International Chamber of Commerce
Policy and Business Practices

LOCALIZATION BARRIERS TO TRADE

Prepared by the ICC Commission on Trade and Investment Policy

Summary and highlights

ICC is seriously concerned that policies mandating a certain percentage of local content or requiring companies to localize activities in a country as a condition of doing business in that country present barriers to trade and impede the ability of businesses to operate.

ICC encourages governments to eliminate existing localization policies and refrain from enacting new ones.

ICC calls on governments to focus on alternative policies that will enhance the competitiveness of their economies and attract global business to invest and operate in their country.

ICC INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

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The International Chamber of Commerce (ICC), representing businesses from around the world, is committed to supporting policies for open markets that facilitate the development of global business and drive economic growth. ICC is seriously concerned that recent adoption of policies mandating a certain percentage of local content or requiring companies to localize activities in a country as a condition of doing business in that country present barriers to trade and impede the ability of businesses to operate. This development is especially problematic in the case of developed economies that are more fully integrated in the global economy. These non-tariff localization barriers to trade (LBTs) negatively affect not only the global economy but also the domestic economies in which they are implemented. Alternative policy approaches exist that can more effectively enhance the competitiveness of countries.

There is a growing trend of implementing LBTs in an attempt to create domestic jobs and to promote domestic enterprises by “systematically disadvantaging foreign competitors.”[1] Local governments generally implement policies leading to forced localization for foreign investors and businesses as measures with the nominal intention of:

- protecting or promoting local industries and service suppliers,
- strengthening and maintaining national regulatory supervision over industries, data and banking, and
- providing enhanced confidentiality and security for consumers’ information.

Protectionism can manifest itself in areas as disparate and broad as forced local ownership; forced local employment; forced local data storage and restrictions on e-commerce; forced use of a certain percentage of local content; forced local production as a condition of market access and of preferential investment and tax policies; discriminatory customs requirements and prejudice against foreign direct investment.

These measures run counter to the current global trading system, which since the acceleration of globalization and the explosion of information technology products and services, functions through global supply and value chains. Underlying global value chains is the ability to make decisions about investment and sourcing, and the ability to move data across borders. As various stages of production have moved outside of national borders, multinational production systems and the need for cross-border trade have increased. [2,3,4] Trade has changed in recent decades, making cross-border enterprises more prevalent. Global value chains need smooth trade facilitation, open markets, and opportunities for foreign direct investment.

LBTs negatively affect imports and, because they are intended to insulate domestic markets from foreign trade and investment, effectively render global value chains less efficient. According to the WTO, non-tariff measures are nearly twice as trade-restrictive as tariffs, causing a loss of almost $100 billion in world trade and affecting 3.8 million jobs.[5] Businesses of all sizes and across all sectors rely on the Internet and open data flows to operate efficiently and on a global scale in ways not possible a generation ago. However, LBTs intentionally restrict cross-border data flows, impeding trade and the ability of business and consumers to communicate. Specific types of non-tariff localization barrier to trade, local content requirements (LCRS), are often opaque and complex, making them difficult to analyze and dispute. LCRs create delays, raise costs, and are “susceptible to corruption and playing favorites”.[6]

While governments believe these requirements will ultimately help their domestic economy, localization policies fundamentally distort the global trade system. LBTs and LCRs negatively affect the countries at which

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[1] Ezell, Stephen J.; Atkinson, Robert D.; Wein, Michelle A. “Localization Barriers to Trade: Threat to the Global Innovation Economy.” (Washington, DC: Information Technology & Innovation Foundation, September 2013), 2.

[2] Baldwin, R.. “Global supply chains: why they emerged, why they matter, and where they are going,” in *Global value chains in a changing world.* Ed. Deborah K. Elms, Patrick Low. (Geneva: World Trade Organization, 2013), 17.

[3] Sturgeon, T. “Global Value Chains and Economic Globalization: Towards a New Measurement Framework.” Report to Eurostat. Industrial Performance Center. (Cambridge: Massachusetts Institute of Technology, 2013), 1.

[4] *No Transfers No Trade: The Importance of Cross-Border Data Transfers for Companies Based in Sweden* (Stockholm: Swedish National Board of Trade, 2014) available at http://www.kommers.se/In-English/News-archive/No-transfer-no-trade-/

[5] Ezell *supra* note 1 at 9.

[6] Hufbauer, G & Schott, J., et. al. *Local Content Requirements, A Global Problem.* (Washington, DC: Peterson Institute for International Economics, 2013), 7.

the policies are directed and the countries implementing them. Localizing policies are detrimental to domestic economies in that they often:

- increase firm cost structure and complexity of doing business in the country,
- raise costs of key capital goods, especially information and communication technologies, but also important raw materials and equipment,
- reduce choices for businesses and consumers,
- discourage innovation by reducing intellectual property protection,
- affect the implementing country's reputation and investment attractiveness, and
- isolate the country from the global economy.[7]

Forcing production in one country reduces production in other countries, which may encourage third countries to pursue their own localization policies.

The diminished incentive to innovate resulting from localization policies is likely to negatively affect the global economy. Innovation is crucial to the vitality and expansion of firms and production. Innovative economies are built on a predictable rule of law, promoting domestic market competition, and securing strong intellectual property protection.[8] LCRs often try to force innovators and creators to provide their intellectual property to competitors, which unfairly allows competitors to produce the same product and reduces incentives for further creation.

Rather than reducing innovation and dissolving linkages in fledgling global value chains, countries should look to alternative development policies. Governments should consider pursuing pro-innovation policies that make their countries more attractive to foreign investors, such as:

- providing training for necessary jobs: investing in human capital,
- boosting scientific and technical research,
- improving logistics in terms of reducing transaction costs,
- investing in infrastructure domestically, and
- providing subsidies that are not trade distorting.

These pro-innovation policies are mutually beneficial measures for governments, companies, employees, customers, consumers, and thus for global trade.

Recognizing the need for special and differential treatment for developing countries, ICC encourages governments to eliminate existing localization policies and refrain from enacting new ones. These policies close off markets rather than opening them. They undercut the ability of businesses to effectively operate across borders and negatively impact global trade. In the medium- and long-term, such policies may have negative economic consequences for the countries that implement them and for the global economy. ICC also encourages the development of better mechanisms to assess the economic impact of LBTs, which are incompatible with multilateral trading rules yet difficult to challenge. In light of the post-Bali multilateral trade agenda, analysis of the economic impact of LBTs may further facilitate the updating of WTO rules such as those on trade-related investment measures. Finally, ICC calls on governments to focus on alternative policies that will enhance the competitiveness of their economies and attract global business to invest and operate within the domestic market. ICC encourages governments to adopt policies that encourage growth, innovation, and fair competition.

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[7] Ezell 36-50.
[8] *Ibid*, 42-50.

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the 20th century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice. ICC also offers specialized training and seminars and is an industry-leading publisher of practical and educational reference tools for international business, banking and arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on relevant technical subjects. These include anti-corruption, banking, the digital economy, marketing ethics, environment and energy, competition policy and intellectual property, among others.

ICC works closely with the United Nations, the World Trade Organization and intergovernmental forums including the G20.

ICC was founded in 1919. Today its global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. National committees work with ICC members in their countries to address their concerns and convey to their governments the business views formulated by ICC.

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