



October 29, 2020

**COMMENTS FOR DOCKET NUMBER USTR-2020-0034  
TO THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
REGARDING “FOREIGN TRADE BARRIERS TO U.S. EXPORTS” FOR 2021  
REPORTING**

Public Citizen welcomes the opportunity to provide written comment on the Office of the United States Trade Representative’s (USTR) 2021 incoming National Trade Estimate (NTE) report. Public Citizen is a national, nonprofit consumer organization with more than 400,000 members that champions citizen interests before Congress, the executive branch agencies, and the courts.

For years, the statutorily required annual review of U.S. trade partners’ “significant trade barriers” has focused on labelling an array of other countries’ public interest policies related to public health and the environment, food-labelling and privacy laws, and even religious standards as illegal trade barriers. It is Public Citizen’s view that it is against the public interest both for USTR to spend resources compiling a corporate hit list of such measures and for USTR to effectively arm commercial interests to attack similar policies domestically by labeling such measures categorically as trade barriers. Whatever policies in other countries that U.S. commercial interests may find not to their liking, U.S. government officials should not be in the business of elevating special interest peeves into U.S. policy. Indeed, any broad sense of the U.S. national interest would favor other countries enforcing strong environmental public health and other public interest standards.

However, even considering a narrow national interest perspective, NTE reports have been loaded with “boomerangs” that could come back against U.S. policy. The most recent NTE report emphasized “barriers to digital trade.” Particularly, it raised concerns over proposed or existing data localization requirements in several countries including India, Kenya, Nigeria, Saudi Arabia, and Turkey.<sup>1</sup> Another barrier listed in the 2018 report was the European Union’s General Data Protection Regulation (GDPR). According to the report, the policy adds “new requirements for accountability, data governance, and notification of a data breach,” which may “increase administrative costs and burdens” for U.S. companies operating in Europe.<sup>2</sup> The inherent problem in targeting other countries’ non-trade policies simply because they are different than ours and disfavored by corporate interests is spotlighted every time U.S. policy shifts. Consider recent U.S. government demands that TikTok only store U.S. consumers’ data locally to avoid its abuse by Chinese government authorities or the numerous bipartisan bills promoting enhanced consumer privacy protections, including using mechanisms that could limit data flows. While Big Tech platforms may not like the various policies that the report labelled as “unclear”,

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<sup>1</sup> Office of the United States Trade Representative, “2020 National Trade Estimate Report on Foreign Trade Barriers,” March 31, 2020. Available at:

[https://ustr.gov/sites/default/files/2020\\_National\\_Trade\\_Estimate\\_Report.pdf](https://ustr.gov/sites/default/files/2020_National_Trade_Estimate_Report.pdf)

<sup>2</sup> Public Citizen, “New Trump Administration Trade Report Sticks to the Status Quo”, *Eyes on Trade*, April 11, 2018. Available at: <https://citizen.typepad.com/eyesontrade/2018/04/new-trump-administration-trade-report-sticks-to-the-status-quo.html>

“potentially restrictive” or “burdensome”, it should not be the business of the U.S. government to pressure other countries to not protect their populations’ privacy, personal data, and security, much less to take any actions in the “trade” sphere that foreclose U.S. domestic policymakers’ space to enact robust measures domestically.

The 2018 NTE report also attacked Quebec’s requirement that 60% of the goods used in wind energy projects be sourced domestically as this “could pose hurdles for U.S. companies in the renewable energy sector in Canada.”<sup>3</sup> Yet, one of the Trump administration’s core stated policy goals has been “Buy American/Hire American,” with a goal of reinvigorating U.S. domestic manufacturing supply chains and expanding domestic content requirements in procurement and more. And the Biden campaign’s “Build Back Better” platform for the future prioritizes creating U.S. jobs in the energy sector, including in renewal energy-related manufacturing, as part of a ‘just transition’ to more climate-friendly U.S. economy. Indeed, the Quebecois policy, if applied nationally in the United States, would fit squarely within the Biden agenda.

The past NTE approach has also been tone-deaf with respect to broader U.S. diplomatic goals, for instance criticizing Malaysia—a predominantly Muslim country—for having certain restrictions on the importation of alcohol, and Brunei—another predominantly Muslim country—for requiring that non-halal foods be sold in specially designated rooms.<sup>4</sup>

Shamefully, both the 2018 and the 2017 national trade estimate reports even condemned other governments’ policies to promote breastfeeding. Despite the fact that studies show that breastfeeding has the potential to save 800,000 children under the age of five every single year,<sup>5</sup> these reports challenged existing regulations or proposed legislation that restrict corporate marketing practices aimed at toddlers and young children in Hong Kong, Indonesia, Malaysia, and Thailand.<sup>6</sup>

The 2014 NTE report listed as trade barriers to be removed New Zealand’s popular health programs to control medicine costs, an Australian law to prevent the offshoring of consumers’ private health data, Japan’s pricing system that reduces the cost of medical devices, Peru’s policies favoring generic versions of expensive biologic medicines, and Canada’s patent standards requiring that a medicine’s utility should be demonstrated to obtain monopoly patent rights.<sup>7</sup> All of these issues and similar policies are now the focus of the U.S. Congress and state legislatures. As well, many states and cities have adopted a policy also attacked in the 2014 NTE

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Unicef, “Breastfeeding”, last accessed: October 28, 2020. Available at:

[https://www.unicef.org/nutrition/index\\_24824.html](https://www.unicef.org/nutrition/index_24824.html)

<sup>6</sup> Public Citizen, “New Trump Administration Trade Report Sticks to the Status Quo”, *Eyes on Trade*, April 11, 2018. Available at: <https://citizen.typepad.com/eyesontrade/2018/04/new-trump-administration-trade-report-sticks-to-the-status-quo.html>; Public Citizen, “Trump’s Trade Agency Attacks Other Countries’ Efforts to Promote and Protect Breastfeeding in New Report”, *Eyes on Trade*, April 19, 2017. Available at:

<https://citizen.typepad.com/eyesontrade/2017/04/trumps-trade-agency-attacks-other-countries-efforts-to-promote-and-protect-breastfeeding-in-new-repo.html>

<sup>7</sup> Public Citizen, “As Obama Visits TPP Countries, New Obama Administration Report Targets Their Public Interest Policies as “Trade Barriers” to be Eliminated”, *Eyes on Trade*, April 22, 2014. Available at:

<https://citizen.typepad.com/eyesontrade/2014/04/new-obama-administration-report-targets-tpp-countries-public-interest-policies-as-trade-barriers-to-.html>

report, which named Mexico's "sugary beverage tax" and "junk food tax" to be illegal trade barriers.

The practice of targeting and condemning public interest policies undertaken by other nations through these reports has been pervasive in both Republican and Democratic administrations as has the failure to consider the conflicts with U.S. domestic policy initiatives that can be created by a U.S. government agency taking up a list of policies U.S. commercial interests want to attack in other countries and socializing those private attacks in a U.S. government report. Attacks on legitimate policies adopted by other countries by labeling them as "trade" violations also fuels the growing global backlash against the current globalization and trade regime.

USTR should limit the scope of its statutorily required review to actual trade policies, such as tariffs, quotas, or import licensing schemes, and refrain from demonizing environmental, public health, and other legitimate public interest policies as "significant trade barriers," especially those that treat domestic and foreign goods, firms and services alike.