

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**



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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 is the nineteenth such annual report to Congress and describes the U.S. government's activities and key actions taken during 2013 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 orient American businesses towards the global marketplace by significantly enhancing exports and related job growth. Already U.S. exports have risen substantially to nearly \$2.3 trillion by the end of 2013 and more than 1.3 million export related jobs have been added since 2009. These record levels reflect the Administration's commitment under the NEI to use all the tools at its disposal to help American exporters grow their markets and support additional jobs, including through the strong enforcement of international trade rules.

This commitment to enforcement continues to be an important component of the NEI because many U.S. companies are competing at a considerable disadvantage both at home and abroad against foreign companies that benefit from unfair government subsidies and other questionable trade practices. To complement its NEI strategy, the Administration enhanced its ability to address these issues when, in February 2012, the President signed an Executive Order launching the Interagency Trade Enforcement Center (ITEC). ITEC represents a more aggressive whole-of-government approach to ensuring that our trading partners abide by their international trade obligations. With 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. ITEC continues to play an important role in vigorously pursuing U.S. rights under international subsidy rules, as evidenced by ITEC's role in supporting several World Trade Organization (WTO) dispute settlement challenges that involved subsidies disciplines, including prohibited export subsidies and local content subsidies. ITEC's work enhances and supplements the ongoing monitoring and enforcement efforts of the U.S. government.

Strong enforcement is a vital element of the Administration's trade strategy, which recognizes 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 objective 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. USTR and Commerce pursued this joint enforcement agenda in 2013 through a wide range of actions, including enhanced monitoring of foreign government subsidies, intensive engagement with trading partners, advocacy for stronger subsidy disciplines, and decisive action against foreign government practices that appear to be 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. 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

Pressuring China to Notify All of Its Subsidy Programs: In 2013, the United States continued to press 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 U.S. “counter notification,” and a formal request for China to fully disclose many additional documented support measures.

Preserving Effective Multilateral Subsidies Disciplines through Dispute Settlement: The WTO Appellate Body affirmed a WTO dispute settlement panel’s conclusions that European governments had provided billions of dollars of subsidies to Airbus, which caused serious prejudice to U.S. trade interests. As a result, WTO rules required the withdrawal of the subsidies at issue or the removal of their adverse effects. Unfortunately, this was not done, and the United States was forced to pursue further WTO action.

Advancement of ITEC: President Obama signed an Executive Order launching ITEC in 2012, 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. USTR and Commerce have now assembled critical ITEC infrastructure and staff from a variety of agencies with a diverse set of language skills and expertise. In 2013, ITEC made important contributions to several WTO disputes that involved subsidies disciplines, including prohibited export subsidies and local content requirements.

Countering Chinese Subsidies using the U.S. CVD Law: In 2012, Congress and President Obama reaffirmed Commerce’s ability to impose CVDs on products from countries designated as non-market economy countries. Through January 2014, Commerce has issued 33 CVD final determinations regarding imports from China.

Defending U.S. Interests in Dispute Settlement and Foreign CVD Cases: The United States won a major dispute at the WTO in 2013 on behalf of American chicken producers, in which a dispute settlement panel found that China’s imposition of countervailing (and antidumping) duties on chicken “boiler products” was unjustified under WTO rules. During the year, USTR and Commerce defended U.S. interests in a variety of CVD investigations of U.S. products. Most notably, Peru terminated its CVD investigation into US exports of cotton without the imposition of duties.

Promoting Improved Transparency in the WTO Subsidies Committee on Subsidies: In 2013, 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 – such as Vietnam – to take steps in 2013 to meet their subsidy notification obligations.

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 a trade distorting 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 subsidies) are prohibited. All

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 of the Subsidies Agreement regarding green light subsidies, the only non-actionable subsidies at present are those that are not specific, as discussed below.

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 (ITA's) Enforcement and Compliance (E&C) unit, formerly known as Import Administration (IA),³ 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

³ Effective October 1, 2013, Commerce's ITA consolidated its four business divisions into three more efficient and functionally aligned units: Global Markets, Industry and Analysis, and Enforcement and Compliance. The Enforcement and Compliance unit enhances ITA's responsibilities to enforce U.S. trade laws and ensure compliance with trade agreements negotiated on behalf of U.S. Industry.

understand the impact of foreign subsidies on U.S. commerce and provide assistance to interested U.S. parties concerning remedies available to them. E&C 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 E&C, 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. In the negotiations under this agreement of the Ministers – hereafter referred to as the Rules mandate – the United States pursued an aggressive, affirmative agenda, aimed at strengthening the rules and addressing the underlying causes of unfair trade practices.

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 has provided an

avenue to address these other practices and to inform the discussion of trade remedies in a constructive manner. Moreover, it provided 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 continues to be a major economic and environmental concern, and the United States has long believed 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 has viewed 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.

Little activity has occurred in the Rules Group since 2011. Due to the broader impasse in the DDA negotiations, there were no substantive meetings related to trade remedies, or horizontal and fishery-related subsidy negotiations in 2013. The Friends of Fish group (Australia, Argentina, Chile, Colombia, Iceland, New Zealand, Norway, Pakistan, Peru, and the United States) have continued to remain active, however, sponsoring workshops and seminars to raise WTO Member awareness of the deteriorating condition of fish stocks globally, the role subsidies play in overcapacity and overfishing, and the importance of improved transparency of fisheries subsidies. In December 2013, the

Friends of Fish delivered a joint statement at the 9th WTO Ministerial Conference, in Bali, among other things pressing for an ambitious fisheries subsidies discipline within the WTO and highlighting the need for reform and increased transparency of fishery programs.

In any WTO negotiations going forward, the United States will continue to focus on 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 agreements to discipline fisheries subsidies in other fora such as the Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership negotiations, which will reinforce U.S. efforts to reach eventual agreement on fisheries subsidies in the WTO.

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 agreement on 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. In 2012, Canada and Mexico joined the TPP negotiations; Japan became the newest TPP partner country in 2013.

The Administration has identified the negotiation of new disciplines on state-owned enterprises (SOEs) as a priority for the TPP. Negotiations on SOEs have progressed substantially, and a detailed plan is in place for reaching agreement on the remaining issues. The U.S. SOE proposal aims to level the playing field for U.S. firms and workers by addressing distortions of trade and investment that result from the unfair advantages – such as subsidies – that governments provide to SOEs. Regarding trade remedies, TPP negotiations have proceeded consistent with the negotiating objectives that Congress laid out in the Trade Act of 2002 and with the goal of preserving the effectiveness of trade remedy rules and improving transparency and due process in trade remedy proceedings.

With respect to marine fisheries, the TPP countries now include many of the top global producers of marine fisheries products by volume.⁴ Other TPP countries are significant traders of these products. Among the most significant problems that inhibit efforts to conserve marine resources and diminish distortions in international trade are government subsidies, which have

⁴ Top global producers include Canada, Chile, Japan, Mexico, Peru, the United States and Vietnam.

contributed to overcapacity and overfishing in global fisheries. Addressing these subsidies will have positive impacts on trade, the economy, and the environment. The United States and other TPP countries have therefore continued their efforts to discipline subsidies that contribute to overcapacity and overfishing, as well as improve transparency regarding subsidy practices.

TRANS-ATLANTIC TRADE AND INVESTMENT PARTNERSHIP

Following a detailed exploratory process that took place throughout 2012, the United States and the European Union (EU) issued the Final Report of the High Level Working Group on Jobs and Growth in February 2013. The Report concluded that a comprehensive trade agreement that addresses a broad range of bilateral trade and investment issues, and contributes to the development of global rules, would provide significant mutual benefit. The Report highlighted globally relevant challenges and opportunities, including those related to subsidies and other privileges granted to SOEs, localization requirements, export restrictions on raw materials, and other areas of mutual concern.

USTR subsequently notified Congress of the Administration's intent to enter into negotiations, and the Transatlantic Trade and Investment Partnership (TTIP) negotiations were launched in June 2013. The first round of negotiations took place in July 2013, with subsequent rounds taking place in November and December 2013.

Among the U.S. objectives are developing disciplines addressing SOEs and

discriminatory localization barriers to trade. Discussions continue on whether and what types of subsidies and trade remedies-related provisions might also be included in the agreement.

MULTILATERAL EFFORTS TO ADDRESS MARKET-DISTORTING PRACTICES IN THE STEEL INDUSTRY

During 2013, the United States continued its work with other countries to address concerns related to the global steel sector, particularly through its work at the Organization for Economic Cooperation and Development (OECD) and within the North American Steel Trade Committee (NASTC).

As an active participant in the OECD 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. Among those issues are the continued growth of global trade restrictions, steelmaking overcapacity, raw materials, state-owned steel enterprises, trade policy issues in the steel sector, maintaining open markets for steel, and energy issues. The gradual and unsteady recovery of the steel market in the wake of the global economic downturn, along with increasing concerns regarding the growth of global steel-making capacity, continued to be central to the Committee's discussions and work.

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 2013, 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 continue to identify and evaluate, as appropriate, trade-related concerns and distortions in the global steel market.

Bilaterally and at the OECD, 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.

Government-funded capacity expansion in China continues to be a concern. While China has closed some inefficient steel capacity, steel capacity and production in 2013 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 783 million MT for 2013, an eight percent increase when

compared to 2012. Notwithstanding a weak global and domestic demand outlook, the OECD projected Chinese steelmaking capacity to reach 940 million MT in 2013 and to continue growing significantly through 2014, reaching 965 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, the work of China's policymakers at its Economic Work Conference (EWC) for 2014's macroeconomic policy, 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 on such matters in bilateral and multilateral fora.

MONITORING AND ENFORCEMENT

Interagency Trade Enforcement Center

On February 28, 2012, the President signed an Executive Order establishing the Interagency Trade Enforcement Center (ITEC) within USTR to enhance enforcement of U.S. trade rights and domestic trade laws.

ITEC leverages and mobilizes resources and expertise across the federal government to develop and support the pursuit of trade enforcement actions that will address unfair foreign trade practices and barriers that could otherwise imperil our Nation's export growth and job recovery efforts. ITEC's goal is to create a dedicated, "whole-of-government"

approach to trade enforcement that will significantly strengthen efforts to level the playing field for American workers and businesses.

Since its inception, ITEC has coordinated and leveraged interagency resources to provide in-depth analysis of enforcement-related issues and develop challenges to foreign practices that threaten the rights of U.S. workers and exporters. In a close, collaborative effort, USTR and the Department of Commerce have assembled critical ITEC infrastructure and staff with a diverse set of language skills and expertise in a number of trade areas including subsidy analysis. ITEC staff members come from a variety of agencies including the Departments of Commerce, Agriculture, State, Justice and the Treasury as well as from the International Trade Commission.

ITEC has provided substantive support to USTR for a variety of ongoing WTO disputes, as well as developing issues for possible future dispute settlement action and enforcement-related negotiations. In 2013, ITEC made important contributions to several WTO disputes that involved subsidies disciplines, including prohibited export subsidies and local content subsidies. While supporting ongoing litigation and negotiations as well as conducting self-initiated research, ITEC's Mandarin-speaking staff members have identified numerous potentially prohibited and other subsidies maintained by the Chinese government. In addition, ITEC assisted in conducting Russian-language research and drafting U.S. questions on Russia's first subsidies notification to the WTO since its accession.

Current ITEC detailees from the International Trade Administration (ITA) include an experienced subsidy analyst and two Mandarin-speaking trade enforcement analysts. ITEC also has a detailee from the Department of Agriculture experienced in subsidy analysis on its staff and fluent in Portuguese. Over the coming months, ITA plans to hire and detail to ITEC additional trade enforcement analysts with Mandarin, Russian, and Spanish language skills.

U.S. Government subject matter experts from a variety of agencies have made important contributions to the efforts already undertaken by ITEC, and continue to collaborate closely with ITEC staff to provide assistance as USTR works to ensure that our trading partners abide by their obligations under the WTO and other U.S. trade agreements, including commitments to maintain open markets on a non-discriminatory basis, and to follow rules-based procedures in a transparent way.

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 Secretary of Commerce Penny Pritzker and USTR Ambassador Michael Froman, is responsible for pursuing the commitment under the NEI to use all the tools at the U.S. government's disposal to help American exporters grow their markets abroad. A key component of achieving that goal is a focus on trade compliance and

enforcement of existing trade agreements, such as the Subsidies Agreement.⁵

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 support programs. U.S. government participation in these cases is critical for U.S. exporters to maintain their access to key markets.

Monitoring Efforts

Identifying, researching and evaluating potential foreign government subsidy practices is a core function of the subsidies enforcement program. Expert subsidy analysts in E&C, USTR and 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

⁵ See <http://trade.gov/nei/> and <http://www.ustr.gov/nei>.

contacts. E&C 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 E&C 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 E&C 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 E&C 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 E&C 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 E&C 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 foreign government authorities through informal contacts, formal bilateral meetings and/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 2013, USTR and Commerce worked with a variety of U.S. companies, industries and workers that had significant concerns about unfair foreign government support practices in a wide range of countries. These activities included new and ongoing work on behalf of the U.S. aerospace, chemicals, paper, steel and renewable energy industries, among others.

OUTREACH EFFORTS

USTR and E&C 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. 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, E&C 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 monitoring China's subsidy practices and enforcing the unfair trade rules. Furthermore, both USTR and E&C have staff stationed in Geneva, Switzerland, to participate in the ongoing WTO Rules negotiations, the work of the WTO Subsidies, Antidumping and Safeguard Committees and WTO dispute settlement activities relevant to subsidies enforcement and trade remedies.

CHINESE GOVERNMENT SUBSIDY PRACTICES

Overview

During most of the past decade, the Chinese government emphasized 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 industries dominated by SOEs. 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 and evidenced by several successful dispute settlement proceedings initiated by the United States

and other WTO Members, China has a poor record of compliance with the obligations that it assumed regarding its industrial subsidy regime. China maintains a largely opaque industrial support system and appears to have employed numerous subsidies – some of which may be prohibited – as an integral part of industrial policies designed to promote or protect its domestic industries and SOEs.

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 to the WTO 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 the 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 were significantly incomplete. In particular, both notifications exclude numerous central government subsidies, and neither notification includes a single subsidy administered by provincial or local government authorities, even though the United States has 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 make available translations of its trade-related measures – including subsidy measures – into one or more WTO languages and publish all trade-related measures in a single official journal. However, to date, it appears that China has not translated or published most of 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 substantial 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 policies. The magnitude 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 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' efforts to obtain relevant legal measures, which prevents a thorough understanding of subsidy policy formulation and implementation in China.

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.

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 Commerce that eventually led to WTO dispute settlement proceedings, various CVD investigations conducted by Commerce, and an 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.)

In response, it was incumbent upon China under the Subsidies Agreement rules 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 not provided a complete, substantive response to the U.S. counter notification, instead insisting that the United States has "misunderstood" China's subsidy programs and the relationship between the programs notified by China and those contained in the U.S. request under Article 25.10. Since the U.S. submission under Article 25.10, the United States has repeatedly urged China in multiple fora to meet bilaterally and discuss any misunderstandings that the United States might have regarding China's subsidy programs. China has avoided engaging with the United States in any meaningful discussions on this matter, however, and has failed to provide any of the required information or a full explanation of the 200 unreported subsidy programs contained in the U.S. counter notification.

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 programs, which underscores a point that the United States has 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 sub-central governments. A subsidy notification from China that omits sub-central government

subsidy programs, therefore, is not a complete 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" On its face, this language outlines 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 implementing 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 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 – or replaced – 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 not only to raise questions about the existing measures, but also to analyze whether those measures are consistent with 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 so many years of WTO membership.

In October 2011, not long after the United States 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 yet again 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, textiles, 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 to the United States and other WTO Members and their descriptions lacked substantial new information. For these reasons, China's most recent notification again appears to fall

significantly short of the notification obligation in the Subsidies Agreement.

The United States has also taken other steps to highlight China's failure to notify all of its subsidy measures 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 2014, 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. The United States will continue to press China in the Subsidies Committee 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.

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 that Commerce has 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 2014, Commerce had reached final affirmative CVD determinations in 33 investigations of imports from China involving products in the steel, seafood, textiles, paper, chemical, wood, non-ferrous metals, plywood, flooring, and new energy technology industries, among others. There is a broad array of alleged subsidies that Commerce has investigated or is investigating, including 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 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 2013, the JCCT was co-chaired for the United States by Secretary Pritzker and Ambassador Froman, and for China by Vice Premier Wang. 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 NME status 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 establish the Structural Issues Working Group (SIWG), to be jointly chaired for the United States by Commerce's Assistant Secretary

for Enforcement and Compliance and the Assistant U.S. Trade Representative for China Affairs, and for China by the Director General of the Bureau of Fair Trade (BOFT) of the Ministry of Commerce (MOFCOM).⁶ The working group has met a number of times since its launch in July 2004.

The SIWG held its most recent meetings in Washington, D.C., in November 2013. China's delegation included several Chinese government officials who offered insight into various aspects of legal reform in China as well as market reforms in specific localities.

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 2013, concurrent with the SIWG meetings, the United States and China held TRWG meetings in Washington, D.C. The United States requested

⁶ 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.

information with regard to a number of aspects of MOFCOM's AD and CVD decisions, including the administration and application of China's measures, the procedures and methodologies used in its investigations, and China's procedures for implementing adverse WTO decisions. These requests were prompted by concerns resulting from the insufficient disclosure and transparency that often characterizes MOFCOM's administrative system. The United States also suggested that time could be set aside in the TRWG to discuss U.S. questions and concerns regarding China's lack of compliance with its WTO subsidies notification obligations (as detailed more fully above), but as with similar requests for a bilateral discussion on this issue, the Chinese delegation refused to engage on the topic.

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 2013. 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 following: the U.S. "counter notification" of unreported subsidy programs in China and India; submission by the United States of questions to China under Article 25.8 of the Subsidies

Agreement; examination of ways to improve the timeliness and completeness of subsidy notifications; the "export competitiveness" of India's textile and apparel sector; review of the export subsidy program extension mechanism for certain small-economy developing-country Members; filling an opening on the five-member Permanent Group Of Experts; and updating the eligibility threshold for developing countries to provide export subsidies under Annex VII(b) of the Subsidies Agreement. 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 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 that, as set forth in Articles 1 and 2 of the Agreement, meet the definition of a subsidy and are specific. In 2013, the Subsidies Committee reviewed thirty-six subsidies notifications.⁷ Numerous Members have

⁷ During the 2013 spring and fall meetings, the Subsidies Committee reviewed the 2013 new and full subsidy notifications of Armenia, Burkina Faso, Cuba, Gabon, Macao China, the Russian Federation, and Singapore. The Committee also

never made a subsidy notification to the WTO, although many are lesser developed countries.⁸

Review of CVD Legislation, Regulations and Measures

Throughout 2013, 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 2013. 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 Members⁹ have notified that they have CVD legislation in

reviewed the 2009 and 2011 new and full subsidy notifications of Armenia, Australia, Burkina Faso, Cuba, the European Union, Gabon, Georgia, Honduras, Macao China, Macedonia, Mali, Peru, the Russian Federation, Singapore, and Swaziland. The Committee continued the review of 2011 and 2009 new and full subsidy notifications of Argentina, Armenia, Brazil, China, Gabon, Honduras, India, Japan, the European Union, Namibia, Nicaragua, Turkey, the United States and Vietnam.

⁸ For further information, see the Report (2013) of the WTO Committee on Subsidies and Countervailing Measures (G/L/1052), November 4, 2013.

⁹ The European Union is counted as one

place or made communications in this respect to the Subsidies Committee. In 2013, the Subsidies Committee reviewed notifications of new or amended CVD laws and regulations from Cameroon, Chile, Lao PDR, Macao China, Indonesia, Mali, Morocco, New Zealand, the Russian Federation and Ukraine.¹⁰

As for CVD measures, nine WTO Members notified CVD actions taken during the latter half of 2012, and eight Members notified actions taken in the first half of 2013.¹¹ In 2013, the Subsidies Committee reviewed actions taken by Australia, Brazil, Canada, China, the EU, Mexico, Pakistan, Peru, South Africa, Turkey 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

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.

¹⁰ In keeping with WTO practice, the review of legislative provisions which pertain or apply to both AD and CVD actions by a Member generally has taken place in the Antidumping Committee.

¹¹ Data for the second half of 2013 were not yet available at the time this report was written.

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 subsidies under the Subsidies Agreement, the United States chose to exercise its rights under Article 25.10 of the Subsidies Agreement. Article 25.10 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 program that was not notified. If the subsidizing Member does not then promptly notify the 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.

As explained 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.

The United States also exercised its rights under Article 25.10 to highlight

shortcomings in India's record of notifying its subsidies. 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 by Commerce and USTR of Indian subsidies.

India subsequently provided a subsidies notification for certain programs, including some fisheries subsidies maintained at state levels, which is an encouraging step toward meeting its subsidy notification obligation. However, the notification was limited to the fisheries sector and 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. At the two meetings of the Committee in 2013, the United States continued to press China and India to provide complete subsidy notifications.

Submission of Article 25.8 questions to China

Article 25.8 of the Subsidies Agreement provides: "Any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member (including any subsidy referred to in Part IV), or for an explanation of the

reasons for which a specific measure has been considered as not subject to the requirement of notification."

Because China's two notifications to date have been significantly incomplete (*e.g.*, notifying only central government-level programs) and late (*e.g.*, the notification filed in 2011 covered the period 2005 through 2008), as noted above, the United States submitted extensive, detailed questions to China in October 2012 covering a wide range of possible subsidy programs in numerous sectors, which it appears China should have notified. Under Article 25.9, China is obligated to provide a response "as quickly as possible and in a comprehensive manner."

To date, China has not responded to the United States' questions submitted under Article 25.8. The United States continued to press China to provide answers at both meetings of the Subsidies Committee in 2013.

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 has fully supported this initiative since 2009 and has developed proposals that would encourage Members to be more transparent in their industrial subsidy policies.

In 2013, the United States continued its engagement on this issue by highlighting the chronic failure by several important

WTO Members (*e.g.*, China, India and Malaysia) 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 objectives 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 2013, the United States continued advocating 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. As discussed above, under Article 25.8, any Member may make a written request for information on the nature and extent of a subsidy granted by another Member, or for an explanation why a specific measure is not considered subject to the notification requirement. This mechanism allows Members to draw attention to and request information about particular subsidy measures that are of 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 questions submitted to Members under Article 25.8 remain unanswered or are answered only many years after the

questions are first submitted. In order to clarify Members' obligations in this area, in 2011, the United States generally proposed 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.¹² In 2012, the United States submitted a detailed textual 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 has been provided.

The United States provided additional, detailed explanations regarding its proposal in 2013, emphasizing the importance of implementing a formal schedule for Members to respond to Article 25.8 questions and suggesting a deadline of 60 days for such responses. A number of WTO Members, including Australia, Canada, the EU, Japan and New Zealand, supported the U.S. proposal while other Members, such as China, India, Brazil, and South Africa have expressed concerns that 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 the subsidy notification obligations of the Subsidies Agreement.

Article 27.4 Update

¹² G/SCM/W/555 (October 21, 2011).

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 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. This recommendation included a final two-year phase-out period (2014-2015) as provided for in Article 27.4 of the Subsidies Agreement. 2014 marks

the beginning of this final two-year phase-out. 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 2007.¹³ (Attachment 3 contains a chart of all of the programs for which an extensions were previously 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 articulates three roles for the PGE: (1) 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; (2) to provide, at the request of the Subsidies Committee, an advisory opinion on the existence and nature of any subsidy; and (3) 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 experts to the PGE, with one of the five experts being

replaced every year. At the beginning of 2013, the members of the PGE were: Mr. Jeffrey A. May (United States); Mr. Gérard Depayre (EU); Mr. Akio Shimizu (Japan); Mr. Zhang Yuqing (China); and, Mr. Welber Barral (Brazil).

Mr. May’s term expired in 2013. Two candidates were nominated to replace him – one from the United States and one from Chile. At the regular April 2013 meeting, Mr. Chris Parlin of the United States was elected to replace Mr. May. At the end of 2013, the five members of the PGE were: Mr. Gérard Depayre (until Spring 2014); Mr. Akio Shimizu (until Spring 2015); Mr. Zhang Yuqing (until Spring 2016); Mr. Welber Barral (until Spring 2017); and Mr. Chris Parlin (until Spring 2018).

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).¹⁴ A country

¹³ WT/L/691.

¹⁴ 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

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.¹⁵

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.¹⁶ 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, 2010,¹⁷ 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 2013 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. Despite these efforts, the United States remains concerned that during 2013 India continued to implement new export subsidy programs.

In 2014, the United States will continue to seek a resolution of 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

compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

¹⁵ G/SCM/110/Add.10.

¹⁶ G/SCM/132.

¹⁷ G/SCM/132/Add.1; G/SCM/132/Add.1/Rev.1.

United States will consider appropriate alternative actions afforded under the Subsidies Agreement and other WTO agreements.

Prospects for 2014

The United States will continue to press WTO Members to comply with their subsidy notification obligations in 2014, including those Members with a large and increasing role in global trade, such as China and India. In particular, the United States will urge China and India to notify the outstanding programs included in the U.S. counter notifications and expects to review China's answers to the United States' questions submitted under Article 25.8, with particular focus on those programs that may be prohibited under the Subsidies Agreement and those administered at the provincial and local government levels. Furthermore, the United States will continue to seek to engage India bilaterally to ensure India honors its obligation to phase-out any export subsidy programs that benefit the textile and apparel sector. More generally, the Subsidies Committee will persist in its work in 2014 to improve the timeliness and completeness of Members' subsidy notifications. In particular, the United States will continue to promote the U.S. proposal to improve and strengthen the Subsidies Committee's procedures under Article 25.8 of the Subsidies Agreement.

WTO DISPUTE SETTLEMENT

European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft – DS316

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 appeared to be prohibited, actionable, or both. A panel was established on July 20, 2005.

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.

Many of the 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 that certain 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 DSB 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 has complied with its WTO obligations. On March 30, 2012, the United States requested that a dispute settlement panel be formed to determine that the EU had failed to comply fully with its WTO obligations. The Panel is expected to issue its report on the U.S. claims in 2014.

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 violated 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.

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 the 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. Panel proceedings are underway and a report is expected in 2014. The EU has also requested authorization to impose countermeasures in the estimated amount of USD\$12 billion annually. Pursuant to 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.¹⁸

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 last payment to the fund was a partial payment in September 2013 due to the

¹⁸ See the 2010 Subsidies Enforcement Annual Report to the Congress for a full description of the dispute.

sequester. Subsequent payments have not been made.

With the conclusion of the MOU, Brazil announced that countermeasures would not be imposed for at least 60 days 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. After the United States made a partial payment in September 2013, Brazil stated that it believed the United States was in breach of the Framework and began taking steps towards possible retaliation while monitoring movement of the a new farm bill.

U.S. Application of Countervailing Duties to Chinese Imports –DS437 & DS449 and Domestic Litigation Involving China CVD Proceedings

On May 25, 2012, China requested WTO consultations with respect to 22 CVD investigations of 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 Dispute Settlement Body 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. Panel proceedings are underway, and the panel has advised the DSB that it expects to complete its work in May 2014.

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 an opinion 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 opinion 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 granted a rehearing of the GPX case, and acknowledged that its earlier opinion, which was not finalized, had no legal effect because of Public Law 112-99. As a result, the CAFC held that Commerce could apply the CVD law to imports from NME countries such as China. China and Chinese respondent companies have since challenged the constitutionality of Public Law 112-99 in more than ten proceedings before the U.S. Court of International Trade and CAFC. The CAFC is expected to issue an

opinion regarding the constitutionality of Public Law 112-99 in early 2014.

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 established a panel at China's request. Panel proceedings are underway, and a report is expected to be issued in 2014.

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. 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.

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 United States has challenged Canada's enforcement of the SLA before the London Court of International Arbitration in three separate disputes. One of those disputes involved several financial assistance programs for the lumber industries in Quebec and Ontario, which the United States argued violated the SLA's standstill provision against new assistance. The tribunal issued a final decision on January 21, 2011, finding that Canada had circumvented the SLA with respect to two Ontario programs and three Quebec programs. The tribunal appeared to

accept that Canada's circumvention had resulted in about 54.8 million (US) dollars of injury to the U.S. domestic industry. On February 11, 2011, Canada publicly announced that it would comply with the ruling of the tribunal and increase export charges by 0.1 percent and 2.6 percent on softwood lumber exported from Ontario and Quebec. As of August, 2012, Canada had collected approximately 11 million (US) dollars of export charges pursuant to this remedy.

On September 30, 2013, Canada and the United States jointly requested that the tribunal reconvene to determine whether or not Canada is required to continue to collect the increased export charges during the extension period until 54.8 million (US) dollars is collected, or if Canada's responsibility to collect those charges ended on October 12, 2013, which was the end-date of the pre-extended SLA. Arbitral proceedings are currently underway.

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. A panel in this dispute was composed in February 2013. Panel proceedings are currently underway, and the panel is expected to complete its work in 2014.

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 CVD 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 CVD 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. The DSB recommended that China bring its measures into conformity with the Agreements. China and the United States could not agree to a “reasonable period of time” for implementation by China, and therefore an arbitrator ruled that China must implement the decision by July 31, 2013. China issued a redetermination in July 2013, but it appears

to be inconsistent with the WTO’s rulings. In December 2013, the United States requested consultations with China; if those consultations fail to resolve U.S. concerns, the United States may request establishment of a compliance panel under Article 21.5 of the DSU.

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 the alleged WTO-inconsistent practices in this dispute paralleled 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. In June 2013, the WTO panel issued its report, finding that China’s measures were inconsistent with its WTO obligations. On the key issues the Panel found the following:

- In the AD investigation, China misallocated the U.S. producers’

costs of production, when it attributed the same costs to chicken feet as it did to all other chicken parts, such as breasts and legs. The result artificially inflated the AD margins.

- In the CVD investigation, China determined that the United States subsidized the provision of soybeans and corn, which was fed to chickens. Frozen chickens were exported to China, while fresh chickens were not, yet the allegedly subsidized feed was provided to both sets of chickens. Nonetheless, China's calculations incorrectly presumed that the subsidy benefited solely the frozen chickens, resulting in a gross misappropriation of the subsidy to the subject merchandise.
- China failed to provide parties with essential information (*i.e.*, the AD margin calculations) that is necessary for parties to defend their interests.
- In both the AD and CVD investigations, China's "all others rate" for those firms not individually investigated were found to be excessively high rates that had no "logical relationship with the facts on the record."
- Relied on flawed price comparisons for its determination that China's domestic industry had suffered injury.

The DSB adopted the panel report on September 25, 2013. On December 19, 2013, the United States and China agreed

that the reasonable period of time for China to implement the Panel's findings would be 9 months and 14 days, *i.e.*, July 9, 2014.

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 but failed to resolve the dispute. A WTO panel was established in October 2012, and panel proceedings are underway. The panel is expected to complete its work later in 2014.

Separately, on December 13, 2013, MOFCOM announced that it was terminating the AD and CVD measures on U.S. automobiles; the United States is monitoring this situation.

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, 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 United States and China held consultations in November 2012 and continue to engage in discussions to explore ways for China to address the concerns raised by the United States in this dispute.

FOREIGN CVD AND SUBSIDY INVESTIGATIONS OF U.S. EXPORTS

In 2013, USTR and Commerce defended U.S. commercial interests in CVD investigations by China and Peru that involved exports of products from the United States.

CVD Investigation of U.S. Polysilicon

In July 2012, acting on a petition from Chinese solar-grade polysilicon producers, China's Ministry of Commerce (MOFCOM)

initiated a CVD investigation into alleged U.S. federal and state subsidies to U.S. producers and exporters of polysilicon.¹⁹ Solar-grade polysilicon is the main input into the production of crystalline silicon photovoltaic cells, or solar cells. On September 16, 2013, MOFCOM issued a preliminary determination, with CVD rates for U.S. exporters ranging between 0 percent and 6.5 percent. The United States provided comments on the preliminary determination and MOFCOM has since conducted on-site verification at the state and Federal government authorities responsible for administering the programs under investigation. On January 20, 2014, MOFCOM released the final determination in this proceeding, which resulted in a significant reduction in the CVD rate imposed. The final CVD rates ranged from 0.0 to 2.1 percent *ad valorem*.

AD/CVD New Shipper Review of U.S. Autos

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. MOFCOM issued a final determination in this review on July 17, 2013, finding that the subsidies to Nissan were minimal. Consequently, MOFCOM did not impose CVD duties on Nissan's exports of certain automobiles to China and refunded any CVD cash deposits collected on Nissan's exports of certain automobiles from the United States. This was followed by a December 13, 2013 announcement by MOFCOM that, because no expiry (*i.e.*,

¹⁹ China also initiated an AD investigation into U.S. polysilicon exports.

sunset) review of the measures had been requested by the Chinese domestic autos industry, MOFCOM was terminating the AD and CVD measures on U.S. autos; the United States is monitoring this situation.

CVD Investigation of U.S Cotton

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 investigated 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. On July 8, 2013 INDECOPI released its draft findings of essential facts, and on September 5, 2013, INDECOPI held a hearing. On November 22, 2013, INDECOPI announced that it was closing the investigation without imposing any countervailing duties, as there was not sufficient evidence to support a finding that the allegedly subsidized U.S cotton exports had caused injury to the Peruvian domestic industry.

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 in that country that are of particular concern to U.S. industries.

A main accomplishment during 2012-2013 was the successful conclusion of Tajikistan's accession process. Tajikistan became the 159th WTO member on March 2, 2013. The WTO Working Party on the accession of Tajikistan was established by

the General Council on 18 July 2001. Tajikistan completed its membership negotiations on October 26, 2012, when the Working Party adopted the accession package. The General Council approved the accession on December 10, 2012.

On September 26, 2013, Members of the Working Party on the Accession of Yemen agreed on the terms of WTO membership for Yemen. The accession package was presented to the 9th Ministerial Conference in Bali, in December, for a formal decision by ministers. Yemen is designated as a Least Developed Country (LDC) at the WTO, and has committed to not implement any subsidy programs that promote substituting the use of domestic over imported goods.

Other highlights in 2013 included the notice by Laos that it had ratified its membership agreement and thus officially became the WTO's 158th member on February 2, 2013.

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 2013, USTR and Commerce reviewed 14 Members' TPRs, including Kyrgyz Republic, Peru, Costa Rica, Vietnam, Cameroon, Congo, Gabon, Central African Republic, Chad, the European Union, Brazil, Suriname, Macao China, Switzerland, Liechtenstein, Mexico, Indonesia, Argentina, and Japan.

Notable TPRs during 2013 include the TPR of Brazil, held June 24 and 26, which was particularly comprehensive. Members asked, and Brazil answered, over 800 questions. A large number of questions focused on Brazil's Plano Brasil Maior, which many Members criticized as having a restrictive impact on trade via favoritism for domestic production. Brazil was encouraged to avoid such measures in line with its important role in the global economy.

During the TPR of Vietnam on September 17 and 19, 2013, the United States submitted an extensive set of questions asking Vietnam for more up-to-date notifications of its subsidy programs,

noting that it had so far only notified through the year 2007. Additionally, the United States requested more detail and clarification regarding certain programs Vietnam had notified, as well as certain un-notified programs that appear to have export performance and/or local-content requirements. The United States is continuing to monitor Vietnam's compliance with its WTO obligations in all of these areas.

In addition, the U.S. TPR was also held during 2013, at which 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 2013, the U.S. government continued its strong efforts to enforce subsidy disciplines, and those efforts were enhanced by the work of ITEC. With ITEC's establishment within USTR, the President has brought an unprecedented level of focus and cooperation directed at investigating unfair trade practices around the world, including injurious, foreign government subsidies. In its first year, ITEC

has already played a critical role assisting USTR and Commerce in vigorously pursuing U.S. interests under the Subsidies Agreement.

In the future, the U.S. government will continue to focus its subsidy enforcement efforts on pursuing several significant WTO dispute settlement cases, advocating tougher subsidy disciplines at the WTO, pushing for greater transparency with respect to the support programs of foreign governments, and closely monitoring the actions of other WTO Members 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 making a significant contribution 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 E&C'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 Enforcement and Compliance (E&C) 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. E&C'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.

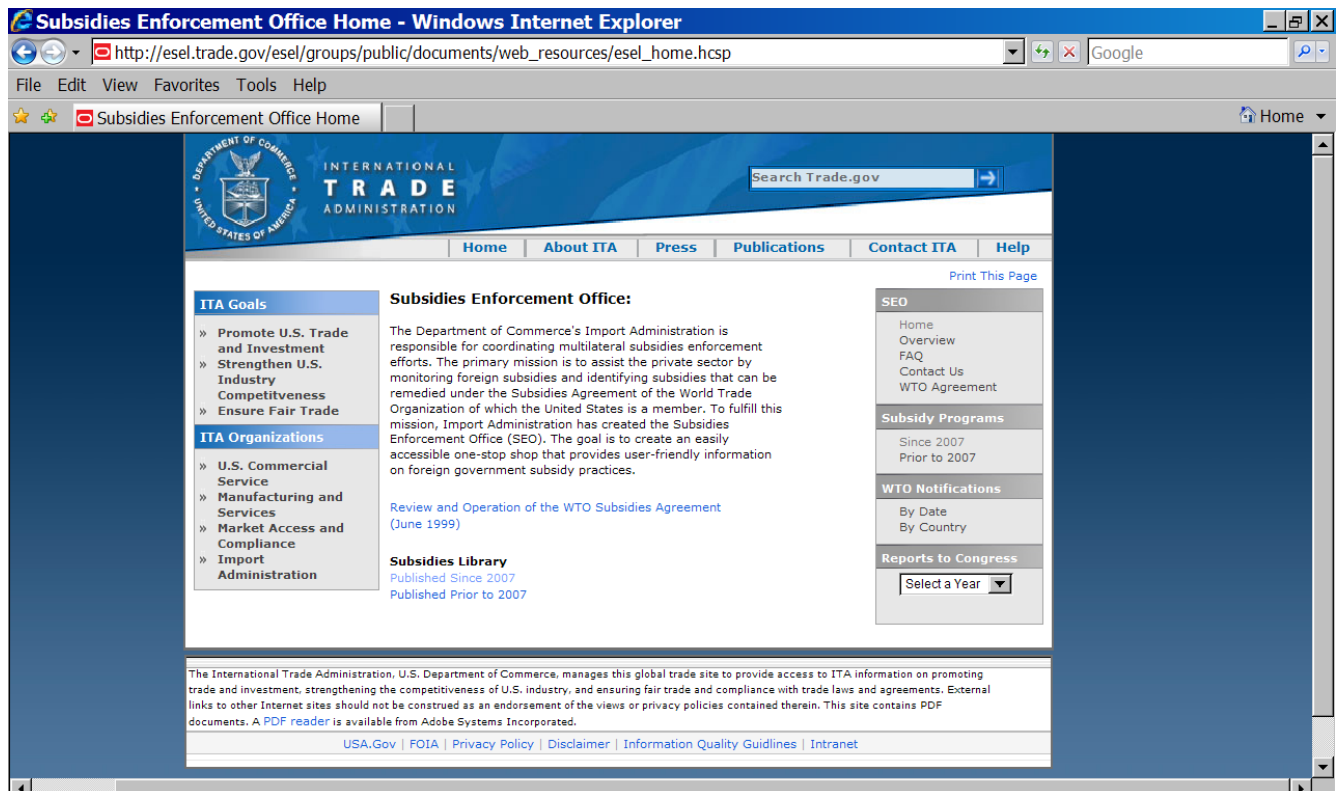
ATTACHMENT 2

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 Enforcement and Compliance staff in the course of CVD proceedings since 1980.

Published Since 2007 - This links 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 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 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 to the WTO Subsidies Agreement, 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 links 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 links to the most recent SEO Annual Report to Congress, as well as past Annual Reports.

ATTACHMENT 3

Status of Programs Under Extension of the Transition Period Pursuant to Article 27.4 of the Subsidies Agreement		
WTO MEMBER	NAME OF PROGRAM	Status
ANTIGUA & BARBUDA	Fiscal Incentives Act	Phase-out period
	Free Trade/Processing Zones	Phase-out period
BARBADOS	Fiscal Incentive Program	Phase-out period
	Export Allowance	Phase-out period
	Research & Development Allowance	Phase-out period
	International Business Incentives	Phase-out period
	Societies with Restricted Liability	Phase-out period
	Export Re-discount Facility	Extension previously not requested
	Export Credit Insurance Scheme	Extension previously not requested
	Export Finance Guarantee Scheme	Extension previously not requested
	Export Grant & Incentive Scheme	Extension previously not requested
BELIZE	Fiscal Incentives Program	Phase-out period
	Export Processing Zone Act	Phase-out period
	Commercial Free Zone Act	Phase-out period
	Conditional Duty Exemption Facility	Extension previously not 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	Phase-out period
	Inward Processing Regime	Phase-out period
DOMINICA	Fiscal Incentives Program	Phase-out period
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones"	Phase-out period
EL SALVADOR	Export Processing Zones & Marketing Act	Phase-out period
	Export Reactivation Law	Extension previously not requested
FIJI	Short-Terms Export Profit Deduction	Phase-out period
	Export Processing Factories/Zones Scheme	Phase-out period
	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)	Extension previously not requested

GRENADA	Fiscal Incentives Act No. 41 of 1974	Phase-out period
	Qualified Enterprise Act No. 18 of 1978	Phase-out period
	Statutory Rules and Orders No. 37 of 1999	Phase-out period
GUATEMALA	Special Customs Regimes	Phase-out period
	Free Zones	Phase-out period
	Industrial and Free Trade Zones (ZOLIC)	Phase-out period
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	Phase-out period
	Jamaica Export Free Zone Act	Phase-out period
	Foreign Sales Corporation Act	Phase-out period
	Industrial Incentives (Factory Construction) Act	Phase-out period
JORDAN	Income Tax Law No. 57 of 1985, as amended	Phase-out period
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	Extension previously not requested
	Pioneer Status Enterprise Scheme	Extension previously not requested
	Export Promotion	Extension previously not requested
	Freeport Scheme	Phase-out period
PANAMA	Export Processing Zones	Phase-out period
	Official Industry Register	Phase-out period
	Tax Credit Certificates (CAT)	Extension previously not requested
PAPUA NEW GUINEA	Section 45 of the Income Tax Act	Phase-out period
SRI LANKA (ANNEX VII COUNTRY)	Income Tax Concessions	Reservation of rights. No action taken.
	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	Phase-out period
ST. LUCIA	Fiscal Incentives Act	Phase-out period
	Micro & Small Scale Business Enterprise Act	Phase-out period
	Free Zone Act	Phase-out period
ST. VINCENT AND THE GRENADINES	Fiscal Incentives Act	Phase-out period
URUGUAY	Automotive Industry Export Promotion Regime	Phase-out period