asia

India

Price Controls on Medical Devices: In 2017, India implemented price controls on coronary stents and knee implants that do not fully differentiate for advanced technologies within a product class. U.S. companies have applied to withdraw technologically advanced products from the market, but the requests have been rejected, forcing the United States to sell certain products at a loss. India has indicated it may apply similar price controls on additional medical devices.

Tariff Increases: India continues to maintain some of the highest average tariff rates worldwide. The large gap between India's WTO bound and applied tariff rates allows India to make frequent adjustments to the level of protection provided to domestic producers by modifying tariff rates. For example, in 2017 India increased tariffs on pulses from zero to 30 and 50 percent. India also raised tariffs on certain high-tech information and communication technology products from zero to between 10 and 20 percent. U.S. companies have raised significant concerns with these actions.

The United States continues to raise these concerns through bilateral engagement with the Indian government, including through the U.S.-India Trade Policy Forum.

Southeast Asia

Vietnam

Electronic Payments Restrictions: Southeast Asian governments are implementing measures that favor national monopolies and champions at the expense of U.S. and other payments companies. Vietnam is implementing a plan to develop its own local electronic payments industry by requiring that all credit and debit payment transactions be processed by a government-owned monopoly, the National Payments Corporation of Vietnam (NAPAS). Implementation of the new system has been postponed until January 2019. The United States continues to urge Vietnam to adopt a competitive approach in which U.S. electronic payment companies are able to supply services without disruption or harm to commercial arrangements that have been in place for many years.

Motor Vehicles: In October 2017, Vietnam released Decree 116, which imposes onerous new requirements on imports, including new certification and testing requirements. The decree took effect on January 1, 2018 and has resulted in significant trade disruptions. The United States continues to engage Vietnam for a solution to these concerns that allows trade to resume for the benefit of both countries.

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