

**SUBSIDIES ENFORCEMENT
ANNUAL REPORT TO THE CONGRESS**



**Joint Report of
The Office of the United States Trade Representative and
The United States Department of Commerce
February 2013**

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
INTRODUCTION	5
MULTILATERAL INITIATIVES.....	6
WTO Negotiations.....	6
Trans-Pacific Partnership Negotiations	9
Steel: Multilateral Efforts to Address Market-Distorting Practices	9
MONITORING AND ENFORCEMENT..	11
Interagency Trade Enforcement Center.....	11
Advocacy Efforts and Monitoring Subsidy Practices Worldwide.....	11
Monitoring Efforts	12
Counseling U.S. Industry.....	12
Outreach Efforts.....	13
Chinese Government Subsidy Practices	14
WTO Subsidies Committee	20
WTO Dispute Settlement	27
Foreign CVD and Subsidy Investigations of U.S. Exports	37
U.S. Monitoring of Subsidy-Related Commitments	39
CONCLUSION.....	40

EXECUTIVE SUMMARY

Section 281(f)(4) of the Uruguay Round Agreements Act directs the Office of the United States Trade Representative (USTR) and the U.S. Department of Commerce (Commerce) to submit an annual report to Congress describing the U.S. subsidies enforcement program. This report represents the eighteenth annual report to Congress and, as such, describes the U.S. government's activities and key actions taken during 2012 to identify, monitor, and address trade-distorting foreign government subsidies.

The National Export Initiative (NEI), launched in 2010, reflects the Administration's strong commitment to increasing exports, supporting American job growth, and enforcing international trade obligations. While more work remains, the United States is making progress toward achieving President Obama's goal of doubling U.S. exports by the end of 2014. This export growth has supported an additional 1.2 million American jobs between 2009 and 2011.

Many U.S. companies continue to find themselves at a considerable disadvantage when competing with foreign companies that benefit from unfair government subsidies and other questionable trade practices. In complement to its NEI strategy, the Administration enhanced its ability to address these problems when, in February 2012, the President signed an Executive Order launching the Interagency Trade Enforcement Center (ITEC). The ITEC represents a more aggressive whole-of-government approach to ensuring that our trading partners abide by their international trade obligations. With the ITEC, the President has brought together an unprecedented level of focus and cooperation directed at investigating unfair trade practices – including injurious, foreign government subsidies – around the world. In its first year, the ITEC is already playing an important role in vigorously pursuing U.S. rights under international subsidy rules, as evidenced by the ITEC's role in the World Trade Organization (WTO) dispute settlement proceeding regarding China's autos and auto parts "export base" subsidy program. The ITEC's work enhances and supplements the ongoing monitoring and enforcement efforts of the U.S. government, consistent with U.S. trade law and international subsidy rules.

Strong enforcement efforts are central to the NEI and the newly-established ITEC, as these initiatives recognize that U.S. manufacturers, workers and exporters can succeed at home and abroad when they have the opportunity to compete on a level playing field. The aim of USTR's and Commerce's subsidies enforcement activities is to deter, identify and confront foreign-government subsidization that harms U.S. manufacturing and agriculture interests. During 2012, USTR and Commerce pursued this joint enforcement agenda through a wide range of actions, including enhanced monitoring, intensive engagement with trading partners, advocacy for stronger subsidy disciplines, and decisive action to confront foreign government practices inconsistent with international subsidy rules.

The principal tools available to the U.S. government to address harmful subsidy practices are the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) and U.S.

domestic countervailing duty (CVD) law. The Subsidies Agreement obligates all WTO Members to ensure that their actions and government support programs are consistent with the subsidy rules. The United States relies on the disciplines and tools provided under the Subsidies Agreement, as well as the U.S. CVD law, to remedy harm caused to U.S. industries, workers and exporters from distortive foreign subsidies.

Collaborating closely with American manufacturers, agricultural interests, workers and exporters, USTR and Commerce address potential unfair trade practices that affect not only competitiveness in the U.S. domestic market, but also U.S. exporters' access to important foreign markets. We continue to exercise U.S. rights under the Subsidies Agreement, including in response to foreign trade remedy actions against U.S. exports. Where appropriate, we work to resolve issues of concern through bilateral and multilateral engagement, advocacy, and negotiation. In those instances where our rights and interests cannot be readily and effectively defended through these means, we will not refrain from initiating WTO dispute settlement proceedings, as appropriate.

The Administration remains committed to meeting the NEI's goal of expanding U.S. exports and supporting U.S. jobs based on export growth, in part through robust monitoring and enforcement of domestic trade laws and U.S. rights under international trade agreements. The U.S. government's subsidies enforcement program is an integral part of meeting the challenge of ensuring that American companies and workers benefit from an open and competitive trading environment that is unencumbered by harmful, trade-distorting government subsidies.

Subsidies Enforcement Highlights for 2012

Creation of the ITEC: In February 2012, President Obama signed an Executive Order launching the Interagency Trade Enforcement Center (ITEC) bringing together resources and expertise from across the federal government into one organization with a clear, “all hands on deck” commitment to strong trade enforcement. In a close, collaborative effort, USTR and Commerce have assembled critical ITEC infrastructure and staff from a variety of agencies with a diverse set of language skills and expertise. In its first year, the ITEC has already played an important role in vigorously pursuing U.S. rights under the Subsidies Agreement, as evidenced by the ITEC’s role in the WTO dispute settlement proceeding regarding China’s autos and auto parts “export base” subsidy program.

Countering Subsidies under the U.S. CVD Law: On March 13, 2012, President Obama signed into law Public Law 112-99, which reaffirmed Commerce’s ability to impose CVDs on merchandise from countries designated as non-market economy countries that benefit from countervailable subsidies that materially injure a U.S. industry. Through January 2013, Commerce has issued a total of 30 CVD final determinations regarding a wide range of imports from China. From January 2012 through January 2013, Commerce initiated four new CVD investigations on imports from China.

Pressuring China to Notify All of Its Subsidy Programs: In 2012, the United States continued to urge China to meet its subsidy transparency obligations under the WTO Subsidies Agreement. These efforts included continuing to pressure China to notify the 200 unreported subsidy programs described in the 2011 U.S. WTO filing known as a counter notification, and a new request for China to fully disclose many additional support measures provided by Chinese central and local governments to a wide range of industry sectors, including aerospace, high technology, iron and steel, and textiles.

Enforcing and Preserving Effective Subsidies Disciplines and Remedies through Dispute Settlement: In May 2011, the WTO Appellate Body affirmed an earlier WTO dispute settlement panel’s conclusions that certain European governments had provided billions of dollars of subsidies to Airbus causing serious prejudice to U.S. trade interests. As a result, WTO rules required these European governments to withdraw the subsidies at issue or remove their adverse effects. Unfortunately, they have failed to do so, resulting in a need for the United States to pursue further action regarding European compliance at the WTO in March 2012.

In September 2012, the United States initiated WTO dispute settlement proceedings against China concerning China’s auto and auto parts “export base” subsidy program, under which China appears to provide extensive subsidies contingent on export performance to auto and auto parts producers located in designated regions known as “export bases.” These subsidies provide an unfair advantage to auto and auto parts manufacturers located in China and appear to be prohibited under WTO rules. Importantly, the consultation request of the United States included several transparency claims addressing China’s apparent failure to comply with its WTO obligations to notify the WTO Subsidies Committee of the subsidies at issue, to translate the legal measures in question into one of the three official WTO languages, and to publish all the relevant legal measures in a single official government journal. The United States held consultations with China concerning its export bases program in Geneva in November 2012.

Promoting Improved Transparency in the WTO Committee on Subsidies and Countervailing Measures (Subsidies Committee): In 2012, the United States played an active role in the Subsidies Committee, advocating to improve the timeliness and completeness of WTO Members’ subsidy notifications, and to enhance transparency across a range of reporting obligations under the Subsidies Agreement. These efforts prompted a number of WTO Members to take steps in 2012 to meet their subsidy notification obligations.

Defending U.S. Interests in Foreign CVD Cases: In 2012, USTR, Commerce and the International Trade Commission defended U.S. interests in several foreign CVD investigations involving U.S. exports. These included CVD proceedings in China, the EU, and Peru. In a key victory, on October 18, 2012, the WTO Appellate Body found in favor of the United States in a dispute challenging China’s imposition of duties on U.S exports of grain oriented flat-rolled electrical steel (GOES). A WTO dispute initiated by the United States in 2011 regarding China’s imposition of AD duties and CVDs on chicken “broiler products” from the United States is ongoing. In 2012, the United States also initiated WTO dispute settlement proceedings regarding China’s imposition of AD duties and CVDs on automobiles. As with the GOES case, these new challenges allege that China’s conduct of its investigations, and its determinations imposing duties are inconsistent with WTO rules.

INTRODUCTION

The World Trade Organization's (WTO) Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) establishes multilateral disciplines on the use of subsidies and provides mechanisms for challenging government measures that contravene these disciplines.¹ The disciplines established by the Subsidies Agreement are subject to dispute settlement procedures, which specify time lines for bringing an offending practice into conformity with the relevant obligation. The remedies in such circumstances can include the withdrawal or modification of a subsidy, or the elimination of a subsidy's adverse effects. In addition, the Subsidies Agreement sets forth rules and procedures to govern the application of countervailing duty (CVD) measures by WTO Members with respect to subsidized imports.

The Subsidies Agreement nominally divides subsidy practices into three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted non-actionable (green light) subsidies.² Subsidies contingent upon export performance (export subsidies) and subsidies contingent upon the use of domestic over imported goods (import-substitution

¹ This report focuses on measures that would fall under the purview of the Subsidies Agreement and does not necessarily cover activities that would be addressed under other WTO agreements, such as the Agreement on Agriculture.

² With the expiration in 2000 of certain provisions in the Subsidies Agreement regarding green light subsidies, the only non-actionable subsidies at present are those that are not specific, as defined below.

subsidies) are prohibited. All other subsidies are permitted, but are nevertheless actionable through CVD or dispute settlement action if they are (i) "specific", *e.g.*, limited to a firm, industry or group within the territory of a WTO Member and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another WTO Member.

The Office of the U.S. Trade Representative (USTR) and the U.S. Department of Commerce (Commerce) have unique and complementary roles with respect to their responses to U.S. trade policy problems associated with foreign subsidized competition. In general, it is USTR's role to coordinate the development and implementation of overall U.S. trade policy with respect to subsidy matters; represent the United States in the WTO, including its Committee on Subsidies and Countervailing Measures (Subsidies Committee); and chair the interagency process on matters of subsidy trade policy.

The role of Commerce, through the International Trade Administration's Import Administration (IA), is to administer and enforce the CVD law, identify and monitor the subsidy practices of other countries, provide the technical expertise needed to analyze and understand the impact of foreign subsidies on U.S. commerce and provide assistance to interested U.S. parties concerning remedies available to them. IA also helps to identify appropriate and effective strategies and opportunities to address problematic foreign subsidies and works with USTR to engage foreign governments on subsidies issues. Within IA,

subsidy monitoring and enforcement activities are carried out by the Subsidies Enforcement Office (SEO). See Attachment 1.

MULTILATERAL INITIATIVES

WTO NEGOTIATIONS

At the Doha Ministerial Conference in 2001 – which launched the Doha Development Agenda (DDA) – Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Subsidies Agreement and the WTO Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement, or AD Agreement), and to address trade-distorting practices that often give rise to CVD and antidumping duty (AD) proceedings. Under this agreement of the Ministers – hereafter referred to as the Rules mandate – the United States has pursued an aggressive, affirmative agenda, aimed at strengthening the rules and addressing the underlying causes of unfair trade practices.

Background

As noted above, the existing WTO disciplines on subsidies prohibit only two types of subsidies: export subsidies and import-substitution subsidies. However, other types of permitted subsidies can significantly distort trade. The specific language of the Rules mandate is important in this regard because it provides an avenue to address these other practices and to inform the discussion of trade remedies in a constructive manner. Moreover, it provides a basis to take up the negotiating objectives that Congress had laid out in the Trade Act of 2002, as well as other subsidy concerns that

affect key sectors of the U.S. economy.

The Rules mandate also calls for clarified and improved WTO disciplines on fisheries subsidies. The depleted state of the world's fisheries is a major economic and environmental concern, and the United States believes that subsidies that contribute to overcapacity and overfishing, or that have other trade-distorting effects, are a significant part of the problem. The United States views the negotiations on fisheries subsidies as a groundbreaking opportunity for the WTO to show that trade liberalization can benefit the environment and contribute to sustainable development, as well as to address traditional trade concerns.

In November 2007, the Chairman of the Rules Negotiating Group of the DDA (Rules Group) issued *Draft Consolidated Chair Texts of the AD and SCM Agreements (2007 text)*.³ The United States publicly stated that, while it was very disappointed with important aspects of the 2007 text, it believed that the 2007 text provided a basis for further negotiations. Other Members expressed similar views. However, during the subsequent discussions of the Rules Group in 2008, it became clear that many Members were dissatisfied with the balance reflected in this text with respect to certain key, controversial proposals.

After Ministers reached an impasse in July 2008 on how to advance the DDA in other areas, work in the Rules Group remained relatively quiet until December 18, 2008, when the Chairman issued *New Draft Consolidated Chair Texts of the AD and SCM*

³ TN/RL/W/213 (November 30, 2007).

Agreements (2008 text).⁴ In a cover note to the 2008 text, the Chairman noted that this new document reflected a “bottom-up approach” (e.g., based on proposals by Members and convergence on new text among Members) and included new draft language on AD and subsidies/CVD issues only in those areas where some degree of convergence among the Members appeared to exist. More contentious issues for which the Chairman felt that he had no basis to propose compromise solutions were bracketed, along with a general summary of the range of Members’ views regarding those issues. The Chairman observed further that few, if any, of the areas in which new draft language has been proposed could be characterized as having consensus support. As to the fisheries subsidies negotiations, the Chairman issued a roadmap (consisting of an outline of the issues and numerous discussion questions for each issue) to further elicit Members’ views on the critical issues.

The Rules Group has based its work primarily on written submissions from Members, organizing its work into the following categories: (1) AD (often including issues that are also relevant to CVD remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements. Since the Rules Group began its work in 2002, Members have submitted hundreds of formal and informal papers and proposals to the Group.⁵

⁴ TN/RL/W/236 (December 18, 2008).

⁵ Both types of papers are publicly available on the WTO website (<http://wto.org>): formal papers may be found using the “TN/RL/W” document prefix, and elaborated informal proposals may be found using the “TN/RL/GEN” prefix.

In 2011, in order to complement the ongoing meetings of the Rules Group, the Chairman convened several groups to address key issues in the negotiations. The Chairman’s intention was for these groups to explore possible solutions in a “bottom up” (as opposed to a chair-driven) process. First, he appointed several “Friends of the Chair,” who worked in their personal capacities to develop draft text on various issues with the goal of capturing a group consensus among Members. With regard to horizontal subsidies, Friends of the Chair were appointed to discuss: (1) export competitiveness, (2) duty drawback systems, and (3) a proposed CVD facts available annex. Friends of the Chair were also appointed to address the fisheries subsidies issues of fisheries management and reciprocal/shared access agreements.

In addition to the Friends of the Chair groups, the Chairman also created several “Contact Groups” to address the more contentious issues in the negotiations. These Contact Groups were tasked with discussing and identifying the spectrum of Members’ views, key considerations, possible options and, ideally, possible legal text to consider. These groups were purposely structured to operate without a leader *per se* because, in the Chairman’s view, most of these issues were so contentious that it would be unrealistic to expect that any single person or delegation could identify points of convergence. On horizontal subsidies, Contact Groups were created to discuss: (1) regulated pricing, (2) export credits, and (3) new subsidy allegations and pre-initiation consultations in CVD proceedings. On fisheries subsidies, Contact Groups were formed to address: (1) subsidies to high seas

fishing, (2) fuel subsidies, (3) income support, and (4) special and differential treatment (S&DT) for artisanal/small scale fishing. Although Members constructively engaged, little progress was achieved on these issues.

Meetings in these various configurations continued until April 2011, when the various negotiating chairs were asked to report on the status of their respective negotiations. Pursuant to this request, the Rules Chairman released a draft text for antidumping but only “reports” for horizontal subsidies and fisheries subsidies. This reflected the fact that, in his view, there had been no significant signs of convergence on bracketed issues as reflected in the 2008 Chair’s text on horizontal or fisheries subsidies. Further, unlike antidumping, the areas of un-bracketed text for these areas were limited, and some of that language was still controversial.

On horizontal subsidies, the Chair noted that, while some traction had been gained on certain technical issues, there were very few useful changes to be proposed at this point. Concerning the transposition of possible changes in the Antidumping Agreement to their counterpart provisions in the Subsidies Agreement, the Rules Chairman concluded that insufficient discussion has occurred to allow the identification of legal language reflecting convergence. Finally, the Rules Chairman noted that a significant number of substantive proposals submitted in 2010 had not been fully discussed among Members.

On fisheries subsidies, the Chair’s report followed the structure of the draft text that was released in 2007. He explained that

there was too little convergence on even the technical issues, and indeed virtually none on the core substantive issues, for there to be anything to reflect in a bottom-up, convergence-driven legal text. The report noted several areas where gaps in the fishery subsidies negotiations remain wide. In the Chairman’s view, in order for the negotiations to make significant progress, negotiators would have to focus more on these incontrovertible realities no matter how inconvenient, and less on protecting their short-term defensive interests.

Since the release of the Chair’s reports, little activity has occurred in the Rules Group. On October 25, 2012, Rules Chair Wayne McCook held an open-ended informal meeting of the Rules Group to provide a brief summary of his activities since assuming the chairmanship and provide a forum for Members to share their views. Chairman McCook acknowledged that the Rules negotiations were at an impasse and that there was little appetite to move the discussions forward without substantive progress in other areas. The Friends of Fish (Australia, Argentina, Chile, Colombia, Iceland, New Zealand, Norway, Pakistan, Peru, and the United States) delivered a joint statement, pressing for an ambitious fisheries subsidies discipline and highlighting the need for transparency of programs in the short-term. There is no proposed date for a future meeting of the Rules Group.

Prospects for Rules in 2013

In 2013, the United States will continue to focus on, *inter alia*, preserving the effectiveness of trade remedy rules; improving transparency and due process in

trade remedy proceedings; and strengthening existing subsidies rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome in the WTO, including by pursuing results to discipline fisheries subsidies through other fora such as the Trans-Pacific Partnership negotiations, which will assist the United States' efforts to reach eventual agreement on fisheries subsidies in the WTO. Preparations will also continue for a fisheries subsidies symposium to take place in early 2013 to build on previous discussions in the Rules Group.

TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS

In November 2009, President Obama announced the United States' intention to participate in the Trans-Pacific Partnership (TPP) negotiations to conclude an ambitious, next-generation, Asia-Pacific trade agreement. Through these negotiations, the United States, along with Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam began to craft a high-standard agreement that addresses new and emerging trade issues and 21st-century challenges. After nine rounds of negotiations, on November 12, 2011, the Leaders of the nine TPP countries announced the achievement of the broad outlines of an ambitious, 21st-century agreement that will enhance trade and investment among the TPP partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs. Negotiations continued through 2012 and will extend into 2013. The two newest TPP partner countries, Canada and Mexico, joined in 2012 and began participating in negotiations.

The Administration has identified the negotiation of new disciplines on state-owned enterprises (SOEs) as a priority for the TPP. After extensive consultations with a wide range of U.S. stakeholders and Congress, the United States put forward its proposal on SOEs at the ninth round of negotiations that took place in October 2011 in Lima, Peru. The U.S proposal aims to level the playing field for U.S. firms and workers by addressing distortions to trade and investment that result from the unfair advantages – such as subsidies – that governments provide to SOEs.

With respect to marine fisheries, the TPP countries now include six of the top 21 global producers of marine fisheries products by volume.⁶ Other TPP countries are significant traders in these products as well. Among the most significant problems that inhibit efforts to conserve marine resources and diminish distortions in international trade are government subsidies which have contributed to overcapacity and overfishing in global fisheries. The United States and other TPP countries therefore have proposed TPP disciplines on subsidies that contribute to overcapacity and overfishing.

STEEL: MULTILATERAL EFFORTS TO ADDRESS MARKET-DISTORTING PRACTICES

During 2012, the United States continued its work with other countries to address concerns related to the rapidly changing trade situation in the global steel sector, particularly through its work at the Organization of Economic Cooperation and

⁶ This includes Canada, Chile, Mexico, Peru, the United States and Vietnam.

Development (OECD) and within the North American Steel Trade Committee (NASTC).

As an active participant in the OECD Steel Committee (Steel Committee), the United States worked closely with the governments of other steel-producing economies to take up policy issues affecting the global steel industry. For instance, the Steel Committee covered a broad range of issues, including raw materials issues, state-owned steel enterprises, concerns with steelmaking overcapacity, current trends in steel-using industries, trade policy issues in the steel sector (including import and export restrictions, trade remedies and non-tariff measures in steel), and environmental issues and their impact on the steel industry. The gradual and unsteady recovery of the steel market in the wake of the global economic downturn, along with the negative effects of tariff and non-tariff barriers implemented by certain governments during the downturn which can distort steel trade, continue to be central to the Committee's discussions.

The NASTC continued to be a valuable forum for the governments and steel industries of North America to examine and pursue common policy approaches to promote the competitiveness of North American steel producers. The NASTC developed a North American Steel Strategy in 2006 that includes cooperation on issues of importance to steel in multilateral fora (*e.g.*, the OECD Steel Committee and the WTO Rules Group). In 2012, these cooperative efforts included coordinated interventions in the OECD Steel Committee urging governments of all steel-producing nations to refrain from the use of administrative measures to control or otherwise influence

trade in steelmaking raw materials. In addition, under the NASTC, the North American governments and steel industries have been tracking developments in certain steel-producing countries to identify, corroborate and address, as appropriate, trade-related concerns and distortions in the global steel market.

Bilaterally, at the OECD and in the WTO, the United States continued to raise specific concerns with other countries about steel policies that contribute to excess capacity and production, including subsidies, border measures on steel and steelmaking raw materials, and other trade-distorting practices. The United States also continued to oppose support by national and multinational financial institutions for projects that increase raw or finished steel capacity.

In particular, government-funded capacity expansions in China remain a concern. While China has closed some inefficient steel capacity, steel capacity and production in 2012 in China continued to grow as newer, more efficient capacity has come on line. This capacity expansion is occurring in the face of slowing growth in China's domestic steel demand, stagnant demand in export markets, and significant Chinese steel company losses.

Chinese steel production was on track to reach a record 723 million MT for 2012, a six percent increase when compared to 2011. Notwithstanding a very weak global and domestic demand outlook, the OECD projected Chinese steelmaking capacity to reach 865 million MT in 2012 and to continue growing significantly through 2013, reaching

900 million MT. The United States continues to work with Canada, Mexico, and the European Union to monitor and support concrete steps by China to rein in its steelmaking capacity. The United States will continue to closely scrutinize China's new five-year steel plan and the implementation of its 2010 steel measures that are designed to reduce excess capacity and improve energy efficiency. The United States will also continue to engage China through the U.S.-China Steel Dialogue (a bilateral forum under the auspices of the U.S.-China Joint Commission on Commerce and Trade, or JCCT), which is planning to meet in 2013, as well as at the WTO and in plurilateral fora such as the OECD.

MONITORING AND ENFORCEMENT

Interagency Trade Enforcement Center

In his 2012 State of the Union Address, President Obama called for the creation of an interagency trade enforcement unit charged with investigating unfair trading practices. In February 2012, President Obama established the Interagency Trade Enforcement Center (ITEC), bringing together resources and expertise from across the federal government into one organization with a clear, "all hands on deck" commitment to strong trade enforcement.

The ITEC, with a Director appointed by USTR and a Deputy Director appointed by Commerce, has assembled critical ITEC infrastructure and staff from a variety of agencies -- including the Departments of Commerce, Agriculture, State, the Treasury and Justice as well as the Small Business Administration and the International Trade

Commission with a diverse set of language skills and expertise in, *inter alia*, subsidy analysis. The ITEC also has a full-time Intelligence Community liaison.

In its first year, the ITEC has already played an important role in vigorously pursuing U.S. rights under the Subsidies Agreement, as evidenced by the ITEC's role in the WTO consultations request regarding China's export subsidies in the autos and auto parts sector. In this context, Commerce, USTR and the ITEC subsidy experts collaborated closely in extensively researching, compiling and analyzing hundreds of Chinese central and provincial government measures. This endeavor demonstrates that the ITEC will significantly enhance the U.S. government's capability to proactively enforce U.S. rights under trade agreements through investigation of unfair trade practices, including foreign government subsidies.

ADVOCACY EFFORTS AND MONITORING SUBSIDY PRACTICES WORLDWIDE

The United States is strongly committed to pursuing its rights under the Subsidies Agreement. This commitment to enforcement is a critical component of the President's National Export Initiative (NEI), launched in January 2010. The Export Promotion Cabinet, whose members include Acting Secretary of Commerce Rebecca Blank and USTR Ambassador Ronald Kirk, is responsible for pursuing the President's goal of doubling U.S. exports by 2015, and a key component of achieving that goal is a focus on trade compliance and enforcement of existing trade agreements, such as the Subsidies Agreement. A key component of achieving that goal is a focus on trade

compliance and enforcement of existing trade agreements, such as the Subsidies Agreement.⁷

Under the NEI, the U.S. government is focusing its monitoring and enforcement activities in key overseas markets by actively working to address harmful foreign government subsidies and ensuring foreign government compliance with existing trade agreements. By proactively working to address a wide range of unfair trade practices, the U.S. government's subsidies enforcement program is helping to meet the important goal of expanding U.S. exports and preserving and creating U.S. jobs. Further, the U.S. government is devoting increased resources to the defense of U.S. commercial interests affected by foreign trade remedy actions, particularly CVD investigations of U.S. federal and state government programs and practices. U.S. government participation in these cases is extremely important in order for U.S. exporters to maintain their access to key markets.

Electronic Subsidies Enforcement Library

IA uses the "Electronic Subsidies Enforcement Library" (ESEL) as a key tool to organize subsidy-related material and convey it to the public. Along with an overview of the SEO, the website -- available at <http://esel.trade.gov> -- includes foreign governments' subsidy notifications made to the WTO, an overview of the SEO, information on U.S. *domestic AD/CVD proceedings as well as foreign AD/CVD actions with respect to U.S. exports*, helpful links, and an easily navigable tool that provides information about each subsidy program investigated by Commerce in CVD cases since 1980. See Attachment 2.

⁷ See <http://trade.gov/nei/> and <http://www.ustr.gov/nei>.

Monitoring Efforts

Identifying, researching and evaluating potential foreign government subsidy practices is a core function of the subsidies enforcement program. Expert subsidy analysts in IA, USTR and the ITEC with various foreign language skills primarily conduct this work. This involves performing in-depth analysis of potential subsidies identified in worldwide business journals, periodicals and various online resources, including foreign government web sites; utilizing numerous legal databases; and cultivating relationships with U.S. industry contacts. IA and USTR officers stationed overseas (for example, in China) enhance these efforts by helping to gather, clarify, and confirm the accuracy of information concerning foreign subsidy practices.

Counseling U.S. Industry

USTR and IA regularly engage with U.S. companies and workers confronted by unfairly subsidized foreign competitors with the goal of identifying and implementing effective and timely solutions. While solutions can often be pursued through informal and formal contacts with the relevant foreign government, USTR and IA also advise U.S. companies and workers of other options and legal tools available, such as trade remedy investigations or WTO dispute settlement.

During this process, USTR and IA work closely with affected companies and workers to collect information concerning potential subsidies and to determine how U.S. commercial interests are harmed by these measures. While U.S. companies facing

subsidized foreign competition can be expected to have useful information as to the financial health of their industry, they usually require significant technical assistance in identifying and fully understanding the nature and scope of the foreign subsidies practices they confront. In these instances, USTR and IA conduct additional research to determine the legal framework under which a foreign government may be offering potential subsidies and whether other U.S. firms, industries or workers have been facing similar problems.

Working with an interagency team, USTR and IA fully analyze the information collected to determine the best way to proceed. Often, the most timely and effective approach to resolving these problems is by pursuing the matter with the foreign government authorities through informal contacts, formal bilateral meetings or discussions in the WTO Subsidies Committee. This process may produce more expeditious and practical solutions to the problem than would immediate recourse to formal WTO dispute settlement or the filing of a CVD petition. If these informal efforts fail to adequately resolve the issue, the U.S. government may consider WTO dispute settlement proceedings or may advise an affected firm about procedures for filing a CVD petition.

During 2012, USTR and Commerce worked with a broad array of U.S. companies, industries and workers that had significant concerns about unfair foreign government subsidy practices in a wide range of countries. These activities included new and ongoing work on behalf of the U.S. aerospace, aluminum, autos and auto parts,

chemical, paper, steel, clean energy (wind and solar power) and textile industries, among a wide range of others. The foreign subsidy practices examined included those maintained by the central and local governments of Brazil, Canada, China, the European Union, India, Indonesia, Japan, Malaysia, Mexico, Pakistan, South Africa, South Korea, Turkey and Vietnam.

OUTREACH EFFORTS

USTR and IA coordinate with other U.S. government personnel who have direct contact with the U.S. exporting community, both in the United States and abroad, to make them aware of the resources and services available regarding subsidy enforcement efforts. For example, USTR and IA personnel train Department of State and Department of Agriculture officers in how to identify and evaluate foreign subsidy practices. This collaboration among U.S. government agencies, each with its own on-the-ground knowledge and expertise, is important to help effectively exercise U.S. rights under the Subsidies Agreement. Also, working closely with their colleagues in U.S. embassies, IA and USTR officers stationed in Beijing undertake primary-source research of potential unfair trade practices in China and in other countries in the region. Their efforts in this area are critical to successfully monitor China's subsidy practices and enforce the unfair trade rules. Furthermore, both USTR and IA have staff stationed in Geneva, Switzerland, to participate in the ongoing WTO Rules negotiations, the work of the WTO Antidumping, Safeguard and Subsidies Committees and WTO dispute settlement activities relevant to subsidies enforcement and trade remedies.

CHINESE GOVERNMENT SUBSIDY PRACTICES

Overview

For much of the past decade, the Chinese government has been re-emphasizing the state's role in the economy, diverging from the path of economic reform that drove China's accession to the WTO. With the state leading China's economic development, the Chinese government has pursued new and more expansive industrial policies, often designed to limit market access for imported goods, foreign manufacturers and foreign service-suppliers, while offering substantial government guidance, regulatory support and resources, including subsidies, to Chinese industries, particularly ones dominated by state-owned enterprises. The heavy state role in the economy, *inter alia*, has generated serious trade frictions with China's many trade partners, including the United States.

This is reflected in developments relating to China's commitments under the Subsidies Agreement. China has a poor record of compliance with the obligations that it assumed regarding its use of subsidies. China maintains a largely opaque subsidies regime, and appears to have employed numerous prohibited subsidies as an integral part of industrial policies designed to promote or protect its domestic industries and SOEs, as evidenced by several successful dispute settlement proceedings initiated by the United States and other WTO Members.

Transparency is a core principle of the WTO Agreements, and it is firmly enshrined as a key obligation under the Subsidies Agreement and China's Protocol of Accession and accompanying report of the Working

Party. Article 25 of the Subsidies Agreement obligates every Member to file regular notifications of all specific subsidies that it maintains. This information is required, among other reasons, so that it is possible to assess the nature and extent of a Member's subsidy programs and their likely impact on trade.

Despite its obligation to submit regular subsidy notifications, and despite being one of the largest trading economies among the WTO membership, China did not file its first subsidy notification until 2006, five years after joining the WTO. That notification only covered the time period from 2001 to 2004. China submitted a second notification five years later, in 2011, covering the period 2005 to 2008. However, both of these notifications are significantly incomplete. In particular, both notifications excluded numerous central government subsidies, and neither notification included a single subsidy administered by provincial or local government authorities, even though the United States and other WTO members have successfully challenged scores of provincial and local government subsidies as prohibited subsidies in WTO dispute settlement proceedings. The United States and several other Members have expressed serious concerns about the incompleteness of China's notifications and have repeatedly requested that China submit complete and timely notifications, including subsidies provided by provincial and local government authorities.

Pursuant to its WTO accession commitments, China is also obligated to provide translated copies of all of its trade-related measures – including subsidy

measures – and publish all trade-related measures in a single official journal. However, to date, it appears that China has not met these obligations with respect to the legal measures that establish and fund China’s subsidy programs.

The United States has devoted significant time and resources to identifying, monitoring and analyzing China’s subsidy practices. These efforts have confirmed significant and disturbing omissions in China’s subsidies notifications. It is clear, for example, that provincial and local governments play a key role in implementing

many of China’s industrial policies, including subsidies policy. The significant scope of governmental support in pursuit of industrial policies at all levels of government can be seen in the massive funds allocated as part of China’s recently issued Twelfth Five-Year Plan, a blueprint for China’s industrial development, which, by some accounts, amounts to over RMB 1.2 trillion.

China’s large and growing role in world production and trade necessitates that its trading partners understand the nature of China’s subsidy regime at both the central and sub-central government levels. However, China’s failure to submit regular and complete subsidy notifications hinders other WTO Members from obtaining the relevant legal measures and a thorough understanding of subsidy policy formulation and implementation in China.

China also had a poor record of adhering to a separate but related transparency obligation under its WTO Protocol of Accession. There, during the first ten years of its WTO membership, China agreed to notify all “annual economic development programs, China’s five-year programs and any industrial or sectoral programs or policies (including programs related to investment, export, import, production, pricing or other targets, if any) promulgated by central and sub-central government entities.” These industrial policy plans typically form the foundation for much of the government subsidization in China, particularly with respect to SOEs.

The plans also include government restrictions on firms with respect to their choice of technologies, the scale of their operations, the selection of investment

Subsidies to the Chinese Auto Parts Industry

The United States has a trade surplus with China in finished autos but a growing trade deficit with China in auto parts. The U.S. auto parts industry has raised concerns that this imbalance stems, at least in part, from China’s continued subsidization of its auto parts industry, which includes batteries, motors, electronic controls, and other key components. Specifically, it has pointed to Chinese measures targeting priority and export-oriented industries, including the auto parts industry, for support in the form of grants, reduced corporate income tax rates and low-cost lending from state-owned banks. The United States has previously raised many of these concerns in the context of China’s Transitional Review Mechanism and during the Subsidies Committee’s review of China’s first subsidy notification. Ultimately, the subsidy enforcement efforts of USTR, the ITEC and Commerce led to a WTO dispute settlement consultation request regarding China’s export subsidies on autos and auto parts. The United States will continue its efforts to identify monitor and address potentially trade-distortive Chinese subsidy measures, including those within the auto parts industry, that impact U.S. companies, workers and exporters.

projects and products produced, and eligibility for subsidies and other government support. Given the size of China's economy and volume of world trade, industrial policy implementation in China has a very real, adverse impact on the trade interests of other countries, whether or not China actually achieves its policy objectives.

Over the years, while China has provided some limited information with regard to its national five-year plans, China did not provide any information with respect to the national plans governing particular sectors or the plans sub-central governments have adopted.

U.S. Counter Notification of Chinese Subsidy Programs and Article 25.8 Submission

In the face of repeated unfulfilled promises from China that it would soon file a new subsidies notification, in October 2011, the United States exercised its rights under Article 25.10 of the Subsidies Agreement and submitted its first-ever counter notification to the WTO Subsidies Committee. In the counter notification, the United States identified 200 unreported subsidy programs that China has maintained since 2004. In response, it was incumbent upon China to promptly provide detailed information and data regarding the operation of the many subsidy programs identified in the U.S. counter notification or explain why the programs should not be notified. To date, China has failed to provide any of the required information or a full explanation.

The counter notification included copies of the underlying legal measures for *each* subsidy program. These measures were identified in the course of: extensive research

conducted by USTR and IA that eventually led to WTO dispute settlement proceedings; various CVD investigations conducted by Commerce; and, examination of a Section 301 petition filed by the United Steelworkers union regarding China's green energy support programs. The various measures included in the counter notification were voluminous, numbering over several hundred pages. (Further detail of the counter notifications filed by the United States with respect to both China and India can be found in the *WTO Subsidies Committee* section below.)

Several points are noteworthy with respect to the U.S. counter notification. The first is the prevalence of provincial and local government subsidy programs. Over half of the programs in the U.S. counter notification are sub-central government in nature, which underscores the point that the United States had been making for many years before the Subsidies Committee: sub-central government programs are critically important in China, as actual implementation of central government industrial subsidy policies are often, if not normally, the responsibility of the sub-central governments. A subsidy notification from China that omits sub-central government subsidy programs, therefore, is not a full notification.

The second point is the importance of five-year plans in China. While China has downplayed the role of five-year plans in discussions before the Subsidies Committee, it is clear that China's industrial plans establish policies pursuant to which actual subsidy programs are implemented. For example, the Eleventh Five-Year Plan with respect to the renewable energy sector states that one objective is to: "Implement preferential tax, investment, and mandatory market share

policies . . .” Clearly, this language is outlining the overarching legal and policy basis for the establishment of particular subsidy programs, which will also appear in provincial or local government five-year plans or measures.

Third, it appears that certain measures establishing subsidy programs in China are only in effect for a short period, such as one or two years, and then are replaced by other measures, which may be similar to the original subsidy program or, in some instances, significantly different. This type of successor measure is prevalent among some of the measures included in the “famous export brand” WTO case and some of the funding measures included in the autos and auto parts “export base” WTO case. This underscores the importance of China notifying its subsidy programs on a regular and timely basis. In the absence of regular notifications, many programs will have been implemented and ended without any notification provided during the time that the program was in effect.

Fourth, insisting on a complete and timely notification of China’s specific subsidy programs is not simply an academic exercise. Among the 200 subsidies included in the U.S. counter notification are programs that appear to be prohibited export and import-substitution subsidies, as well as actionable subsidies that have been found to have caused injury to the industries of other WTO Members. Maintaining such subsidies and not providing a complete and timely notification impedes Members’ ability to not only question the existing measures, but also to analyze whether those measures meet WTO obligations.

Finally, the United States’ ability to compile and analyze all of the information in the counter notification – much, if not all of it, from publicly available Chinese government sources – casts serious doubts on China’s repeated claims that it lacks the capacity and ability to collect and report the same information in a timely and regular manner, especially after eleven years of WTO membership.

In October 2011, not long after the United States had filed its counter notification of Chinese subsidy programs, China submitted its second subsidies notification. Covering only the period from 2005 to 2008, China’s notification was inadequate, as it included only a handful of programs that were included in the United States’ counter notification. Moreover, this notification once again failed to notify a single subsidy administered by provincial or local governments and it omitted various subsidies provided to certain industry sectors in China, such as steel, textile, high-technology and alternative energy. Most of the central government subsidies that China did notify, such as preferential tax programs to foreign-invested enterprises (FIEs), were well known by the U.S. and other Members and failed to provide substantial new information. For these reasons, China’s most recent notification again appears to fall significantly short.

In 2012, the United States continued to highlight China’s failure to abide by its important transparency obligations under the Subsidies Agreement. At the October 2012 meeting of the Subsidies Committee, the United States submitted a written request for information to China pursuant to Article 25.8 of the Subsidies Agreement. In this request,

the United States provided more evidence of central government and sub-central government subsidies that China has not yet notified and identified programs that provide benefits to a wide range of industrial sectors in China, including high technology, aerospace, steel, and textiles. In addition, this request identified several programs that appear to constitute prohibited export or import-substitution subsidies. To date, China has not responded to this latest U.S. request for information.

In 2013, the United States will continue to research and analyze the various forms of financial and other support that the Chinese government provides to manufacturers and exporters in China and assess whether this support is consistent with WTO rules. Before the WTO's Subsidies Committee, the United States will continue to press China to submit a complete and up-to-date subsidies notification, along with a response to the United States' submission under Article 25.8 of the Subsidies Agreement. The United States will also continue to raise its concerns with China's subsidies practices in bilateral meetings with China, including through future meetings of the JCCT Structural Issues Working Group (see below) and the Steel Dialogue.

Application of U.S. Countervailing Duty Law to China

In 2006, based on a CVD petition filed by the U.S. coated free sheet paper industry, Commerce changed its policy of not applying the U.S. CVD law to China. This change was based on Commerce's finding that reforms in China's economy in recent years had removed the obstacles to applying the CVD

law that were present in the Soviet-era economies at issue when Commerce first declined to apply the CVD law to nonmarket economies (NMEs) in the 1980s. More recently, on March 13, 2012, President Obama signed into law Public Law 112-99, reaffirming Commerce's ability to impose countervailing duties on merchandise from countries designated as NMEs that benefit from countervailable subsidies that materially injure a U.S. industry.

Since 2006, several other U.S. industries concerned about subsidized imports from China have filed CVD petitions. Through January 2013, Commerce had reached final affirmative CVD determinations in 30 investigations of imports from China involving products in the steel, textiles, paper, chemical, wood, non-ferrous metal and new energy technology industries. The alleged subsidies that Commerce has investigated or is investigating include preferential government policy loans; income tax and VAT exemptions and reductions; the provision by government of goods and services such as land, electricity and steel on non-commercial terms; and a variety of provincial and local government subsidies.

Several of the programs Commerce has investigated appear to be prohibited export or import-substitution subsidies, including a myriad of export-contingent grants and tax incentives. Details on all of Commerce's CVD proceedings, and the programs investigated in each proceeding, can be found in the SEO's Electronic Subsidies Enforcement Library website at <http://esel.trade.gov>.

JCCT - Structural Issues Working Group and the Trade Remedies Working Group

Established in 1983, the U.S.-China Joint Commission on Commerce and Trade (JCCT) is a government-to-government consultative mechanism that provides a forum to resolve trade concerns and promote bilateral commercial opportunities. In 2012, the JCCT was co-chaired for the United States by Acting Secretary Blank and Ambassador Kirk, and for China by Vice Premier Wang Qishan. Several other senior-level government representatives participated on both sides.

From a U.S. trade policy standpoint, it is important to engage China on existing structural and operational issues regarding China's economy, particularly those that distort trade and give rise to trade frictions, and to encourage China to pursue the economic reforms that drove its accession to the WTO. At the same time, China's status as an NME under U.S. AD law is of substantial concern and importance to the Chinese government. To better understand China's reform objectives and the results of reforms to date, as well as to discuss issues that relate to China's desire for market economy status under the U.S. AD law, China and the United States agreed during the April 2004 JCCT meetings to the establishment of the Structural Issues Working Group (SIWG), to be jointly chaired for the United States by Commerce's Assistant Secretary for Import Administration and the Assistant U.S. Trade Representative for China Affairs, and for China by the Director General of Bureau of Fair Trade (BOFT) of the Ministry of

Commerce (MOFCOM).⁸ The working group has met a number of times since its launch in July 2004.

The SIWG held its most recent meetings in Beijing, China, in November 2012. China's delegation included several experts and Chinese government officials who offered insight into various aspects of judicial reform in China as well as private sector development, with a particular focus on China's programs to encourage investment and growth. In addition, in this meeting, the United States raised its concerns about Chinese state intervention and overcapacity in the steel sector.

The United States and China also established in 2004 a second working group, the Trade Remedies Working Group (TRWG), in conjunction with the SIWG, to serve as a forum for both sides to raise issues of concern with regard to the other's trade remedy practices and proceedings, *i.e.*, with respect to the application of AD, CVD, and safeguards measures. Importantly, discussions in the TRWG supplement but do not replace engagement on these matters at the WTO.

In November 2012, concurrent with the SIWG meetings, the United States and China held TRWG meetings in Beijing. The

⁸ While the SIWG is not a forum for resolving or deciding this issue, it provides a constructive setting for the mutual exchange of views and relevant information. Under U.S. antidumping law, any review of China's NME status must take place in a formal, on-the-record proceeding before Commerce, open to all interested parties.

United States requested information with regard to a number of aspects of MOFCOM's AD and CVD decisions, including the administration and application of China's measures as well as the procedures and methodologies used in its investigations. These requests were prompted by concerns resulting from the insufficient disclosure and transparency that characterizes MOFCOM's administrative system. The United States will continue to seek ways to improve the bilateral dialogue in the TRWG, and, where possible, utilize this group as a practical means to address areas of mutual concern.

WTO SUBSIDIES COMMITTEE

The WTO Subsidies Committee held its two formal meetings in April and October of 2012. The Subsidies Committee continued its regular work of reviewing WTO Members' periodic notifications of their subsidy programs and the consistency of Members' CVD laws, regulations, and actions with the requirements of the Subsidies Agreement. Among other items addressed in the course of the year were: the U.S. counter notification of unreported subsidy programs in China and India; examination of ways to improve the timeliness and completeness of subsidy notifications; the U.S. Article 25.8 questions regarding additional Chinese subsidy programs; examination and approval of specific export subsidy program extension requests for certain small-economy developing-country Members; filling two openings on the five-member Permanent Group of Experts provided for under the Subsidies Agreement; updating the eligibility threshold for developing countries to provide export subsidies under Annex VII(b) of the Subsidies Agreement; and the "export competitiveness" of India's textile and

apparel industry. Further information on these various activities is provided below.

Subsidy Notifications by Other WTO Members

Subsidy notification and surveillance is one means by which the Subsidies Committee and its Members seek to ensure adherence to the disciplines of the Subsidies Agreement. In keeping with the objectives and directives expressed in the Uruguay Round Agreements Act, WTO subsidy notifications also play an important role in the U.S. subsidies monitoring and enforcement activities.

Under Article 25.2 of the Subsidies Agreement, Members are required to report certain information on all measures, practices and activities that, as set forth in Articles 1 and 2 of the Agreement, meet the definition of a subsidy and are specific. In 2012, the Subsidies Committee reviewed thirty-eight subsidies notifications.⁹ Numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.¹⁰

⁹ During the 2012 spring and fall meetings, the Subsidies Committee reviewed the 2009 and 2011 new and full subsidy notifications of Albania, Argentina, Australia, Bahrain, Brazil, Burkina Faso, Canada, Chile, China, European Union, Honduras, India, Israel, Japan, Korea, Liechtenstein, Macao China, Malaysia, New Zealand, Nicaragua, Norway, Saudi Arabia, Singapore, Switzerland, Separate Customs territory of Taiwan, Penghu, Kinmen and Matsu, Tonga, Turkey, Ukraine, the United States, and Zambia. The Committee also continued the review of 2011 and 2009 new and full subsidy notifications of Armenia, Brazil, Canada, Gabon, Honduras, Japan, Malaysia, Mexico, the European Union, Namibia, Turkey, Uruguay and the United States.

¹⁰ For further information, see the Report (2012) of the WTO Committee on Subsidies and Countervailing Measures (G/L/1005), October 25,

Review of CVD Legislation, Regulations and Measures

Throughout 2012, many WTO Members continued to submit notifications of new or amended CVD legislation and regulations, as well as CVD investigations initiated and decisions taken. These notifications were reviewed and discussed by the Subsidies Committee at its regular spring and fall meetings in 2012. In reviewing notified CVD legislation and regulations, the Subsidies Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified laws and regulations and their relationship to the obligations of the Subsidies Agreement. The United States continued to play an important role in the Subsidies Committee's examination of the operation of other Members' CVD laws and their consistency with the obligations of the Subsidies Agreement.

To date, 99 WTO Members¹¹ have notified that they have CVD legislation in place or made communications in this respect to the Committee. In 2012, the Subsidies Committee reviewed notifications of new or amended CVD laws and regulations from Australia; Brazil; Burkina Faso; Indonesia; Nepal; Pakistan; Tonga; and the United States.¹²

2012.

¹¹ The European Union is counted as one Member. These notifications do not include those submitted by Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic and Slovenia before these Members acceded to the European Union.

¹² In keeping with WTO practice, the review of legislative provisions which pertain or apply to both AD

As for CVD measures, eight WTO Members notified CVD actions taken during the latter half of 2011, and eight Members notified actions taken in the first half of 2012.¹³ In 2012, the Subsidies Committee reviewed actions taken by several Members, including Australia, Brazil, Canada, China, the EU, Mexico, Pakistan and the United States.

Counter Notifications

Under Article 25.1 of the Subsidies Agreement, WTO Members are obligated to regularly provide a subsidy notification to the Subsidies Committee. Over the past several years, the United States and other Members have repeatedly expressed deep concern about the notification record of China and India, among other Members. As discussed above, prior to October 2011, China had only submitted a single subsidy notification, in 2006, that covered the years 2001-2004. India submitted a subsidies notification in 2010, which was its first in 10 years, and included only three subsidy programs.

In light of China's and India's poor record of notifying its subsidies under the Subsidies Agreement, the United States chose to exercise its rights under Article 25.10 of the Subsidies Agreement. This article provides that when a Member fails to notify a subsidy program, another Member may bring the matter to the attention of that Member by submitting a counter notification of the programs it did not notify. If the subsidizing Member does not then promptly notify the

and CVD actions by a Member generally has taken place in the Antidumping Committee.

¹³ Data for the second half of 2012 were not yet available at the time this report was written.

program, the complaining Member may bring the program to the attention of the Committee. Pursuant to Article 25.10, the United States took the first step in this process by submitting counter notifications with respect to unreported subsidy programs to India and China on October 10 and 11, 2011, respectively.

With regard to China, as noted above, the U.S. submission included information on approximately 200 subsidy programs maintained by China that had not been notified, as well as a request that China immediately notify these programs to the WTO. Although China submitted its second subsidy notification (covering the period 2005–2008) shortly after the U.S. counter notification, only about 10 of the 200 subsidies included in the U.S. Article 25.10 counter notification were notified in China's most recent subsidy notification. In addition, China, once again, failed to notify a single subsidy program administered by provincial or local governments.

With regard to India, the U.S. counter notification included approximately 50 subsidy programs administered at the central and sub-central government levels that India had not previously notified. These measures were identified in various CVD investigations conducted by the United States and also through other ongoing monitoring of Indian subsidies by Commerce's SEO.

Although India subsequently provided a subsidies notification for certain programs, including those maintained at state levels, the notification failed to include any of the programs listed in the U.S. counter notification.

Since the subsidies in the two counter notifications were not properly notified, in April 2012, the United States brought these programs to the attention of the Subsidies Committee pursuant to the provisions of Article 25.10 and continued to press China and India to provide complete subsidy notifications.

U.S. Notification

The United States submitted its most recent subsidy notification in October 2011, consistent with its subsidy notification obligations under the Subsidies Agreement. This notification covered the reporting period 2009-2010 and included approximately 70 federal programs and over 500 state programs. Assembling the necessary detailed information and consulting extensively – particularly at the sub-central level of government – was a major undertaking requiring a significant commitment of staff and other resources of both USTR and Commerce. The fact that United States provided a wide-ranging and extensive notification reflects an intensified effort by Commerce and USTR, heightened cooperation between federal and state government personnel, and the further institutionalization within the United States of meeting the subsidy notification obligation.

In 2012, various WTO Members submitted questions regarding U.S. federal- and state-level programs. The United States fully responded to these questions in a timely fashion.

Notification Improvements

In March 2009, the Chairman of the WTO's Trade Policy Review Body, acting through the Chairman of the General Council, requested that all committees discuss "ways to improve the timeliness and completeness of notifications and other information flows on trade measures." The United States fully supported this initiative in 2009 and developed proposals that would encourage Members to be more transparent in their industrial subsidy policies.

The United States continued to engage on this issue in 2012, as it had in prior years when it took the initiative to highlight the chronic failure by several large Members (*i.e.*, China, India, Malaysia, and Mexico) to submit timely and complete subsidy notifications. This failure by some of the WTO's largest exporters to notify their subsidy programs under the Subsidies Agreement undermines the function of the Agreement. The United States has devoted significant time and resources to researching, monitoring, and analyzing the subsidy practices of Members that have not submitted complete and timely subsidy notifications. This has helped to identify the very significant omissions in the subsidy notifications submitted to date, particularly in the case of China and India (as noted above), and has laid the groundwork for the further pursuit of these issues in the context of the Subsidies Committee's work.

Also under the transparency agenda item of the Subsidies Committee, in 2012, the United States followed up on a specific proposal it submitted in 2011, to strengthen and improve the procedures of the Subsidies

Committee under Article 25.8 of the Subsidies Agreement. Under Article 25.8, any Member may make a written request for information on the nature and extent of a subsidy granted or maintained by another Member, or for an explanation why a specific measure is not considered as subject to the requirement of notification. This mechanism allows Members to draw attention to and request information on specific subsidy measures which are of particular concern. Further, under Article 25.9, Members that receive such a request must answer "as quickly as possible and in a comprehensive manner."

Despite these provisions, many Members' questions under Article 25.8 remain unanswered or are answered only many years after the questions are first submitted. In order to clarify Members' obligation in this area, the United States' 2011 proposal advocated that the Subsidies Committee develop guidelines for answering Article 25.8 questions, including deadlines for submitting written answers under Article 25.9 within a specific timeframe.¹⁴ In 2012, the United States submitted a proposal that would require (1) a written process; (2) time-limits for submitting replies to questions received under Article 25.8; (3) time-limits for submitting written replies to follow-up questions; and (4) that all pending questions under Article 25.8 remain on the Subsidies Committee's agenda until a reply was provided. A number of WTO Members, including Canada, the EU and Turkey supported the U.S. proposal while other Members, such as China, India, Brazil, South Africa and Malaysia expressed concerns that

¹⁴ G/SCM/W/555 (October 21, 2011).

it would impose additional burdens on Members that go beyond the requirements of the text of Articles 25.8 and 25.9. The United States will continue to promote this proposal and other means to improve compliance with subsidy notification obligations at upcoming Subsidies Committee meetings.

Article 27.4 Update

Under the Subsidies Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the Subsidies Agreement authorizes the Subsidies Committee to extend this deadline, where justified. If the Subsidies Committee does not affirmatively determine that an extension is justified, the export subsidy at issue must then be phased out within two years.

To address the concerns of certain small, developing country Members, a special procedure within the context of Article 27.4 of the Subsidies Agreement was adopted at the Fourth WTO Ministerial Conference in 2001. Under this procedure, a developing country Member meeting all of the agreed-upon qualifications became eligible for annual extensions upon request for a five-year period through 2007, in addition to the two years referred to under Article 27.4. Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests for extensions since 2002 under this special procedure.

Following a request for a further extension after the agreed upon five-year period, in 2007, the Subsidies Committee decided to recommend to the General Council a further extension of the transition period until 2013 under similar special procedures as those that had previously been in place, with a two-year phase-out period ending in 2015. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, was that the beneficiaries have no further recourse to extensions beyond 2015. The General Council adopted the recommendation of the Subsidies Committee in July 2007.¹⁵

At its October 2012 meeting, the Subsidies Committee conducted a review of more than 40 programs in the context of the transparency and standstill requirements in the General Council's decision and agreed to continue the requested extensions of the transition period for calendar year 2013. This was the last extension to be given under the General Council decision. Article 27.4 of the SCM Agreement provides the final two-year phase-out period, which ends no later than December 31, 2015. (Attachment 3 contains a chart of all of the programs for which an extension was granted).

Permanent Group of Experts

Article 24 of the Subsidies Agreement directs the Subsidies Committee to establish a Permanent Group of Experts (PGE) "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The Subsidies Agreement

¹⁵ WT/L/691.

articulates three roles for the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy within the meaning of Article 3 of the Subsidies Agreement; (ii) to provide, at the request of the Subsidies Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not been called upon to fulfill any of these functions.

Article 24 further provides for the Subsidies Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

As noted in last year’s report, a consensus could not be reached for replacing Dr. Manzoor Ahmad (Pakistan), whose term expired in 2011. Consequently, at the beginning of 2012, the PGE had only four members, Mr. Zhang Yuqing (China); Mr. Jeffrey A. May (United States); Mr. Gérard Depayre (EU); and Mr. Akio Shimizu (Japan). At the regular meeting held in April 2012, the Committee elected Mr. Zhang Yuqing to replace Dr. Manzoor starting Spring 2011 and Mr. Welber Barral (Brazil) to replace Mr. Zhang Yuqing starting Spring 2012 as members of the PGE. Therefore, at the end of 2012, the five members of the PGE were: Mr. Jeffrey A. May (until Spring 2013); Mr. Gérard Depayre (until Spring 2014); Mr. Akio Shimizu (until Spring 2015); Mr. Zhang Yuqing (until Spring 2016); and Mr. Welber Barral (until Spring 2017).

The Methodology for Annex VII (b) of the Subsidies Agreement

Annex VII of the Subsidies Agreement identifies certain lesser developed country Members that are eligible for particular types of special and differential treatment. Specifically, any export subsidies provided by these Members are not prohibited. The Members identified in Annex VII include those WTO Members designated by the United Nations as “least developed countries” (Annex VII(a)) as well as countries that, at the time of the negotiation of the Subsidies Agreement, had a per capita GNP under \$1,000 per annum and that are specifically listed in Annex VII(b).¹⁶ A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. At the WTO’s Fourth Ministerial Conference, Ministers made a decision that the calculation of the \$1,000 threshold would be based on constant 1990 dollars. The WTO Secretariat regularly updates these calculations and, to date, the following countries have graduated from Annex VII(b) status: the Dominican Republic, Egypt, Guatemala, Morocco and the Philippines.¹⁷

¹⁶ Members identified in Annex VII(b) are: Bolivia, Cameroon, Congo, Cote d’Ivoire, Ghana, Guyana, India, Indonesia, Kenya, Nicaragua, Nigeria, Pakistan, Senegal, Sri Lanka, and Zimbabwe. In recognition of a technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

¹⁷ G/SCM/110/Add.9.

India's Export Competitiveness

As a developing country Member listed in Annex VII of the Subsidies Agreement, India is not subject to the Subsidies Agreement's general prohibition of export subsidies. However, Article 27.5 of the Subsidies Agreement stipulates that Annex VII Members that have reached export competitiveness in one or more products must gradually phase-out over a period of eight years any export subsidies on such products. Article 27.6 of the Subsidies Agreement further stipulates that export competitiveness exists when a developing country Member's exports of a product reach 3.25 percent of world trade for two consecutive calendar years.

On February 26, 2010, the United States submitted a request, in accordance with Article 27.6 of the Subsidies Agreement, that the WTO Secretariat undertake a computation of the export competitiveness of textile and apparel exports from India.¹⁸ Prior to making the request to the Secretariat, the United States performed its own export competitiveness calculations, which indicated that India's textile and apparel products clearly had become export competitive. The Secretariat released its computation on March 23, 2010,¹⁹ which confirmed that India's exports of textile and apparel products exceed the export competitiveness threshold stipulated in the Subsidies Agreement.

The United States has held a number of bilateral discussions with India to review, among other things, the implications of India's textile and apparel industries reaching export competitiveness, including the requirement under Article 27.5 of the Subsidies Agreement that India begin to phase out export subsidies benefitting its textiles and apparel industries. Further, at the April and October 2012 meetings of the Subsidies Committee, the United States, along with other Members, urged India to commit to a schedule to end its export subsidies for products for which it had achieved export competitiveness and refrain from implementing new programs.

In 2013, the United States will continue to seek a resolution to this issue by pressing India to begin the required phase-out of export subsidies that benefit the textile and apparel industries. If India does not engage in resolving this issue, the United States will consider appropriate alternative actions afforded under the Subsidies Agreement and other WTO Agreements.

Prospects for 2013

In 2013, United States will press China and India to notify the outstanding programs included in the U.S. counter notifications. In addition, the United States expects to review China's answers to the United States' outstanding questions on China's 2009 new and full subsidy notification, as well as its answers to U.S. questions submitted under Article 25.8, and will focus on those programs not notified, particularly those that may be prohibited under the Subsidies Agreement and those administered at the provincial and local government levels. Furthermore, the

¹⁸ G/SCM/132.

¹⁹ G/SCM/132/Add.1; G/SCM/132/Add.1/Rev.1.

United States will continue to seek to engage India bilaterally to commit to a phase-out of its export subsidy programs to the extent that they benefit the textile and apparel sector. More generally, the Subsidies Committee will persist in its work in 2013 to improve the timeliness and completeness of Members' subsidy notifications and, in particular, will continue to discuss the U.S. proposal to improve and strengthen the Subsidies Committee's procedures under Article 25.8 of the SCM Agreement. Finally, the United States will likely submit its next subsidies notification to the Subsidies Committee in 2013, covering fiscal years 2011 and 2012.

WTO DISPUTE SETTLEMENT

European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft – DS315

On October 6, 2004, the United States requested consultations with the EU, as well as with Germany, France, the United Kingdom, and Spain, with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the Subsidies Agreement, as well as Article XVI:1 of the GATT 1994. Despite an attempt to resolve this dispute through the negotiation of a new agreement to end subsidies for large civil aircraft, the parties were unable to come to a resolution. As a result, the United States filed a panel request on May 31, 2005. The U.S. request challenged several types of EU subsidies that appear to be prohibited, actionable, or both. A panel was established on July 20, 2005. Several third parties also participated in the

dispute, including Australia, Brazil, Canada, China, Japan and Korea.

The Panel issued its report on June 30, 2010. It agreed with the United States that the disputed measures of the EU, France, Germany, Spain, and the United Kingdom were inconsistent with the Subsidies Agreement, including:

- Every instance of “launch aid” provided to Airbus was found to be an actionable subsidy because, in each case, the terms charged for this unique low-interest, success-dependent financing were more favorable than would have been available in the market.
- Some of the launch aid provided for the A380, Airbus's newest and largest aircraft, was found to be contingent on exports and, therefore, a prohibited subsidy.
- Several instances in which the German and French governments developed infrastructure for Airbus were found to be actionable subsidies because the infrastructure was not generally available and was provided for less than adequate remuneration.
- Several government equity infusions into the Airbus companies were found to be subsidies because they were provided on more favorable terms than available in the market.
- Several EU and Member State research programs to develop new aircraft technologies were found to provide actionable grants to Airbus.
- These subsidies were also found to cause serious prejudice to the interests of the United States due to

lost sales, displacement of U.S. imports into the EU market, and displacement of U.S. exports into the markets of Australia, Brazil, China, Chinese Taipei, Korea, Mexico, and Singapore.

The EU appealed the ruling to the WTO Appellate Body. The Appellate Body issued its findings on May 18, 2011. The Appellate Body modified the Panel's findings on whether launch aid was a prohibited export subsidy, but left intact most of the Panel's findings, including the recommendation that the EU take appropriate steps to remove the adverse effects or withdraw the subsidies. The Appellate Body report and the Panel report, as modified by the Appellate Body report, were adopted by the Dispute Settlement Body (DSB) on June 1, 2011. The EU had until December 1, 2011 to bring itself into compliance with the adopted reports.

On December 1, 2011, the EU sent the United States a "Compliance Report" asserting that it had taken steps to address the subsidies, and had thereby come into compliance with its WTO obligations. However, the United States believes the EU notification shows that the EU has not withdrawn the subsidies in question and has, in fact, granted new subsidies to Airbus' development and production of large civil aircraft. On December 9, 2011, the United States requested consultations with the EU regarding the December 1, 2011 notification. The United States also requested authorization from the WTO Dispute Settlement Body in Geneva to impose countermeasures annually in response to the EU's claim that it fully

complied with the ruling in this case. The amount of the countermeasures would vary annually, but in a recent period are estimated as having been in the range of \$7-10 billion.

In early 2012, the United States and the EU agreed to a sequencing agreement under which the determination of the amount and imposition of any countermeasures would not occur until after WTO proceedings determining whether the EU actions had complied with its obligations. On March 30, 2012, the United States requested that a dispute settlement panel be formed to determine that the EU had failed to honor its compliance obligations. The Panel is expected to issue a ruling on the U.S. claims sometime in 2013.

United States – Measures Affecting Trade in Large Civil Aircraft – DS353

On October 6, 2004, the EU requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EU alleged that such subsidies violate several provisions of the Subsidies Agreement, as well as Article III:4 of the GATT 1994. Consultations were held on November 5, 2004. On May 31, 2005, the EU requested the establishment of a panel to consider its claims, and on June 27, 2005, filed a second request for consultations regarding large civil aircraft subsidies. This request addressed many of the measures covered in the initial consultations, as well as several additional measures that were not covered. The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. Several third parties also

participated in the dispute, including Australia, Brazil, Canada, China, Japan, and Korea.

The Panel issued its report on March 31, 2011. It agreed with the United States that many of the EU's claims were without merit. Particularly, the Panel found that many of the U.S. practices challenged by the EU were not subsidies or did not cause adverse effects to the interests of the EU. However, the Panel did find certain U.S. practices to be inconsistent with its WTO obligations. Specifically, certain NASA and Department of Defense research and development programs as well as certain state tax and investment incentives were found to be subsidies that caused adverse effects. As well, the U.S. foreign sales corporation and extraterritorial income (FSC/ETI) tax exemptions were found to be prohibited export subsidies pursuant to previous WTO rulings. However, because those previous rulings already addressed the FSC/ETI exemptions, the Panel refrained from making a recommendation in this case.

The EU filed a notice of appeal on April 1, 2011. The United States cross-appealed on April 28, 2011. The Appellate Body held two hearings on the issues raised in the appeal: the first on August 16-19, 2011, addressing issues related to whether certain U.S. practices were subsidies, and the second on October 11-14, 2011, focusing on the Panel's findings that the U.S. practices caused serious prejudice to EU interests. The Appellate Body issued its ruling in March 2012. The Appellate Body's decision upheld or modified the Panel's findings regarding the federal research and development programs and state tax and investment incentives, but

curtailed some of the Panel's findings as to the adverse effects caused by those subsidies.

On September 23, 2012, the United States notified the EU and the WTO that it had modified the terms of research and development programs and otherwise operated its programs in a manner to comply with the WTO rulings. However, the EU did not agree with this assessment. Immediately thereafter, on September 25, 2012, the EU requested consultations with the United States over its compliance. Consultations were held on October 10, 2012. The very next day, October 11, the EU requested the formation of a dispute settlement panel by WTO Dispute Settlement Body to determine whether that United States has complied with the rulings. The DSB formed a panel to hear the EU's claim on October 23, 2012. The Panel has begun its work and its report is expected in the first half of 2014. The EU has also requested authorization to impose countermeasures in the estimated amount of USD\$12 billion annually. Per a sequencing agreement between the parties, the determination and imposition of any amount of countermeasures will not occur until after the issue of compliance is determined.

United States – Subsidies on Upland Cotton – DS267

On September 8, 2004, the panel in *United States—Subsidies on Upland Cotton* circulated its final report. The Panel, *inter alia*, made the following findings: (1) certain export credit guarantees (under the GSM 102, GSM 103, and SCGP programs) were prohibited export subsidies; (2) some

payments under U.S. domestic support programs (marketing loan, counter-cyclical, market loss assistance, and Step 2 payments) were found to cause significant suppression of cotton prices in the world market resulting in serious prejudice to Brazil's interests; and (3) Step 2 payments to exporters of cotton were prohibited export subsidies and Step 2 payments to domestic users were prohibited import substitution subsidies because they were contingent upon the purchase of U.S. cotton.

The United States and Brazil appealed several of the Panel's findings. The case went through various arbitration proceedings, a compliance panel (in 2006), and ultimately an Appellate Body review of the compliance panel decision.²⁰

Ultimately, the DSB adopted the Appellate Body report, and the Panel report, as modified by the Appellate Body report, on June 20, 2008. Brazil requested resumption of both arbitration proceedings on August 25, 2008. The meetings with the Arbitrators took place on March 2-4, 2009.

The Arbitrators issued their awards on August 31, 2009. They issued one award concerning U.S. subsidies found to cause serious prejudice to Brazil's interests (marketing loan and countercyclical payments for cotton), and another award concerning U.S. subsidies found to be prohibited export subsidies (export credit guarantees under the GSM 102 program for a range of agricultural products plus the

repealed "Step 2" program for cotton). The Arbitrators rejected Brazil's request for countermeasures for the Step 2 program.

The Arbitrators also found that, in the event that the total level of countermeasures that Brazil would be entitled to in a given year should increase to a level that would exceed a threshold based on a subset of Brazil's consumer goods imports from the United States, then Brazil would also be entitled to suspend certain obligations under the TRIPS Agreement and/or the GATT with respect to any amount of permissible countermeasures applied in excess of that figure. On November 19, 2009, the DSB granted Brazil authorization to suspend the application to the United States of concessions or other obligations consistent with the Arbitrator's awards.

On April 6, 2010, the United States and Brazil reached agreement on certain steps to help make progress in the dispute. Pursuant to this agreement, on April 20, 2010, the United States and Brazil signed a Memorandum of Understanding (MOU) establishing a fund of approximately \$147.3 million per year funded monthly on a pro rata basis to provide technical assistance and capacity building for activities such as pest control and promotion of the use of cotton in Brazil and certain other countries. The fund is scheduled to continue until the next Farm Bill or a mutually agreed solution to the Cotton dispute is reached. The MOU also provides that the United States may end the fund if Brazil imposes countermeasures.

With the conclusion of the MOU, Brazil announced that countermeasures would not be imposed for at least 60 days

²⁰ See the 2010 Subsidies Enforcement Annual Report to the Congress for a full description of the dispute.

from signature of the MOU. During this period, the United States and Brazil negotiated a framework regarding the Cotton dispute. On June 17, 2010, Brazil approved the framework that the governments had negotiated, and on June 21 it announced that it would not impose countermeasures as long as the framework remained in effect. The framework includes elements on cotton support, the GSM-102 program, and further discussion between the United States and Brazil. Brazil and the United States met numerous times under the framework in 2011 and 2012. In October 2012, Brazil informed the WTO Dispute Settlement Body that Brazil was not currently intending to terminate the framework, pending the enactment and Brazil's analysis of a new U.S. Farm Bill. Brazil and the United States are continuing work under the Framework in 2013.

U.S. Application of Countervailing Duties to Chinese Imports – DS379, DS437 & DS449

A WTO dispute settlement panel, reviewing the consistency of four pairs of Commerce's AD and CVD determinations involving imports from China with U.S. obligations under the WTO agreements, circulated its report on October 22, 2010.²¹ Before the Panel, China challenged Commerce's determinations that certain SOEs and banks provided financial

contributions (including production inputs, land-use rights, and loans), that those financial contributions conferred benefits, and that the subsidies identified were specific. China also challenged certain procedural aspects of Commerce's determinations. In addition, China argued that the concurrent application of a CVD and an AD duty calculated pursuant to Commerce's NME methodology results in a so-called "double remedy" for domestic subsidies in China.

The Panel largely upheld Commerce's determinations. Among other findings, the Panel concluded that: (1) Commerce's determinations that Chinese SOEs and state-owned commercial banks (SOCBs) were "public bodies" that provided financial contributions were not inconsistent with the Subsidies Agreement; (2) Commerce was not required to assess whether trading companies were "entrusted or directed" to provide goods for less than adequate remuneration to subject merchandise producers; (3) Commerce properly determined that certain lending by SOCBs was *de jure* specific; (4) Commerce's use of external or "out-of-country" benchmarks to measure the benefit of production inputs, land-use rights, and RMB-denominated loans was appropriate; (5) there was no obligation for Commerce to "offset" positive subsidy benefit amounts with negative subsidy benefit amounts; (6) Commerce acted properly with respect to certain procedural claims by China; and (7) that China failed to establish that the United States acted inconsistently with U.S. WTO obligations when it concurrently imposed CVD and AD duties calculated under the U.S. NME methodology on the same products.

²¹ *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/R. The AD and CVD determinations at issue in this dispute apply to exports from China of *Circular Welded Pipe, Off-the-Road Tires, Laminated Woven Sacks, and Light-Walled Rectangular Pipe*.

In December 2010, China notified its appeal of certain of the Panel's findings to the WTO Appellate Body. In March 2011, the Appellate Body issued a decision that partially reversed the Panel. Specifically, the Appellate Body found that Commerce had used a methodology that was inconsistent with the Subsidies Agreement when it determined that various Chinese SOEs were "public bodies" that had provided "financial contributions." The Appellate Body also reversed the Panel with respect to the issue of alleged "double remedies" from concurrent imposition of countervailing duties and AD duties calculated under the U.S. NME methodology. The Appellate Body found that an improper "double remedy" may arise in such situations and concluded that the United States had an affirmative obligation under the WTO Agreements to determine the extent of such a "double remedy."

At the same time, the Appellate Body affirmed Commerce's and the Panel's findings in several respects. It ruled that: (1) Commerce properly found that Chinese SOCBs are public bodies that provide financial contributions under the Subsidies Agreement; (2) Commerce properly determined that certain lending by SOCBs was *de jure* specific; and (3) Commerce's use of external or "out-of-country" benchmarks to measure the benefit of production inputs, land-use rights, and RMB-denominated loans was appropriate.

Following the partially adverse WTO findings, the United States stated at the April 21, 2011, meeting of the Dispute Settlement Body that it intended to comply with its WTO obligations within a reasonable period of

time and would be considering carefully how to do so. In July, the United States and China reached agreement on 11 months (i.e., until February 25, 2012) as a reasonable period of time for implementation. Subsequently, as a result of an agreement between the United States and China, the reasonable period of time for implementation was extended to April 25, 2012. Commerce initiated administrative proceedings under Section 129 of the Uruguay Round Agreements Act (URAA) to implement the WTO decision and, after agreeing to give Chinese respondents and other interested parties extensions of time to submit materials, made its final determinations in these Section 129 proceedings on July 31, 2012. Following consultations with the appropriate congressional committees pursuant to Section 129(b)(3) of the URAA, Commerce implemented these determinations in a *Federal Register* notice published on August 30, 2012.

On May 25, 2012, China requested WTO consultations with respect to 22 additional CVD investigations on Chinese imports conducted since 2008. Consultations were held on June 25 and July 18, 2012, which failed to resolve the dispute. On August 20, 2012, China requested the establishment of a WTO panel, and the DSB established a panel at its September 28, 2012, meeting. In *United States — Countervailing Duty Measures on Certain Products from China* (DS437), China includes similar claims related to the "public bodies" issue raised in *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379, and also includes claims related to export restraints, initiation standards, benchmarks,

and the application of adverse facts available. A panel was composed in December 2012 and briefing and hearings are scheduled during the first half of 2013.

In U.S. domestic courts, interested parties have been litigating under U.S. law a number of issues similar to those raised in these WTO disputes, including the issue of “double remedy.” In December 2011, the Court of Appeals for the Federal Circuit (CAFC) issued a decision in *GPX Int’l Tire Corp. v. United States (GPX)* stating that, under U.S. law, Commerce could not apply the CVD law to imports from NME countries such as China. In March 2012, in response to the *GPX* decision and before the Court’s ruling became final, Congress passed and President Obama signed into law Public Law 112-99. Public Law 112-99 confirmed that Commerce can apply the CVD law to imports from NME countries. Public Law 112-99 also provides for Commerce to adjust AD duties to address any “double remedy” demonstrated to exist where AD duties and CVDs are applied concurrently to NME imports.

In May 2012, the CAFC acknowledged that Public Law 112-99 overturned its earlier decision in *GPX*. China and Chinese respondent companies have since challenged the constitutionality of Public Law 112-99 before the U.S. Court of International Trade. In January 2013, in the case of *GPX Int’l Tire Corp. v. United States*, the U.S. Court of International Trade upheld the constitutionality of Public Law 112-99.

In September 2012, in *United States — Countervailing and Anti-dumping Measures on Certain Products from China (DS449)*, China requested WTO consultations

with respect to Public Law 112-99, contending that the effective date provision of Public Law 112-99 is inconsistent with the United States’ WTO obligations. China also challenged Commerce’s determinations related to the “double remedy” issue in multiple AD and CVD proceedings involving products imported from China. Consultations between China and the United States took place in November 2012. At its December 17, 2012, meeting, the Dispute Settlement Body granted China’s request for establishment of a panel.

Canada – U.S. Softwood Lumber Agreement

The 2006 Softwood Lumber Agreement between the Government of the United States of America and the Government of Canada (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. Pursuant to a settlement of litigation, Commerce revoked the AD and CVD orders on imports of softwood lumber from Canada. (The settlement ended a large portion of the litigation over trade in softwood lumber). Upon revocation of the orders, U.S. Customs and Border Protection ceased collecting cash deposits and returned previously collected deposits with interest to the importers of record.

The SLA provides for unrestricted trade in softwood lumber in favorable market conditions. However, when the price of lumber is low, Canada must impose export measures. Canadian exporting provinces can choose either to collect an export charge that ranges from 5 percent to 15 percent as prices fall or to collect lower export charges and

limit export volumes. The SLA also includes provisions to address potential Canadian import surges, provide for effective dispute settlement, and monitor administration of the SLA through the establishment of a Softwood Lumber Committee. In addition, the SLA prohibits “circumvention” of the SLA by restricting Canada from taking any action having the effect of reducing or offsetting the export measures. The SLA specifically provides that, with certain enumerated exceptions, grants or benefits provided by a Party, including any public authority of a Party, to producers or exporters of Canadian softwood lumber products shall be deemed to reduce or offset the export measures.

The most recent dispute settlement proceeding began on October 8, 2010, when the United States requested consultations with Canada pursuant to Article 14 of the SLA regarding certain pricing practices with respect to timber harvested from public lands in the interior region of British Columbia. Consultations were held on October 25 in Ottawa. The United States has monitored with growing concern the dramatically increasing share of timber (40 percent of the timber harvested) provided by the provincial government to softwood lumber producers for the low fixed price of 25 cents per cubic meter – the price applied to timber graded “lumber reject.” The increased amount of timber provided at this price did not appear to be justified by any known factors affecting timber quality in the province (including the mountain pine beetle). The provision of an increasing amount of timber for 25 cents per cubic meter appeared to be providing a benefit to producers of Canadian softwood lumber products, which had the effect of offsetting or reducing the export measures

provided for in the SLA, contrary to Article 17 of the Agreement. On January 18, 2011, the United States requested arbitration for a third time pursuant to Article 14 of the SLA, seeking a finding from the London Court of International Arbitration that the increased provision of 25-cent timber to Canadian softwood lumber producers by the province of British Columbia breached the SLA. On July, 18, 2012, following a briefing and hearing, the tribunal issued its finding. While the tribunal acknowledged the dramatic increase in the amount of timber priced as grade 4, and reviewed a number of actions by British Columbia that the United States had explained helped account for that increase, the tribunal did not find a conclusive link between the increase and actions taken by British Columbia. Consequently, the Panel dismissed the case.

On January 23, 2012, the United States and Canada signed a two-year extension of the SLA. The Agreement was set to expire in 2013, but will now extend until October 12, 2015.

United States - Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India – DS436

On April 12, 2012, India requested WTO consultations regarding aspects of Commerce’s 2001 CVD investigation, as well as certain subsequent administrative reviews, of hot-rolled carbon steel flat products from India. Consultations were held on May 31-June 1, 2012. India requested the establishment of a panel on July 12, 2012. The panel request claims that sections 771(7)(G) and 776(b) of the Tariff Act of 1930,

and sections 351.308 and 351.511(a)(2)(i)-(iv) of Title 19 of the Code of Federal Regulations are “as such” inconsistent with the Subsidies Agreement. India also made claims against several aspects of Commerce’s CVD methodology as it was applied in determinations related to the original investigation, certain administrative reviews of the countervailing duty order, and a five-year “sunset” review of the order. As of the drafting of this report, a panel in this dispute had not yet been composed.

China – Countervailing and Anti-Dumping Duties on Grain-Oriented Electrical Steel – DS414

In September 2010, the United States initiated a WTO dispute challenging China’s imposition of AD and countervailing duties on imports of grain-oriented electrical steel (GOES) from the United States. GOES is a soft magnetic material used by the power generating industry in transformers, rectifiers, reactors and large electric machines. In its panel request, the United States alleged that China’s antidumping and subsidy determinations in the GOES investigations appeared to violate numerous WTO requirements. The United States was concerned, *inter alia*, that China initiated the countervailing duty investigation without sufficient evidence; failed to objectively examine the evidence; failed to properly conduct its analysis of injury to the domestic industry; failed to disclose “essential facts” underlying its conclusions; failed to provide an adequate explanation of its calculations and legal conclusions; improperly used investigative procedures; and failed to

provide non-confidential summaries of Chinese submissions.

In its report, the Panel agreed with the United States that China must do more to meet its transparency and due process commitments. In doing so, the Panel found that China breached numerous WTO obligations. In particular, the Panel found that China:

- Initiated the countervailing duty investigation with respect to several alleged programs based on insufficient evidence;
- Failed to provide non-confidential summaries of Chinese submissions containing confidential information;
- Calculated the subsidy rates for U.S. companies in a manner unsupported by the facts;
- Calculated the “all others” subsidy rate and dumping margin without a factual basis;
- Failed to disclose essential facts and failed to explain its calculation of the “all others” subsidy rate and dumping margin; and
- Made unsupported findings that U.S. exports caused injury to China’s domestic industry.

In October 2012, the WTO Appellate Body rejected all of China’s claims on appeal. Specifically, the Appellate Body upheld the Panel’s findings of defects in China’s determination that U.S. exports caused adverse price effects in the Chinese market. The Appellate Body also upheld Panel findings that China failed to disclose essential facts, and failed to explain its determination. China must now bring its AD and CVD

measures on GOES into compliance with its WTO obligations. That process is ongoing and will continue in 2013.

China – Antidumping and Countervailing Measures on Broiler Products from the United States DS427

In a WTO dispute initiated in September 2011, the United States challenged China’s imposition of AD and countervailing duties on U.S. poultry products or “broiler parts.” Broiler parts are essentially chicken products, with a few exceptions such as live chickens and cooked and canned chicken. Many of China’s WTO-inconsistent practices in this dispute parallel those alleged in the ongoing GOES dispute. Consultations were held in October 2011 but were unsuccessful in resolving the dispute.

Following consultations, on December 8, 2011, the United States requested the formation of a dispute settlement panel to resolve the U.S. claims.

A WTO panel was established to hear the dispute in January 2012, and seven other WTO members joined the dispute as third parties. Hearings before the Panel took place in September and December 2012, and the Panel is scheduled to issue its decision in 2013. The alleged errors by MOFOM include:

- assuming the non-cooperation of, and applying adverse inferences to “all other” exporters that were not investigated or even aware of the investigations;
- failure to disclose how the investigated companies’ rates were

calculated, preventing the companies from being able to adequately defend their interests;

- denial of hearings in both investigations, contrary to China’s own law and its WTO obligations;
- failure to provide non-confidential summaries of proprietary information, also limiting the companies’ ability to defend their interests;
- inflating the subsidy calculation by applying a chicken feed subsidy entirely to the uncooked chicken subject to the countervailing duty order, even though the alleged subsidized feed was provided to chicken used to make both uncooked and cooked chicken products;
- multiple errors in the injury determinations, including MOFCOM’s definition of the “domestic industry” for purposes of the petition, MOFCOM’s failure to account for price comparisons, level of trade differences and product mix differences, and MOFCOM’s defective analysis of an alleged “causal link” between the subject imports and the alleged injury to the domestic industry.

China – Antidumping and Countervailing Measures on Certain Automobiles from the United States – DS440

The United States initiated a WTO dispute in July 2012, challenging China’s imposition of AD and countervailing duties on imports of certain U.S. automobiles. As in other recent AD and CVD investigations (Broiler Products and GOES), China appears to have imposed the duties without the

necessary legal and factual support, and without adhering to its transparency and due process commitments, thus violating numerous substantive and procedural WTO obligations under the AD and Subsidies Agreements.

Consultations took place in August 2012. A WTO panel was established to hear this dispute in October 2012, and eight other WTO members joined the dispute as third parties. The Panel is expected to issue its decision in late 2013.

China – Certain Subsidy Measures Affecting the Automobile and Automobile Parts Industries – DS450

After years of extensive independent Chinese language research conducted by USTR, Commerce and, more recently, the ITEC, in September 2012, the United States requested dispute settlement consultations with China concerning China's auto and auto parts "export base" subsidy program. Under this program, China appears to provide extensive subsidies contingent on export performance to auto and auto parts producers located in designated regions known as "export bases." These export subsidies appear to be prohibited under WTO rules and provide an unfair advantage to auto and auto parts manufacturers located in China, which are in competition with producers located in the United States and other countries. The United States also raised the following transparency claims in its consultations request: (1) China had not notified the measures in question; (2) China had not published the relevant measures in an official journal dedicated to the

publication of all trade-related measures; and, (3) China had not made available to Members translations of the measures at issue in one of the official WTO languages. The consultations were held in Geneva on November 6 and 7, 2012.

FOREIGN CVD AND SUBSIDY INVESTIGATIONS OF U.S. EXPORTS

In 2012, USTR and Commerce defended U.S. commercial interests in several CVD investigations by foreign governments that involved exports of products from the United States. These included CVD proceedings conducted by the EU, China, and Peru.

European Union: Bioethanol

On November 25, 2011, the Commission of the European Union (Commission) initiated new AD and CVD investigations on imports of bioethanol from the United States. The Commission included in its investigation 15 programs: seven federal programs, such as income and excise tax credits for bio-fuel production; and, eight state-level programs in Illinois, Iowa, Minnesota, Nebraska and South Dakota, involving the provision of grants, tax incentives or loans for the production of bio- or alternative fuels.

The Commission made a provisional CVD determination on August 24, 2012. Although the Commission made positive findings of countervailable subsidization and injury, the Commission did not impose provisional countervailing duties because the main subsidy scheme – the Federal bio-fuel mixture program – had expired and had not been reintroduced. The Commission also

found that for all other investigated programs the benefits were negligible or had not been claimed by respondents, or the programs had been terminated before the investigation period.

On October 31, 2012, the Commission provided the United States with its general disclosure document in which it stated its intention to terminate the CVD proceeding without the imposition of any anti-subsidy duties. This decision was based on the same reasons outlined in the provisional measures decision described above. The Commission affirmed this decision to impose no duties when it released its final measures on December 20, 2012.

China

Polysilicon — CVD Investigation

In July 2012, acting on a petition from Chinese solar-grade polysilicon producers, MOFCOM initiated a CVD investigation into alleged U.S. federal and state subsidies to U.S. producers and exporters of polysilicon.²² Solar-grade polysilicon is the main input into the production of crystalline silicon photovoltaic cells, or solar cells. USTR and Commerce, are actively working to defend U.S. commercial interests in the polysilicon investigation. The proceeding is expected to conclude by July 2013, but may be extended through January 2014.

²² China also initiated an AD investigation into U.S. polysilicon exports.

Autos – AD/CVD New Shipper Review

On October 15, 2012, MOFCOM initiated a new shipper review based on an application by Nissan North America (Nissan) with respect to China’s AD and CVD measures on certain automobiles from the United States. Since initiating the review, MOFCOM has issued questionnaires to the U.S. government and Nissan. Responses to these questionnaires have been provided. The review may take approximately twelve months to complete.

Trade Barriers Investigation

On November 25, 2011, China initiated an investigation of U.S. “supporting policies and subsidy measures applicable to the U.S. renewable energy industry” as possible trade barriers. The investigation looked at six state-level programs in five states. China issued final conclusions in the investigation on August 20, 2012, expressing the view that the six programs are inconsistent with U.S. WTO obligations. The United States raised concerns about the lack of transparency and fairness in the investigation.

Peru

On June 2, 2012, the Peruvian Anti-dumping and Countervailing Duties Commission of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) self-initiated a CVD investigation of imports of cotton from the United States. INDECOPI is investigating four farm programs administered by the U.S. Department of Agriculture: Direct Payments, Counter-Cyclical Payments, Marketing

Assistance Loans, and the Average Crop Revenue Election (ACRE) program. INDECOPi announced on November 15, 2012, that it would extend the investigative phase of the proceeding until March 2013. As of the date of drafting this report, INDECOPi has not yet issued a preliminary determination in this case.

U.S. MONITORING OF SUBSIDY-RELATED COMMITMENTS

WTO Accession Negotiations

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members. Typically, the applicant submits an application to the WTO General Council, which establishes a working party to review information regarding the applicant's trade regime and to oversee the negotiations over WTO membership.

The economic and trade information reviewed by the working party includes the acceding candidate's subsidies regime. Subsidy-related information is summarized in a memorandum submitted by the applicant detailing its foreign trade regime, which is supplemented and corroborated by independent research throughout the accession negotiation. USTR and Commerce, along with an interagency team, review the compatibility of the applicant party's subsidy regime with WTO subsidy rules. Specifically, the interagency team examines information on the nature and extent of the candidate's subsidies, with particular emphasis on subsidies that are prohibited under the Subsidies Agreement. Additionally, an accession candidate's trade remedy laws are

examined to determine their compatibility with relevant WTO obligations.

U.S. policy is to seek commitments from accession candidates to eliminate all prohibited subsidies upon joining the WTO, and to not introduce any such subsidies in the future. The United States may seek additional commitments regarding any subsidies that are of particular concern to U.S. industries.

The main highlight during 2011-12 was the successful conclusion of the Russian Federation's accession process. As part of the accession agreement, Russia has undertaken a series of commitments to ensure that its trade regime is compliant with the WTO Agreements and has committed to fully apply all WTO provisions, with recourse in some cases to transitional periods.

With regard to trade remedies, Russia has committed to ensure that the application of Russia's AD and CVD laws, as well as the AD and CVD laws relevant to the Customs Union between Russia, Kazakhstan and Belarus, will be compliant with the Antidumping and Subsidies Agreements. Existing U.S. AD duty orders and suspension agreements will not be affected by Russia's accession to the WTO.

On the issue of energy pricing, Russia agreed to language stipulating that producers and distributors of natural gas in the Russian Federation will operate on the basis of normal commercial considerations and price natural gas based on recovery of costs and profit.

Samoa and Montenegro also became full members of the WTO in May and April

2012, respectively, following approval of their accession packages by the General Council in December 2011. Subsequently, in August 2012, Vanuatu also became a full member of the WTO, after the General Council approved its accession package in October 2011.

Other highlights in 2012 included the conclusion of the accession processes for Tajikistan and Laos. The accession package for Tajikistan was adopted by its working party in October 2012, and approved by the WTO General Council in December. The accession package for Laos also was approved by its working party in September 2012 and by the General Council the following month.

WTO Trade Policy Reviews

The WTO's Trade Policy Review (TPR) mechanism provides USTR and Commerce with another opportunity to review the subsidy practices of WTO Members. The four largest traders in the WTO (the EU, the United States, Japan and China) are examined once every two years. The next 16 largest Members, based on their share of world trade, are reviewed every four years. The remaining Members are reviewed every six years, with the possibility of a longer interim period for least-developed Members. For each review, two documents are prepared: a policy statement by the government of the Member under review and a detailed report written independently by the WTO Secretariat.

By describing Members' subsidy practices, these reviews play an important role in ensuring that WTO Members meet their obligations under the WTO Agreements, including the Subsidies Agreement. In

reviewing these TPR reports, USTR and Commerce scrutinize the information concerning the subsidy practices detailed in the report, but also conduct additional research on potential omissions regarding known subsidies – especially prohibited subsidies – that have not been reported.

In 2012, USTR and Commerce reviewed 19 Members' TPRs, including those of China, Colombia, Korea, Turkey, United Arab Emirates, the Philippines, Norway, Nicaragua, Uruguay and Singapore. The United States played a particularly active role in the WTO's third TPR of China held in June 2012, submitting approximately 135 written questions about various aspects of China's trade regime.

In addition, the U.S. TPR was reviewed by other Members, and the United States responded to numerous, detailed questions regarding a wide range of issues concerning our trade regime, including domestic state- and federal-level subsidy practices.

CONCLUSION

In 2012, the subsidy discipline enforcement efforts of the U.S. government were significantly enhanced with the creation of the ITEC. With the ITEC's establishment, the President has brought an unprecedented level of focus and cooperation directed at investigating unfair trade practices – including injurious, foreign government subsidies – around the world. In its first year, the ITEC has already played a critically important role in vigorously pursuing U.S. interests under the Subsidies Agreement.

In 2013, the U.S. government's subsidy enforcement efforts will continue to focus on pursuing several highly significant WTO dispute settlement cases, advocating tougher subsidy disciplines at the WTO, pushing for greater transparency with respect to the government provision of support, and closely monitoring the actions of others to ensure adherence to the obligations set out in the Subsidies Agreement. By actively working to address trade-distorting foreign

government subsidies, the U.S. government's subsidies enforcement program is significantly contributing to the NEI's goal of expanding U.S. exports, advancing economic growth and encouraging job creation. Ultimately, a trading environment that is free from trade-distorting government subsidies will be more open and competitive, bringing significant economic benefits to American manufacturers, workers and consumers alike.

ATTACHMENT 1



Fostering U.S. Global Competitiveness by Combating Unfair Foreign Subsidies IA's Subsidies Enforcement Office is Here to Help

What are Unfair Foreign Subsidies and How Do They Affect American Companies and Workers?

Under the Administration's National Export Initiative (NEI), U.S. companies--large and small--are increasingly selling American-made products in markets across the globe. When selling overseas, many companies find themselves at a disadvantage to foreign competitors who benefit unfairly from financial assistance from foreign governments. Such "subsidies" can take many forms, including:

- *Export loans or loan guarantees at preferential rates*
- *Tax exemptions for exporters or favored companies or industries*
- *Assistance conditioned on the purchase of domestic goods*
- *R&D grants for the development and commercialization of new technologies*

What is the Subsidies Enforcement Office and What Can It Do for You?

ITA's Import Administration (IA) knows that U.S. exporters, manufacturers and workers can be highly successful in diverse industries and overseas markets when they can compete on a level playing field. However, it is clear that not all foreign companies or governments always play by internationally accepted rules. IA's Subsidies Enforcement Office (SEO) is committed to confronting foreign government subsidies and related trade barriers that impede U.S. companies' and workers' ability to expand into and compete fairly in these crucial markets. With a variety of resources and tools at its disposal, the SEO provides:

- A dedicated staff that continually monitors and analyzes foreign subsidies and intervenes, where possible and appropriate, to challenge harmful foreign subsidies.
- Resources to find information on a wide range of foreign government subsidy practices, including our online [Subsidies Library](#).
- Counseling services to American companies on the tools available to address unfairly subsidized imports.
- An experienced staff that provides advice to U.S. companies whose exports are subject to foreign countervailing duty (anti-subsidy) actions and that takes an active role in such cases to defend U.S. interests.

The SEO has vigorously defended the interests of dozens of U.S. exporters subject to foreign anti-subsidy proceedings, whose exports across a variety of industries amount to over \$6 billion.

What Other Remedies Are Available To Combat Unfair Foreign Subsidies?

In addition to the SEO services noted above, under the U.S. trade remedy laws and international trade rules if a foreign subsidy meets certain conditions, the U.S. government could take the following steps, where appropriate:

The SEO recently developed an effective advocacy strategy to help a medium-sized U.S. aerospace exporter to address foreign subsidies that impeded its ability to compete in overseas markets.

- Impose special duties (*i.e.*, countervailing duties) on subsidized imports that are injuring U.S. industries.
- Challenge foreign subsidization through the dispute settlement system of the World Trade Organization.

What is the Next Step?

Contact the SEO if you believe subsidized imports are harming your company or foreign subsidies are impeding your ability to export and compete abroad. SEO experts can evaluate the situation to determine what tools under U.S. law and international trade rules are available to effectively address the problem. Working together we can combat harmful foreign subsidies, to ensure that high quality, export-related jobs in the United States are created and preserved.

ATTACHMENT 2

THE SUBSIDIES ENFORCEMENT LIBRARY

[<http://esel.trade.gov>]

First Screen

[Please note: the SEO is continuing to implement certain improvements to the website; as a result, its appearance may continue to change somewhat, but the basic contents will remain the same.]



Main Features of the Webpage

Review and Operation of the WTO Subsidies Agreement (June 1999)

This links to the June 1999 Report to Congress regarding the operation of the WTO Subsidies Agreement.

Subsidies Library

This is the gateway to the library. The visitor can click on the links under this heading to access information regarding subsidy programs that have been analyzed by Import Administration staff in the course of countervailing duty (CVD) proceedings since 1980.

Published Since 2007 - This links the visitor to subsidy programs analyzed in the most recent CVD decisions since 2007. By clicking on this link, the visitor can access a search feature to find programs by entering terms or dates, or selecting from a list of terms (such as country name), in various boxes where indicated. Clicking on the "search" button will execute a search based on the terms and dates selected, and open a "search results page" displaying the relevant CVD decisions arranged in reverse chronological order from top to bottom. The visitor can then click on the decision title to access a copy of the decision for review.

Published Prior to 2007 - This links the visitor to subsidy programs analyzed in earlier CVD proceedings through 2007. The information is provided by country and then subdivided into various categories, based on the Department of Commerce's finding in the proceeding. More detailed information about a program in a specific case can be easily found by clicking on the hyperlinked cite to the Federal Register notice, in which a complete description of the program and Commerce's analysis is provided.

Home

This link will take the visitor back to the SEO homepage.

Overview

This links the visitor to the informational page found in Attachment 1 of this Report, which includes a general overview of the SEO as well as contact information.

FAQ

This link contains "frequently asked questions" that the visitor can consult for additional information regarding the SEO and the subsidies library.

Contact Us

This link will automatically open up an email form with the SEO's email address, which the visitor can use to submit comments or questions. SEO staff aims to respond to all relevant queries within a week.

WTO Agreement

This links the visitor to the World Trade Organization Agreement on Subsidies and Countervailing Measures as found in the Multilateral Agreement on Trade in Goods. Information in this Agreement includes the definition of a subsidy and provides general guidelines under which remedies may be put in place.

Subsidy Programs

This is an alternative link to the subsidy library with the same information as "Subsidies Library" above.

WTO Notifications

This will link the visitor to all unrestricted WTO subsidy notifications, listed either by date or by country. Beside each country's name is a description of the document, the document number and document symbol as well as the date the document was submitted to the WTO. Clicking on the name of a country will lead the visitor to that country's subsidy notification. The notification will provide a list of notified subsidies, in addition to specific information concerning each subsidy program, such as the type of incentive provided, the duration and purpose of the program, and the legal measure that established the program. Although the Subsidies Agreement stipulates that the notification of a measure does not prejudice its legal status under the Agreement, these notifications do provide detailed information concerning a number of countries' subsidy measures. In the event that less than full information about the program is provided, the Subsidies Enforcement Office, working with other U.S. agencies, seeks more detailed information.

Reports to Congress

This will link the visitor to the most recent SEO Annual Report to Congress, as well as past Annual Reports.

ATTACHMENT 3

**Further Extension of the Transition Period Pursuant to Article 27.4
of the Agreement on Subsidies and Countervailing Measures**

WTO MEMBER	NAME OF PROGRAM	SUBSIDIES COMMITTEE ACTION*
ANTIGUA & BARBUDA	Fiscal Incentives Act	Extension granted
	Free Trade/Processing Zones	Extension granted
BARBADOS	Fiscal Incentive Program	Extension granted
	Export Allowance	Extension granted
	Research & Development Allowance	Extension granted
	International Business Incentives	Extension granted
	Societies with Restricted Liability	Extension granted
	Export Re-discount Facility	No extension requested.
	Export Credit Insurance Scheme	No extension requested.
	Export Finance Guarantee Scheme	No extension requested.
	Export Grant & Incentive Scheme	No extension requested.
BELIZE	Fiscal Incentives Program	Extension granted
	Export Processing Zone Act	Extension granted
	Commercial Free Zone Act	Extension granted
	Conditional Duty Exemption Facility	No extension requested.
BOLIVIA (Annex VII Country)	Free Zone	Reservation of rights. No action taken.
	Temporary Admission Regime for Inward Processing	Reservation of rights. No action taken.
COSTA RICA	Duty Free Zone Regime	Extension granted
	Inward Processing Regime	Extension granted
DOMINICA	Fiscal Incentives Program	Extension granted
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones"	Extension granted
EL SALVADOR	Export Processing Zones & Marketing Act	Extension granted
	Export Reactivation Law	No extension requested.
FIJI	Short-Terms Export Profit Deduction	Extension granted
	Export Processing Factories/Zones Scheme	Extension granted

	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)	No extension requested.
GRENADA	Fiscal Incentives Act No. 41 of 1974	Extension granted
	Qualified Enterprise Act No. 18 of 1978	Extension granted
	Statutory Rules and Orders No. 37 of 1999	Extension granted
GUATEMALA	Special Customs Regimes	Extension granted
	Free Zones	Extension granted
	Industrial and Free Trade Zones (ZOLIC)	Extension granted
HONDURAS (ANNEX VII COUNTRY)	Free Trade Zone of Puerto Cortes (ZOLI)	Reservation of rights. No action taken.
	Export Processing Zones (ZIP)	Reservation of rights. No action taken.
	Temporary Import Regime (RIT)	Reservation of rights. No action taken.
JAMAICA	Export Industry Encouragement Act	Extension granted
	Jamaica Export Free Zone Act	Extension granted
	Foreign Sales Corporation Act	Extension granted
	Industrial Incentives (Factory Construction) Act	Extension granted
JORDAN	Income Tax Law No. 57 of 1985, as amended	Extension granted
KENYA (ANNEX VII COUNTRY)	Export Processing Zones	Reservation of rights. No action taken.
	Export Promotion Program Customs & Excise Regulation	Reservation of rights. No action taken.
	Manufacture Under Bond	Reservation of rights. No action taken.
MAURITIUS	Export Enterprise Scheme	No extension requested.
	Pioneer Status Enterprise Scheme	No extension requested.
	Export Promotion	No extension requested.
	Freeport Scheme	Extension granted
PANAMA	Export Processing Zones	Extension granted
	Official Industry Register	Extension granted
	Tax Credit Certificates (CAT)	No extension requested.
PAPUA NEW GUINEA	Section 45 of the Income Tax Act	Extension granted
	Income Tax Concessions	Reservation of rights. No action taken.

SRI LANKA (ANNEX VII COUNTRY)	Tax Holidays & Profits Generated	Reservation of rights. No action taken.
	Concessionary Tax on Dividends	Reservation of rights. No action taken.
	Indirect Tax Concessions - Internal Tax Exemptions	Reservation of rights. No action taken.
	Export Development Investment Support Scheme	Reservation of rights. No action taken.
	Import Duty Exemption	Reservation of rights. No action taken.
	Exemption from Exchange Control	Reservation of rights. No action taken.
ST. KITTS & NEVIS	Fiscal Incentives Act	Extension granted
ST. LUCIA	Fiscal Incentives Act	Extension granted
	Micro & Small Scale Business Enterprise Act	Extension granted
	Free Zone Act	Extension granted
ST. VINCENT AND THE GRENADINES	Fiscal Incentives Act	Extension granted
URUGUAY	Automotive Industry Export Promotion Regime	Extension granted

*All programs for which an extension was requested are permitted a two-year phase-out period after the extension period sanctioned by the Subsidies Committee. If no extension period was approved, Members must phase-out the program in two years.