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United States Releases Annual Assessment of Foreign Trade Barriers

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On March 29, 2019, the Office of the United States Trade Representative (USTR) published its annual National Trade Estimate (NTE) Report on Foreign Trade Barriers, which "highlights significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce."[1] This year's NTE report comes at an important time, as the Trump administration has been vocal about its view that current trading arrangements have permitted widespread unfair treatment of the United States, including by its largest trading partners.

The administration has shown that it is willing to address such issues through negotiation: for example, it has recently proposed formal negotiations with Japan and the EU, is in the midst of bilateral negotiations with China, and has completed a renegotiation of the North American Free Trade Agreement with Canada and Mexico. At the same time, the administration also has been willing to take aggressive unilateral actions in response to perceived unfair treatment, causing significant commercial disruptions and frictions in the global trading system.

These developments have generated significant interest in the administration's views and priorities with respect to the trade policies of the United States' major trading partners. This report aims to shed light on these issues by reviewing key developments in this year's NTE with respect to major US trading partners, namely China, Japan, the European Union, Canada, Mexico, Brazil, and Korea.

China

The 2019 NTE lists a multitude of longstanding US concerns about China's trade and industrial policies, which "seek to limit market access for imported goods, foreign manufacturers and foreign services suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries." It also identifies several new US concerns, and highlights the Trump administration's recent efforts to obtain the elimination of certain Chinese practices through the unilateral actions it has taken against China under Section 301 of the Trade Act of 1974. We discuss these issues below.

New developments in the 2019 NTE

The report highlights several new developments over the last year that are of concern to the United States, including the following:

[1] The 2019 NTE report and related documents can be viewed **here**.

- E-Commerce. China's new E-Commerce Law, which entered into force in January 2019, allegedly "introduced provisions that weaken the ability of rights holders to protect their rights online and that make it more difficult for Chinese electronic commerce platforms to be liable for selling counterfeit and other infringing goods[.]"
- Financial services. China recently finalized measures that remove equity caps relating to Chinese-owned banks, but "in practice, China has maintained restrictions that do not allow for significant non-Chinese competition in commercial banking activities." Foreign suppliers also allegedly have been unable to secure licenses to supply electronic payment services in China under a licensing process that China established in 2017 following an adverse WTO ruling, and have had similar difficulties with respect to internet-enabled payments services.
- Agriculture. China's most recent WTO notification "showed that China had exceeded its *de minimis* level of domestic support for soybeans (in 2012, 2014 and 2015), cotton (from 2011 to 2016), corn (from 2013 to 2016), rapeseed (from 2011 to 2013) and sugar (2012)." The report also expands on prior criticism of China's sanitary and phytosanitary (SPS) restrictions on beef, pork, and poultry, and flags a new concern that China "has not approved longstanding market access requests for a variety of U.S. horticultural products[.]"
- Audiovisual services. China's National Radio and Television Administration (NRTA) has issued a "problematic" draft measure that "would impose new restrictions in China's already highly restricted market for foreign creative content on over-the-air television, cable television and online audiovisual-content platforms."
- Cosmetics regulations. China allegedly imposes "discriminatory testing and documentation requirements for imported cosmetics and personal care products" and does not recognize international standards for good manufacturing practices and product safety assessment.
- Section 232 retaliation. The report also notes that China has imposed retaliatory tariffs in response to the US Section 232 measures on steel and aluminum, and that the United States is challenging this action in the WTO.

Investment, technology transfer, and intellectual property

Like previous iterations of the NTE, the report highlights several alleged barriers related to technology transfer, foreign investment, and intellectual property protection:

- Investment restrictions and technology transfer. China "seeks to protect many domestic industries through a restrictive investment regime", and its investment restrictions are among a "variety of tools" that it uses to require or pressure US companies to transfer technologies and intellectual property to Chinese companies.
- "Made in China 2025." China's "Made in China 2025" industrial plan aims "to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to equip Chinese companies to dominate international markets".
- Intellectual property. China's intellectual property rights protection and enforcement regime "continue to present serious barriers to U.S. exports and investment", and there are "[s]erious inadequacies in the protection and enforcement of trade secrets".

The report notes that some of these issues were the subject of USTR's recent investigation of China under Section 301, based on which the United States "has imposed additional tariffs on $250 billion worth of Chinese imports". It further notes that China has responded to that action by imposing retaliatory tariffs on US goods. However, the report does not reference directly the ongoing bilateral negotiations between the United States and China regarding the issues raised in the Section 301 investigation and other issues.

Other alleged barriers

The report also describes a wide range of longstanding US concerns about China's trade policies and economic model that are not directly related to the recent Section 301 action:

- Subsidies and excess capacity. China "continues to provide substantial subsidies to its domestic industries", and is "the world's leading offender in creating noneconomic capacity[.]"
- Services and digital trade. Chinese regulators "use case-by-case approvals, discriminatory regulatory processes, informal bans on entry and expansion, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China." In addition, China maintains "restrictions on cross-border data flows and requirements to store and process data locally[.]"
- Trade remedies. China's regulatory authorities "seem to be pursuing antidumping and countervailing duty investigations and imposing duties – even when necessary legal and factual support for the duties is absent – for the purpose of striking back at trading partners that have exercised their WTO rights against China."
- Export restraints. China "continues to deploy a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions[.]"
- Agriculture. China remains "a difficult and unpredictable market for U.S. agricultural exporters, largely because of inconsistent enforcement of regulations and selective intervention in the market by China's regulatory authorities." China's regulators fail to "routinely follow science-based, international standards and guidelines."

Bilateral negotiations

As noted above, the report does not reference directly the ongoing bilateral negotiations between the United States and China, in which the United States is seeking Chinese commitments to eliminate not only the policies identified in the Section 301 investigation, but other alleged trade barriers discussed in the NTE. For example, the United States reportedly is seeking commitments from China related to digital trade, services (*e.g.*, electronic payments, motion pictures, and cloud computing), and various agriculture issues (*e.g.*, biotechnology approvals). However, the extent to which these issues will be addressed in a potential US-China agreement remains unclear, and other key trade frictions highlighted in the NTE undoubtedly will remain. The NTE notes that the Trump administration is pursuing other avenues to address such issues (*e.g.,* by "working with the EU and Japan to identify further effective action and potential rules that could address problematic subsidies practices not currently covered by existing obligations.")

Japan

The report highlights a range of barriers to goods and services trade with Japan, including in areas such as agriculture and automotive trade that are likely to be central to forthcoming bilateral FTA negotiations. In addition to discussing longstanding issues identified in previous iterations of the NTE, this year's report introduces new sector-specific issues aligned with the Trump administration's stated trade priorities. We discuss the most significant issues highlighted in the report below.

New developments in the 2019 NTE

USTR notes several new or exacerbated regulatory challenges that it sees as negatively impacting US companies' competitiveness relative to their Japanese counterparts, including: (i) changes to the reimbursement pricing system adversely affecting US medical devices and pharmaceuticals companies; (ii) newly-noted tariffs of 3.5 percent to 10 percent on certain fish and seafood products; (iii) new concerns relating to government procurement procedures, including that technical specifications are selected to exclude US products and services, or direct procurements towards a specific Japanese company; (iv) a potentially problematic geographical indications law; and (v) the denial of access to the electrical grid for US companies attempting to sell renewable energy. While these additions are relatively narrow in scope, the updated report does demonstrate a continued focus on incremental market access issues, both for goods and services, some of which could be addressed via a bilateral FTA.

Other alleged barriers

The report highlights several other alleged trade barriers, most of which have been discussed in prior versions of the NTE:

- Tariffs. The Report focuses on Japan's high tariffs "that hinder U.S. exports of agricultural and other food products to its market," including on fish, grains, sugar, citrus, wine, dairy, and certain processed foods. USTR also notes high tariffs and tariff-rate quotas on US leather, footwear, and travel goods.

- Nontariff barriers. Priority nontariff barriers to US imports include: a tariff-rate quota on imported rice; the requirement that wheat imports be routed through Japan's state trading entity; a restrictive beef special safeguard; a variable levy-like pork import regime; a low *de minimis* threshold for low-value imports; and unique standards and testing protocols for automobiles.

- Technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) barriers. Alleged TBT and SPS issues include labelling requirements for food products processed in Japan, which could limit Japanese manufacturers' utilization of US ingredients; restrictions on food additives; cattle age limits for beef imports; and burdensome application requirements for maximum residue level approvals.

- Services barriers. Certain sectors are heavily regulated and challenging for foreign service providers, including: express delivery; insurance and financial services; legal services; telecommunications services; and renewable energy services.

- Anticompetitive practices. The report alleges underutilization of the Anti-Monopoly Act to deter cartel conduct and a lack of fairness and transparency in the Japan Fair Trade Commission's procedures.

- Sector-specific issues. The report includes specific barriers to trade/investment in the following areas: automotive industry; medical devices and pharmaceuticals; nutritional supplements; cosmetics; and aerospace.

Bilateral negotiations

The Report notes that "[i]n September 2018, President Trump and Prime Minister Abe agreed to start negotiations for a U.S.-Japan Trade Agreement, and the Administration notified Congress on October 16, 2018, of its intent to start negotiations following the completion of relevant domestic procedures." As outlined in USTR's published negotiating objectives for the proposed agreement, released on December 21, 2018, the agreement is meant to be comprehensive, including trade in goods and services, investment, digital trade, intellectual property, regulatory practices, sanitary and phytosanitary measures, technical barriers to trade, state-owned enterprises, labor and environment, currency, and government procurement, among other areas. The priority concerns highlighted by USTR in its negotiating objectives in many cases overlap with those outlined in the the NTE report, including increased market access for automotive goods, pharmaceuticals/medical devices, and agriculture (*for more details on the US negotiating objectives for the proposed US-Japan Trade Agreement, see the W&C trade alert dated January 9, 2019*). However, the Trump administration has indicated that it may pursue negotiations with Japan "in stages", focusing on market access for goods (and particularly agricultural goods) during the first stage.

European Union

The report notes that the United States and the EU "share the largest economic relationship in the world", but claims that "U.S. exporters and investors nonetheless face persistent barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market." The report focuses extensively on tariffs and alleged non-tariff barriers affecting US agricultural exports – an issue that the Trump administration is seeking to address through proposed bilateral trade negotiations with the EU. USTR claims that these and other barriers "have contributed to annual U.S. trade deficits with the EU". As the report notes, some of the listed barriers have been highlighted in the NTE for years, but many of the items listed are new. We discuss the most significant issues highlighted in the report below.

New developments in the 2019 NTE

- Digital services tax. The report notes that, in March 2018, the European Commission proposed a directive to levy an interim tax on certain types of digital services that would apply to companies with annual worldwide revenues exceeding €750 million ($849 million) and revenues within the EU exceeding €50 million ($57 million). The report acknowledges that the effort to reach agreement on an EU-wide digital services tax was later abandoned, but it highlights efforts by several EU member states to impose their own digital services taxes in 2019, including France, Italy, Spain, and the United Kingdom. The report warns that the United States "opposes proposals by any country to single out digital companies", and that US companies believe the proposed measures are discriminatory.
- Geographical indications. The report escalates the United States' criticism of the EU's approach to recognition of geographical indications, stating that "[t]he United States does not believe that the EU should bargain for specific GI recognition in its bilateral trade agreements in return for market access, because such intellectual property rights should be evaluated independently on their merits, based on the unique circumstances of each country."
- High-quality beef (HQB) quota. The report notes that the United States and the EU have engaged in negotiations to change the EU's HQB quota after the EU received a mandate to do so from the European Council in October 2018. The United States claims that its access to the EU beef market has been eroded because countries such as Argentina, Australia, and Canada have also been able to ship under the HQB quota, which was established in 2009 as a compromise solution to the US-EU beef hormone dispute.
- Ruling on gene-edited crops. USTR notes that, in July 2018, the Court of Justice of the European Union ruled that gene-edited crops are subject to the same "onerous barriers" associated with EU regulations implemented under its GMO Directive and that the judgement "is anticipated to further exacerbate and expand existing agricultural trade barriers to innovative agricultural products."
- Cybersecurity certification. The report states that the European Commission's September 2017 Cybersecurity Act proposal "proposes a voluntary EU-wide certification and labeling scheme for Internet of Things products and services" and that "some observers are concerned that the result could be a de facto mandatory approach to certification and labeling."
- Platform Regulation. In April 2018, the European Commission proposed a new regulation on platform-to-business services and online search services. According to the report, US companies have raised concerns that the requirements could create market access barriers and potentially compromise trade secrets that are critical to their provision of such services.
- Maximum residue levels (MRLs). In January 2019, the EU published regulations setting MRLs for several active substances at the limit of detection "ignoring U.S. comments requesting that they reconsider." The report asserts that the rules will affect crop protection products for tree nuts, wine grapes, berries, and other fruits, which in total represent over $3 billion in US exports to the EU.
- Retaliatory tariffs. The report notes that the EU adopted tariffs ranging from 10 percent to 50 percent on a range of US products in retaliation against the United States' Section 232 tariffs on steel and aluminum. It further notes that the United States has challenged this action at the WTO.

Other alleged barriers

The report also highlights several longstanding US concerns regarding the EU's trade and investment policies:

- SPS barriers. The report contains extensive criticism of the EU's approach to food safety regulation. It expresses concern that many EU measures "unnecessarily restrict trade without furthering their safety objectives because they are not based on scientific principles, maintained with sufficient scientific evidence, or applied only to the extent necessary." Among the many alleged barriers listed in the report are restrictions related to hormones in meat; agricultural biotechnology; pathogen reduction treatments; certification requirements limiting US agricultural exports such as fish, meat, dairy, eggs, processed products, and animal byproducts; certification requirements for bovine diseases; hazard-based cutoff criteria for agricultural chemicals; and pesticide maximum residue limits.

- Agricultural tariffs. The report notes that the EU's agricultural tariffs average 10.8 percent, compared to its average non-agricultural tariff rate of 4.2 percent.
- Customs barrier. The report expresses concern that the EU does not administer its laws through a single customs administration, which allegedly leads to non-uniformity of administration.
- Technical barriers to trade. Among the many alleged TBT issues flagged in the report are the EU regulations concerning the production, marketing, and use of chemicals – known as Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH); elements of the EU Cosmetics Regulation and the EU Renewable Energy Directive; country of origin labelling (COOL) requirements; and nutritional labelling regulations.
- Subsidies. The report flags various financial transactions and equity arrangements throughout the EU, which it states, "raise questions as to the role of state funding or subsidizing private or quasi-private organizations, including in the manufacture of civil aircraft." The report also discusses the US case brought at the WTO concerning Member State subsidies provided to Airbus.
- Intellectual property. Concerns include the EU's "overbroad" protection of geographical indications; legislative developments relating to the draft Directive on Copyright; trademark issues and implementation of the EU's trademark directive; and implementation of a directive on trade secrets.
- Services barriers. The report highlights numerous alleged barriers relating to the supply of telecommunications services, audiovisual media services, satellite and cable services, legal services, accounting and auditing services; and pharmacies.
- Digital trade barriers. The report states that the EU's General Data Protection Regulation (GDPR) "restricts the transfer of the personal data of EU citizens outside of the EU", and that the United States remains concerned that the implementation and administration of the GDPR "create disproportionate barriers to trade." It notes that the United States has received a determination of partial adequacy from the EU in the form of the Privacy Shield Framework, but warns that legal challenges in the EU "continue to create uncertainty around the transfer of data for US and other foreign companies."

Notably, the report does not mention the Trump administration's October 16, 2018 notification to Congress regarding the administration's intention to enter into trade negotiations with the EU. That notification followed a joint statement of July 25, 2018 in which President Trump and European Commission President Jean-Claude Juncker agreed to begin preliminary discussions on a "joint agenda" of bilateral trade initiatives, including a potential negotiation to liberalize US-EU trade in non-automotive industrial goods and services. Those negotiations have stalled, however, due to the United States' subsequent insistence that proposed agreement cover tariff and non-tariff barriers affecting US agricultural exports to the EU. The EU has insisted that agricultural issues be excluded from the proposed agreement, but they clearly remain a top priority for the Trump administration, as this year's NTE report indicates.

Canada

The 2019 NTE report highlights a range of alleged barriers to goods and services trade with Canada, most of which have been raised in prior iterations of the NTE. It also includes a new discussion of the proposed US-Mexico-Canada Agreement (USMCA), which the Trump administration claims will reduce some of the barriers to trade with Canada highlighted in the NTE report. We discuss the most significant issues highlighted in the report below.

New developments in the 2019 NTE

This year's report includes a new discussion of the USMCA, which USTR claims will "modernize and rebalance" US trade relations with Canada. It notes, for example, that Canada agreed under the USMCA "to eliminate milk classes 6 and 7, discriminatory grading of US wheat, and British Columbia's discriminatory treatment of US wine in grocery stores." The Agreement also "includes obligations to strengthen enforcement against counterfeiting and piracy, camcording of movies, satellite and cable signal theft, transparency with respect to new geographical indications, and copyright protection and enforcement in the digital environment." In addition, the USMCA "will ensure that Canada eliminates its rule prohibiting simultaneous substitution of advertising for the Super Bowl."

The report also focuses on Canadian tariffs ranging from 10 percent to 25 percent on various products imported from the US, which Canada imposed in July 2018 in retaliation against the United States' Section 232 tariffs on steel and aluminum. The report says that the United States "will take all necessary action" to protect US interests, and includes discussion of the related WTO case brought by the United States against Canada.

Other alleged barriers

Aside from the discussion of the USMCA and Canada's retaliatory tariffs, the United States' trade priorities with respect to Canada remain largely unchanged from previous iterations of the NTE:

- <u>Nontariff barriers</u>. Priority nontariff barriers include: agricultural supply management systems to regulate the dairy, chicken, turkey, and egg industries; Canada's use of milk classes; restrictions on US grain exports; Ministerial exemptions for bulk imports of fresh fruits and vegetables; customs barriers (personal duty exemptions and the *de minimis* threshold); and limitations on importation of alcohol.
- <u>TBT and SPS barriers</u>. Alleged TBT and SPS barriers include regulations on compositional standards for cheese; front-of-packaging labelling requirements for pre-packaged foods; and restrictions on US seeds exports.
- <u>Subsidies</u>. The report alleges that Canada has provided subsidies to companies in its aerospace sector.
- <u>Government procurement</u>. The report expresses concern that the reaction by the Government of Canada to Boeing's recent trade remedy action against Canada's Bombardier may place US companies at a disadvantage when bidding on future Canadian defence procurement projects.
- <u>Intellectual property rights protection</u>. Canada was downgraded to the Priority Watch List in USTR's Special 301 Report in 2018 for allegedly failing to resolve "longstanding deficiencies" in the protection and enforcement of intellectual property rights, including with respect to medicines and pirated and counterfeit goods.
- <u>Services, digital trade, and e-commerce</u>. Certain sectors allegedly are heavily regulated and challenging for foreign service providers, including telecommunications services, radio-television broadcasting (due to requirements for Canadian content in broadcasting), and financial services. The Report states that the US government will closely monitor the "Creative Canada" initiative to ensure it is implemented in a manner that does not constitute a barrier to digital trade.

Mexico

The 2019 NTE report discusses several alleged trade barriers that US providers of goods and services face in Mexico, including customs issues, non-tariff barriers, and challenges related to intellectual property rights protection. Some of the alleged barriers are new, whereas others reflect longstanding US concerns and have been included in prior iterations of the NTE. The report also includes a new discussion of the proposed US-Mexico-Canada Agreement, which USTR claims will "rebalance" US trade with Mexico. We discuss the most significant issues highlighted in the report below.

New developments in the 2019 NTE

- EU-Mexico FTA and Geographical Indication. The report notes that "in April 2018, Mexico and the European Union (EU) came to an agreement in principle on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers." The United States is "highly concerned about Mexico negotiating product-specific IP outcomes as a condition of market access from the EU, and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico."
- Import Licensing. The report criticizes Mexico's decision to suspend its alternative scheme for issuing steel import licenses in December 2018, which it claims has resulted in confusion and concerns for steel exporters and Mexican customers.
- Telecommunications. The United States is concerned that, due to a proposed regulatory revision, certain US information and communications technology exports will no longer be exempt from Mexican testing requirements, and that Mexico will no longer recognize the results of conformity assessment procedures from the United States.
- Oil auctions. The report notes that President Lopez Obrador has "cancelled oil auctions for three years", but has reassured companies that contracts awarded under the previous Mexican administration as part of Mexico's 2013 energy reform will be respected.
- Section 232 retaliation. The report notes that Mexico has imposed tariffs ranging from 7 to 25 percent in response to the United States' steel and aluminum tariffs under Section 232, and that the United States has challenged this action at the WTO.
- USMCA. The report claims that the proposed USMCA will "modernize and rebalance" US trade relations with Mexico. It asserts, for example, that the agreement "reduces incentives to outsource by providing strong labor and environmental protections, innovative rules of origin, and revised investment provisions." The Agreement also "locks in Mexico's telecommunications and energy reforms", "brings labor and environment obligations into the core text of the agreement and makes them fully enforceable", "cracks down on data localization measures", and "includes obligations to strengthen enforcement against counterfeiting and piracy, camcording of movies, satellite and cable signal theft, transparency with respect to new geographical indications, and copyright protection and enforcement in the digital environment."

Other alleged barriers

The report highlights several other alleged barriers to US goods and services trade with Mexico, many of which have been raised by the United States in prior editions of the NTE:

- Customs Barriers. US exporters continue to express concerns about Mexican customs administrative procedures, including insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven enforcement of Mexican standards and labeling rules.
- Non-Tariff Barriers (NTBs). US concerns include certain energy efficiency labeling requirements and unique testing requirements that are different from requirements in the United States or elsewhere. The US spirits industry also has raised concerns regarding ageing requirements, minimum and maximum limits for various components, alcohol content limits, as well as minimum spirit content requirements for certain labels.
- SPS Measures. The report criticizes certain Mexican restrictions regarding the importation of potatoes and stone fruit from the United States.
- Intellectual property. The report cites "obstacles to U.S. trade in intellectual property-intensive goods and services", including "the wide availability of pirated and counterfeit goods, via both physical and virtual markets."

- Services and investment. The report highlights several alleged barriers facing US providers of telecommunications services, despite Mexico's reform of the sector in 2013 and 2014, as well as audiovisual services. Moreover, despite energy reforms enacted by Mexico in 2013, certain barriers to investment in the oil and hydrocarbons sectors allegedly remain (*e.g.*, local content requirements). Other sectors, such as ground transportation services and transportation infrastructure, (such as airport management), are closed to foreign participation.

Brazil

The 2019 NTE report highlights a range of alleged barriers maintained by Brazil, including with respect to digital trade, tariffs and other restrictions (*e.g.*, on ethanol imports), restrictions in the services sector, and intellectual property protection. Most of these issues have been discussed in prior iterations of the NTE. However, this year's report also discusses several recent instances in which Brazil has reduced barriers to US exports, in the view of the Trump administration. We discuss the most significant issues highlighted in the report below.

New developments in the 2019 NTE

This year's report highlights the following new developments with respect to Brazil:

- Barriers to digital trade. USTR notes that Brazil in August 2018 adopted a measure on the protection of personal data that "will apply to any processing of the personal data of Brazilians done by people or entities, regardless of the type of means, the country where the data is located, or the headquarters of the entity." USTR categorized this measure as a "data localization requirement".
- Wheat TRQ. USTR notes that, "[a]s an outcome of the meeting between President Trump and President Bolsonaro on March 19, 2019," Brazil announced it will implement a 750,000 metric ton (MT) duty-free MFN tariff-rate quota (TRQ) tariff-rate quota on wheat imports. Brazil previously has applied the MERCOSUR Common External Tariff (CET) of 10 percent tariff on imported wheat from non-MERCOSUR trading partners, including the United States.
- Pork. The report states that "U.S. fresh, frozen, and further processed pork products are ineligible for import into Brazil", but notes that "[i]n the Joint Statement following the meeting between President Trump and President Bolsonaro on March 19, 2019, the leaders announced agreement on science-based conditions to allow for the importation of U.S. pork to Brazil."

The above commitments from Brazil regarding the wheat TRQ and US pork imports were first announced in a joint statement from President Trump and new Brazilian President Jair Bolsonaro in March. During the March visit, Brazilian Minister of Economy Paulo Guedes indicated that Brazil is interested in holding further discussions with the United States on liberalizing bilateral trade, though this possibility is not mentioned in the NTE report.

Other alleged barriers

In addition to the above issues, the report highlights the following alleged barriers to US trade with Brazil, most of which have been discussed in prior iterations of the NTE:

- Import tariffs. The report questions Brazil´s use of MERCOSUR´s CET flexibilities to raise or lower import tariffs, particularly on industrial products, to protect domestic industries from import competition and to manage prices and supply. It states that the lack of predictability with regard to tariff rates makes it difficult for US exporters to forecast the cost of doing business with Brazil.

- Ethanol tariff-rate quota (TRQ). The report strongly objects to Brazil´s implementation of a TRQ on ethanol imports in September 2017, which ended reciprocal duty-free trade in ethanol between the world's largest ethanol consumers and producers.

- Non-automatic import licenses. The report lists US exporters' complaints about Brazil´s non-automatic import license procedures in several sensitive sectors, such as agricultural commodities, pharmaceuticals, footwear, textiles and apparel, and automobiles and automotive parts.

- Conformity assessment requirements. The report highlights complaints about conformity assessment procedures for telecommunications products and equipment, toys and medical devices.

- Wine and spirits. US industry remains concerned about certain requirements that restrict importation of US wine and spirits, such as requirements on labeling of sugar content, restrictions on the use of certain food additives applied to spirit-based beverages, use of certain grape varieties allowed for production of fine wine, and use of certain pesticides.

- Tax incentives for the automotive sector. On November 8, 2018, Brazil implemented a new tax incentive program, known as "Rota 2030", for the improvement of energy efficiency and car safety in the automotive sector. This program replaced "Inovar-Auto", a program that the WTO ruled inconsistent with Brazil´s WTO obligations in January 2019. The NTE Report questions whether the new program only benefits domestic manufacturers and does not apply to automobile importers.

- Subsidies. The Report details some positive developments that have taken place with regard to government subsidies, although some US concerns remain on certain programs, including the proviosion of preferential loans that are conditioned on the use of local content. According to the Report, the US will closely monitor Brazil´s agricultural domestic support programs for cotton, corn, rice, soybeans and wheat in meetings of the WTO Committee on Agriculture.

- Intellectual property. Brazil remained on USTR's Special 301 Watch List in 2018. Major US concerns relate to, *inter alia*, high levels of counterfeiting and piracy online and offline; weak IP enforcement at the tri-border region between Argentina, Brazil and Paraguay; delays in the review of patent and trademark applications; and lack of pharmaceutical test data protection.

- Services barrier. Certain services sectors are heavily regulated and challenging for foreign service providers, including audiovisual services; express delivery; insurance and financial services; and telecommunications services.

Korea

The report details several new and longstanding US concerns regarding alleged trade barriers maintained by Korea, including with respect to agriculture, digital trade, and services. However, this year's report also touts recent "modifications and amendments" to the United States-Korea Free Trade Agreement (KORUS) that entered into force in January 2019, which in the view of the Trump administration will benefit US exporters particularly in the automotive sector. We discuss the most significant issues highlighted in the report below.

New developments in the 2019 NTE

- KORUS improvements in the auto sector. The report notes that, as part of the recent renegotiation of KORUS, Korea has agreed to take a number of actions that will facilitate US automotive exports. These include (1) doubling from 25,000 to 50,000 the number of US-origin vehicles per manufacturer per year that may be imported and sold in Korea that meet US safety standards in lieu of Korean safety requirements; (2) expanding the "eco-credit cap" from 14 grams to 17.9 grams, which is identical to the US cap; and (3) harmonizing emission requirements and testing standards for gasoline engine vehicles with US EPA requirements and standards, thereby allowing vehicles exported to Korea to show compliance with Korea's gasoline emissions standards using the same tests they conduct to show compliance in the United States.

- Dispute over competition policy enforcement. The report states that US firms have raised concerns that the Korea Fair Trade Commission (KFTC) "has targeted foreign companies with aggressive enforcement efforts" and that the agency's procedures violate Korea's KORUS obligations because they inhibit the ability of companies to adequately defend themselves during investigatory proceedings and hearings. The report claims that recent proposed amendments to Korea's Monopoly Regulation and Fair Trade Act do not "meaningfully" address these concerns, and notes that, as a result, the United States on March 15 "requested the first ever consultations with the Republic of Korea under the chapter on Competition-Related Matters of [KORUS]."

- Origin verification. The report notes that, in the context of the 2018 KORUS agreement amendment discussions, Korea agreed to "specific systemic changes to its origin verification procedures", which have previously been a concern for US companies.

- E-commerce. The report includes a new claim that certain Korean measures limit foreign electronic commerce suppliers from selling products and services denominated in local currency, the Korean won, and that "[b]y requiring firms seeking to offer won-denominated products and services to register as payment gateways to be able to process such transactions, Korea effectively limits cross-border distribution services, since Korea requires a local entity to hold the payment gateway registration."

- SPS restrictions on horticultural products. The United States is seeking to resolve alleged SPS barriers that limit export of a variety of horticultural products to Korea.

- Pharmaceutical pricing. The report claims that, although amendments made in December 2018 removed "discriminatory elements" of Korea's premium pricing system for pharmaceuticals, they also narrowed the program's scope "in a manner that may dramatically limit the ability of any company, foreign or domestic, to qualify for premium pricing."

Other alleged barriers

- Digital trade and e-commerce. The report highlights a range of alleged data localization requirements and other restrictions, including "restrictions on the export of location-based data"; "stringent requirements on service providers seeking to transfer customer data outside Korea"; protections for personal data that "appear to discriminate against any suppliers reliant on foreign data storage and processing"; "facilities localization requirements with respect to payment gateway services"; and policies that "have the effect of favoring local cloud computing providers suppliers to the detriment of foreign service suppliers."

- TBT issues. The report expresses concerns about Korea's regime for registering and evaluating chemicals under the Registration and Evaluation of Chemicals (K-REACH) Act, including alleged lack of guidance on its implementation, insufficient time for companies to implement the requirements, and lack of protection for confidential business information.

- SPS issues. Korea's regulatory system for agricultural biotechnology "continues to present challenges to U.S. agricultural exports." In addition, while the United States and Korea in 2008 reached a bilateral agreement to fully reopen Korea's market to US beef and beef products, as a transitional measure such products imported into Korea must be derived from animals less than 30 months of age. The report also claims that certain beef products are still prohibited for importation. Other alleged market access challenges are cited regarding fruit, potatoes, and Korea's use of maximum residue limits.

- Government procurement. According to the report, the Korean government requires network equipment procured by government agencies to undergo additional verification in Korea by Korean government authorities, even if the products received certification under the Common Criteria Recognition Arrangement outside Korea.

- Services barriers. The report highlights alleged barriers to the provision of audiovisual services, including screen and broadcast quotas for foreign content, as well as financial services, franchising services, and telecommunications services.

- Investment. According to the report, US investors have on occasion raised concerns about "possible discrimination and lack of transparency" in investment-related regulatory decisions in Korea, including decisions by tax authorities. The report also flags sector-specific investment restrictions related to television broadcasting, agriculture and power generation.

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