

# SUBSIDIES ENFORCEMENT ANNUAL REPORT TO THE CONGRESS



JOINT REPORT OF  
THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
AND THE UNITED STATES DEPARTMENT OF COMMERCE



FEBRUARY 2017





## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	1
INTRODUCTION .....	4
WTO NEGOTIATIONS.....	5
ADDRESSING MARKET-DISTORTING PRACTICES IN THE STEEL INDUSTRY.....	5
MONITORING AND ENFORCEMENT.. .....	9
Interagency Center on Trade Implementation, Monitoring, and Enforcement ...	9
Advocacy Efforts and Monitoring Subsidy Practices Worldwide.....	10
Chinese Government Subsidy Practices .....	11
WTO Subsidies Committee.....	18
WTO Dispute Settlement .....	25
Canada Softwood Lumber.....	37
Foreign CVD and Subsidy Investigations of U.S. Exports.....	37
U.S. Monitoring of Subsidy-Related Commitments .....	38
CONCLUSION.....	39

## EXECUTIVE SUMMARY

This is the twenty-second annual report to Congress describing the activities and actions taken by the Office of the United States Trade Representative (USTR) and the U.S. Department of Commerce (Commerce) to identify, monitor, and address trade-distorting foreign government subsidies.<sup>1</sup> 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. In 2016, USTR and Commerce continued to rigorously monitor and evaluate foreign government subsidies, intensively engage with trading partners on subsidies issues, firmly advocate for stronger subsidy disciplines, and proactively pursue concrete action against foreign government practices that appear to be inconsistent with international subsidy rules. Through these actions, USTR and Commerce ensured that the U.S. Government's subsidies enforcement program identified, deterred, and challenged foreign government subsidization that harms U.S. manufacturing and agricultural interests.

In 2016, the Interagency Trade Enforcement Center (ITEC), now the Interagency Center on Trade Implementation, Monitoring, and Enforcement – established to enhance the U.S. Government's ability to address key trade enforcement issues -- continued to play an important role in pursuing U.S. rights under international subsidy rules. This is 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.

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 administer their government support programs 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 challenge and to remedy the harm caused to U.S. industries, workers and exporters by trade-distorting foreign-government subsidies. USTR and Commerce work to resolve issues of concern with foreign governments' practices and measures through bilateral and multilateral engagement, advocacy, and negotiation. In those instances where U.S. rights and interests cannot be effectively furthered through these means, USTR will initiate and pursue 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 commercially harmful, trade-distorting foreign government subsidies. In 2017, the

---

<sup>1</sup> This report is mandated by Section 281(f)(4) of the

Uruguay Round Agreements Act.

subsidies enforcement program will fully explore and develop additional means of promoting a level playing field of competition and help to expand U.S. exports and support U.S. jobs based on export growth through robust monitoring and enforcement of domestic trade remedy laws and U.S. rights under international trade agreements.

## Subsidies Enforcement Highlights

**Countering Subsidies that Lead to Overcapacity in the Steel and Aluminum Sectors:** Throughout 2016, the United States aggressively sought to address the problem of subsidy-induced overcapacity, particularly in the steel and aluminum sectors. In the steel sector, the United States and several other key trading partners launched the Global Forum on Steel Excess Capacity, designed in part to examine and address government subsidies that lead to overcapacity. In the aluminum sector, the United States in January 2017 requested WTO consultations with China, alleging that cheap loans and preferential input pricing to certain Chinese producers has caused “serious prejudice” to the U.S. aluminum industry. The United States also joined with the EU, Japan, and Mexico in the WTO Subsidies Committee to highlight the roles of government subsidies in creating and sustaining global excess capacity, and calling upon the WTO membership to consider appropriate and necessary steps to address such distortive practices.

**Ending Chinese Prohibited Subsidies:** In 2015, the United States began WTO dispute settlement proceedings involving China’s “Demonstration Base” program, which provided millions of dollars in prohibited export subsidies to hundreds of companies in China. In a significant victory for U.S. companies and workers, China agreed in April 2016 to dismantle this trade-distorting export subsidy program that benefitted Chinese enterprises in various industries, including agriculture, textiles, and medical products.

**Holding China Accountable for its Subsidies Notification Obligations:** In 2016, the United States continued to press China to meet its transparency obligations under the Subsidies Agreement. This included the submission to the WTO Subsidies Committee of the United States’ fourth subsidy “counter notification,” covering Chinese fisheries subsidies. The United States has now counter-notified over 400 Chinese subsidy measures across a broad array of industries in China, including steel, aluminum, semiconductors, and textiles.

**Countering Unfair Subsidies in Non-Market Economies, such as China and Vietnam, 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 2016, Commerce has in place 37 CVD orders on products imported from China and 3 orders on products imported from Vietnam. USTR, together with Commerce, is vigorously defending in the WTO U.S. CVD orders that counteract injurious Chinese government subsidies.

**Confronting EU Member State Subsidies to Airbus:** In September 2016, the United States achieved an important victory when a WTO dispute settlement compliance panel agreed with the United States that the EU had not complied with prior WTO findings by removing harmful subsidies. The panel also found that EU Member States further breached WTO rules by granting nearly \$5 billion in new subsidized launch aid for the Airbus A350 XWB, causing billions of dollars in adverse effects to the U.S. industry. The WTO compliance panel found that approximately \$22 billion in EU member State subsidized financing remains in breach of the EU's WTO obligations.

## INTRODUCTION

The World Trade Organization's (WTO) Agreement on Subsidies and Countervailing Measures (Subsidies Agreement or SCM Agreement) establishes multilateral disciplines on the use of subsidies and provides mechanisms for challenging government measures that contravene these disciplines.<sup>2</sup> The disciplines established by the Subsidies Agreement are subject to WTO 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 on 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.<sup>3</sup> Subsidies contingent upon export performance (export subsidies) and subsidies contingent upon the use of domestic over imported goods (import-substitution subsidies or local-content 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

---

<sup>2</sup> This report focuses on measures that would fall under the purview of the Subsidies Agreement and does not comprehensively address activities that would be addressed under other WTO agreements, such as the Agreement on Agriculture.

group 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 government subsidies. In general, USTR has primary responsibility for developing and coordinating the implementation of U.S. international trade policy, including with respect to subsidy matters; represents the United States in the WTO, including its Committee on Subsidies and Countervailing Measures (Subsidies Committee); and chairs the U.S. interagency process on matters of subsidy trade policy. The creation of ITEC/ICTIME within USTR also provides the U.S. government an increased research and monitoring ability.

The role of Commerce, through its Enforcement and Compliance (E&C) unit within the International Trade Administration, is to administer and enforce the U.S. CVD law, identify and monitor the subsidy practices of other countries, provide the technical expertise needed to analyze and understand the impact of foreign subsidies on U.S. commerce, and provide assistance to interested U.S. parties concerning remedies available to them. E&C also identifies appropriate and effective strategies and opportunities to

<sup>3</sup> 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.

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 in defending the interests of U.S. exporters in foreign CVD cases involving imports from the United States. Within E&C, subsidy monitoring and enforcement activities are carried out by the Subsidies Enforcement Office (SEO). See Attachment 1.

## WTO NEGOTIATIONS

Following the WTO Ministerial Conference in December 2015 (MC10), no agreement was reached among Ministers to continue the Doha mandates. The Chair reported that while delegations expressed diverging views on whether and how to continue to engage on the various Rules issues in a post-MC10 environment, a large number of delegations stressed the importance of work on fisheries subsidies and of moving away from old linkages and stalemates that have been obstacles to reaching consensus.

In September 2016, the United States joined 12 other Members to launch a plurilateral initiative to negotiate fisheries subsidies disciplines, with the goal of delivering an ambitious, high-standard agreement for MC11. For the remainder of 2016, the plurilateral group began meeting in order to organize its work and discuss the scope of the negotiations.

In 2017, to the extent that the work of the Rules Group remains active, the United States will strive to ensure that the focus of such work continues to be, *inter alia*, preserving the effectiveness of trade

remedy rules, improving transparency and due process in trade remedy proceedings, and strengthening existing subsidies rules. The United States will also continue to seek stronger disciplines and greater transparency in the WTO with respect to fisheries subsidies.

## ADDRESSING MARKET-DISTORTING TRADE PRACTICES IN THE STEEL INDUSTRY

Throughout 2016, the United States continued to address concerns related to the global steel sector, working closely with trading partners bilaterally and in a number of regional and international fora. This activity included coordination in the Organization for Economic Cooperation and Development (OECD); the North American Steel Trade Committee (NASTC); the U.S.-China Strategic and Economic Dialogue; the U.S.-China Joint Commission on Commerce and Trade (JCCT); G7; G20; and, the newly-launched Global Forum on Steel Excess Capacity. The Global Forum, in particular, represents an opportunity for G20 and interested OECD members to address the systemic issues present in the current global steel crisis that have a negative impact on the steelmaking industry and workers in the United States and around the world. The Global Forum will aim to reduce in global excess steel capacity and production through the identification of market-distorting policies, implementation of actions to make net reductions in capacity, and monitoring and accountability mechanisms.

The global excess steelmaking capacity situation continued to worsen in 2016. Government policies drove the



continued global expansion and retention of inefficient excess steelmaking capacity in many economies. Excess nominal steelmaking capacity remains at unsustainable levels – more than 700 million metric tons, according to OECD estimates in 2015. China accounts for approximately one half of the global capacity of steel production. Chinese excess capacity is estimated to be between 200 and 300 million metric tons. This excess capacity was equivalent to approximately 13-20 percent of global demand in 2016. With slowing global demand for steel, the sustained high levels of steelmaking capacity and steel production that are out of line with market realities are causing distortions in trade patterns and disruptions on global markets. The collapse of steel prices in 2015 and their volatility since then has impacted both upstream and downstream producers.

We have made clear to our trading partners – in particular, China – that excess capacity in the steel and other industrial sectors is an unsustainable drag on the global economy and that all major steel-producing nations must be committed to working together to eliminate policies that contribute to excess capacity. USTR, Commerce, Treasury, State, and other agencies have worked to engage their international counterparts to reinforce our concerns about global excess capacity and ways to address global excess industrial capacity, particularly in the steel industry.

During 2016, the United States engaged its trading partners on excess capacity in numerous venues, as follows:

- *North American Steel Trade Committee, March 31 – April 1:* The

United States, Canada, and Mexico agreed on the need for all major steel-producing countries to make strong and immediate commitments to address the problem of global excess steelmaking capacity.

- *OECD High-Level Meeting on Excess Capacity and Structural Adjustment in the Steel Sector, April 18-19:* The United States, Canada, the European Union, Japan, Korea, Mexico, Turkey and others joined together to call for specific steps to address steel excess capacity and to urge the formation of a global forum facilitated by the OECD.
- *Joint Committee on Commerce and Trade Steel Dialogue with China, May 11-12:* United States senior officials, with full participation of steel industry representatives and the United Steelworkers, held a dialogue with senior Chinese government and industry officials to emphasize the United States' serious concerns about excess capacity and injurious trade.
- *G7 Leaders Meeting, May 26-27:* G7 Leaders committed to quickly take steps to address global excess capacity across industrial sectors, especially steel.
- *OECD Ministerial Council Meeting, June 1-2:* The United States and its partners issued statements recognizing the negative impact on trade of global excess capacity in sectors such as steel and shipbuilding, and stressed the need to avoid market-distorting measures

and to enhance well-functioning markets.

- *U.S. China Strategic & Economic Dialogue, June 6-7*: Excess capacity was one of the key economic issues discussed, with the United States securing China's commitment to, among other things, strictly contain steel capacity expansion, reduce net steel capacity, eliminate outdated steel capacity, and dispose of 'zombie enterprises' through restructuring, bankruptcy, and liquidation, as appropriate.
- *North American Leaders Summit, June 29*: The United States, Mexico, and Canada announced efforts to address government policies that distort the steel and aluminum sectors and contribute to excess capacity, and announced that each country's customs agencies would work together to ensure robust trade enforcement, including increased information sharing on high-risk shipments of steel and other industrial goods.
- *G20 Trade Ministers Meeting, July 9-10 and G20 Finance Ministers Meeting, July 23-24*: Trade and Finance Ministers committed to enhanced communication and cooperation, and to take effective steps to address the challenges surrounding excess capacity, including participation in the OECD Steel Committee and discussions of a potential global forum on steel.
- *U.S.-China Leaders Meeting, September 3*: President Obama met

with Chinese President Xi to emphasize U.S. concerns regarding overcapacity in steel and other industries. Both leaders recognized that excess capacity is a global issue that requires collective responses, and committed to enhance cooperation and communication on the issue while taking effective steps to address the challenges so as to enhance market function and encourage necessary adjustments. China further committed to improve its bankruptcy administrator systems to address excess capacity.

- *G20 Leaders Meeting, September 4-5*: Leaders committed to take effective steps to address the challenges of excess capacity in steel and other industries so as to enhance market function and encourage adjustment. Leaders also called for increased information sharing and cooperation through the formation of a Global Forum on Steel Excess Capacity, to be facilitated by the OECD with the active participation of G20 members and interested OECD members, which would report on progress to the relevant G20 ministers in 2017.
- *OECD Steel Committee Meeting, September 8*: The United States actively participated in an exchange of information regarding regional and global steel market developments and steelmaking capacity developments, with a view to a potential work program in a global forum on steel.

- *U.S.-ASEAN Summit, September 8:* ASEAN countries recognized excess capacity as a global problem and welcomed the formation of the Global Forum on Steel Excess Capacity envisioned by the G20 and pledged to actively support its work.

*WTO Subsidies Committee, October 2016:* The United States, the European Union, Japan, Mexico and Korea co-sponsored a paper on the problem of subsidies and overcapacity in certain sectors (*e.g.*, steel and aluminum), and submitted it for consideration by the WTO Subsidies Committee. The submission proposed that the Subsidies Committee examine the extent to which subsidies contribute to overcapacity and how such subsidies could be further disciplined.

- *Joint Commission on Commerce and Trade:* On November 23, the United States and China committed to actively participate and strengthen information sharing and cooperation in the Global Forum and to hold a Steel Dialogue meeting in 2017.
- *Launch of the Global Forum, December 16:* In the first meeting under the German G20 Presidency, 33 economies, including the G20 and 13 interested OECD countries welcomed the outcomes of the G20 Leaders' Summit on 4-5 September 2016 and established the Global Forum by agreeing to Terms of Reference. Among the actions at the first meeting, Global Forum members approved Germany to be

Chair, and selected China and the United States as co-chairs. Members also discussed elements of an ambitious work plan, facilitated by the OECD, to develop solutions that support market-driven principles in efforts to decrease excess steel capacity in the global steel market. The Global Forum will report to the relevant G20 ministers in 2017 and annually thereafter. At least two Global Forum meetings are anticipated before the G20 Leaders meet next in Hannover, Germany in July 2017.

In addition to its international engagement activities on excess capacity, Commerce and USTR organized a Public Hearing on April 12-13, 2016, to solicit views about excess capacity to help inform U.S. engagement with its trading partners, to identify solutions to address the steel crisis, and to hear the concerns of U.S. steelworkers and industry. The request for public comment generated 100 submissions and 43 requests to testify. Among those testifying were twelve Members of Congress, the President of the United Steelworkers, many company Chief Executive Officers and Chief Operating Officers, and at least five steelworkers' associations.

In August 2016, Commerce announced the release of a series of reports detailing current steel trade flows involving the top importing and exporting countries. The enhanced steel monitoring reports provide U.S. businesses with updated market intelligence about global steel trade flows.

China's continued state subsidies remain a serious imperfection in the global

marketplace and a significant threat to U.S. industry and U.S. steelworkers. This is despite significant pressures from the United States and other countries. Therefore, the United States continues to explore and pursue with like-minded trading partners effective avenues for monitoring subsidies and developments in China's steel sector and supporting concrete steps by China to rein in its steelmaking capacity. We will also continue to press China on these matters in bilateral and multilateral fora.

## **MONITORING AND ENFORCEMENT**

### **INTERAGENCY CENTER ON TRADE IMPLEMENTATION, MONITORING, AND ENFORCEMENT**

A February 2012 Executive Order established the Interagency Trade Enforcement Center (ITEC) within USTR to strengthen the United States' capability to monitor foreign trade practices and enforce U.S. trade rights. In 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTE) statutorily established the International Center on Trade Implementation, Monitoring, and Enforcement (the Center) within USTR. In 2017, ITEC will be transitioning into the Center.

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' exports and jobs. 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 research and in-depth analysis of enforcement-related issues regarding foreign trade practices that harm U.S. workers and exporters. ITEC staff members have come from a variety of agencies, including the Departments of Commerce, Agriculture, State, Justice, and Treasury, as well as from the U.S. International Trade Commission and the Office of the Director of National Intelligence. ITEC staff bring a diverse set of language skills – including Mandarin, Spanish, Portuguese, Bahasa, and Vietnamese – as well as subject matter expertise such as subsidy analysis, economics, and agriculture.

ITEC has provided substantive support as part of USTR's efforts in a variety of ongoing WTO disputes, including monitoring and post-dispute compliance, as well as developing issues for possible future dispute settlement action and enforcement-related negotiations. In 2016, ITEC provided critical support for developing WTO challenges to China's subsidies to its aluminum sector, "demonstration base" export subsidy program, export restraints on key raw materials, and tax exemptions for certain Chinese-produced aircraft, as well as securing a victory in a dispute challenging Indian discrimination against U.S. solar exports. ITEC analysts also researched and identified foreign government subsidies to help advance the U.S. agenda of enhancing transparency of the subsidies provided by WTO Members in the context of the work of the WTO Subsidies Committee.

Particularly noteworthy has been the work of ITEC's Mandarin-speaking staff members who have identified and systematically catalogued numerous potentially prohibited and other subsidies maintained by the Chinese government.

In 2017, USTR, Commerce and other interagency partners will continue to collaborate closely as ITEC transitions to the new Interagency Center on Trade Implementation, Monitoring, and Enforcement 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. Specifically, 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 creating and preserving 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 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, and the Center) with various foreign language skills primarily conduct this work. This includes performing research and in-depth analysis of potential subsidies identified in various online resources, including foreign government web sites, worldwide business journals and periodicals; 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 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.

During 2016, 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 numerous U.S. industries, including steel, aluminum and semiconductors, as well other sectors that significantly contribute to U.S. exports and a strong domestic manufacturing base.

#### *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 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 programs and dispute settlement activities relevant to subsidies enforcement and trade remedies.

### **CHINESE GOVERNMENT SUBSIDY PRACTICES**

#### *Overview*

In recent years, despite its insistence that it be treated as a market economy, the Chinese government has continued to emphasize the state's significant role in China's economy and rely heavily on state-owned and state-financed enterprises. China's state capitalist and mercantilist strategy diverges from the path of economic reform that drove China's accession to the WTO and underscores its status as a non-market economy. With the state leading China's economic development, the Chinese government has pursued new and more expansive industrial and mercantilist policies, often designed to limit market access for imported goods, foreign manufacturers, and foreign service-suppliers. The Chinese government does this while also offering substantial government guidance, regulatory support, and resources, including subsidies, to Chinese industries, particularly industries dominated by state-owned enterprises (SOEs).

Against this backdrop, there continue to be serious concerns regarding China's poor record of compliance with its WTO obligations and its willingness to play by the rules it agreed to when it joined the

WTO in 2001. With respect to those obligations pertaining to subsidies, particular concerns involve China's chronic failure to notify all aspects of its industrial subsidy regime to the WTO. China maintains a largely opaque industrial support system and employs 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, and caused significant harm to the U.S. manufacturing base. In response, the United States and other WTO Members have pursued several successful dispute settlement proceedings against China with respect to its subsidies practices. Particularly noteworthy in 2016 was China's agreement to dismantle its "Demonstration Base" program.

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 WTO Members, China has repeatedly engaged in delaying tactics. It 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. In October of 2015, China submitted its third notification, covering the periods 2009 to 2014. Not only were all three notifications late; they were significantly incomplete.

In particular, none of these included the numerous central government subsidies for certain sectors (*e.g.*, steel, aluminum, and wild capture fisheries), and none 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 subsidy measures as prohibited subsidies in WTO dispute settlement proceedings.

In July of 2016, China submitted its first subsidy notification covering sub-central government subsidy programs since becoming a WTO Member in 2001. Unfortunately, the number and range of programs covered appears to be a small fraction of the programs actually administered at the sub-central levels of government. Some subsidy programs in this notification were first raised in one or more of the counter notifications submitted by the United States, as discussed in detail below.

Pursuant to its WTO accession commitments, China is also obligated to publish all trade-related measures – including subsidy measures – in a single official journal and make available translations of these measures in one or more WTO languages. However, to date, it

appears that China has not published in its official journal or made available translations of most of the legal measures that establish and fund China's subsidy programs. This is another example of China benefitting from the rules of the WTO while continuing to break them.

The United States has devoted significant time and resources to researching, 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 that had been 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). China is now in the process of implementing its Thirteenth Five-Year Plan.

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, as well as subsidies provided to industries with serious overcapacity problems, such as steel,

aluminum, and wild capture fisheries, among others.

*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 aggressive steps in the WTO Subsidies Committee to address China's failure to provide timely and complete subsidy notifications, with at least some limited success. As detailed below, the United States has made formal requests for information from China regarding its subsidy regime and has now counter-notified over 400 unreported Chinese subsidy measures to the WTO Subsidies Committee. These actions were taken under provisions of the Subsidies Agreement that allow WTO Members to address the failure of other Members to comply with their transparency obligations.

Article 25.8 Information Requests:

The United States submitted written requests to China for information under Article 25.8 of the Subsidies Agreement in October 2012, April 2014, and April 2015.

In its 2012 Article 25.8 request, the United States provided evidence of central government and sub-central government subsidy measures that provided assistance to a wide range of industrial sectors in China, including semiconductors, aerospace, steel, fisheries, and textiles. Under Article 25.9 of the Subsidies Agreement, China was obligated to respond “as quickly as possible and in a comprehensive manner”. When China did not 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 an 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). A key objective of this plan was to promote key SEI sectors, which included: (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 appeared to play an important role in implementing China's Twelfth Five-Year Plan for its SEI. In light of China's failure to respond to this Article 25.8 request, the United States submitted a counter notification under Article 25.10 of the Subsidies Agreement in October 2015 (see below) covering the subsidy measures raised in the 2014 Article 25.8 request.

In the spring of 2015, the United States employed the Article 25.8 mechanism yet again to submit questions to China on various measures that appear to be fishery subsidies. Many of the measures were first listed in WTO's Trade Policy Report for China, drafted by the WTO Secretariat as part of its review of China's trade policies under the Trade Policy Review Mechanism. When China did not

respond to this request, the United States submitted a counter notification under Article 25.10 of the Subsidies Agreement in April 2016 (see below) covering the subsidy measures raised in the spring 2015 Article 25.8 request.

#### Article 25.10 Counter Notifications:

The United States has utilized the Article 25.10 counter notification mechanism of the Subsidies Agreement with respect to Chinese subsidy measures four times: in October 2011, October 2014, October 2015, and April 2016. As noted, over 400 subsidy measures have been counter notified to date.

In its 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, examining a Section 301 petition that had been filed by the United Steelworkers Union regarding China's green energy support programs, and extensive research conducted by USTR and Commerce (including some research that eventually led to successful WTO dispute settlement proceedings). The various measures included in the counter notification were voluminous, numbering over several hundred pages.

In October 2014, the United States submitted a second Article 25.10 counter notification of subsidy measures in China.

This counter notification was based on the Article 25.8 questions submitted to China in October 2012. Because China did not respond to these questions after two years, the United States counter notified the measures at issue. This counter notification included 110 subsidy measures, covering, *inter alia*, steel, semiconductors, non-ferrous metals (including aluminum), textiles, fisheries, 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 counter notified measure.

In October of 2015, the United States submitted its third counter notification of subsidy measures in China. All of the measures in this counter notification pertain to China's policy of promoting its "strategic, emerging industries" or SEIs. This counter notification was based on the Article 25.8 questions submitted to China in the spring of 2014. Once again, because China did not respond to these questions, the United States counter notified the measures at issue. Over 60 subsidy measures were included in the counter notification. As with other industrial planning measures in China, sub-central governments appear to play an important role in implementing China's SEI policy. While China submitted its third subsidy notification (covering 2009 – 2014) shortly after the third U.S. counter notification, it covered very few of the subsidy programs referenced in the U.S. counter notifications.

In the spring of 2016, the United States submitted its fourth counter notification of subsidy measures in China. All of the measures in this counter

notification pertain to China's fisheries subsidies. This counter notification was based on Article 25.8 questions submitted to China in the spring of 2015. Once again, because China did not respond to these questions, the United States counter notified the measures at issue. The measures counter notified included measures to support fishing vessel acquisition and renovation; a 100 percent corporate income tax exemption; grants for new fishing equipment; subsidies for insurance; subsidized loans for processing facilities; fuel subsidies; preferential provision of water, electricity, and land; grants to explore new offshore fishing grounds; grants for establishing famous brands; and special funds for strategic emerging industries in the marine economy. Over 40 subsidy measures were included in the counter notification. As with prior counter notifications, full translations of each measure were included in the counter notification.

To date, China has not provided a complete, substantive response to these counter notifications. Instead, China has included in its subsidy notifications a small number of the programs in the U.S. counter notifications and has argued that other measures counter notified have been notified. For most programs, 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 bilateral discussions on this matter, despite numerous requests to do so. China's third subsidies notification, and its notification covering subsidy programs at the sub-central government level,

nominally brings China up to date with its Subsidies Agreement obligations in that at least some information now has been provided up through the current reporting period. A review of China's latest notifications, however, indicates that China over-reports programs that appear not to be subject to the notification requirement (*e.g.*, general poverty reduction programs and programs for the handicapped) and grossly under-reports active subsidy programs (*e.g.*, steel, aluminum, wild capture fisheries). This is another example of China's subterfuge when it comes to meeting its WTO obligations.

In 2017, the United States will continue to research and analyze China's most recent notifications, particularly with respect to China's sub-central programs, and will more aggressively focus on other possible subsidy programs in China that were not notified, particularly those that may be prohibited under the Subsidies Agreement and those provided to sectors for which China does not appear to have provided a complete notification.

As part of this effort, the United States will actively consider what additional Article 25.8 questions and 25.10 counter notifications regarding China's support programs may be necessary. The United States will also continue to raise its objections with respect to China's subsidies practices in bilateral meetings with China and provide firm notice that non-compliance will be met with appropriate defensive measures.

### *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. Public Law 112-99, amending Section 701 of the Tariff Act of 1930, reaffirmed Commerce's ability to impose countervailing duties on merchandise from countries that Commerce has designated as NMEs that benefit from countervailable subsidies that materially injure a U.S. industry. 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 2016, Commerce has in place 37 CVD orders on products imported from China, involving such products as steel, aluminum, textiles, paper, 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 [https://esel.trade.gov/esel/groups/public/documents/web\\_resources/esel\\_home.hcsp](https://esel.trade.gov/esel/groups/public/documents/web_resources/esel_home.hcsp). Details on the U.S. WTO disputes challenging China's maintenance of subsidy programs that appear to be prohibited are discussed below in the WTO Dispute Settlement section.

In addition to initiating CVD investigations pursuant to petitions filed by the U.S. domestic industry, U.S. law and WTO rules also permit Commerce to "self-initiate" CVD (and AD) investigations where certain criteria are met. In 2017, Commerce intends to actively consider this enforcement tool, among others, where the circumstances warrant in order to defend U.S. industries and workers from the injurious impact of unfair trade.

#### *JCCT - Trade Remedies Working Group*

Established in 1983, the U.S.-China Joint Commission on Commerce and Trade, or JCCT, is a government-to-government consultative mechanism that provides a forum to resolve trade concerns and

---

<sup>4</sup> At the end of 2015, both sides agreed that, going forward, issues that had been previously raised in the former JCCT "Structural Issues Working Group" (SIWG) and TRWG-related issues would be

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.

In 2004, the United States and China established a JCCT working group, the Trade Remedies Working Group (TRWG), to serve as a forum for both sides to raise issues of concern with regard to the other's trade remedy practices and proceedings, e.g., with respect to the application of AD, CVD, and safeguards measures. The TRWG is also a forum in which the United States can raise existing structural and operational features of China's economy and industrial policy, particularly those — for example, subsidies — that distort trade and give rise to the need for trade remedies.<sup>4</sup> Importantly, discussions in the TRWG supplement, but do not replace, engagement on these matters in other fora, such as at the WTO.

Commerce's Assistant Secretary for Enforcement and Compliance and the Assistant U.S. Trade Representative for China Affairs have co-chaired the TRWG for the U.S. side, and the Director General of the Trade Remedy Investigation Bureau of the Ministry of Commerce (MOFCOM) has served as China's chair. The TRWG held its most recent meetings in Beijing in October 2016. China's delegation included several Chinese experts who provided an overview of China's recent economic reform plans as well as an update on China's efforts to transition to a more market-oriented

consolidated and addressed in a new, re-configured TRWG, without prejudice to any former SIWG-related issues that either side might want to raise.

system. With respect to trade remedy issues, 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 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 enhanced TRWG, and, where possible, utilize this group as a practical means to address areas of concern, including subsidies-related issues. However, the United States will also clearly express the view that dialogue must lead to tangible steps to stop China from failing to fully respect WTO rules.

### **WTO SUBSIDIES COMMITTEE**

The WTO Subsidies Committee held its two formal semi-annual meetings in April and October of 2016. 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 above) were the following: the four U.S. counter

notifications of unreported subsidy programs in China and 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; updating the eligibility threshold for developing countries to provide export subsidies under Annex VII(b) of the Subsidies Agreement; a U.S. proposal to enhance the transparency of fisheries subsidies notifications; and a proposal by the European Union, Japan, Mexico, and the United States regarding certain measures contributing to overcapacity in a number of industrial sectors. Further information on these various activities is provided below.

In addition to these specific items included on the Subsidies Committee agenda in 2016, consistent with its own obligations under the Subsidies Agreement, the United States responded in writing to Members' questions on its new and full subsidies notification to the Subsidies Committee, covering fiscal years 2013 and 2014. This notification includes detailed information on dozens of federal level programs as well as hundreds of programs provided at the state level.<sup>5</sup>

---

<sup>5</sup> See New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures--United States ((G/SCM/N/284/USA), 18

November 2015, which is available on the WTO's public document download site at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx).

### *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 that are specific. In 2016, the Subsidies Committee reviewed subsidies notifications from 39 Members.<sup>6</sup> Numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.<sup>7</sup>

### *Review of CVD Legislation, Regulations and Measures*

Throughout 2016, many WTO Members submitted notifications of new or amended CVD legislation and regulations,

---

<sup>6</sup> During the 2016 spring and fall meetings, the Subsidies Committee reviewed the 2015 new and full subsidy notifications of Australia, Belize, Canada, Chile, China, Congo, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, the European Union, Hong Kong China, Jamaica, Japan, Korea, Lesotho, Liechtenstein, Macao China, Mexico, Montenegro, New Zealand, Norway, Peru, Qatar, Saint Vincent and the Grenadines, Switzerland, Thailand, Chinese Taipei, Turkey, Ukraine, United Arab Emirates, and the United States; the 2013 new and full notifications of China, Lesotho, Qatar, and

as well as CVD investigations initiated and decisions taken. These notifications were reviewed and discussed by the Subsidies Committee at its regular spring and fall meetings in 2016. 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, 110 WTO Members<sup>8</sup> have notified that they have CVD legislation in place or stated they do not have such legislation. In 2016, the Subsidies Committee reviewed notifications of new or amended CVD laws and regulations from Australia, Bahrain, Kingdom of Cameroon, Canada, Dominican Republic, India, Kazakhstan, Kuwait, Kyrgyz Republic, Lesotho, Oman, Pakistan, Qatar, Saudi Arabia, Russian Federation, Kingdom of

Vietnam; and the 2011 new and full subsidy notifications of China and Lesotho.

<sup>7</sup> For further information, see the Report (2016) of the WTO Committee on Subsidies and Countervailing Measures (G/L/1157), October 31, 2016.

<sup>8</sup> 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.

Seychelles, United Arab Emirates, the United States, and Vanuatu.<sup>9</sup>

As for CVD measures, 14 WTO Members notified CVD actions taken during the latter half of 2015, and 15 Members notified actions taken in the first half of 2016.<sup>10</sup> In 2016, the Subsidies Committee reviewed actions taken by Australia, Brazil, Canada, China, the EU, India, Pakistan, Peru, Ukraine, and the United States.

#### *U.S. Counter Notifications*

Under Article 25.1 of the Subsidies Agreement, Members are obligated to regularly provide a subsidy notification to the Subsidies Committee. The United States and other Members have repeatedly expressed deep concern about the notification record of China (among others). As detailed above, in light of China's untimely and incomplete subsidy notifications since becoming a WTO Member, the United States has employed provisions of the Subsidies Agreement to formally ask China questions about unreported subsidy programs (Article 25.8) and counter notify subsidy measures (Article 25.10) that, in the view of the United States, should have been notified by China. Over 400 Chinese subsidy measures have now been counter notified by the United States.

At both meetings of the Subsidies Committee in 2016, the United States continued to press China to notify the outstanding measures identified in the U.S. counter notifications. See the above

---

<sup>9</sup> 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.

section, "China Subsidy Practices," for further details.

#### *Notification Improvements*

In March 2009, the Chairman of the WTO's Trade Policy Review Body, acting through the Chairman of the General Council, requested that all committees discuss "ways to improve the timeliness and completeness of notifications and other information flows on trade measures." The United States fully supported the continuation of this initiative in 2016 in light of Members' poor record in meeting their subsidy notification obligations.

In 2010, the United States took the initiative under this agenda item to review the subsidy notification record of several large exporters in failing to provide complete and timely subsidy notifications. Of primary concern in this regard was China. As noted above, in 2016 the United States continued to devote significant time and resources to researching, monitoring, and analyzing China's subsidy practices. The United States has also been working with several other larger exporting country Members bilaterally to assist and encourage them to meet their subsidy notification obligations.

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, India, and other large exporting country Members, and has laid the groundwork for the further pursuit of these issues in the context of the Subsidies Committee's work.

Another issue the United States has been concerned with is the lack of subsidy notifications by Members with respect to sub-central government programs. While China continues to be the primary focus of this concern, other countries such as India, Canada, Mexico, and Brazil also seem to have difficulty notifying sub-central government programs. Especially in light of the efforts the United States makes to notify its state programs, the United States has focused on identifying such gaps in other Members' subsidy notifications and pressed these Members to notify their sub-central government programs.

In 2016, under the transparency agenda item of the Subsidies Committee, the United States continued to advocate for a specific proposal that it originally submitted in 2011 to strengthen and improve the procedures of the Subsidies Committee under Article 25.8 of the Subsidies Agreement. Under Article 25.8, any Member may make a written request for information on the nature and extent of a subsidy granted by another Member, or for an explanation of 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, are answered only many years after the questions are first submitted, or are answered orally after significant delay. To address this problem, the United States proposed that the Subsidies Committee establish deadlines for the submission of written answers to Article 25.8 questions and include all unanswered Article 25.8 questions on the bi-annual agendas of the Subsidies Committee until the questions are answered.<sup>11</sup> In 2016, the United States continued to advocate for a revised proposal, which sets out specific deadlines for responses to questions.<sup>12</sup> Many Members supported the proposal, while several other Members, such as China, India, South Africa, and Brazil, voiced concerns.

The United States will continue to work on finding a pragmatic solution that satisfies the underlying objective of enhancing the information exchange, and to continue to promote its revised proposal and other means to improve compliance with the subsidy notification obligations of the Subsidies Agreement.

#### *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

---

<sup>11</sup> G/SCM/W/555; 21 October 2011.

<sup>12</sup> G/SCM/W/557/Rev.1; September 22, 2014.



deadline for particular Members, where requested and justified. If the Subsidies Committee does not affirmatively determine that an extension is justified, that Member's export subsidies must 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, developing country Members who met 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 special procedures similar to those that had been in place previously. This recommendation included a final two-year phase-out period (ending in 2015) 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.<sup>13</sup> (Attachment 3 contains a chart of all of the programs for which extensions were granted previously).

In 2016, the United States continued its efforts to ensure that all extension recipients had either terminated the program at issue or were in the process of doing so. To this end, the United States backed a proposal for the WTO Secretariat to report on Members' compliance at the spring Subsidies Committee meeting in 2017.

#### *Permanent Group of Experts*

Article 24.3 of the Subsidies Agreement directs the Subsidies Committee to establish a Permanent Group of Experts (PGE) "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The Subsidies Agreement articulates three roles for the PGE: (1) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy within the meaning of Article 3 of the Subsidies Agreement; (2) to provide, at the request of the Subsidies Committee, an advisory opinion on the existence and nature of any subsidy; and (3) to provide, at the request of a Member, a "confidential" advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not been called upon to fulfill any of these functions.

---

<sup>13</sup> WT/L/691.

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 normally taken by the Subsidies Committee during its regular spring meeting in the year following the expiration. In 2016, Ms. Luz Elena Reyes de la Torre (Mexico) was elected at the regular spring meeting to replace the outgoing Mr. Zhang Yuqing (China). Therefore, as of the end of 2016, the five members of the PGE were: Mr. Welber Barral (until 2017), Mr. Chris Parlin (until 2018), Mr. Subash Pillai (until 2019), Mr. Ichiro Araki (until 2020) and Ms. Luz Elena Reyes de la Torre (2021).

*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).<sup>14</sup> A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises

---

<sup>14</sup> 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

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.<sup>15</sup>

*India’s Export Competitiveness*

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

On February 26, 2010, the United States submitted a request, in accordance with Article 27.6 of the Subsidies Agreement, that the WTO Secretariat undertake a computation of the export competitiveness of textile and apparel exports from India.<sup>16</sup> The Secretariat

Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

<sup>15</sup> G/SCM/110/Add.10.

<sup>16</sup> G/SCM/132.

released its computation on March 23, 2010,<sup>17</sup> which confirmed that India's exports of textile and apparel products exceed the export competitiveness threshold stipulated in the Subsidies Agreement.

The eight-year period during which India was required to phase out all export subsidies to its textiles industry ended in 2014. Despite that requirement, based on India's Foreign Trade Policy 2015-2020 and other public information, it appears that India continues to maintain existing export subsidies—and in some cases has instituted new export subsidies—to its textiles industry into 2016. 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 phase out export subsidies benefitting its textiles and apparel industries.

As it has done at prior meetings of the Subsidies Committee, in 2016, 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 to refrain from implementing new programs. Despite these efforts, the United States remains concerned that India continues to maintain export subsidy programs and implement new export subsidy programs for which India's textile and apparel industries are eligible.

India was required to phase out its export subsidies to textiles and apparel

products before the start of 2015. While India has recognized its obligation to end its export subsidies to its textile and apparel industry, it has not yet developed a public timetable to do so. The United States will continue bilateral engagement on this matter.

#### *Enhanced Fisheries Subsidies Notification*

In light of the rapid depletion of global fisheries, the role of fisheries subsidies in facilitating overfishing and overcapacity, and the difficulty of reaching agreement on stricter rules limiting fishery subsidies at the WTO, the United States has proposed as a realistic and practical first step that WTO Members consider providing additional information (e.g., information beyond that required under the Subsidies Agreement) when notifying their fisheries subsidies. The United States has noted that additional information regarding, for example, the health of the relevant fish stocks and the applicable management regime, could be voluntarily included in a Member's regular subsidy notification. Many Members spoke in favor of developing such an approach, while others, such as China and India, expressed reservations.

#### *Overcapacity Submission*

At the fall meeting of the Subsidies Committee, a paper on the problem of overcapacity in certain sectors (e.g., steel and aluminum) was submitted by the European Union, Japan, Mexico, and the United States. The paper was a follow-up to the recognition by the G20 that industrial overcapacity has become a major problem for the global economy. It suggested that

---

<sup>17</sup> G/SCM/132/Add.1; G/SCM/132/Add.1/Rev.1.

the Subsidies Committee could usefully examine the extent to which subsidies contribute to overcapacity and how such subsidies could be further disciplined in the interest of providing a level playing field and an environment where trade and resource allocation is not distorted. Several countries spoke in favor of continuing work in this area, while China argued that the Subsidies Committee was not the appropriate forum.

#### *Committee Prospects for 2017*

In 2017, the United States will continue to analyze the latest subsidy notifications submitted by China in late 2015 and summer of 2016. The United States will focus on subsidies to China's fishery sector, those administered at the provincial and local levels, and other possible subsidy programs in China not notified. This latter category would include, in particular, those programs provided to sectors for which China has not provided a full notification, as well as new programs being implemented under the 13<sup>th</sup> Five Year Plan. The United States will also seek to continue the discussion of subsidy-induced overcapacity and the further development of disciplines to address this issue. The United States will continue to seek to engage India bilaterally to commit to a phase out of its export subsidy programs to the extent that they benefit the textile and apparel sector. As to the proposal to enhance the transparency of fisheries subsidies, the United States will work with like-minded Members to develop specific elements for inclusion in an enhanced fisheries subsidies notification. Finally, the subsidy notification of the United States, covering fiscal years 2016 and 2017, will likely be submitted in 2017.

## **WTO DISPUTE SETTLEMENT**

### *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (DS316)*

On October 6, 2004, USTR 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, as detailed below:

- 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 by the government.
- 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.
- The subsidies found were determined to cause adverse effects to the interests of the United States in the form of 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 believed 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 issued its report on the U.S. claims on September 22, 2016, finding that the EU and its member States had failed to come into compliance with the recommendations from the original proceedings:

- The EU claimed that it took 36 “steps” to comply with the WTO findings against it, but the panel concluded that 34 of the steps were “not ‘actions’ relating to the ongoing (or even past) subsidization,” and that the remaining two “steps” were insufficient.
- The panel reaffirmed the original panel’s findings that France, Germany, Spain, and the United Kingdom gave Airbus \$15 billion in subsidized financing, along with subsidized capital contributions.
- The panel found the member States gave \$4.8 billion in *new* subsidized financing to Airbus.
- The panel concluded that the collective effect of ongoing subsidies was to deprive U.S. producers of billions of dollars of sales in the United States, Europe, Australia, China, India, Korea, Singapore, and the United Arab Emirates.

The EU appealed these findings on October 13, 2016. The Appellate Body is expected to issue its report in 2017.

*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. 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 the United States has complied with the rulings. The DSB formed a panel to hear the EU's claim on October 23, 2012. The EU 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 EU claims in June 2017.

*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 seven such tax incentives are prohibited subsidies that are inconsistent with Articles 3.1(b) and 3.2 of the Subsidies Agreement. Consultations were held on February 2, 2015, and a panel was established on February 23, 2015. On November 28, 2016, the panel issued its report, finding that the EU failed to establish an inconsistency with the Subsidies Agreement with respect to six of the tax measures. The panel found that one tax measure – a reduced business and occupation tax for the aerospace industry – breached Articles 3.1(b) and 3.2 of the Subsidies Agreement. The United States and the EU both appealed aspects of the panel report. The Appellate Body is expected to issue its report in 2017.

*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 this dispute, China included claims related to the "public bodies" issue that were similar to those raised in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)*, and also included 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, arguing that the Panel made findings with respect to certain matters that were outside of its terms of reference. On October 16 and 17, 2014, the United States, China, and third participants presented 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 of the SCM Agreement when it failed to identify the "jurisdiction of the granting authority" and "subsidy program" before finding the subsidy specific. On facts available, the Appellate Body accepted China's claim that the panel's findings regarding facts available were 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 met the requirements 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.

China and the United States consulted in the months that followed in an effort to agree on the reasonable period of time (RPT) for the United States to bring its measures into conformity with the DSB's recommendations and rulings, but could not reach agreement. On July 9, 2015, China requested that the WTO appoint an arbitrator to determine the RPT. The parties filed written submissions and met with the arbitrator on September 9, 2015. On October 9, 2015, the arbitrator determined that the RPT would end on April 1, 2016, which was months shorter than the time period that the United States explained it needed to complete implementation.

In March 2016, Commerce completed issuance of preliminary determinations in the Section 129 proceedings and issued a schedule for public comment. For the public body, *de facto* specificity and the benchmark issues in all proceedings and the land issue in three proceedings, Commerce's ultimate determinations were the same as in the underlying investigations and the originally calculated CVD margins were unchanged.



However, Commerce provided additional analysis and explanation supporting these determinations. With respect to three other proceedings pertaining to land, Commerce determined that some land use programs were not specific. Also, in the two proceedings pertaining to export restraints Commerce determined not to initiate investigations into the export restraint programs. For the three proceedings involving these non-specific land programs and the two proceedings involving export restraints the revised CVD margins were lower.

On March 31, 2016, Commerce issued final determinations with respect to eight of the challenged CVD investigations and, on April 1, USTR directed Commerce to implement those determinations. Furthermore, because Commerce had already revoked one of the remaining CVD orders challenged in the WTO dispute, Commerce determined it had already brought its measure into conformity with respect to that investigation. In addition, Commerce determined that it had already withdrawn an approach determined by the DSB to be inconsistent “as such” with the SCM Agreement.

On April 26, 2016, Commerce issued its final determinations with respect to two of the remaining six CVD proceedings. On May 13, 2016, the Government of China (GOC) filed a consultation request at the WTO challenging all the Section 129 determinations including those yet to be completed. On May 19, 2016, Commerce issued final determinations for the remaining CVD proceedings. On May 26, 2016, USTR directed Commerce to implement the completed final section 129 determinations in the remaining CVD

proceedings. On June 9, 2016, Commerce published a Federal Register notice announcing the Section 129 determinations. In June 2016, the United States informed the WTO that it had come into compliance in this dispute. In July 2016, at China’s request, the WTO established a compliance panel to examine China’s challenge to the Section 129 determinations. Panel proceedings are underway.

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

On April 12, 2012, India requested WTO consultations regarding aspects of Commerce’s 2001 CVD investigation, as well as certain subsequent administrative reviews, of hot-rolled carbon steel flat products from India. Consultations were held on May 31-June 1, 2012. India requested the establishment of a panel on July 12, 2012. 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 USITC's use of "cross-cumulation" in injury investigations, 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. The Appellate Body also found that "cross-cumulation" as applied in the injury determination at issue was inconsistent with the United States' obligations under the Subsidies Agreement. The Appellate Body further found that one never-before used aspect of the U.S. statute governing "cross-cumulation" was inconsistent with that Agreement.

The DSB adopted the reports of the panel and the Appellate Body on December 19, 2014. At the DSB meeting held on January 16, 2015, the United States notified the DSB of its intention to comply with the recommendations and rulings and indicated

it would need a RPT to do so. On March 24, 2015, the United States and India informed the DSB that they had agreed on an RPT of 15 months, ending on March 19, 2016.

On March 7, 2016, the USITC issued a new determination rendering the findings with respect to injury in the underlying proceeding concerning subsidized hot-rolled steel from India consistent with the findings of the panel and the Appellate Body. On April 18, 2016, Commerce issued its final results for the section 129 determinations, following a mutually agreed extension of the RPT. In April 2016, the United States informed the WTO that it had come into compliance in this dispute.

*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 involving the CVD investigation, the panel found the following:

- 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 misallocation 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 material injury caused by the imports from the United States.

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 of the 2010 duties. The United States continued to have significant concerns with China's redetermination, and on May 10, 2016, the United States requested consultations pursuant to Article 21.5 of the DSU. On June 22, 2016, the WTO established a compliance panel at the U.S. request to examine the U.S. challenge to China's redetermination. Panel proceedings are underway.

More broadly, the United States has had trouble with China retaliating against legitimate U.S. antidumping and countervailing duty measures with spurious litigation. This is just one such example, and another example of China playing by its own rules.

*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. After consultations, China removed or did not renew key provisions. The United States continues to monitor China's actions with respect to 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 AD and CVD measures imposed by the United States pursuant to final determinations issued by Commerce following AD and CVD 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 Subsidies 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 Subsidies 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 of 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. The panel held meetings with the parties in March and May of 2015.

On March 11, 2016, the panel issued its report. The Panel found that Commerce's disproportionality analysis, in its original and remand determinations, was inconsistent with Article 2.1(c) of the SCM Agreement. But the Panel rejected Korea's remaining claims – i.e., its claim that Commerce's regional specificity determination was inconsistent with Article 2.2 of the SCM Agreement, and its claims concerning the proper quantification of subsidy ratios.

After appeals by both the United States and Korea, the Appellate Body issued its report on September 7, 2016. The Appellate Body upheld the Panel's rejection of Korea's regional specificity claim. But the Appellate Body also found that certain aspects of Commerce's calculation of subsidy ratios were inconsistent with Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994.

On September 26, 2016, the DSB adopted the panel and Appellate Body

reports. On October 26, 2016, the United States stated that it intends to implement the recommendations of the DSB in this dispute in a manner that respects U.S. WTO obligations, and that it will need a reasonable period of time in which to do so.

On December 9, 2016, Korea requested that the reasonable period of time be determined through binding arbitration under Article 21.3(c) of the Dispute Settlement Understanding.

*United States – Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia (DS491)*

In March 2015, Indonesia requested consultations regarding aspects of Commerce’s 2010 CVD investigation on coated paper suitable for high-quality print graphics from Indonesia, and with respect to certain aspects of the USITC’s injury determination. With respect to the CVD measures, Indonesia challenges Commerce’s determinations that Indonesia’s provision of standing timber, log export ban and debt forgiveness program are countervailable subsidies. Indonesia claims that Commerce determined both that the standing timber was provided for less than adequate remuneration and that the log export ban distorted prices without factoring in prevailing market conditions. Indonesia also alleges, in regards to all three subsidies, that Commerce failed to examine whether there was a plan or scheme in place sufficient to constitute a “subsidy program” within the meaning of the Subsidies Agreement. Indonesia further claims that Commerce did not identify whether each subsidy was “specific to an enterprise ... within the jurisdiction of the

granting authority,” as required by the Subsidies Agreement. In addition, Indonesia challenges DOC’s facts available determination in which it concluded that the Government of Indonesia forgave debt.

Indonesia alleges that the threat of injury determinations are inconsistent with both the AD Agreement and Subsidies Agreement, claiming that the USITC failed to exercise “special care”; relied on allegation, conjecture, and remote possibility; did not base the determinations on a change in circumstances that was clearly foreseen and imminent; and failed to demonstrate a causal relationship between the subject imports and the threat of injury to the domestic industry. Indonesia also alleges that the requirement contained in 19 U.S.C. § 1677(11)(B) that a tie vote in a threat of injury determination must be treated as an affirmative USITC determination is “as such” inconsistent with the “special care” provisions of the Agreements.

Consultations between Indonesia and the United States took place in June 2015. At its September 28, 2015 meeting, the WTO established a panel to examine Indonesia’s complaint. Panel proceedings are underway.

*China — Measures related to Demonstration Bases and Common Service Platform Programs (DS489)*

On February 11, 2015, the United States requested consultations regarding China’s “Demonstration Bases-Common Service Platform” export subsidy program. Under this program, it appeared that China provided prohibited export subsidies through “Common Service

Platforms” to manufacturers and producers across seven economic sectors and dozens of sub-sectors located in more than one hundred and fifty industrial clusters, known as “Demonstration Bases.”

Pursuant to this Demonstration Bases-Common Service Platform program, China provides free and discounted services as well as cash grants and other incentives to enterprises that meet export performance criteria and are located in 179 Demonstration Bases throughout China. Each of these Demonstration Bases is comprised of enterprises from one of seven sectors: (1) textiles, apparel and footwear; (2) advanced materials and metals (including specialty steel, titanium and aluminum products); (3) light industry; (4) specialty chemicals; (5) medical products; (6) hardware and building materials; and (7) agriculture. China maintains and operates this extensive program through over 150 central government and sub-central government measures throughout China.

The United States held consultations with China on March 13 and April 1-2, 2015, but the consultations did not resolve the dispute. On April 22, 2015, the WTO Dispute Settlement Body established a panel to examine the U.S. complaint. The United States and China continued discussions following the establishment of the panel, and in April 2016 USTR announced that the parties had entered into a Memorandum of Understanding (MOU). Pursuant to the MOU, China agreed to terminate the export subsidies it had provided through the Demonstration Bases-Common Service Platform program. The United States continues to monitor China’s

actions with respect to its compliance with the terms of MOU.

*United States — Countervailing Duty Measures on Supercalendered Paper from Canada (DS505)*

On March 30, 2016, Canada requested consultations with the United States to consider claims related to U.S. countervailing duties on supercalendered paper from Canada (Investigation C-122-854). Consultations between the United States and Canada took place in Washington, DC on May 4, 2016.

On June 9, 2016, Canada requested the establishment of a panel challenging certain actions of the U.S. Department of Commerce with respect to the countervailing duty investigation and final determination, the countervailing duty order, and an expedited review of that order. The panel request also presents claims with respect to alleged U.S. “ongoing conduct” or, in the alternative, a purported rule or norm, with respect to the application of facts available in relation to subsidies discovered during the course of a countervailing duty investigation.

Canada alleges that the U.S. measures at issue are inconsistent with obligations under Articles 1.1(a)(1), 1.1(b), 2, 10, 11.1, 11.2, 11.3, 11.6, 12.1, 12.2, 12.3, 12.7, 12.8, 14, 14(d), 19.1, 19.3, 19.4, 22.3, 22.5, 32.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement); and Article VI:3 of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

A panel was established on July 21, 2016. On August 31, 2016, the Panel was

composed by the Director-General. Panel proceedings are underway.

*United States – Certain Measures Relating to the Renewable Energy Sector (DS510)*

On September 9, 2016, India requested WTO consultations regarding alleged domestic content requirement and subsidy measures maintained under renewable energy programs in the states of Washington, California, Montana, Massachusetts, Connecticut, Michigan, Delaware, and Minnesota. India's request alleges inconsistencies with Articles III:4, XVI:1 and XVI:4 of the GATT 1994, Article 2.1 of the TRIMS Agreement, Articles 3.1(b), 3.2, 5(a), 5(c), 6.3(a), 6.3(c) and 25 of the SCM Agreement. Consultations between India and the United States took place in Geneva on November 16-17, 2016.

*United States – Countervailing Measures on Cold- and Hot-Rolled Steel Flat Products from Brazil (DS514)*

On November 11, 2016, the Government of Brazil requested consultations concerning the U.S. CVD determinations on hot-rolled and cold-rolled steel from Brazil. Consultations took place on December 19, 2016. Brazil alleges inconsistencies with Article VI of the GATT 1994, and Articles 1, 2, 10, 11 (in particular, Articles 11.2, 11.3, 11.4, and 11.9), 12 (in particular, Articles 12.3, 12.5, and 12.7), 14, 15, 16, 17, 19, and 32.1, as well as Annexes II and III, of the SCM Agreement. Brazil alleges that the United States initiated countervailing duty investigations in the absence of sufficient evidence and inappropriately drew adverse inferences or relied upon adverse facts available. Brazil also alleges that the United States failed to

demonstrate that certain legislation (related to the "IPI" (tax on industrialized products) levels for capital goods, the integrated drawback scheme, the *ex-tarifario*, the "REINTEGRA," the payroll tax exemption, and the FINAME and "Desenvolve Bahia") entailed a financial contribution and conferred a benefit within the meaning of the SCM Agreement; that the United States failed to demonstrate that the tax legislation is specific within the meaning of the SCM Agreement; and that, with regard to FINAME, the United States failed to demonstrate that the loans conferred a benefit and were specific within the meaning of the SCM Agreement. Brazil alleges that the subsidies were calculated in excess of the actual benefit provided, because the benchmarks used were flawed. In addition, Brazil claims that it is not clear that the decision on injury was based on positive evidence or an objective examination of the facts, and that the domestic industry definition did not refer to the domestic producers as a whole.

*China – Subsidies to Producers of Primary Aluminum (DS519)*

On January 12, 2017, the United States requested consultations with China concerning China's subsidies to certain producers of primary aluminum. This action followed numerous U.S. efforts to persuade China to take strong steps to address the excess capacity situation in its aluminum sector. The United States is concerned that China's subsidies appear to have caused "serious prejudice" under WTO rules to U.S. interests by artificially expanding Chinese capacity, production and market share and causing a significant lowering of the global price for primary aluminum.

## **CANADA SOFTWOOD LUMBER**

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. On October 12, 2015, the Agreement expired. During 2016, Canada's government and the United States held discussions on a potential new agreement, but as of the end of 2016 no new agreement had been reached.

On November 25, 2016, the United States domestic industry filed antidumping and countervailing duty petitions alleging that softwood lumber imports from Canada are being dumped and subsidized, and are causing injury to the domestic softwood lumber industry. On December 15, 2016, Commerce initiated investigations based on those petitions.

## **FOREIGN CVD AND SUBSIDY INVESTIGATIONS OF U.S. EXPORTS**

In 2016, USTR and Commerce helped to defend U.S. commercial interests

in CVD investigations by China that involved exports of products from the United States.

### *China CVD Expiry Review of U.S. Broiler Products*

On August 28, 2015, China's MOFCOM initiated an expiry review of its CVD measure on U.S. exports of broiler products. MOFCOM also initiated an expiry review of its AD measure beginning September 27, 2015. The AD and CVD measures have been in place since August 2010. USTR and Commerce coordinated the participation of the relevant U.S. Federal and state government authorities responsible for administering the subsidy programs subject to this review. The U.S. Government filed its response to MOFCOM's initial questionnaire on November 30, 2015 and a response to MOFCOM's supplementary questionnaire on January 26, 2016. MOFCOM verified the US questionnaire responses in Washington, DC during the week of April 12, 2016.

On August 22, 2016, MOFCOM issued its final determination to continue the imposition of countervailing duties on imports of broiler products from the United States, concluding that certain U.S. subsidy programs continued to benefit the U.S. industry. The AD and CVD rates remain unchanged. As referenced above, the United States is currently challenging MOFCOM's failure to bring its AD and CVD measures into compliance with WTO rules in the *China – Broiler Products (DS427)* compliance proceeding.



### *CVD Investigation of U.S. Dried Distillery Grains (with or without solubles)*

On January 12, 2016, acting on a petition from the Chinese Wine Association on behalf of the domestic industry, MOFCOM initiated AD and CVD investigations of imports of distiller's dried grains (with or without solubles) from the United States. DDGS are distiller's grains obtained from the production of alcohol through fermentation with corn or other grains as the raw materials. DDGS from the United States are largely by- or co-products from ethanol production, and are used in China as a source of animal feed. The petition alleged eight U.S. federal government subsidy programs and 32 state-level programs. MOFCOM initiated on all of the alleged programs. On September 28, 2016, MOFCOM issued the preliminary determination. The preliminary CVD rates for U.S. companies ranged between 10.2 percent and 10.7 percent. On January 11, 2017, MOFCOM issued the final determination. The final CVD rates for U.S. companies ranged from 11.2 percent to 12 percent.

### **U.S. MONITORING OF SUBSIDY-RELATED COMMITMENTS**

#### *WTO Accession Negotiations*

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

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

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

Highlights in 2016 include the Working Party meeting for the accession of Azerbaijan on July 22, and the Working Party meeting for the accession of Sudan on December 12.

#### *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) have been examined once every two years. The next 16 largest Members, based on their share of world trade, have been reviewed every four years. The remaining Members have been 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 2016, USTR and Commerce reviewed the reports of 26 Members' TPRs, including Georgia, Morocco, Fiji, Turkey, Maldives, Saudi Arabia, Ukraine, Malawi, Honduras, Albania, United Arab Emirates, Democratic Republic of the Congo, Zambia, China, Tunisia, Singapore, El Salvador, Russian Federation, Republic of Korea, Sri Lanka, Guatemala, Mozambique, Solomon Islands, the United States, Sierra Leone, and Zambia.

## **CONCLUSION**

China continues to be the most common source of subsidized (and dumped) imports into the United States and global markets. Both the number of cases filed in the United States and other countries, plus the numerous strategies and tactics China uses to implement its industrial and mercantilist policies underscore the need to more closely monitor, and defend against, China's behavior.

More broadly, the U.S. government will continue to focus its subsidy enforcement efforts on defending U.S. CVD actions to counteract injurious foreign government subsidization, pursuing several significant WTO dispute settlement cases, advocating tougher subsidy disciplines in a variety of fora, 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 promotes a level-playing field of competition, and contributes to the goals of expanding U.S. exports, advancing economic growth, and encouraging job creation. Notwithstanding the success of enforcement efforts to date, the U.S. government is reviewing options for how these efforts may be expanded and intensified in the year ahead. 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, farmers, ranchers, 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?***

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 has 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.]

The screenshot shows the Electronic Subsidies Enforcement Library (ESEL) website. The browser address bar displays <http://esel.trade.gov/esel/group/public/document>. The page header includes the International Trade Administration logo and a search bar labeled "Search Trade.gov". Navigation links include "About ITA", "Press", "Publications", "Contact ITA", and "Help". A "Print This Page" link is also present.

The main content area is titled "ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY" with a "Link to Advanced Search" link. It features a search form with the following fields:

- Case Name:
- Country:
- Program Name:
- Industry:
- Full-Text Search:

Below the search form, there are options for "Results Per Page" (set to 100) and "Sort By" (set to Release Date, Descending). "Search" and "Reset" buttons are located at the bottom of the form.

On the left side, there are two menu sections:

- ITA Goals**
  - Promote U.S. Trade and Investment
  - Strengthen U.S. Industry Competitiveness
  - Ensure Fair Trade
- ITA Organizations**
  - Global Markets
  - Industry and Analysis
  - Enforcement and Compliance

On the right side, there are three menu sections:

- SEO**
  - Home
  - Overview
  - FAQ
  - Contact Us
  - WTO Agreement
- Subsidy Programs**
  - Since 2007
  - Prior to 2007
- WTO Notifications**
  - Official WTO Doc
  - Search Page
- Reports to Congress**
  - Select a Year

At the bottom of the page, there is a footer with the following text: "The International Trade Administration, U.S. Department of Commerce, manages this global trade site to provide access to ITA information on promoting trade and investment, strengthening the competitiveness of U.S. industry, and ensuring fair trade and compliance with trade laws and agreements. External links to other Internet sites should not be construed as an endorsement of the views or privacy policies contained therein. This site contains PDF documents. A PDF reader is available from Adobe Systems Incorporated." Below this is a row of links: "USA.Gov | FOIA | Privacy Policy | Disclaimer | Information Quality Guidelines | Intranet".

## 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 Subsidies Enforcement Annual Report to Congress, as well as past Annual Reports.



---

---

**ATTACHMENT 3**

---

---

**Programs Granted Extension Under Article 27.4  
of the Subsidies Agreement**

WTO MEMBER	NAME OF PROGRAM
ANTIGUA & BARBUDA	Fiscal Incentives Act
	Free Trade/Processing Zones
BARBADOS	Fiscal Incentive Program
	Export Allowance
	Research & Development Allowance
	International Business Incentives
	Societies with Restricted Liability
	Export Re-Discount Facility
	Export Credit Insurance Scheme
	Export Finance Guarantee Scheme
	Export Grant & Incentive Scheme
BELIZE	Fiscal Incentives Program
	Export Processing Zone Act
	Commercial Free Zone Act
	Conditional Duty Exemption Facility
BOLIVIA (Annex VII Country)	Free Zone
	Temporary Admission Regime for Inward Processing
COSTA RICA	Duty Free Zone Regime
	Inward Processing Regime
DOMINICA	Fiscal Incentives Program
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones"
EL SALVADOR	Export Processing Zones & Marketing Act
	Export Reactivation Law
FIJI	Short-Terms Export Profit Deduction
	Export Processing Factories/Zones Scheme
	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)
GRENADA	Fiscal Incentives Act No. 41 of 1974

	Qualified Enterprise Act No. 18 of 1978
	Statutory Rules and Orders No. 37 of 1999
GUATEMALA	Special Customs Regimes
	Free Zones
	Industrial and Free Trade Zones (ZOLIC)
HONDURAS (ANNEX VII COUNTRY)	Free Trade Zone of Puerto Cortes (ZOLI)
	Export Processing Zones (ZIP)
	Temporary Import Regime (RIT)
JAMAICA	Export Industry Encouragement Act
	Jamaica Export Free Zone Act
	Foreign Sales Corporation Act
	Industrial Incentives (Factory Construction) Act
JORDAN	Income Tax Law No. 57 of 1985, as amended
KENYA (ANNEX VII COUNTRY)	Export Processing Zones
	Export Promotion Program Customs & Excise Regulation
	Manufacture Under Bond
MAURITIUS	Export Enterprise Scheme
	Pioneer Status Enterprise Scheme
	Export Promotion
	Freeport Scheme
PANAMA	Export Processing Zones
	Official Industry Register
	Tax Credit Certificates (CAT)
PAPUA NEW GUINEA	Section 45 of the Income Tax Act
SRI LANKA (ANNEX VII COUNTRY)	Income Tax Concessions
	Tax Holidays & Profits Generated
	Concessionary Tax on Dividends
	Indirect Tax Concessions - Internal Tax Exemptions
	Export Development Investment Support Scheme
	Import Duty Exemption
	Exemption from Exchange Control

ST. KITTS & NEVIS	Fiscal Incentives Act
ST. LUCIA	Fiscal Incentives Act
	Micro & Small Scale Business Enterprise Act
	Free Zone Act
ST. VINCENT AND THE GRENADINES	Fiscal Incentives Act
URUGUAY	Automotive Industry Export Promotion Regime