

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 twentieth such annual report to Congress and describes the U.S. government's key activities and actions taken during 2014 to identify, monitor, and address trade-distorting foreign government subsidies.

Strong enforcement of international trade rules is vital to providing U.S. manufacturers, workers and exporters the opportunity to compete on a level playing field at home and abroad. The subsidies enforcement program of USTR and Commerce aims to identify, deter and confront foreign government subsidization that harms U.S. manufacturing and agriculture interests. As in prior years, in 2014, USTR and Commerce pursued this objective through a wide range of actions, including rigorous monitoring and evaluation of foreign government subsidies, intensive engagement with trading partners, advocacy for stronger subsidy disciplines, and concrete action against foreign government practices that appear to be inconsistent with international subsidy rules.

In February 2012, the President signed an Executive Order launching the Interagency Trade Enforcement Center (ITEC) as a means to enhance further the U.S. government's ability to address key trade enforcement issues. ITEC represents a more focused, 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 plays 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, as well as several transparency related actions. ITEC's work enhances and supplements the ongoing monitoring and enforcement efforts of the U.S. government.

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 government support programs are consistent with certain 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 trade-distorting foreign government subsidies. Where appropriate, USTR and Commerce 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 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 foreign government subsidies. The Administration remains committed to utilizing this important program to help expand U.S. exports and support U.S. jobs based on export growth, in part through robust monitoring and enforcement of domestic trade remedy laws and U.S. rights under international trade agreements.

Subsidies Enforcement Highlights

Holding China Accountable for Its Subsidies Notification Obligations: Throughout 2014, the United States continued to hold China accountable for its transparency obligations under the WTO Subsidies Agreement. This included the submission of a second “counter notification” of over 100 Chinese subsidies; continued pressure to notify the nearly 200 unreported subsidies in an earlier U.S. “counter notification” of Chinese subsidies; and a formal request to China to disclose fully all support measures provided under its Strategic Emerging Industries policy.

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 require the withdrawal of the subsidies at issue or the removal of their adverse effects. The European Union (EU) has not complied with this requirement. The United States is pursuing further WTO action as a result.

Advancement of ITEC: 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 2014, ITEC made important contributions to the counter notification of Chinese subsidies (discussed above) and to several WTO disputes and potential WTO disputes that involved subsidies disciplines, including prohibited export subsidies and local content subsidies.

Countering Unfair Subsidies in NMEs, such as China, using the U.S. CVD Law: In 2012, Congress reaffirmed Commerce’s ability to impose countervailing duties on unfairly subsidized products from countries designated as non-market economy countries. As of the end of 2014, Commerce has in place 28 CVD final orders on products imported from China.

Defending U.S. Interests in Dispute Settlement and Foreign CVD Cases: The United States won another major dispute at the WTO in 2014 on behalf of the American auto industry, in which a dispute settlement panel found that China’s imposition of countervailing (and antidumping) duties on automobiles was unjustified under WTO rules. In 2013, those duties were imposed on approximately \$5.1 billion of U.S. auto and SUV exports. USTR also initiated the first-ever challenge of a compliance action by China when it requested a WTO compliance panel to examine China’s decision to continue to impose countervailing and antidumping duties on imports of U.S. grain-oriented electrical steel (GOES). Furthermore, during the year, USTR and Commerce defended U.S. interests in a variety of CVD investigations involving a range of U.S. exports.

Promoting Improved Transparency of Subsidies in the WTO Subsidies Committee: In 2014, the United States continued to play a leading role in the Subsidies Committee, advocating to improve the timeliness and completeness of WTO Members’ subsidy notifications and to enhance transparency across a range of reporting obligations under the Subsidies Agreement. These efforts prompted a number of WTO Members to take steps to improve the transparency of their subsidy regimes.

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 subsidy 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 or local content

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.

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

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

The role of Commerce, through the International Trade Administration's (ITA's) Enforcement and Compliance (E&C) unit, formerly known as Import Administration,³ is to administer and enforce the CVD law, identify and monitor the subsidy practices of other countries, provide the technical

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.

expertise needed to analyze and understand the impact of foreign subsidies on U.S. commerce and provide assistance to interested U.S. parties concerning remedies available to them. 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. Moreover, E&C works closely with USTR in responding to foreign government requests for information, and defending the interests of U.S. exporters in foreign CVD cases. 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 the further development of international trade rules 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 or 2014. 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 over the last few years 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. Following a fall 2014 negotiating breakthrough among WTO members and the implementation of the Bali Ministerial Declarations, the Rules Negotiating Group Chairman convened consultations among WTO Members on December 16, 2014, to discuss whether the Rules group should await further clarification of the core DDA issues before resuming any work on Rules issues. While numerous Members expressed their opinions on possible options, no agreement was reached as to whether the Rules Group should resume its work in the near future.

To the extent the Rules negotiations do resume, 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 the pursuit of 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 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 the text of the SOE chapter are in the final stages, including country-specific annexes. 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 consistently with the negotiating objectives that Congress laid out in the Trade Act of 2002, 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 and traders of marine fisheries products. Among the most significant problems that inhibit efforts to conserve marine resources and diminish distortions in international trade are government subsidies, which have contributed to overcapacity and overfishing in global fisheries. Addressing these subsidies will have positive impacts on trade, development 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.

TRANSATLANTIC 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 (e.g., requirements to use domestically sourced inputs, labor, technology or capital), 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 (T-TIP) negotiations were launched in June 2013. During 2014, negotiating rounds took place in March, May, July, and September.

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 could also be included in the agreement.

ADDRESSING MARKET-DISTORTING TRADE PRACTICES IN THE STEEL INDUSTRY

During 2014, 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); in the North American Steel Trade Committee (NASTC); and within the context of the U.S.-China Strategic and Economic Dialogue and the U.S.-China Joint Commission on Commerce and Trade.

As an active participant in the OECD Steel Committee, the United States continued to work closely with the governments of other steel-producing economies to take up policy issues affecting the global steel industry. Among those issues are global steelmaking excess capacity – and the role of subsidies in creating and artificially maintaining capacity – raw materials, state-owned steel enterprises, the continued growth of trade restrictions in many countries, 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 2014, the United States, Canada and Mexico collaborated on a joint statement and presentation at the June 2014 meeting of the OECD Steel Committee, which highlighted concerns regarding policies that contribute to global excess capacity, including government subsidies. The joint statement called upon all governments of steelmaking economies to pursue policies that reduce or eliminate subsidies in the steel sector, especially those that create or maintain excess steelmaking capacity.

Government-funded expansion of steelmaking capacity in China continues to be a particularly serious concern. While China has closed some inefficient steel capacity, steel capacity in China continued to grow in 2014 as newer, more efficient capacity has come on line. Steel production growth in China slowed in 2014, with production increasing only one percent over 2013 levels. However, the fact that Chinese steelmaking capacity is expected to reach 1 billion MT in 2014, up from 863 million MT in 2011, despite slowing demand, combined with the fact that

exports from China reached a record level of 94 million MT in 2014 - 50 percent higher than in 2013 - raises concerns that China's growing excess capacity is increasingly being shifted to global markets.

The United States has raised this issue with the government of China in the Strategic and Economic Dialogue, which took place in July 2014. As a result of discussions in this forum, China agreed to "establish mechanisms that strictly prevent the expansion of crude steelmaking capacity and that are designed to achieve, over the next five years, major progress in addressing excess production capacity in the steel sector" in the context of its "efforts to rein in excess production capacity in key manufacturing sectors and to foster a business environment in which the market can play a decisive role in allocating resources." The United States and China had a further discussion of excess capacity in various Chinese industries, including China's steel sector, as part of the December 2014 meetings of the Joint Commission on Commerce and Trade (JCCT). (See further discussion below.)

The United States continues to work with like-minded trading partners to monitor subsidies and developments in China's steel sector and support concrete steps by China to rein in its steelmaking capacity. We will also continue to engage China on these 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 strengthen the United States' capability to monitor and enforce U.S. trade rights.

ITEC mobilizes and coordinates 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 negatively affect the United States' export growth and job recovery efforts. ITEC employs a dedicated, "whole-of-government" approach to trade enforcement to strengthen efforts to level the playing field for American workers and businesses.

Since its inception, ITEC has leveraged interagency resources to provide in-depth analysis of enforcement-related issues in relation to foreign practices that harm U.S. workers and exporters. In a close, collaborative effort, USTR and 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 U.S. International Trade Commission.

ITEC has provided substantive support as part of USTR's efforts in a variety of ongoing WTO disputes, as well as developing issues for possible future

dispute settlement action and enforcement-related negotiations. In 2014, ITEC was critical to the "counter notification" of over 100 Chinese subsidies to the WTO (discussed further below) and made important contributions to several WTO disputes that involved subsidies disciplines, including prohibited export subsidies and local content subsidies. While supporting ongoing litigation, enforcement-related negotiations, compliance matters, and WTO Committee work, as well as conducting self-initiated research, ITEC's Mandarin-speaking staff members have also identified and systematically catalogued numerous potentially prohibited and other subsidies maintained by the Chinese government.

Current ITEC detailees from the International Trade Administration (ITA) include trade enforcement analysts with proficiency in Mandarin, Spanish, Portuguese, and Russian, as well as an economist. ITEC support was particularly helpful in conducting Russian-language research and assisting in the drafting of U.S. questions regarding Russia's first subsidies notification to the WTO. Over the coming months, ITA plans to hire and detail to ITEC additional trade enforcement analysts with foreign language skills. ITEC and ITA regularly exchange information such as news reports, measures, translations, and analyses regarding foreign programs that appear to provide subsidies.

U.S. Government subject matter experts from Commerce and 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.

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 with a subsequent phase (NEI/NEXT) launched in 2014. 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/NEXT 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.⁴

Under the NEI/NEXT, 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 subsidy practices, the U.S. Government's subsidies enforcement program is helping to meet the important goal of expanding U.S. exports and preserving and supporting 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 and USTR (including within ITEC) with various foreign language skills primarily conduct this work. This involves performing in-depth analysis of potential subsidies identified in worldwide business journals, periodicals and various online resources, including foreign government web sites; utilizing numerous legal databases; and cultivating relationships with U.S. industry contacts. USTR and E&C 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. industries 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 confer with U.S. companies and workers regarding other options that may

⁴ See <http://trade.gov/nei/> and <http://www.ustr.gov/nei>.

be 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.

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 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 2014, 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, cement, paper, chemicals, 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, USTR and E&C 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 monitoring successfully 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

While China's new leaders have signaled a re-focusing on economic reform, during most of the past decade, the Chinese government has emphasized the state's role in China's 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.

Against this backdrop, there are serious concerns that China has a poor record of compliance with the WTO transparency 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 SOEs and favored domestic industries. The heavy state role in the economy has generated trade frictions with China's many trade partners, including the United States. The United States and other WTO Members have pursued several successful dispute settlement proceedings against China with respect to its subsidies practices.

Transparency is a core principle of the WTO agreements, and it is firmly

enshrined as a key obligation under the Subsidies Agreement, as well as 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 the largest trader among the WTO Members, 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 included 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.

Pursuant to its WTO accession commitments, China is also obligated to make available translations of its trade-related measures – including subsidy measures – in 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 in its official journal 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 serious 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 funds allocated for implementation 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 (roughly \$200 billion at the current exchange rate).

China's large and growing role in world production and trade necessitates that its trading partners understand the extent and nature of China's subsidy regime at both the central and sub-central government levels. 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 that include subsidies provided by provincial and local government authorities. Moreover, as the United States noted before the WTO Subsidies Committee at the fall 2014 meeting, China has yet to notify any subsidies provided to the steel industry or wild capture fisheries, or under the Twelfth Five-Year Plan, or pursuant to the stimulus measures implemented after the 2008 global financial crisis.

U.S. Actions in the WTO Subsidies Committee – Article 25.8 Questions and Article 25.10 “Counter Notifications” of Chinese Subsidy Programs

Over the past several years the United States has taken numerous steps in the WTO Subsidies Committee to address China's repeated failure to provide timely and complete subsidy notifications. Specifically and as detailed below, the United States has made formal requests for information from China regarding its subsidy regime and has now counter notified over 300 unreported Chinese subsidy measures to the WTO Subsidies Committee. These actions are specifically provided for under the Subsidies Agreement so that WTO Members can address the failure of other Members to comply with their transparency obligations. The United States took these actions only after repeatedly expressing its concerns at the regular meetings of the WTO Subsidies Committee and numerous attempts to engage China through dialogue and bilateral consultations. Unfortunately, China's notification record remains significantly incomplete.

Article 25.8 Information Requests: The United States submitted written requests for information to China under Article 25.8 of the Subsidies Agreement in October 2012 and in April 2014. In the 2012 Article 25.8 request, the United States provided more evidence of central government and sub-central government subsidies that provide assistance to a wide range of industrial sectors in China, including semiconductors, aerospace, steel, fish and textiles. Under Article 25.9 of the Subsidies Agreement, China was obligated to respond “as quickly as possible and in a comprehensive

manner". In light of China's failure to respond to this request, the United States submitted a counter notification under Article 25.10 of the Subsidies Agreement in October 2014 (see below) covering most of the subsidy programs raised in the 2012 Article 25.8 request, and revised the 2012 request for the remaining programs not included in the counter notification.

The United States also submitted a new Article 25.8 request in 2014. This request pertains to China's policies, programs and implementing measures in support of its "strategic emerging industries" (SEI) -- none of which China has notified to the WTO -- and more generally reflects the continued absence of a complete and timely subsidy notification by China that covers its key industrial policy mechanism, the Twelfth Five-Year Plan, now in its last year. A key objective of this plan is to promote key SEI sectors, which include: (1) new energy vehicles, (2) new materials (a category that includes textile products) (3) biotechnology, (4) high-end equipment manufacturing, (5) new energy, (6) next generation information technology, and (7) energy conservation and environmental protection. As with other industrial planning measures in China, sub-central governments appear to play an important role in implementing China's Twelfth Five-Year Plan. Furthermore, the information available to the United States confirms the important role of industrial policies in China which, in the case of the SEI initiative, include policies, programs and implementing measures that may be considered to be subsidies. To date, China has not provided written responses to the 2014 Article 25.8 questions of the United States.

Article 25.10 Counter Notifications: The United States also has exercised its rights under Article 25.10 of the Subsidies Agreement with respect to Chinese subsidies in October 2011 and October 2014. In the 2011 Article 25.10 submission, the United States identified 200 unreported subsidy measures that China has maintained since 2004, including many provided by provincial and local government authorities. Although not obligated to do so, in its submission, the United States included complete translated copies of each legal measure. These measures were identified in the course of various CVD investigations conducted by Commerce, an examination of a Section 301 petition filed by the United Steelworkers Union regarding China's green energy support programs, and extensive research conducted by USTR and Commerce that eventually led to WTO dispute settlement proceedings. 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 October 2014, the United States submitted a second Article 25.10 counter notification of over 100 subsidy measures that were the subject of the U.S. 2012 Article 25.8 request described above. As part of this Article 25.10 counter notification, the United States made available electronically complete translations of each of the subsidy measures at issue for the benefit of other WTO Members and the general public. The counter notification includes subsidies measures covering the steel, fish, and semiconductor sectors, as well as stimulus

programs covering a wide range of strategic industries within China. The counter notification also includes twenty-six measures under which government assistance is being provided through stimulus plans. These measures cover important industries such as textiles, non-ferrous metals and light industry.

To date, China has not provided a complete, substantive response to these counter notifications. Instead, China claims 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. counter notifications. However, China has also refused to engage with the United States in any meaningful discussions on this matter and has failed to notify any of the measures at issue in response to the two U.S. counter notifications.

In 2015, the United States will continue to research and analyze the various forms of financial 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 also continue to press China in the Subsidies Committee to submit a complete and up-to-date subsidies notification, along with a response to the U.S. submissions under Article 25.8 of the Subsidies Agreement. As part of this effort, the United States will actively consider what additional Article 25.8 questions regarding China’s support programs may be necessary. 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 began to apply U.S. CVD law to China. The application of the CVD law to China was premised upon 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. 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 benefits from countervailable subsidies that materially injure a U.S. industry. As explained in further detail below, efforts by China to challenge Commerce’s ability to countervail Chinese subsidies under Public Law 112-99 through WTO dispute settlement were unsuccessful.

Since 2006, several U.S. industries concerned about subsidized imports from China have filed CVD petitions. As of the end of 2014, Commerce has in place 28 CVD final orders on products imported from China, involving such products as steel, aluminum products, textiles, paper, various chemicals, wood, non-ferrous metals, plywood, flooring, tires, and products of new energy technology industries, among others. There is a broad array of alleged subsidies that Commerce has investigated or is investigating in these cases, 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 under the Subsidies Agreement, 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. The JCCT is co-chaired for the United States by the Secretary of Commerce and the U.S. trade Representative, and for China by a Vice Premier.

From a U.S. trade policy standpoint, it is important to engage China on existing structural and operational issues regarding China's economy, particularly those that distort trade and give rise to trade frictions, and to encourage China to pursue the economic reforms that drove its accession to the WTO. At the same time, China's status as an NME country under the U.S. antidumping duty (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 meeting to establish the Structural Issues Working Group (SIWG). Currently, this working group is 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 Trade Remedy Investigation Bureau of the Ministry of Commerce (MOFCOM).⁵ The working group has met a number of times since its launch in July 2004.

The SIWG held its most recent meetings in Beijing in November 2014. China's delegation included several Chinese experts who provided an overview of China's recent economic reform plans, including improving the rule of law and government administration.

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

⁵ While the SIWG is not a forum for resolving or deciding the issue of market economy country status, it provides a constructive setting for the mutual exchange of views and relevant information. Under U.S. AD law, any review of China's status as an NME country must take place in a formal, on-the-record proceeding before Commerce, open to all interested parties.

supplement, but do not replace, engagement on these matters in other fora, such as at the WTO.

In November 2014, concurrent with the SIWG meetings, the United States and China held TRWG meetings in Beijing. The United States requested information with regard to a number of aspects of MOFCOM's AD and CVD decisions, including the procedures and methodologies used in MOFCOM's investigations, China's procedures for implementing adverse WTO decisions, and MOFCOM's efforts to ensure transparency in its investigations. These U.S. requests for information were prompted by concerns regarding insufficient disclosure and transparency that often characterize MOFCOM's administrative system.

The United States will continue to seek ways to improve the bilateral dialogue in the TRWG, and, where possible, utilize this group as a practical means to address areas of concern.

WTO SUBSIDIES COMMITTEE

The WTO Subsidies Committee held its two formal semi-annual meetings in April and October of 2014. The Subsidies Committee continued its regular work of reviewing WTO Members' periodic notifications of their subsidy programs and the consistency of Members' domestic laws, regulations, and actions with the requirements of the Subsidies Agreement. Among other items addressed in the course of the year (and as discussed in part elsewhere in this report) were the following: the U.S. 2011 counter notifications of unreported subsidy programs in China and India; the 2014 U.S.

counter notification of additional Chinese subsidies; U.S. questions to China under Article 25.8 of the Subsidies Agreement; examination of ways to improve the timeliness and completeness of subsidy notifications; the U.S. proposal regarding procedures for responding to questions submitted under Article 25.8 of the Subsidies Agreement; 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 2014, the Subsidies

Committee reviewed ninety-two subsidies notifications.⁶ Numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.⁷

Review of CVD Legislation, Regulations and Measures

Throughout 2014, many WTO Members submitted 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

⁶ During the 2014 spring and fall meetings, the Subsidies Committee reviewed the 2013 new and full subsidy notifications of Antigua and Barbuda, Australia, Barbados, Botswana, Burundi, Cameroon, Canada, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, the European Union, Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden, the United Kingdom, Georgia, Grenada, Guatemala, Haiti, Honduras, Hong Kong China, Jamaica, Japan, Jordan, Korea, Kuwait, Lao, Liechtenstein, Madagascar, Mali, Mexico, Moldova, New Zealand, Norway, Panama, Papua New Guinea, Peru, St. Kitts and Nevis, St. Lucia, Saint Vincent and the Grenadines, Switzerland, Chinese Taipei, Thailand, Togo, Ukraine, and Uruguay, Russia, Bahrain, Brazil, Chile, Congo, Belgium, Denmark, Italy, India, Saudi Arabia, Senegal, and Turkey; the 2011 new and full subsidy notifications of Argentina, Armenia, Honduras, Thailand; the 2009 new and full subsidy notifications of China, Congo, Gabon, Namibia, Turkey; the 2007 new and full subsidy notification of Viet Nam; and the 2001 new and full subsidy notification of Cameroon.

⁷ For further information, see the Report (2014) of the WTO Committee on Subsidies and Countervailing Measures (G/L/1077), November 3, 2014.

meetings in 2014. 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, 106 WTO Members⁸ have notified that they have CVD legislation in place or stated they do not have such legislation. In 2014, the Subsidies Committee reviewed notifications of new or amended CVD laws and regulations from Australia, Brazil, Cameroon, Congo, Côte d'Ivoire, the European Union, the Gambia, Mexico, Montenegro, New Zealand, Papua New Guinea, Qatar and the United States.⁹

As for CVD measures, 14 WTO Members notified CVD actions taken during the latter half of 2013, and sixteen Members notified actions taken in the first half of 2014.¹⁰ In 2014, the Subsidies Committee reviewed actions taken by

⁸ The European Union is counted as one Member. These notifications do not include those submitted by Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic and Slovenia before these Members acceded to the European Union.

⁹ 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.

Australia, Botswana, Brazil, Canada, China, the EU, India, Lesotho, Mexico, Namibia, Pakistan, Peru, South Africa, Swaziland, Turkey and the United States.

Counter Notifications

Under Article 25.1 of the Subsidies Agreement, Members are obligated to regularly provide a subsidy notification to the Subsidies Committee. Prior to October 2011, China had only submitted a single subsidy notification in 2006 (covering the years 2001 – 2004). India submitted a subsidies notification in 2010 – that only included three programs – after not providing any notification for 10 years. The United States and other Members have repeatedly expressed deep concern about the notification record of China and India (among others). During the 2010 fall meeting of the Subsidies Committee, the United States foreshadowed in a statement before the Committee potential resort to the counter notification mechanism under Article 25.10 of the Subsidies Agreement. This provision states that when a Member fails to notify a subsidy, any other Member may bring the matter to the attention of the Member failing to notify.

Pursuant to Article 25.10, the United States filed counter notifications in October 2011 with respect to over 200 unreported subsidy programs in China and 50 unreported subsidy programs in India – the first counter notifications ever filed by the United States. While China submitted its second subsidy notification (covering 2005 – 2008) shortly after the U.S. counter notification, it covered very few of the subsidy programs referenced in the U.S. counter notification. At the April 2012 meeting of the Committee, the United

States brought these matters to the notice of the Subsidies Committee under the provisions of Article 25.10. Subsequently, India submitted a supplemental subsidy notification covering certain fishery programs, including programs at the sub-central level. However, none of the programs in the supplemental notification were those referenced in the U.S. counter notification. At both meetings of the Subsidies Committee in 2014, the United States continued to press China and India to notify the outstanding programs identified in the U.S. 2011 counter notifications.

In the fall of 2014, the United States submitted its second counter notification of subsidy measures in China. This counter notification was based on the Article 25.8 questions submitted to China in October 2012 (see below). After China failed to respond to these questions after two years, the United States decided to counter notify the measures at issue. This counter notification included 110 subsidy measures, covering *inter alia*: steel, semiconductors, textiles, fish and various sector-specific stimulus initiatives. As part of this counter notification, the United States provided hyperlinks in its submission to complete translations of each measure counter notified. The United States has now counter notified and provided full translations of over 300 Chinese subsidy measures.

Submissions of Article 25.8 questions to China

Article 25.8 of the 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.*, only central government-level programs have been notified) and late (*e.g.*, the notification filed in 2011 only covered up through 2008), the United States submitted extensive, detailed questions to China in October 2012, covering a wide range of possible subsidy programs in numerous sectors that appear to require notification. Under Article 25.9, China is obligated to provide a response "as quickly as possible and in a comprehensive manner." As noted above, China did not respond to the United States' 2012 questions submitted under Article 25.8. This led to the filing, as discussed above, of the United States' second counter notification of subsidy measures in China.

For several subsidy programs referenced in the 2012 Article 25.8 questions, the United States was unable to find the underlying legal measures. For these programs, the United States submitted a revised set of questions under Article 25.8 (*ie*, a "corrigendum" to the 2012 Article 25.8 questions) at the same time as it submitted the second counter notification.

In 2014, the United States also submitted a new request for information under Article 25.8 pertaining to China's policies and programs in support of its "strategic emerging industries" (SEI). A central objective of China's SEI plan is to promote key SEI sectors, which include: (1) new energy vehicles, (2) new materials (a category that includes textile products) (3)

biotechnology, (4) high-end equipment manufacturing, (5) new energy, (6) next generation information technology, and (7) energy conservation and environmental protection. To date, China has not provided written responses to the 2014 Article 25.8 questions of the United States.

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 2014, the United States continued its engagement on this issue by highlighting the failure by several important WTO Members (*e.g.*, China, India, Indonesia, Malaysia and the Philippines) 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 transparency objectives of the Agreement. The United States devotes 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.

In 2014, under the transparency agenda item of the Subsidies Committee, the United States continued to advocate for a specific proposal that 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 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.¹¹ 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

¹¹ G/SCM/W/555 (October 21, 2011).

questions under Article 25.8 remain on the Subsidies Committee's agenda until a reply has been provided.

In 2014, the United States provided additional, detailed explanations regarding its 2011 proposal, 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. Prior to the October 2014 meeting of the Subsidies Committee, the United States submitted a revision of its 2011 proposal.¹² With this submission, the United States seeks formal adoption by WTO Members of its proposal that written answers be provided within 60 days to written questions submitted under Article 25.8 and written replies to follow-up question be provided within 30 days. Moreover, written questions under Article 25.8 should be included on the Subsidies Committee's agenda until written answers are submitted and an opportunity is provided for further discussion and follow-up questions at a Committee meeting.

As in prior meetings where this proposal was discussed, 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, Russia and South Africa 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 its revised proposal and other means to improve compliance with the subsidy notification obligations of the Subsidies Agreement.

¹² G/SCM/W/557/Rev. 1 (September 22, 2014).

Article 27.4 Update

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

To address the concerns of certain small, developing country Members, a special procedure within the context of Article 27.4 of the Subsidies Agreement was adopted at the Fourth WTO Ministerial Conference in 2001. Under this procedure, a developing country Member meeting all of the agreed-upon qualifications became eligible for annual extensions upon request for a five-year period through 2007, in addition to the two years referred to under Article 27.4. Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests for extensions 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, starting in 2014, as provided for in Article 27.4 of the Subsidies Agreement. 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 extensions were previously granted). Despite the understanding that no further extensions would be provided with respect to these particular export programs, in late 2014, Jordan submitted a formal request to the Subsidies Committee on Trade in Goods for a further extension with respect to its export subsidy. To date, WTO Members have not taken any action regarding Jordan's waiver request.

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)

¹³ WT/L/691.

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. The election to replace an expert whose term has expired is taken by the Subsidies Committee during its regular spring meeting in the year following the expiration. During 2014, Mr. Subash Pillai of Malaysia was appointed at the regular spring committee meeting to replace the outgoing Mr. Depayres. Therefore, at the end of 2014, the five members of the PGE were: Mr. Akio Shimizu (until Spring 2015); Mr. Zhang Yuqing (until Spring 2016); Mr. Welber Barral (until Spring 2017); Mr. Chris Parlin (until Spring 2018); and Mr. Subash Pillai (until Spring 2019).

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 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, the Philippines and Sri Lanka.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.

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 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.

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. As it has done at prior meetings of the Subsidies Committee, in 2014, 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 India continues to implement new export subsidy programs for which India's textile and apparel industries are eligible.

As of the start of 2015, the period in which India was required to phase out its export subsidies to textiles and apparel products has ended. At the drafting of this report, however, India appears to continue to maintain export subsidies with respect to these products. Accordingly, the United States will continue bilateral engagement on this matter.

Prospects for 2015

The United States will continue to press WTO Members to comply with their subsidy notification obligations in 2015, 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. Furthermore, the United States will continue to seek to engage India bilaterally to ensure India adheres to its obligation to end the provision of export subsidies to the textile and apparel sector. More generally, the Subsidies Committee will persist in its work in 2015 to improve the timeliness and completeness of Members' subsidy notifications. In particular, the United States will continue to promote the adoption by the Subsidies Committee of the U.S. proposal to improve and strengthen the Subsidies Committee's procedures under Article 25.8 of the Subsidies Agreement. Finally, the United States will likely submit its next subsidies notification to the Subsidies Committee in 2015, covering fiscal years 2013 and 2014.

¹⁶ G/SCM/132.

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

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 2015.

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. The panel is expected to issue its report on the U.S. claims in 2016.

United States – Conditional Tax Incentives for Large Civil Aircraft – DS487

On December 19, 2014, the EU requested consultations with respect to “conditional tax incentives established by the State of Washington in relation to the development, manufacture, and sale of large civil aircraft.” The EU alleges that such tax incentives are prohibited subsidies that are inconsistent with Articles 3.1(b) and 3.2 of the Subsidies Agreement.

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 or the GATS with respect

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

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.

Brazil subsequently announced that it would begin imposing countermeasures in the form of increased tariffs on goods on April 7, 2010. Brazil estimated the goods countermeasures at \$591 million of a total of \$829.3 million allowed for that year. In addition, Brazil had begun a process to impose countermeasures on U.S. intellectual property rights for the remainder of permitted countermeasures (the excess over \$591 million). On April 6, 2010, the United States and Brazil reached agreement on certain steps to make progress toward a solution to 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. In addition, June 20, 2010, the United States and Brazil agreed to a Framework for a Mutually Agreed Solution for the Cotton Dispute, which provided for regular ongoing consultations between the United States and Brazil on the issues in the dispute and changes in operation of the GSM-102 program, in particular increases in fees based on program usage. After the 2010 MOU and Framework expired in early 2014, Brazil and the United States consulted on the terms of a final negotiated solution to the WTO Cotton dispute (WT/DS267), which

they reached in the Memorandum of Understanding signed October 1, 2014.

The 2014 Memorandum of Understanding Related to the *Cotton Dispute (WT/DS267)* includes provisions on payment to and use of funds by the Brazilian Cotton Institute (“IBA”), which operates the technical assistance and capacity building fund established in 2010; operation of the GSM-102 export credit guarantee program; and limitations on matters on which Brazil may bring new WTO disputes. The 2014 Memorandum provided the basis for termination of the WTO dispute *United States – Subsidies on Upland Cotton (WT/DS267)*. With respect to the IBA, the Memorandum provides for a one-time final payment of \$300 million, changes to authorized activities for use of IBA funds (to allow use of funds for research in cooperation with certain U.S. institutions and for infrastructure required and solely used for cotton, cotton seeds, and cotton inputs), and ongoing transparency obligations on the use of IBA funds. For the GSM-102 program, the Memorandum limits tenor of guarantees to a maximum of 18 months, requires that all fees be risk-based, and requires that fees for guarantees longer than 12 months meet benchmarks based on OECD parameters. In addition, the United States will provide Brazil with information on operation of the GSM-102 program. The Memorandum also limits the matters on which Brazil may bring new WTO disputes. As long as the GSM-102 program is operated consistently with the Memorandum, Brazil will not bring a new WTO dispute on that program and until September 30, 2018, Brazil will not bring a new WTO dispute on cotton domestic support programs. In addition, for other domestic support programs, until

September 30, 2018 Brazil will provide the United States with an opportunity for consultation before initiating any WTO proceedings, with a view to avoiding WTO dispute settlement.

On October 16, 2014, the United States and Brazil submitted to the WTO Dispute Settlement Body a notification under Article 3.6 of the DSU terminating the dispute.

U.S. Application of Countervailing Duties to Chinese Imports –DS437

On May 25, 2012, China requested WTO consultations with respect to 22 U.S. 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, specificity, and the application of adverse facts available. After multiple submissions and two in-person meetings with the panel, on July 14, 2014, the panel found that with respect to the majority of issues, the challenged investigations were consistent with the United States’ WTO obligations. The panel did find, however, that Commerce’s public body determinations were inconsistent with the standards set forth by the Appellate Body in

United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379).

China appealed the panel's findings with respect to the specificity of certain subsidies, benchmarks used by Commerce in four investigations, and Commerce's application of facts available. The United States cross-appealed on a procedural matter pertaining to China's terms of reference in making its initial facts available challenge. On October 16 and 17, 2014, the United States, China and the third parties presented their arguments before the Appellate Body.

On December 18, 2014, the Appellate Body circulated its report. On benchmarks, the Appellate Body reversed the panel and found that Commerce's determination to use out-of-country benchmarks in four CVD investigations was inconsistent with Articles 1.1(b) and 14(d) of the SCM Agreement. On specificity, the Appellate Body rejected one of China's claims with respect to the order of analysis in *de facto* specificity determinations. However, the Appellate Body reversed the panel's findings that Commerce did not act inconsistently with Article 2.1 when it failed to identify the "jurisdiction of the granting authority" and "subsidy programme" before finding the subsidy specific. On facts available, the Appellate Body accepted China's claim that the panel's findings regarding facts available are inconsistent with Article 11 of the DSU, and reversed the panel's finding that Commerce's application of facts available was not inconsistent with Article 12.7 of the SCM Agreement. Lastly, the Appellate Body rejected the U.S. appeal of the panel's finding that China's panel request failed to meet the requirement of Article 6.2 of the DSU to present an

adequate summary of the legal basis its claim sufficient to present the problem clearly.

The DSB adopted the reports of the panel and the Appellate Body on January 16, 2015.

U.S. Application of Countervailing Duties to Chinese Imports -- Domestic Litigation Involving China CVD Proceedings

In U.S. domestic courts, interested parties have been litigating under U.S. law a number of issues similar to those raised in 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 CAFC'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 countries determined to be nonmarket economies for AD purposes. 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 multiple proceedings before the U.S. Court of International Trade and CAFC. The CAFC upheld the constitutionality of Public Law 112-99 in one such challenge in March 2014, and is expected to issue an opinion regarding additional challenges to the constitutionality of Public Law 112-99 in early 2015.

United States — Countervailing and Anti-dumping Measures on Certain Products from China - DS449

In September 2012, 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. After consultations between China and the United States failed to resolve the dispute, the WTO DSB established a panel at China's request in December 2012.

On March 27, 2014, a WTO dispute settlement panel determined that Public Law 112-99 – including its effective date provision – is consistent with the United States' WTO obligations. The panel also found that Commerce failed to make adequate inquiries about potential "double remedies" in various AD and CVD proceedings. Both China and the United States appealed the panel report to the WTO Appellate Body, which issued its report on July 7, 2014. Although the Appellate Body reversed the legal conclusions of the panel with respect to China's claim concerning Public Law 112-99,

the Appellate Body concluded that the panel's findings did not provide it with a sufficient basis to complete the analysis of whether Public Law 112-99 is consistent with WTO rules. Thus, the Appellate Body made no finding concerning Public Law 112-99's WTO-consistency. The Appellate Body affirmed the panel's findings with respect to China's "double remedy" claim involving multiple AD and CVD proceedings conducted by Commerce on Chinese imports.

The DSB adopted the reports of the panel and the Appellate Body on July 22, 2014. In August 2014, USTR announced that the United States intends to comply with the DSB's recommendations and would need a reasonable period of time to comply.

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. On September 30, 2013, Canada and the United States jointly requested that the tribunal reconvene to determine whether or not Canada was required to continue to collect the increased export charges during the extension period until approximately 59 million (US) dollars was 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. On March 27, 2014, the tribunal found that Canada’s collection obligations ended on October 12, 2013—the original expiration date of the SLA.

The SLA is currently set to expire on October 12, 2015, and it is unclear at this point if there will be any further extensions of the Agreement, as both Canada and the domestic industry have thus far been unable to agree upon the terms if such an extension were to be implemented.

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. India claimed 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. The panel issued its report on July 14, 2014, and found in favor of the United States on the majority of issues in the dispute including important wins on benchmarks, facts available, public body, and new subsidy allegations. India subsequently filed its appeal with the Appellate Body on August 8, 2014, challenging the panel’s findings on these issues. The United States also appealed the panel’s findings, including with respect to the use of “cross-cumulation” in injury proceedings, on August 13, 2014. The Appellate Body heard arguments in September 2014, and released its report on December 8, 2014.

The Appellate Body upheld several of the panel’s findings in favor of the United States, including Commerce’s application of facts available, its examination of new subsidy allegations in administrative reviews and its specificity determinations. Importantly, the Appellate Body ruled against India on most of its claims that certain provisions of the United States’ CVD laws and regulations were “as such” inconsistent with WTO rules. The Appellate Body did conclude, however, that Commerce’s public body determinations were inconsistent with the standards set forth by the Appellate Body in DS379, and

found certain instances of its benchmark selections WTO inconsistent. In an especially troubling finding, the Appellate Body also found that “cross-cumulation” as applied in the injury determination at issue is inconsistent with the United States’ obligations under the Subsidies Agreement. The Appellate Body further found that one aspect of the U.S. statute governing “cross-cumulation” is inconsistent with that Agreement.

The DSB adopted the reports of the panel and the Appellate Body on December 19, 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 CVD 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 its WTO obligations. China and the United States could not agree to a “reasonable period of time” for

implementation by China, and therefore an arbitrator determined that China must implement the decision by July 31, 2013.

China issued a redetermination on July 31, 2013. However, it appears that China’s injury determinations continue to be WTO-inconsistent. On February 13, 2014, the United States requested the WTO to establish a compliance panel, pursuant to Article 21.5 of the Dispute Settlement Understanding, to address the injury-related matters. On October 14 and 15, 2014, the panel heard arguments on those issues. A report from the panel is expected in 2015.

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 CVD 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.

Subsequently, 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."

- China 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 extend to July 9, 2014.

On July 9, 2014, China issued its redetermination. The redetermination addressed the problems with the companies' CVD calculations, but it appears that China continued to be non-transparent in its determinations of the "all others" rate and failed to allocate the investigated exporters' costs of production in accordance with the panel Report. The United States has significant concerns with China's actions, and is actively considering next steps in this dispute.

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

In July 2012, the United States filed a request for consultations regarding China's imposition of AD and CVD duties on imports of certain automobiles from the United States. In the consultations request, the United States raised concerns about the AD and CVD investigations conducted by China's Ministry of Commerce (MOFCOM). Specifically, the United States expressed concern that China failed to objectively examine the evidence, and made unsupported findings of injury to China's domestic industry. In addition, the United States expressed concern that China failed

to disclose “essential facts” underlying its conclusions, failed to provide an adequate explanation of its conclusions, improperly used investigative procedures, and failed to provide non-confidential summaries of Chinese submissions.

The United States and China held consultations in August 2012, but did not resolve the dispute. In September 2012, the United States requested the establishment of a panel, and in October 2012 the DSB established a panel. The panel held meetings with the parties in June and October 2013. Following these meetings, but before the panel issued its report, MOFCOM terminated the AD and CVD duties at issue.

The panel issued its report on May 23, 2014. In its report, the panel found in favor of the United States on nearly all U.S. claims. Specifically, with regard to MOFCOM’s substantive errors, the panel found that China breached its WTO obligations by improperly determining that U.S. exports were causing injury to the domestic Chinese industry; improperly analyzing the effects of U.S. exports on prices in the Chinese market; and calculating the “all others” dumping margin and subsidy rates for unknown U.S. exporters without a factual basis. With respect to procedural failings in the MOFCOM investigations, the panel found that China breached its WTO obligations by failing to disclose essential facts to U.S. companies, including how their dumping margins were calculated; and failing to provide non-confidential summaries of Chinese submissions containing confidential information.

Neither party appealed the panel’s

findings. On June 18, 2014, the DSB adopted the panel’s recommendations and rulings in this dispute. Because MOFCOM previously had terminated the AD and CVD duties at issue, the United States considers that no more action is necessary for China to implement the findings and recommendations in the panel report with respect to the challenged measures.

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.

United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464)

On August 29, 2013, the United States received from Korea a request for consultations pertaining to antidumping and countervailing duty measures imposed by the United States pursuant to final determinations issued by the U.S. Department of Commerce (Commerce) following antidumping and countervailing duty investigations regarding large residential washers (“washers”) from Korea.

In this dispute, Korea claims that Commerce’s countervailing duty determinations are inconsistent with U.S. commitments and obligations under Articles 1.1, 1.2, 2.1, 2.2, 10, 14, 19.4, and 32.1 of the SCM Agreement and Article VI:3 of the General Agreement on Tariffs and Trade 1994. Korea challenges Commerce’s determinations in the washers countervailing duty investigation that Article 10(1)(3) of Korea’s Restriction of Special Taxation Act (“RSTA”) is a subsidy that is specific within the meaning of Article 2.1 of the SCM Agreement; Commerce’s determination that Article 26 of the RSTA is a regionally specific subsidy; and Commerce’s calculation of the subsidy rate for one respondent, which Korea criticizes for allegedly including the benefit attributable to non-subject merchandise and for not incorporating sales of products manufactured outside Korea.

The United States and Korea held consultations on October 3, 2013. On December 5, 2013, Korea requested the establishment of a panel, and on January

22, 2014, a panel was established. On June 20, 2014, the Director General composed the panel as follows: Ms. Claudia Orozco, Chair; and Mr. Mazhar Bangash and Mr. Hanspeter Tschaeni, members. The panel is expected to hold meetings with the parties during 2015, and subsequently release its report.

FOREIGN CVD AND SUBSIDY INVESTIGATIONS OF U.S. EXPORTS

In 2013 and 2014, USTR and Commerce helped to defend U.S. commercial interests in CVD investigations by China and the EU 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

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

in this proceeding, which resulted in a significant reduction in the CVD rate imposed. The final CVD rates range from 0.0 to 2.1 percent *ad valorem*.

EU CVD Expiry Review of U.S. Biodiesel

On July 10, 2014, the EU initiated expiry reviews of its AD and CVD measures on biodiesel from the United States. These AD and CVD measures have been in place since July 2009. Under EU practice, expiry reviews are conducted by the European Commission's Directorate General for Trade every five years to determine whether or not AD/CVD measures should be continued for up to an additional five years. USTR and Commerce are coordinating the participation of the relevant U.S. Federal and state government authorities responsible for administering the subsidy programs subject to this review. Expiry reviews must be concluded within 15 months.

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

accessing 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.

Highlights in 2014 include the notice by Yemen that it had deposited the Instrument of Acceptance of its membership agreement and thus officially became the WTO's 160th member on June 26, 2014. Further, Seychelles completed its accession negotiations on October 17, 2014, when the Working Party adopted the accession package, *ad referendum*. This decision was formally approved by all WTO Members in the General Council in December 2014.

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 2014, USTR and Commerce reviewed 14 Members' TPRs, including Tonga, Malaysia, Myanmar, Oman, Kingdom of Bahrain, Qatar, Ghana, Organisation of Eastern Caribbean States (OECS), China, Panama, Chinese Taipei, Mongolia, Djibouti, Mauritius, and Hong Kong, China.

Notable TPRs during 2014 include the TPR of China, which was particularly comprehensive. Over 50 Members asked,

and China answered, over 1700 questions. Among the main areas of focus of Members' questions were concerns regarding transparency, consistency in implementation of laws, regulations and policies, and the role of the state in China's economy. In that regard, the United States asked numerous questions, and raised concerns about China's compliance with its subsidy notification obligations – as well as China's more general transparency obligations (*e.g.*, publication and translation of trade-related measures) – and the consistency of certain Chinese subsidy measures with China's obligations under the Subsidies Agreement.

In addition, the U.S. TPR was also held in December 2014, for which the United States responded to hundreds of detailed questions regarding a wide range of issues, including state- and federal-level subsidy practices.

CONCLUSION

In 2014, 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 few years, 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/NEXT'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/NEXT), 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.
- 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 have vigorously defended the interests of dozens of U.S. exporters subject to foreign anti-subsidy (CVD) proceedings.

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:

- 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 or foreign countervailing duty proceedings 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.

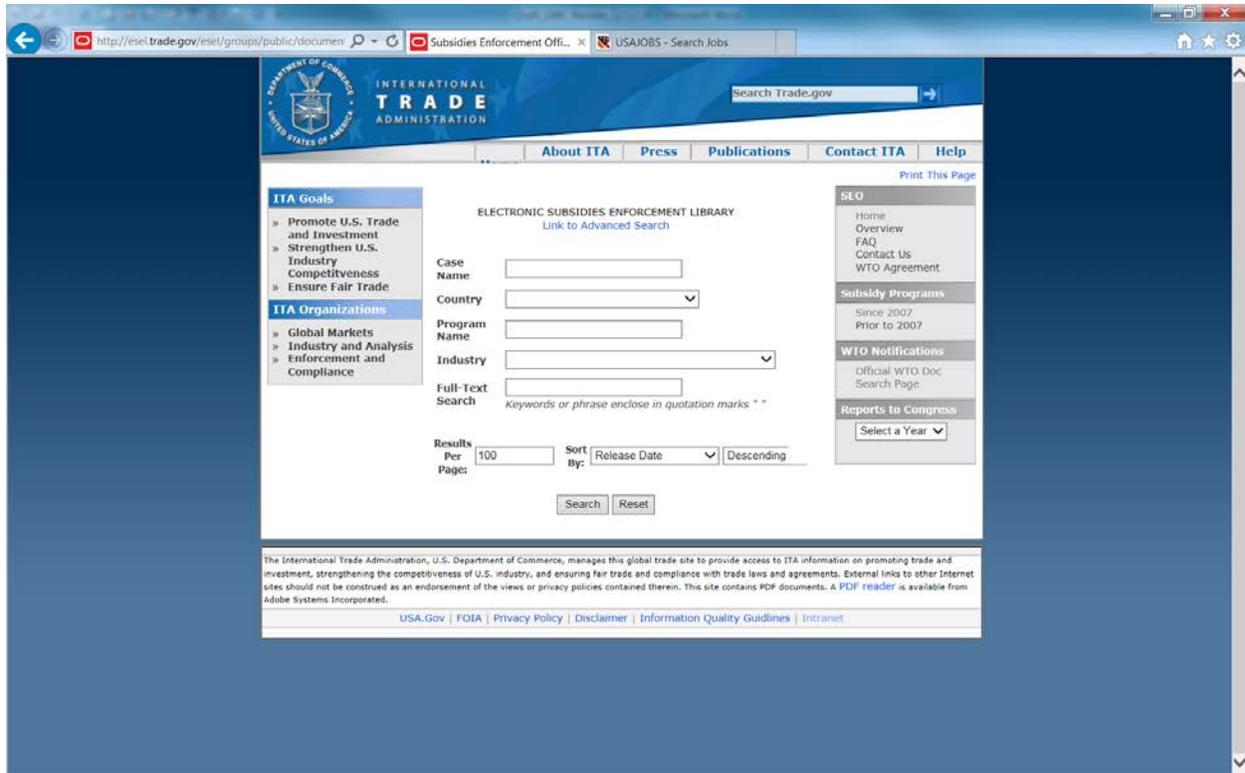
ATTACHMENT 2

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 the WTO's public document download cite where one can access all unrestricted WTO subsidy notifications by every WTO Member, listed either by date or by country. The notifications available for download through this link will provide a list of all Members' 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