

CLIENT ALERT

Market Access: USTR Requests Information on Foreign Trade Barriers

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Each year the Office of the U.S. Trade Representative (USTR) catalogs barriers that U.S. companies report facing around the world to exports of goods and services, investment, and the protection of intellectual property rights. On September 24, 2009, USTR requested submissions for its 2010 National Trade Estimate (NTE) report and two new reports, one focused on standards-related barriers to trade and the other focused on sanitary and phytosanitary (SPS) measures that operate as barriers to trade. Submissions are due November 4 (for standards and SPS comments, see below) and November 18 (for the NTE comments).

The NTE Report, which by statute, must be issued on or before March 31 each year, has served as a vehicle for first collecting a list of the most significant barriers to market access for US-based companies and then attacking particular barriers. It has become a valuable tool in helping administrations target their trade enforcement resources.

The types of barriers on which USTR seeks views include (but are not limited to):

- tariffs, charges, or customs restrictions that impede imports
- policies meant to encourage purchases of locally produced goods and services over imported goods and services;
- export subsidies;
- lack of intellectual property enforcement;
- restrictions on financial and other services that can be supplied by foreign persons;
- investment restrictions (e.g., caps on foreign equity participation in local investments; forced technology transfers; restrictions on moving capital into and out of a country) and,
- government tolerance of anti-competitive behavior by private parties.

As noted above, USTR is also seeking comments on, and will prepare new companion reports on standards-related barriers and SPS barriers. Standards-related barriers include barriers in the form of technical regulations, mandatory designs or manufacturing processes and labeling requirements (whether for industrial or agricultural products). SPS barriers include measures ostensibly designed to promote the life or health of people, animals and plants but that have the effect of favoring local products over imported products or products containing imported materials.

Once it identifies foreign trade barriers, USTR may seek to negotiate with foreign governments to eliminate the barriers. Alternatively, it may pursue its concerns through the launch of formal dispute settlement proceedings at the World Trade Organization or under regional trade agreements to which the United States is party.

Together with C&M International, Crowell & Moring's Market Access team (in both Washington and Brussels) are experts at getting voices heard and seeing the process through. With former USTR officials, the team is able to maximize the impact that individual stakeholders have on the NTE process.

On the European side, a similar process is carried out by the European Commission in implementing the EU Market Access Strategy which is the EU's system for prioritizing non-EU obstacles to trade. It is supported by the European Commission's Market Access Database (MADB) which is an interactive tool for filing complaints about non-EU trade barriers. This tool has been a very effective means of bringing the weight of the European Commission behind actions to remove non-EU trade barriers. Indeed, multinational companies are often able to engage the attentions of both the USTR and the European Commission through the NTE process and the EU Market Access Strategy and the MADB respectively, maximizing pressures on third countries to remove obstacles to trade. If no remedial action is taken by an EU trading partner to remove an obstacle to trade then it is possible to file a Trade Barrier Regulation (TBR) complaint as a means of having the trade barrier scrutinized in the World Trade Organization Dispute Settlement Body.

Robert MacLean in our Brussels office is a leading expert on the EU Trade Barrier instrument, or TBR and has assisted the Commission with the revisions of the instrument as well as the revisions to the EU Market Access Database.

- **TBR Report**

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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