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Why We Need Fairer Trade: How Export Barriers Cost America Jobs

By Ed Gerwin and Anne Kim

In an increasingly competitive global economy, governments around the world are relying on tactics both subtle and brazen to shut out American-made products and services. Left unchecked, foreign barriers to American exports pose a significant threat to American economic growth and job creation. This report details some of the most egregious practices that foreign countries use to keep out American goods and services—practices that rob American companies of new sales and American workers of new jobs. Our report also calls for strong measures to fight back, including a renewed push for more of the tough trade agreements that have already won fairer treatment for American companies in key markets. We also call for more aggressive enforcement of existing trade deals to ensure that we get everything we've already bargained for.

THE PROBLEM

Foreign governments unfairly shut out American products and services

If you're an American itching for a motorcycle, you can hit the open road today on a brand-new Harley-Davidson "Fat Boy" for just about $17,000, including taxes, license and registration fees.[1] But if you're a Brazilian, a Vietnamese or an Indonesian, that same ride will cost you up to three times that much—between $40,000 and $50,000.[2]

The difference isn't due to high overseas shipping costs or because a motorcycle license costs more in Brazil or Indonesia. Rather, it's the result of the many discriminatory duties and taxes that foreign governments levy on American-made Harleys to stifle competition with their local motorcycle producers.[3]

Nor is Harley-Davidson alone. Around the world, iconic American brands, such as Microsoft, KFC, General Electric, FedEx and John Deere, as well as innovative American small businesses,[4] face an array of unfair trade barriers from foreign governments determined to keep them out. Likewise, American farmers face huge obstacles selling Washington State apples, Montana beef or Tennessee whiskey because of arbitrary foreign rules, corrupt customs practices or excessive duties. In an ever-dynamic and competitive global economy, foreign governments are resorting to protectionist policies to win every advantage they can to promote home-grown industries and squash competition. At the same time, they are aggressively seeking new trade deals to knock down obstacles in other countries to their own exports.

These developments have real consequences for American jobs. Without tough action to fight back and insist on fairness for American exports, small and large American companies and their workers will be left behind and will continue to lose out on billions or even trillions of dollars in potential new opportunities around the world. Harley-Davidson, for example, is a $6 billion U.S. company that earns about 30% of its revenues from foreign sales, even in the face of current foreign trade restrictions. Eliminating punitive foreign tariffs and taxes would make Harley's Fat Boys much more affordable for foreign riders, and could easily translate into hundreds of millions of dollars of new U.S. exports.[5]

Exports are an increasingly essential driver of American economic growth and employment and are critical to the success of many American companies.[6] American exports must continue to grow to support sustainable, long-term economic prosperity and good-paying jobs.[7] If we are to meet President Obama's vital and ambitious goal of doubling U.S. exports in five years, a concerted effort to tackle unfair barriers to trade is essential.[8]

In this report, we detail some of the most common and destructive strategies that foreign governments use to shut out American exports—strategies that severely limit our ability to create new jobs. We also argue that the best solution is one that's in our hands already: the use of expanded trade enforcement and new trade deals to make trade fairer for American workers and companies.

We face a choice. We can empower Congress and the Administration to pursue a proven strategy for opening new markets for American exports. Or we can listen to the isolationists and backward-looking critics who would have us flee from global engagement, tear up existing deals and sit idly by while foreign governments run roughshod on American-made goods and services. To us, the answer is clear: America must act now to negotiate the agreements that will protect our interests.

Trade Barriers: The 100-Headed Hydra
The Evolving and Growing Threat of Foreign Barriers to U.S. Trade

Foreign trade barriers are hardly new. During the Colonial era, Britain's Navigation Acts required American exports to be shipped exclusively on British boats manned by British sailors. These and other discriminatory trade limits were a significant cause of the American Revolution.[9]

Today, U.S. exports continue to face significant foreign restrictions. There are ample indications that these limits present a major and evolving threat to U.S. exports.

First, more foreign governments are joining the game of blocking trade, often at the strong urging of their domestic industries. The recent world economic crisis has contributed to this momentum, as governments desperate to stoke up domestic demand and prop up their economies resort to protectionist measures.[10] Some countries, such as China, are also less scrupulous than we are about the means by which they achieve their growth. For example, China historically has had few qualms about pirating intellectual property or carving out lucrative domestic markets for their "national champions." (At the same time, China is aggressively using its economic prowess to extract from other countries better access and fairer treatment for China's own exports.)

Second, foreign governments are becoming more sophisticated about how they limit trade. While barriers to trade have historically taken more obvious forms, such as taxes or tariffs on imports, today's barriers to trade are often harder to spot and therefore harder to stop. Import taxes and duties are steadily being replaced by a dozen or more types of "non-tariff barriers," which are increasingly problematic for U.S. exporters seeking to sell American goods and services in foreign markets.

While non-tariff barriers have been around for years, they are growing in significance as obstacles to U.S. exports.[11] These non-tariff barriers can take a multiplicity of guises, including discriminatory rules and regulations, arbitrary customs procedures, customs red tape, import licensing burdens and any number of other bureaucratic hurdles.[12] The U.S. government now publishes specialized reports on two kinds of non-tariff barriers—technical trade barriers and barriers to U.S. food and farm exports—that have become particularly worrisome.[13]

In some instances, these new trade barriers are blatantly illegal. In others, foreign governments create illegal trade restrictions by applying otherwise legitimate requirements in a manner that unfairly discriminates against imports. In a surprising number of cases (such as high import tariffs or archaic customs practices), unfair foreign trade barriers can actually be *legal* under international trade rules because the conduct or country is not covered by an existing U.S. trade deal.[14] When trade barriers are discriminatory but legal, better enforcement can't fix the problem, because the United States has no rights to enforce.

The Rogues Gallery
Eight "Worst Practices" Against American Exports

We list below eight of the worst examples of foreign trade restrictions that are blocking export opportunities for American goods and services and holding back American jobs and economic growth. In compiling this list, we reviewed thousands of pages of reports and data, including the USTR's extensive 2010 reports on foreign trade barriers, technical barriers to trade, food and farm measures, and intellectual property rights; the President's 2009 Trade Policy Agenda Report; and extensive submissions from U.S. companies that can't achieve their export potential because of foreign trade restrictions.[15]

This list of "worst practices" is by no means exhaustive and represents a mere snapshot in time. Some foreign countries are even now devising new strategies to limit international competition, all at the expense of export business for American companies and workers.

#1 TECHNICAL BARRIERS
French haute couture: skirts for lawnmowers

Foreign governments are increasingly gaming the system for their domestic industries by imposing unfair "standards-related measures" on imports. These include technical regulations, product standards and related testing and certification requirements.

Standards can legitimately promote important goals, such as facilitating commerce or protecting the environment, public health or consumer rights. However, they can also cross the line and become unfair technical barriers to trade (or "TBTs" in trade-speak) when they are discriminatory, non-transparent or otherwise unjustified. [16]

An infamous example of an unfair technical trade barrier is an ongoing effort by French regulators to challenge John Deere and other American lawn mower manufacturers (who have $1 billion in annual sales in the EU) by requiring American riding lawnmowers to wear "skirts" over their transmissions.

Although French regulators claim these skirts are a necessary safeguard, they can't point to supporting data to back up this claim. Moreover, neither leading international standards organizations nor any other European government has adopted this requirement. French officials also imposed the requirement in a highly irregular manner—through unannounced customs seizures initially directed solely at American products and by requiring that companies make untested and potentially unsafe modifications before the mowers could even be released.[17]

Other variations on the TBT strategy include:

- **Arbitrary definitions for certain products.** Some European countries want to redefine "extra virgin" olive oil to exclude oil from American olives. The EU and Israel require "whiskey" to be aged at least three years (as is required for Scotch and Irish whiskey—but not for the good stuff from Tennessee or Kentucky).[18]
- **"State-of-origin" labels and other burdensome labeling requirements.** Israel requires U.S. auto parts to be marked with the U.S. state of origin (e.g., "Made in USA-Michigan") while parts from other countries need only include the country (e.g., "Made in China"). Taiwan requires U.S. exports of furniture and electronics to be marked—like milk—with an "expiration date!"[19]
- **Lack of meaningful access to the regulatory process.** Korea provides too little time for comments on proposed regulations and often fails to take U.S. industry comments into account.[20]
- **Requiring in-country testing of imports.** China insists that only Chinese labs can determine whether electrical and medical imaging products meet requirements for the China Compulsory Certification mark.[21]
- **Encouraging copycat standards in developing countries.** The EU is working hard to install EU technical standards as standards for the rest of the world. For example, European electrical manufacturers are trying to shape Brazil's new electrical standards so they favor European technology and shut out American products. The EU is also effectively using international standards bodies like the International Standards Organization (where they have 27 votes to 1 for the U.S.) to subvert U.S. competition.[22]

THE BOTTOM LINE FOR AMERICA: The Organization for Economic Cooperation and Development ("OECD") estimates that complying with foreign technical standards can add as much as 10% to the cost of an imported product.[23] When foreign governments abuse standards to block competitive U.S. goods and services, these measures can have even more devastating effects on U.S. export sales and American jobs. On the other hand, under NAFTA, the United States, Canada and Mexico are eliminating standards barriers by aligning their technical regulations on products ranging from appliances to chemicals to cars.[24]

#2 UNFAIR STANDARDS FOR FARM AND FOOD EXPORTS

"We answer to a higher authority"

In a long-running ad campaign, Hebrew National compared its kosher hot dogs to hot dogs that meet U.S. government standards. After listing additives and fillers that Uncle Sam allows in regular franks, the ads noted that these ingredients aren't in Hebrew National's kosher dogs, because ". . . we answer to a higher authority."[25]

Like Hebrew National, governments are free to establish measures (including levels of protection) to safeguard human, animal or plant life or health. In trade jargon, these measures are known as "Sanitary and Phytosanitary" or "SPS" measures.

However, U.S. farm and food exports are frequently unfairly blocked—intentionally or unintentionally—by foreign SPS measures, including measures designed to protect domestic industries more than public health. These include rules that are not based on science, that unfairly favor local producers over imports, that unreasonably differ from international standards, or that result from a non-transparent process. A smorgasbord of the American food products that have faced unfair barriers includes:

- **Pork.** In 2009, more than 30 countries blocked imports of U.S. pork valued at $900 million annually. These countries claimed to be motivated by the H1N1 or "swine flu" virus, even though extensive scientific evidence shows that the virus can't be transmitted by eating properly handled and prepared pork.[26]
- **Apples.** Argentina and Australia block imports of U.S. apples based on plant disease claims that are not backed up by sound science.[27]
- **Potatoes.** China bans imports of U.S. fresh potatoes based on alleged pest concerns and has been dragging its feet in addressing the technical basis for this ban since 2000, when the United States officially requested that China allow certain U.S. potato imports.[28]
- **Rice.** Two different Japanese government agencies require 100% of U.S. rice imports to undergo repeated, extensive and unnecessary testing for hundreds of different chemicals, many of which pose no risk.[29]
- **Biotechnology.** U.S. companies are leaders in using biotechnology to create improved crops that provide the world with vital food, fuel and feed. Despite repeated studies demonstrating their safety, the EU and other countries continue to impose unjustified import bans or labeling requirements on U.S. biotechnology products.[30]

THE BOTTOM LINE FOR AMERICA: U.S. farm and food exports account for some $100 billion in annual trade and support 1 million U.S. jobs.[31] Eliminating foreign SPS trade barriers could add billions more in farm exports and more jobs in America's farm communities.

#3 PROHIBITIVE TARIFFS AND TAXES

No chicken for the Colonel

Despite what European food purists may say, American restaurant chains are widely popular worldwide. (KFC, for example, has almost 2900 restaurants in 650 cities in China, making Colonel Sanders almost as ubiquitous as Chairman Mao.[32]) This popularity is due in no small measure to the fact that KFC, McDonald's, Pizza Hut and other chains insist on consistent standards, and often meet this requirement by using American-made ingredients in their foreign outposts.

In many countries, however, high import duties and taxes on ingredients like chicken, cheese and French fries take a big bite out of profits and growth for U.S. food chains, while hitting local consumers hard in the pocketbook.

India, for example, now imposes a prohibitive 100% import duty on frozen chicken parts and fully cooked chicken, even though the country currently faces a nationwide shortage of poultry. Indian diners ordering pizza, fries or seafood also pay much higher prices as a result of India's 30% import duties on cheese, toppings, dough, frozen fries and cooked seafood. When India's taxes and "special additional" tariffs are taken into account, effective duties on these key ingredients are over 40%.[33] If these high costs tempt Indian diners to have a shot of Kentucky Bourbon or Tennessee whiskey, they would face duties and taxes of 160% on these American imports.[34]

As shown in the table, sky-high duties on a wide variety of other American foods make these products outrageously expensive for foreign consumers. In many cases, these high fees effectively bar otherwise competitive U.S. imports.

Sample Duties/Border Taxes on American Food Products	
Canned soup	30% (India, Korea)[35]
Vegetable juice	30% (India, Korea)[36]
Goldfish crackers	30% (India)[37]
Tomato sauce	35% (Vietnam)[38]
Grapes	45% (Korea)[39]

Chocolate candy and confections	55-62% (India)[40]
Pears	45% (Korea)[41]
Oranges	51% (India, Thailand)[42]
Oreo cookies	45% (India)[43]
Apples	50% (India)[44]

THE BOTTOM LINE FOR AMERICA: The U.S. food, beverage and consumer packaged goods industry is a $1.2 trillion industry that employs 14 million workers and contributes more than $1 trillion to the U.S. economy.[45] In the 17 countries with which the United States has trade agreements, American food companies face few, if any, import duties like the ones described above.[46] But in other areas of the world, America's food and farm sectors face high tariffs that force them to leave significant export opportunities on the table. For example:

- Yum! Brands, the parent company of KFC, Pizza Hut and Taco Bell, estimates that high foreign duties cost hundreds of millions of dollars in additional U.S. exports.[47]
- Campbell's estimates increased U.S. exports of as much as $200 million if India and Korea removed current duties on vegetable juice and canned soup.[48]
- Duties in seven countries on frozen potato fries and dehydrated potatoes block more than $80 million in additional U.S. exports.[49]
- Duties in 11 countries on U.S. table grapes prevent $100 million in additional U.S. exports.[50]
- India's duties on U.S. apples block some $100 million in U.S. exports.[51]
- Japan's duties on U.S. oranges block additional exports of at least $150 million.[52]

#4 RED TAPE AT CUSTOMS

"Your papers, please!"

We've all seen the movie. Our hero rides on a train deep behind enemy lines. He's approached by an evil, trench-coated government agent, who says simply, "Your papers, please!" We breathe a sigh of relief when the agent moves on.

American exporters face similarly high drama every day at foreign ports. Although the countries we trade with are largely friendly, their customs systems frequently are not. Often, millions of dollars of U.S. trade can be blocked by problems with a simple (and often unnecessary) piece of paper.[53]

Countless examples include:

- **Refusing to accept U.S. forms of certification.** India, for example, has blocked some $25 million in U.S. dairy exports over each of the last five years while it "considers" approving the certificates to accompany these products. Russia refuses to approve USDA certificates for exports of U.S. egg products.[54]
- **Demanding documents that can't legally be produced.** Chile, among others, requires phytosanitary* certificates for processed food products that the USDA cannot issue. As a result, U.S. products without these certificates are effectively barred from these markets.[55]
- **Slow-walking paperwork.** Argentina took 150 days in 2008 to process import licenses for U.S. toys, and virtually stopped issuing licenses in early 2009.[56] Ecuador's government often asks its farm sector for permission to grant import certificates to U.S. exporters (and, not surprisingly, the answer is often "no").[57]
- **Requiring excessive or burdensome paperwork.** Egypt requires a raft of documents, certificates and approvals for imported medical equipment and supplies, even for items like tongue depressors and bandages.[58] Pakistan requires invoices to be placed inside shipping containers, even though, in modern supply chains, shipments and documents are often generated in different locations or at different times or by different parties.[59] In Asia, exporting rice may involve as many as 15 different parties, 24 documents and 700 pieces of data![60]

THE BOTTOM LINE FOR AMERICA: Red tape at foreign customs offices is a significant drag on U.S. exports. Needless customs requirements add a whopping $650 billion in costs to worldwide trade each year. Foreign customs bureaucracy can increase the cost of American goods by as much as 15%, and often price otherwise competitive American goods completely out of the market.[61]

* "Phytosanitary" refers to the presence of pests or pathogens in agricultural products.

#5 ARBITRARY LIMITS ON SERVICES EXPORTS

"When it absolutely, positively *can't* get there overnight"

In most public discussions about trade, the words "trade" and "deficit" are invariably linked. But this obscures the fact that America actually enjoys a commanding trade *surplus*—the world's largest—when it comes to services, such as overnight delivery, professional services, finance and host of other high-end sectors.

Global powerhouse FedEx, for example, employs almost 270,000 workers around the world—including almost 220,000 in the United States—ships seven million packages a day to 220 countries and territories around the world and generates revenues of more than $35 billion a year.[62] Other can-do American service companies are world leaders in banking, insurance, telecom, logistics, information technology, engineering, legal, retail and entertainment, and large and small U.S. firms are big exporters of professional, business and technical services.[63] Overall, the United States exported more than $500 billion in services in 2009, with a surplus of some $136 billion.[64]

But even in services, America's strong competitive advantage is blunted by discriminatory foreign trade barriers in countries that are eager to cut into our lead. Some of the industries that have been in the crosshairs include:

- **Express delivery.** In Brazil, customers must pay a 60% duty on all goods imported by express delivery companies. Other countries give their national post offices unfair competitive advantages by restricting overseas express shipments or limiting the right of U.S. express delivery companies to fully own operations in the foreign country. Some countries, including Japan, China, Egypt and Thailand, even force U.S. express companies to help subsidize regular mail delivery, while others take fees from express companies to subsidize products offered by their national postal operators.[65]
- **Movies and Television.** Spain requires movie theatres to show one day of "EU" films for every three days that non-EU films are shown. Canada requires that 60% of its broadcasts be "Canadian" programs.[66]
- **Accountants, architects, doctors and lawyers.** China requires American construction, design, architecture and contracting firms to meet onerous investment and staffing rules, while Chinese firms are exempt. The Philippines allow only Filipinos to practice law, medicine, accounting and engineering.[67]
- **Banking, finance and insurance.** U.S. banking, finance and insurance firms can't recognize their full potential in foreign markets because of discriminatory regulations and other limits.[68] China has a growing private pension market for its 1.3 billion citizens, but has largely closed this

lucrative business to American pension managers. Non-Egyptian banks have not been able to set up new banks in Egypt for 20 years. India severely limits the ability of foreign banks to set up new branches, while in Thailand, American and other foreign banks can't have off-site ATMs. American financial services companies also report widespread problems due to the lack of transparency in Korea's financial regulatory system.[69]

THE BOTTOM LINE FOR AMERICA: The services sector accounts for over 80% of U.S. GDP, more than 80% of U.S. jobs and one-half trillion dollars in U.S. exports. If America is going to create new jobs through trade, a key place to start is with our world-class services companies. American financial service companies, for example, are pursuing significant new opportunities in Chile after a trade agreement eliminated unfair obstacles to American companies.[70]

#6 PIRACY, COUNTERFEITING AND FORGERY
A "Sonkist" orange, anyone?

America has always been a nation of invention and ideas. Founding Fathers like Ben Franklin and Thomas Jefferson were prolific inventors, and the importance of patents and copyrights as drivers of growth is enshrined in the U.S. Constitution.[71] The "Yankee Ingenuity" of our diverse country is a critical and growing part of America's comparative advantage in sectors ranging from drugs to software to consumer goods and the arts. Patents, copyrights and trademarks are increasingly valuable to American companies competing in the global economy. Indeed, more than 50% of U.S. exports now depend on some form of intellectual property ("IP").[72]

Unfortunately, some global competitors and criminals are good at a destructive kind of ingenuity—developing new ways to steal valuable American ideas. Often, foreign governments do little to stop copying, counterfeiting and forgery. Too often, they are wiling accomplices. Countless examples abound:

- **Robbed research.** Pharmaceutical companies spend more than $50 billion annually on clinical research and development for new drugs. However, many countries let competitors take a "free ride" on this valuable clinical data by allowing them to use it prematurely to get marketing approvals for their own competing products. Additionally, some countries use or threaten "compulsory licensing" to undermine valuable drug patents.[73]
- **Phony pharmaceuticals.** The production and export of counterfeit drugs in countries such as India and Indonesia is a huge international problem.[74]

Some 10% of the drugs on world markets are thought to be fakes.[75] This not only has serious financial implications for U.S. pharmaceutical exporters, but, even more significantly, poses severe health risks for the world's consumers.†

- **Stolen software.** Pirated software accounts for more than 60% of the software used in Asia, Central and Eastern Europe and Latin America. In many countries, software piracy rates reach 90%. In a number of countries, the government itself is a software scofflaw. Despite a 10-year-old government order, China's government agencies still make extensive use of illegally copied Microsoft Windows and other U.S. produced software.[76]
- **Pirated pictures.** Pirated copies of American movies, music and video games are available on illegal markets within days of their legitimate release. Illegal camcorder recording of movies is rampant in Mexico, as is Internet piracy in Spain. 65% of Russia's sound recordings are bootlegged, leading to estimated losses for legitimate labels of $2.7 billion.
- **Bootlegged baseball.** Foreign-based internet piracy of live Major League Baseball, NFL, NBA, NHL and NCAA games and other American sports broadcasts robs copyright owners of significant revenues. One notorious online piracy hub, "TV Ants," uses a domain name that appears to be registered to a Chinese computer science professor at Zhejiang University. The site pirates nearly every live major U.S. sports broadcast and illegally profits by selling advertising on the "TV Ants" media player.[77]
- **Counterfeit California oranges.** "Sonkist" oranges are widely available in Chinese markets. In fact, Chinese factories actually manufacture sham "Sunkist" (or "Sonkist") labels for Chinese street vendors to stick on their fake fruit. Worse yet, these bogus labels are exported to other countries, including Europe,[78] so international fruit forgers can join in the fun.‡

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† A study in the New England Journal of Medicine reports that, in early 2008, 150 men in were admitted to hospitals in Singapore with severely low blood sugar. Seven of the patients sustained brain damage and four ultimately died. Many of the patients admitted to taking counterfeit versions of Viagra or Cialis. The counterfeit drugs contained a powerful anti-diabetes medicine, along with leaded road paint, floor polish, shoe polish, cement powder, brick dust, nickel and arsenic. "An Unusual Outbreak of Hypoglycemia," New England Journal of Medicine, vol. 360:734-736, February 12, 2009.

‡ For a photo of a Chinese vendor openly attaching forged "Sunkist" labels to Chinese fruit, go to www.regulations.gov, enter ID number "USTR-2010-0003" and sort by submission ID number to locate Sunkist's submission, USTR-2010-0003-0234, dated February 17, 2010. The picture and other pictures of fake labels are at Exhibit D.

THE BOTTOM LINE FOR AMERICA: America's IP-related industries are key drivers of the U.S. economy. For example, American pharmaceutical companies supported 700,000 U.S. jobs in 2006 and had almost $300 billion in economic impact in the United States. America's core copyright industries (including software, film, video and books) employ 5.6 million U.S. workers and add almost $900 billion to the U.S. economy.

#7 RIGGED BIDS AND CORRUPTION

Foreign thumbs on the scale; foreign hands on the take

Among its many strengths, General Electric is one of the world's leading producers of wind energy equipment. But in China, it's facing strong and increasing headwinds as it tries to capture a piece of the $8.6 billion Chinese wind energy market.

The reason is that China has adopted a broad array of government procurement policies aimed at ensuring that most new wind energy equipment bought by China will: (1) be made in China, (2) be based on Chinese-owned IP (under China's infamous "indigenous innovation" policy) and (3) embody Chinese technical standards.

As a result of these policies, U.S. and other foreign wind turbine producers have seen their Chinese market share plummet from 75% to 24% from 2004 to 2008. 2009 foreign sales were expected to drop yet further, to 15% of the total Chinese market.[79]

China is not the only country in which competitive American bidders don't get a fair shake in government contracting, and the problem isn't limited to wind energy. The list of countries in which American companies are essentially shut out of government procurement includes India, Spain, Japan and others. For example, U.S. firms annually win less than 1% of Japan's massive $195 billion public works sector.[80]

But even rigged bidding processes are a relatively benign problem compared to the outright corruption that American companies often face abroad. Corruption is a significant barrier to trade in at least 25 of the top 58 U.S. export markets.[81] Corrupt customs officials often block or hold up imports from America. Crooked regulators or judges turn a blind eye to piracy of U.S. products or other thefts of valuable American property and investments.[82] Foreign officials often selectively enforce local laws against American companies only. Repeat offenders include:

- **Ukraine.** Corrupt courts and lax laws in the Ukraine have enabled organized crime to literally "hijack" legitimate companies from U.S. and other foreign investors.[83]
- **China.** Chinese officials routinely ignore regulations—unless they are carrying out a vendetta or want a favor in return. And guess what? Chinese companies often benefit over Americans. [84] In addition, while China reliably collects its 5-17% value-added tax (VAT) on imports, Chinese companies often evade the tax, putting U.S. imports into China at a significant price disadvantage.[85]
- **Kenya.** A number of U.S. firms have left Kenya in part due to that country's rampant corruption. Some estimate that more than $10 million in bribes is paid each year in the East Africa to police and customs officials.[86]

THE BOTTOM LINE FOR AMERICA: Government contracting accounts for an estimated 15% of the GDP of OECD countries, and the percentage is even higher in other nations. American companies can't compete for a fair share of this business, however, when public bidding and other aspects of a country's economy are fixed by favoritism or stained by corruption.[87] This is one reason why the U.S. pursued an agreement with Peru. Under our deal with Peru, Peru no longer applies a 20% price preference for local companies against American bidders on covered bids.[88]

#8 "NATIONAL CHAMPIONS"

Rocky versus Drago—except Drago wins

In the Cold War classic *Rocky IV,* Rocky Balboa—a do-it-yourself hometown hero trained on South Philly's gritty streets—defeats the evil boxer Ivan Drago—a steroid-pumped, drug-enhanced product of the Soviet military-industrial machine.

While *Rocky IV* ended happily, U.S. companies are having less luck against foreign competitors who, like Drago, operate with the full weight of their governments behind them and use their favored status to muscle aside rivals and pump up opportunities.

For example, under a "secret" agreement, the European Union appears to be favoring two European suppliers of enriched nuclear fuel and imposing strict limits on imports from the United States.[89] In China, only a monopoly created by the People's Bank is allowed to operate electronic payment systems for Chinese currency credit cards, cutting leading American companies like Visa out of this lucrative service sector.[90]

Other examples include:

- The Canadian Wheat Board's monopolistic marketing practices provide unfair advantages for Canada's wheat farmers over their U.S. competitors.
- A government monopoly manages and strictly regulates the import of U.S. rice into Japan.
- Japanese ports are run under an old boys' network that forces exporters to use Japanese-only companies to unload their cargoes. Prices are fixed by a collusive industry association that intentionally keeps prices high.[91]

THE BOTTOM LINE FOR AMERICA: In America's early years, some states let local monopolies shut out competition from other states. The Supreme Court outlawed these unfair practices in the 1820s and unleashed a torrent of new American economic activity.[92] Today, foreign monopoly practices present U.S. exporters with a similar challenge—and a significant opportunity.

THE SOLUTION

Tough new trade deals and stepped-up enforcement

So how can America fight back?

Fortunately, the most potent weapon we can deploy against export barriers is already in our arsenal: the trade agreement. The question is, will America step forward to use it, or will we allow anti-trade forces to drive an agenda that will lead to more trade barriers, fewer exports and less growth?

The United States has existing reciprocal trade deals with 17 countries. In these countries, our agreements have broken down trade barriers and opened new opportunities for American companies and workers. They have also eliminated the vast majority of duties on U.S. imports into these markets and given the United States considerable leverage to demand fairer treatment for U.S. exports. This leverage includes such tools as new requirements for greater regulatory transparency, expanded U.S. access to foreign government procurement, and stronger protection and enforcement of U.S. IP rights.[93]

But in countries with which we have no reciprocal agreement or no other tough rules for fair play,[94] the Wild West usually prevails. Without the limitations imposed by an effective and comprehensive trade deal, foreign governments are often free to devise whatever ploys they want—like the barriers described in this report—to shut out American companies and products.

This is why America must again demand tough new trade deals—to give us the tools to call out renegade practices, put a stop to unfair barriers and hold foreign governments accountable for the way they treat American companies and workers. In particular, we should pursue more market-opening initiatives with major economies, such as Europe, China, India, Brazil, the ASEAN countries and Japan, and in sectors where we are strongest, such as high technology, services, clean energy and health.[95]

The stakes also go beyond the fair treatment of American companies and workers to the future growth of the American economy. Policymakers now broadly agree that exports must play a much bigger role in America's "post-consumption" economy. The United States can no longer rely on housing bubbles, excessive consumer debt and financial speculation to drive U.S. growth and create new jobs.[96] For our economy to grow, the United States must aggressively seek new opportunities among the rising global middle class.[97]

What follows is a three-step strategy for how we can ensure that America gets its fair share of the global economy and future growth.

STEP 1: RECOGNIZE THAT TRADE DEALS WORK

Trade deals stop bad foreign practices and make trade fairer for U.S. companies

In fact, the United States has had striking success in exporting to countries with which we have free trade deals. According to a U.S. Commerce Department analysis, U.S. trade agreement partners accounted for 7.5% of global GDP in 2006, but took in a whopping 42.6% of all U.S. exports during that year.[98] Commerce Department data also shows very substantial increases in U.S. exports after recent trade agreements entered into force:

BEFORE AND AFTER:
Impact of Recent U.S. Trade Agreements on U.S. Exports and Imports[99]

Trade Agreement	Change in U.S. Exports	Change in U.S. Imports
Australia (2004-2008)	+59%	+41%
Bahrain (Aug. 2006-July 2009)	+48%	-20%
CAFTA-DR (2005-2008)[100]	+50%	+7%
Chile (2003-2008)	+341%	+122%
Morocco (2005-2008)	+199%	+97%
Singapore (2003-2008)	+68%	+5%

One reason for the success of trade agreements in promoting U.S. exports is that American exporters often have comparatively more to gain because our partners frequently must eliminate many more trade barriers than the United States. For example, CAFTA-DR countries had to eliminate significant duties on goods from the United States, while most CAFTA-DR country exports to the United States were already duty free, even before the agreement.[101] Similarly, in the pending U. S.-Korea Free Trade Agreement ("KORUS FTA"), Korea would eliminate duties that effectively average 9%, while the United States will eliminate duties that average only 3.5%.[102]

Trade agreements can also make trade more fair for the United States in other ways. For example, the pending KORUS FTA would eliminate many of the various kinds of tariff and non-tariff barriers discussed in this report.[§]

Barrier	How the US-Korea Free Trade Agreement Would Help Fix This[103]
#1 Technical barriers	• Make Korea's rulemaking process more open; require greater justification for technical standards.
#2 Standards for farm and food exports	• Require Korea to recognize USDA certifications for meat and poultry safety and respect international rules for animal health.
#3 Tariffs and taxes	• Eliminate duties on 95% of U.S. consumer and industrial products exports within 3 years. • Through duty eliminations, provide U.S. exporters with an average 9% price advantage over other foreign competitors without privileged access to the Korean market. • Eliminate or reduce tariffs on foods like cherries, French fries, vegetable soups, and oranges.
#4 Customs red tape	• Require international best practices, such as electronic document submission and transparent rulemaking, to speed up document processing at Korean ports.
#5 Limits on services exports	• Open up Korea's market for nearly all major service sectors. • Permit U.S. financial institutions to establish or acquire financial institutions in Korea to supply a complete range of financial services.
#6 Intellectual property protection	• Provide strong, state-of-the-art IP protections for U.S. patents, copyrights and trademarks. • Require strong Korean IP enforcement mechanisms and penalty provisions, including the criminalization of piracy.
#7 Government procurement	• Expand opportunities for U.S. firms in Korea's government procurement process by creating a special working group to oversee the procurement process and assist U.S. companies.
#8 Pro-competition practices	• Promote greater transparency in Korea's regulatory process and customs procedures.

§ As of this writing, the Obama Administration is continuing efforts to address outstanding issues relating to Korea's technical rules involving U.S. auto exports.

STEP 2: GET IN THE GAME NOW

There's a new global arms race—for trade deals

As President Obama said recently, "if America sits on the sidelines while other nations sign trade deals, we will lose the chance to create jobs on our shores."[104]

We must pursue new trade agreements with urgency. Our foreign competitors fully understand the economic and employment benefits of new trade deals, and they are actively negotiating a raft of attractive new market-opening agreements for themselves.

The number of free trade agreements has exploded over the past decade, and these agreements cover an ever-increasing portion of global trade. Almost 400 of these trade deals will be in force by the end of 2010, with many more in development. America's major international competitors—including China, the EU, India, Japan and Korea—are all aggressively seeking new trade deals with major trading partners. Countries in the rapidly growing Asia-Pacific region have been particularly active in seeking better access and fairer treatment for their exports.[105] In the meantime, America has largely been sitting out of the game. And in this game, standing still means falling behind. This places our companies and workers at severe risk of losing new—and current—export business to foreign competitors whose countries are smashing down barriers to their exports.

	Trade deals being negotiated/proposed[106]	New or Potential partners
China	13	Japan, India, Korea[107]
EU	21	India, Korea, ASEAN
India	7	EU, Japan, Korea
Japan	10	China, India, Korea
Korea	14	China, EU, India, Japan
United States	1	Trans- Pacific Partnership[108]

At the same time they are seeking fairer treatment for their exports, foreign governments continue to maintain and create obstacles to U.S. exports. These barriers will present increasing disadvantages for our exports as limits on other countries' exports continue to fall away.[109] Our foreign competitors seem intent on building shiny new expressways to speed their own exports, while continuing to throw up new speed bumps to trade from the United States.[110] America can't continue to go along for an increasingly bumpy ride.

STEP 3: ENFORCE THE BARGAINS WE'VE ALREADY STRUCK

Provide more help for an unheralded army of heroes

Finally, even as we pursue new agreements, we should ensure that the deals we already have provide us with the maximum benefit. This can only happen if the trade experts at the Departments of Commerce and Agriculture and the U.S. Trade Representative get the resources they need to enforce the bargains we have struck.

The staffs at these agencies are on the frontlines, doing the hard, detailed, day-to-day work of breaking down the many roadblocks to U.S. exports. However, in recent years, the U.S. Government's trade enforcement resources have stayed flat, despite considerable growth in trade and trade agreements. If American exports are to double, we will need more export specialists on the ground attacking trade barriers in foreign markets, and we'll need stronger government efforts to enforce U.S. trading rights throughout the world.

The Obama Administration is moving in this direction by proposing a $78 million increase in the Commerce Department's funding for export promotion and enforcement (which could support as many as 328 new trade experts) and by adding $19 million in USDA funding targeted at trade enforcement, especially at breaking down standards and technical barriers facing U.S. farm exporters. Congress should support the Administration with these efforts and should go even further by supporting more funds for USTR to expand its trade enforcement capabilities.[111]

Finally, the United States must do a better job of identifying and prioritizing those trade barriers that pose the most significant impediments to our exports.

CONCLUSION

If the United States is to maintain its rightful place as a global economic leader and a major supplier to the world, we will need to step up our game and stand up for America's rights in a changing global economy. This means aggressively enforcing the deals we already have with other countries to treat American companies more fairly. It also means pursuing new deals to knock down unfair foreign obstacles to U.S. goods and services and to ensure fairer treatment for competitive American exporters.

By working to make trade fairer for American workers and companies, we will not only grow our exports but ensure future economic growth for the country and success for the middle class.

* * *

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ENDNOTES

1 In Virginia, for example, motorcycle registration and title fees and sales taxes on a $16,000 motorcycle would total $516.75. DMV Fees. Virginia Department of Motor Vehicles. Web. May 17, 2010. Available at: www.dmv.state.va.us/webdoc/citizen/fees.asp.

2 High duties and internal taxes would also raise the cost of a Fat Boy to $29,000 in Argentina, $33,000 in Ecuador, $35,000 in India, $25,000 in South Korea, $38,000 in Malaysia, $24,000 in the Philippines, $29,000 in Russia, $26,500 in Singapore, $33,400 in Taiwan and $39,000 in Thailand. In addition, the European Union imposes a duty of 6% on U.S. motorcycles, which is two-and-one-half times higher than the duty that the United States imposes on motorcycles from the EU. This high duty differential makes it difficult for U.S. motorcycles to compete in Europe's highly competitive motorcycle market, which is second in size only to the United States. Hoetler, Timothy K., Harley-Davidson Motor Company. "Barriers to Imports of Large Motorcycles." Letter to the Office of the United States Trade Representative. Nov. 12, 2009. Web. May 17, 2010. Available at: www.regulations.gov. (Docket No. USTR-2009-0033).

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