



Comment to the Office of the United States Trade Representative

*Re: Significant Foreign Trade Barriers for the 2025 National Trade Estimate Report Docket
USTR-2024-0015*

October 17, 2024

Public Citizen welcomes the opportunity to provide written comment to the Office of the United States Trade Representative (USTR) on the 2025 National Trade Estimate (NTE) report. Public Citizen is a nonprofit consumer advocacy organization with more than 500,000 members and supporters.

At its core, the NTE report is a value judgment, a proclamation to the world about what U.S. public policy priorities are and what they are not. For years, USTR's annual review of U.S. trade partners' "significant trade barriers" (required by statute 19 U.S. Code § 2241) has focused on labeling an array of other countries' public interest policies related to public health and the environment, food-labeling and privacy laws, and even kosher and halal faith-based dietary standards as illegal trade barriers. A trade policy that prioritizes the interests of workers and consumers must be premised on what is in the public interest.

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 public interest measures and for USTR to effectively arm commercial interests to attack similar policies domestically by labeling such measures categorically as trade barriers. As such, we were encouraged to see Ambassador Katherine Tai's explanation of the original purpose of the statute, which she described in a recent response to Senate Finance Questions for the Record:

The statute requires USTR to identify trade barriers in order for USTR to then seek to remove those barriers. According to the legislative history, Congress intended for USTR to "consider vigorously utilizing existing authorities" to "deal with the identified barriers." Thus, the exercise is not simply listing barriers, but listing barriers the United States then seeks to remove. Prior NTEs have, for example, listed import licensing for narcotics as a trade barrier. Consistent with the statute, and with our values as a nation, the United States does not to seek to "deal with" a measure that, while it may impact trade, is for the purpose of protecting the public.¹

¹ Ambassador Katherine Tai, "United States Senate Committee on Finance Hearing on the President's 2024 Trade Policy Agenda: Responses to Questions for the Record for Ambassador Tai," Senate Finance Committee. April 17, 2024. Available at:

https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_for_ambassador_katherine_tai.pdf

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 to 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. While there is work still to be done, Public Citizen acknowledges and appreciates the progress on this front.

Making Progress on Domestic Digital Rights Legislation

The 2024 report captured public attention as it was significantly different from previous versions in important respects. Rather than unthinkingly listing laws that may impact large U.S. multinational corporations, the report explicitly recognizes that countries have “a sovereign right to adopt measures in furtherance of legitimate public purposes,” and therefore adopts a more nuanced approach to identifying barriers to trade, in particular with regard to digital trade.

This change has been met with predictable [outrage](#) by representatives of big U.S. tech companies, who are accustomed to having their long list of gripes related to other countries’ regulations regurgitated in NTE reports. But the shift shown in the 2024 report should have come as no surprise, as USTR made clear its decision to reconsider Trump-era digital trade rules that may conflict with congressional and regulatory efforts to rein in Big Tech. This is a position that nearly [90 members of Congress](#) and [dozens of civil society groups](#) have applauded.

Many policy priorities labeled as ‘digital trade barriers’ by Big Tech corporations are actually pro-privacy, anti-discrimination, and anti-monopoly safeguards. As governments around the world, including our own, work to regulate the rapidly changing tech space, it does not make sense to list these new regulations as ‘barriers to trade.’

Public Citizen also welcomes the exclusion from the 2024 report of a range of pro-competition measures that were previously identified as barriers to digital trade. Among the measures no longer targeted are Europe’s Digital Markets Act, which seeks to crack down on abuse of dominance by digital gatekeepers, and South Korea’s law on app stores, which requires app store providers such as Google and Apple to allow diverse payment systems (not only their own) and to allow app developers to sell on other platforms. The report also excludes certain other measures that aim to bring greater fairness to the digital ecosystem, such as Australia’s News Media Bargaining Code and Canada’s Online News Act, both of which implement mechanisms for revenue-sharing between online platforms and news creators.

Big Tech platforms may not like the various policies that previous reports labeled as “unclear”, “potentially restrictive” or “burdensome.” Nonetheless, it should not be the business of the U.S. government to discourage other countries from safeguarding their populations’ privacy, personal data, and security, much less to take any actions in the “trade” sphere that foreclose U.S. policymakers’ space to enact robust digital governance measures domestically.

While the most recent report is a step in the right direction in terms of aligning the administration's domestic tech accountability goals with its trade agenda, it does not go as far as it could in recognizing valid public interest and consumer protection concerns in a number of countries. There are still [22 jurisdictions](#) with sections on 'digital barriers to trade' (compared to 28 in Trump's 2020 NTE) — revealing the lie behind Big Tech's claim that USTR has dropped their interests entirely.

Most Public Interest Policies Still in the Crosshairs

While the report no longer criticizes South Africa's efforts towards economic equity post-Apartheid and excludes past criticisms of New Zealand's popular health programs controlling medicine costs, for example, a number of legitimate public policies continue to be listed as trade barriers in this year's report, including:

- The EU's regulations on pesticides, the Farm to Fork Strategy for alternative sustainable farming methods, and regulations on antimicrobial resistance and veterinary medicinal products.
- The EU's forthcoming Carbon Border Adjustment Mechanism (CBAM) regulation, scheduled to commence in 2026, which will levy charges on imported products' embedded emissions.
- Halal certification requirements by predominantly Muslim nations, such as Brunei, Egypt, Indonesia, Malaysia, and Qatar.
- Mexico's decision to phase out glyphosate and glyphosate-containing products, such as Monsanto's "Round-Up."
- Regulations on genetically engineered (GE) food in the EU, India, Kenya, Mexico, Peru, Russia, and Turkey.
- Thailand and other countries' regulations concerning beef and pork products treated with beta-agonists like ractopamine.
- Indonesia's mandate for testing heavy metals in cosmetics and Kuwait's stipulation for health certificates disclosing the country of origin for imported cosmetics.

These and other public interest policies should not be listed in the 2025 NTE report. USTR should continue its reassessment of the goals of the NTE report, acknowledging not just countries' sovereign right to regulate in the public interest, but their obligation to do so.

The Trade Barriers USTR Should Be Pursuing

Since 2022, USTR has included labor and the environment as new categories of foreign trade barrier:

- Labor (e.g., concerns with failures by a government to protect internationally recognized worker rights, including through failure to eliminate forced labor, or failures to eliminate discrimination in respect of employment or occupation);
- Environment (e.g., concerns with a government's levels of environmental protection, unsustainable stewardship of natural resources, and harmful environmental practices);²

Public Citizen commends USTR Tai for adding labor and environmental violations to the NTE report. When companies abroad are permitted to abuse workers and pollute with impunity, the local community of course suffers, but so do U.S. workers forced to compete with a flood of imports subsidized by social and environmental dumping. U.S. companies are incentivized to offshore production to take advantage of cheap labor and lax environmental standards -- or at least to threaten to do so to weaken domestic workers' collective bargaining power. We encourage an expanded focus on these new categories, which would be in line with the original intent of the statute to name and shame policies against the public interest.

Looking Ahead

During the Biden administration, the Office of the USTR has taken great leaps to correct the harms of corporate-captured trade policy and end past problematic practices in previous NTEs. This new focus is aligned with the administration's domestic priorities and with public opinion. We urge USTR to continue to build on this progress in the 2025 NTE report by limiting the report's scope to actual trade policies, such as tariffs, quotas, or import licensing schemes, and refraining from demonizing environmental, public health, pro-digital competition, and other legitimate public interest policies as "significant trade barriers," especially those that treat domestic and foreign goods, firms, and services alike. There is still more work to be done to ensure that the NTE does not inappropriately target other countries' public health and development laws. This would be consistent with the Biden-Harris administration's stated "worker-centered" approach to trade, that does not simply privilege large corporate interests over all else, but recognizes that trade policy should complement, rather than undermine, public interest goals.

² United States Trade Representative, "2022 National Trade Estimate Report on Foreign Trade Barriers," March 2022. Available at: <https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf>