

# **SUBSIDIES ENFORCEMENT ANNUAL REPORT TO THE CONGRESS**



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



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## EXECUTIVE SUMMARY

This is the twenty-third 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, or the Department) 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 2017, 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 2017, the Interagency Center on Trade Implementation, Monitoring, and Enforcement (the Center) – established to enhance the U.S. Government's ability to address key trade enforcement issues – played an important role in pursuing U.S. rights under international subsidy rules. This is evidenced by the Center'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, while other venues and initiatives, such as the Steel Global Forum, also play a useful role. 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 informal and formal 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

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

Uruguay Round Agreements Act.

foreign government subsidies. In 2018, the subsidies enforcement program will continue to 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 Steel and Other Industries:** Throughout 2017, the United States aggressively sought to address the problem of subsidy-induced overcapacity, particularly in the steel sector. Working with several other key trading partners, the United States continued its leadership role in the Global Forum on Steel Excess Capacity, which is designed in part to examine and address government subsidies that lead to overcapacity. The United States also continued to work 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.

**Countering Injurious Subsidies to the Canadian Lumber Industry:** On November 2, 2017, Commerce announced its affirmative final determination in the CVD investigation of softwood lumber from Canada. The final calculated subsidy rates ranged from 3.34 to 18.19 percent, reflecting a broad array of government support at the Central and Provincial levels, including and most notably the provision of stumpage (standing timber) from several Provinces at rates that do not adequately reflect a market-determined price. In 2016, imports of softwood lumber from Canada were valued at an estimated \$5.66 billion.

**Self-Initiating AD and CVD Investigations:** In 2017, the Administration indicated that it intends to self-initiate AD and CVD investigations, where appropriate, pursuant to Commerce's authority to do so under U.S. law. Commerce has developed the capacity to more fully utilize self-initiation to address unfair subsidies as well as to expand industry outreach to better address situations where self-initiation may be an appropriate tool. On November 28, 2017, Commerce announced the self-initiation of AD and CVD investigations of imports of common alloy aluminum sheet from China. On January 16, 2018, the USITC determined that there was a reasonable indication that a U.S. industry is materially injured.

**Countering Other Chinese Subsidies and Unfair Practices Through Trade Remedies:** Following an extensive review, on October 26, 2017, Commerce determined that China remains a nonmarket economy country for purposes of the U.S. trade remedy laws due to the intrusive and pervasive role of the State in China's economy, particularly with respect to resource allocations. As a result, Commerce will continue to use special methodologies in its AD proceedings involving imports from China to ensure an effective remedy reflecting the full amount by which these imports are unfairly dumped. Similarly, much of the factual basis of this finding is also relevant to Commerce's analysis in CVD proceedings involving Chinese imports where, for example, Commerce has concluded that the Chinese State's pervasive and intrusive presence in China's financial markets results in systemic distortions that preclude the use of Chinese interest rates and yield rates for CVD loan benchmarking purposes. At the time of this report, Commerce has in place 45 CVD orders on products imported from China.

**Holding China Accountable for its Subsidies Notification Obligations:** In 2017, 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' fifth subsidy "counter notification," covering China's Internationally Well-Known Brand subsidies. The United States has now counter-notified over 500 Chinese subsidy measures across a broad array of industries in China.

## INTRODUCTION

The WTO Agreement on Subsidies and Countervailing Measures 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. The remedies in such circumstances can include the withdrawal or modification of a subsidy, or the elimination of a subsidy's adverse effects within certain timeframes. In addition, the Subsidies Agreement sets forth rules and procedures on the application of 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 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.

USTR and 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 the Interagency Center on Trade Implementation, Monitoring, and Enforcement within USTR also has provided 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 address problematic foreign subsidies and works with USTR to engage foreign governments on subsidies issues.

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<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.

<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.

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.

## **NEGOTIATIONS AND INITIATIVES**

### **NAFTA**

On May 18, 2017, Ambassador Lighthizer sent a letter notifying the United States Congress of the Administration's intent to initiate renegotiation of the North American Free Trade Agreement (NAFTA). This action started the clock on a 90-day consultation period, during which extensive consultations took place with the public and Congress.

In accordance with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, USTR released negotiating objectives at least 30 days prior to formal negotiations, which began on August 16, 2017. USTR released updated objectives on November 17, 2017. As evidenced by the objectives, the United States is committed to ensuring a revised NAFTA strengthens the ability of the government to address trade-distorting subsidization.

In the realm of trade remedies, for example, the United States begins from a premise of seeking to preserve the ability of the United States to enforce rigorously its trade laws, including the CVD law. The United States also seeks to enhance its ability to address trade-distorting

subsidization through, for example, eliminating the Chapter 19 dispute settlement mechanism that has been misused to limit the proper application of trade remedies, seeking a separate domestic industry provision for perishable and seasonal products in AD/CVD proceedings, and facilitating the ability to impose trade remedies that take into account distorted costs of inputs due to ongoing subsidization or dumping. Additionally, the United States seeks to promote cooperation among the trade remedies administrators of the NAFTA countries, particularly with regard to the sharing of information that would improve the ability of administrators to effectively monitor and address unfair trade, such as through self-initiation.

In the chapter of NAFTA covering state-owned enterprises (SOEs), the United States is seeking to build upon previously negotiated agreements. In particular, the United States is seeking to: (1) broaden the definition of an SOE to include instances of government-minority ownership; (2) adopt SOE-subsidy disciplines that go beyond the WTO Subsidies Agreement; and (3) develop enhanced transparency provisions.

With respect to marine fisheries, the renegotiation objectives articulated by the Administration with respect to NAFTA and the environment include establishing rules to prohibit harmful fisheries subsidies, such as those that contribute to overfishing and illegal, unreported, and unregulated (IUU) fishing, and to pursue transparency in fisheries subsidies programs. The Administration is proposing that these rules be subject to the same dispute settlement mechanism that applies to other enforceable obligations of the Agreement.

If adopted, such rules would help level the playing field for the U.S. industry and benefit the long-term health of the ocean's environment and fish stocks, which are essential both to those who depend on fishing and to consumers.

## **WTO NEGOTIATIONS**

During the WTO Ministerial Conference in December 2015 (MC10), no agreement was reached among Ministers to continue the Doha mandates. While delegations expressed diverging views on whether and how to continue to engage on the various Rules Negotiating Group (Rules Group) 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. Moreover, many Members believed that this area would be one where an outcome could most likely be reached at the eleventh Ministerial Conference (MC11), in December 2017 in Buenos Aires.

### *Fisheries Subsidies*

Accordingly, the Rules Group met on multiple occasions in 2017. Over the course of the year, several Members submitted text proposals focused on disciplines for fisheries subsidies that contribute to IUU fishing, overfishing, and overcapacity, and that would enhance transparency and reporting requirements for fisheries subsidies programs. A draft compilation text was developed based on the various

text proposals and formed the basis of intense negotiations in the second half of 2017. However, consensus could not be reached on even the most basic elements of these text proposals. At MC11, Ministers issued a Ministerial Decision in which Members committed to “continue to engage constructively in the fisheries subsidies negotiations, with a view to adopting, by the Ministerial Conference in 2019, an agreement on comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing.”<sup>4</sup>

### *Horizontal Subsidies*

Two Members submitted papers to the Rules Group in 2017 that touched on horizontal subsidy issues (*e.g.*, subsidy issues applicable to all sectors, not just fisheries). The European Union (EU) proposed several novel ideas to improve adherence to the subsidy notification obligation, and more generally to increase the degree of transparency with respect to Members' subsidy regimes. China also submitted a paper, which ostensibly covered only transparency and due process issues, but in fact went into substantive issues as well (*e.g.*, “standing” and the appropriate evidentiary basis for subsidy allegations in a CVD petition). While the United States was willing to consider aspects of the EU paper, Members were split as to whether any of the proposals made could serve as a basis for further work on the issues raised.

light of the concurrent discussions in the Rules Group, decided to suspend its work until early 2018.

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<sup>4</sup> In September 2016, the United States joined 12 other Members to launch a plurilateral initiative to negotiate fisheries subsidies disciplines. The plurilateral group met several times in 2017, but in



## *Prospects for 2018*

In 2018, the United States will continue to strive to ensure that the focus of any work remains, *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 also will continue to seek stronger disciplines and greater transparency in the WTO with respect to fisheries subsidies by fully engaging in any continuing negotiations, whether in the plurilateral or multilateral group.

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

Throughout 2017, 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); and the Global Forum on Steel Excess Capacity (Global Forum). The Global Forum provides 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 excess steelmaking capacity situation remained a significant problem with supply far outpacing demand for steel in 2017. 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 a record 737 million metric tons, according to OECD estimates based on the difference between global capacity and demand in 2016. Announced capacity expansions through 2020 could exacerbate the imbalance. Even though there has been a minor increase in demand for steel in 2017, excess capacity has driven down steel prices, employment, capacity utilization rates, and profitability. China accounts for approximately one half of global steel production capacity. Chinese excess capacity is estimated to be over 300 million metric tons. This excess capacity was equivalent to over 20 percent of global (crude steel) demand in 2016. 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.

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 2016-2017, the United States engaged its trading partners on excess capacity in numerous venues. The Global Forum was launched in December 2016 at the direction of G20 Leaders. The Global

Forum has 33 members, including G20 and interested OECD countries, representing over 93 percent of the world's steel production. The Global Forum held five meetings throughout 2017 to address the issue of excess capacity in the steel sector, including a Ministerial meeting held on November 30.

Consistent with the G20 Leaders' mandate for increased information sharing, one of the first tasks of the Global Forum during 2017 was to develop a mechanism to exchange data on crude steel capacity, as well as subsidies and other government supports that contribute to steel excess capacity. All 33 members of the Global Forum participated to some degree in the information-sharing exercise, but the resulting report does not contain complete information regarding subsidies and other market-distorting measures in certain economies. Much work remains, both to obtain complete information and also to review and analyze the information that has been collected.

The Hangzhou mandate was reaffirmed at the G20 Hamburg Summit in July 2017, where Leaders called on members to rapidly develop concrete policy solutions that reduce excess steel capacity and to produce a substantive report with such solutions by November 2017 (November Report).

In response to both the Hangzhou and Hamburg mandates, the Global Forum developed a set of six principles to serve as the basis for policy action by members, which includes, among other measures, enhancing market function by refraining from market-distorting subsidies and government support measures, fostering a

level playing field in the steel industry and ensuring market-based outcomes, as well as encouraging adjustment. With these principles as guidance, the Global Forum outlined a series of voluntary policy recommendations to reduce excess capacity and enhance market function in the steel sector.

With respect to subsidies, Global Forum members agreed with the policy recommendation that government or government-related entities should remove and refrain from providing market-distorting subsidies and other types of support measures that contribute to excess capacity, irrespective of the vehicles used for such measures, whether direct or indirect, or whether they are or are not subject to WTO agreements.

According to the November Report, in cases in which they distort competition and contribute to excess capacity, such measures include, *inter alia*:

- Preferential financing that is inconsistent with market-based conditions. This includes debt forgiveness, guarantees, and other transfers of liabilities, provision of support given to an insolvent or ailing enterprise without a credible restructuring plan that enables the enterprise to return to long-term viability within a reasonable time, and/or without the enterprise significantly contributing to the restructuring costs. Preferential financing also includes policy loans inconsistent with market consideration, whether through formal bank lending, bond market, asset sales to government, or other financial

channels.

- Equity infusions and conversions (including debt-for-equity swaps) inconsistent with market-based conditions.
- Grants, awards and cost refunds.
- Tax exemptions, reductions, and credits.
- Assumptions of liabilities, administrative fees or other charges by governments or government-related entities inconsistent with market considerations.
- Provision of goods and services by a government (for less than adequate remuneration) and input support throughout the value chain. This includes the provision of land, energy, raw materials, utilities, services, and other inputs, as well as export quotas.
- Distortive discretionary policy measures or non-application of market-based policy measures. This includes export subsidies, tax rebates, import quotas, local content support, including to consumers or downstream industries, local content requirements, restrictions on inward investment or support for outward investment, misappropriation of intellectual property, price fixing and other anti-competitive practices, mergers and acquisitions at nonmarket conditions, isolation of domestic trading from international price arbitrage or separation of domestic from external price setting, lax enforcement of regulations affecting production or sale, and non-enforcement of bankruptcy regulations.

While the November Report provides these and other helpful policy prescriptions, it fails to highlight the recurring failure of some countries to

implement true market-based reforms in the steel sector. China points to its target to reduce 100 – 150 MMT of crude steelmaking capacity from 2016 to 2020, and that since 2016, it has reduced over 100 MMT of crude steel capacity, with 65 MMT reduced in 2016 alone and more expected in 2017. However, the United States has emphasized that the setting of capacity reduction targets is not a long-term response to the crisis, and meaningful progress can only be achieved by removing subsidies and other forms of government support so that markets can function properly. In addition, state-owned enterprises and private steelmakers must be treated equally.

Key next steps to achieve meaningful progress in the Global Forum include additional information and data exchange, as well as three meetings in 2018, with Argentina (the next G20 President) as Chair, to further discuss, review, and assess this information. To be successful, this exercise will need to contain complete information regarding market-distorting subsidies and support from all economies and a clear path forward for implementation of true market-based reforms.

Additional venues and initiatives where the United States engaged its trading partners on excess capacity include:

- *North American Steel Trade Committee, June 7-8*: The United States, Canada, and Mexico met to discuss issues affecting the regional steel market, including the problem of global excess steelmaking capacity.

- *OECD Steel Committee Meetings, March 23 – 24 and September 28 – 29:* OECD economies and participants in the Steel Committee discussed steel market developments throughout the world and, including the global excess steel capacity situation.
- *WTO Subsidies Committee:* In April 2017, the European Union, Japan, and the United States submitted a follow-up paper that described in greater detail the role of subsidies in creating overcapacity and discussed options for addressing this issue in the Subsidies Committee and through amendments to the Subsidies Agreement. (For further information, see *WTO Subsidies Committee* section, below.)

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 bilaterally, and in multilateral fora. China's state subsidies continue to cause distortions in the global steel market and remain a significant threat to U.S. industry and U.S. steelworkers. This is despite significant pressures from the United States and other countries.

## 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 Center within USTR. In 2017, ITEC transitioned by increasing permanent staff with specific linguistic skill sets as well as subject matter expertise in subsidy analysis and economics. The Center now has analysts with a diverse set of language skills – including Mandarin, Spanish, Portuguese, Bahasa, and Vietnamese.

The Center continues to mobilize and coordinate resources and expertise from 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 U.S. exports and jobs. The Center employs a dedicated, "whole-of-government" approach to trade enforcement to strengthen efforts to level the playing field for American workers and businesses and, since its inception, has leveraged interagency resources to provide research and in-depth analysis by drawing 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.

The Center provides 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 2017, the Center provided critical support for further developing WTO challenges to China's subsidies to its aluminum sector, to China's domestic support to certain agricultural producers, and to China's tariff rate quotas for certain agricultural products. Center analysts also continued to research and identify 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.

In 2018, the Center will continue to collaborate closely within USTR and with interagency partners 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 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 2017, 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 aerospace, softwood lumber, steel, aluminum, and semiconductors, as well other sectors that significantly contribute to U.S. exports and a strong domestic manufacturing base.

#### *SELF-INITIATION OF AD AND CVD CASES*

Commerce has the authority under U.S. law to self-initiate AD and CVD

investigations pursuant to sections 702(a) and 732(a) of the Tariff Act of 1930, as amended, which specify that AD and/or CVD investigations “shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under {section 701 (CVD) or 731 (AD)} exist.”

In 2017, the Administration indicated that it intends to self-initiate AD and CVD investigations, where appropriate, pursuant to Commerce’s authority to do so under U.S. law. Commerce has developed the capacity to more fully utilize self-initiation to address unfair subsidies as well as to expand industry outreach to better address situations where self-initiation may be an appropriate tool.

On November 28, 2017, Commerce announced the self-initiation of AD and CVD investigations of imports of common alloy aluminum sheet from China. On January 16, 2018, the USITC determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports from China.

Going forward, it is likely that the filing of petitions by or on behalf of U.S. industry will be how AD and CVD investigations are traditionally initiated. However, the Administration also stands ready to self-initiate investigations where warranted.

#### **US ACTIONS TAKEN TO COUNTER 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 is incompatible with an international trading system expressly based on open, market-oriented policies and rooted in the principles of non-discrimination, market access, reciprocity, fairness, and transparency. 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 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, particularly at the sub-central levels of government. 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 and have pressed China in the WTO Subsidies Committee to be more transparent (see below and *WTO Subsidies Committee* section of this report).

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. Each WTO Member is required to file biennial 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 and competing industries in the territory of other Members.

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 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 China's notifications 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 2016, China finally 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 tiny fraction of the programs 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, or in dispute settlement proceedings brought by the United States.

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 the vast majority of the legal measures that establish and fund China's subsidy programs. Thus, while China generally benefits from many of the rules of the WTO – such as those providing

increased market access – it continues to break others, such as those relating to its transparency obligations.

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 various industrial plans emanating from China's Thirteenth Five-Year Plan. For example, to date, the Chinese government has announced RMB 300 billion (approximately \$46 billion) for the implementation of its Made in China 2025 industrial plan and RMB 139 billion (approximately \$21 billion) for the National Integrated Circuit Fund. In addition to direct subsidies, the government has announced nearly a thousand government "guidance funds" with targeted fundraising of RMB 3.3 trillion (\$476 billion) to support strategic industries.

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.<sup>5</sup>

*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 close to 500 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, April 2015, and April 2017.<sup>6</sup>

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. Considering 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

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<sup>5</sup> For further information on WTO Members adherence to their subsidy notification obligations, see *WTO Subsidies Committee* section below.

<sup>6</sup> The first U.S. Article 25.8 information request was

made in October 2004. This submission was intended to prompt China to submit a subsidy notification, which China had not done since becoming a Member in 2001.

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.

In April 2017, the United States and the European Union jointly submitted an Article 25.8 request on possible subsidies provided to China's steel industry. In prior meetings of the Subsidies Committee, China stated that it only provided subsidies to its steel companies under three broadly available (*e.g.*, non-specific) programs. Considering this statement, the United States, along with the European Union requested information on nearly 160 possible subsidies provided to China's steel industry. These possible subsidies were listed in the annual reports of several steel companies and many appear to meet the notification requirements set forth under Article 25 of the Subsidies Agreement. Given the worldwide overcapacity in the steel industry, the United States believes that it is critical for China to respond this request and notify all of the subsidies provided to its steel industry in accordance with its obligations.

#### 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 five times: in October 2011, October 2014, October 2015, April 2016, and April 2017. As noted, close to 500 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 provided access to complete translated copies of each legal measure. These measures were from (1) various CVD investigations conducted by Commerce; (2) examining a Section 301 petition that had been filed by the United Steelworkers Union regarding China's green energy support programs; and (3) extensive research conducted by USTR and Commerce (including some research that eventually led to successful WTO dispute settlement proceedings). The various measures included as part of 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 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. Although 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 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.

In April 2017, the United States submitted its fifth counter notification of subsidy measures in China pertaining to China's Internationally Well-Known Brand program. As background, in 2008, the United States initiated WTO dispute settlement proceedings challenging China's Famous Export Brand program (and related programs), which provided prohibited export subsidies in the form of cash grants and other benefits to large, well-known exporters. In 2009, pursuant to settlement talks, a mutually agreed solution was reached with China, under which it terminated or amended dozens of the inconsistent measures.

After the settlement, the United States discovered through intensive research central and sub-central measures implementing the "Internationally Well-Known Brand" program. Many of these implementing measures indicate that this new program is essentially a successor to the Famous Export Brand program that was subject to the WTO dispute settlement proceeding. China does not appear to have

notified any of the central or sub-central government Internationally Well-Known Brand measures. Therefore, to obtain more comprehensive information on China's "brand" programs, and to establish the facts surrounding the successor program, the United States submitted its request under Article 25.10 of the Subsidies Agreement. The submission contained eighty measures, including translations of all the implementing measures.

To date, China has not provided a complete, substantive response to any of these counter notifications. Instead, China has included in its subsidy notifications a small number of the programs from the U.S. counter notifications and has argued that other measures counter notified did not provide any financial support, have, in fact, been notified, or have been terminated. 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 bi-annual requests to do so dating back to 2011.

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 through the reporting period ending in 2014. 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 2018, the United States will follow up on the questions submitted to China on possible unnotified subsidy programs to its steel industry; continue to analyze the latest subsidy notifications submitted by China, particularly China's first sub-central notification; and examine new programs being implemented under the 13th Five Year Plan, especially those that may be prohibited under the Subsidies Agreement.

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. CVD 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 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. At the time of this report, Commerce has in place 45 CVD orders on imports from China, involving such products as steel, aluminum, textiles, paper, chemicals, forest products, 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 the 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.

### *Assessment of China's Financial Sector*

In a review of China's financial system, released July 21, 2017, Commerce concluded that China's financial sector remains fundamentally distorted such that interest rates within China cannot be used for subsidized loan benchmarking and discount rate purposes in Commerce's CVD proceedings involving imports from China. The review was a comprehensive update of a 2006 Commerce assessment of China's banking sector. Due to developments in China's financial system since 2006, the scope of the 2017 review was expanded to include not only formal banking, but also the interbank market, the bond market, and "shadow banking," as well as corresponding interest rates and yields. The review found that even though the government nominally removed the last remaining controls on lending and deposit rates at the end of 2015, implicit guarantees, soft budget constraints, non-arm's-length pricing, and government policy directives fundamentally distort the market from both a risk pricing and a resource allocation standpoint. In addition, an analysis of interest rate dynamics suggests that interest rates are not yet market-determined.

### *Review of China's Status as a NME*

In December 2016, Commerce initiated a review of China's NME country status under the U.S. AD law, in the context of the AD investigation of certain aluminum foil from the PRC. After an extensive review of expert, third-party sources and

comments and submissions for the record from interested parties and the public, Commerce determined in accordance with section 771(18) of the Tariff Act of 1930, as amended, that China remains a NME country for trade remedy purposes because it does not operate sufficiently on market principles to permit the use of Chinese prices and costs for purposes of Commerce's AD analysis. Commerce cited as the primary basis for its October 26, 2017, determination the state's pervasive and intrusive role in the Chinese economy and the state's relationship with markets and the private sector, which result in fundamental and systemic distortions of China's economy.

Although the review was conducted for the purposes of Commerce's AD analysis, many of the findings are relevant to enforcement of the U.S. CVD law. Much of the analysis concerns financial supports used to implement government industrial policies in China, which include tax incentives, grants, export subsidies, energy subsidies, and access to cheap credit and cheap or free land. In addition, that analysis includes a summary of Commerce's assessment of China's financial system for CVD benchmarking purposes, as discussed above.

## **WTO SUBSIDIES COMMITTEE**

The WTO Subsidies Committee held its two formal semi-annual meetings in April and October of 2017. 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 fifth "counter notification" by the United States of unreported subsidy measures in China and questions to China on potential subsidies to its steel industry (see above); examination of ways to improve the timeliness and completeness of subsidy notifications; the "export competitiveness" of India's textile and apparel sector; "graduation" of certain developing countries from Annex VII(b) of the Subsidies Agreement; a second submission by the European Union, Japan, Mexico, and the United States on factors contributing to overcapacity in a number of industrial sectors; a U.S. proposal to enhance the transparency of fisheries subsidies notifications; review of the export subsidy program extension mechanism for certain small economy developing country Members; and an opening on the five-member Permanent Group of Experts. Further information on these various activities is provided below.

### *Subsidy Notifications by Other WTO Members*

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

Under Article 25.2 of the Subsidies Agreement, Members are required to report certain information on all measures that, as set forth in Articles 1 and 2 of the

Agreement, meet the definition of a subsidy and that are specific. In 2017, the Subsidies Committee reviewed subsidies notifications from 38 Members.<sup>7</sup> Numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.<sup>8</sup>

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

Throughout 2017, many WTO Members submitted notifications of new or amended CVD legislation and regulations, as well as CVD investigations initiated and decisions taken. These notifications were reviewed and discussed by the Subsidies Committee at its regular spring and fall meetings in 2017. In reviewing notified CVD legislation and regulations, the Subsidies Committee procedures provide for the exchange in advance of written questions and answers 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>9</sup> have notified that they have CVD legislation in place or stated they do not have such legislation. In 2017, the Subsidies Committee reviewed notifications of new or amended CVD laws and regulations from Armenia, Brazil, Cameroon, El Salvador, the European Union, India, Japan, Kyrgyz Republic, New Zealand, and the Russian Federation.<sup>10</sup>

As for CVD measures, 12 WTO Members notified CVD actions taken during the latter half of 2016, and 11 Members notified actions taken in the first half of 2017.<sup>11</sup> In 2017, the Subsidies Committee reviewed actions taken by Armenia, Australia, Brazil, Canada, China, Egypt, the European Union, Kazakhstan, Kirgiz

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<sup>7</sup> During the 2017 spring and fall meetings, the Subsidies Committee reviewed the 2017 new and full subsidies notifications of Burundi, Gabon, Grenada, Macao China, Malawi, Mali, Republic of Moldova, Paraguay, and Togo; the 2015 new and full subsidy notifications of Afghanistan, China, Cuba, the European Union, Guyana, Honduras, India, Kazakhstan, Mali, Russian Federation, Saint Lucia, Seychelles, Brazil, Burundi, Gabon, Georgia, Grenada, Malawi, Moldova, Paraguay, and Togo; the 2013 new and full notifications of China, Guyana, India, Zambia, Malawi, and Paraguay; and the 2011 new and full subsidy notifications of China, Guyana, Malawi, and Paraguay; the 2009 new and full subsidies notifications of China, Guyana, and Mali; the 2007 new and full subsidies notifications of China, Guyana, and Mali; the 2005 new and full subsidies notifications of China, Guyana, Mali, and Paraguay; and the 2003 new and full subsidies notifications of China, Guyana, Mali, and Paraguay.

Note that China is listed several times because it submitted its first subsidy notification covering sub-central governments in 2016. This notification ostensibly covers the period from 2001-2014. It was partially reviewed in 2017 but is subject to further questioning.

<sup>8</sup> See Report (2017) of the WTO Committee on Subsidies and Countervailing Measures (G/L/1195), October 24, 2017.

<sup>9</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.

<sup>10</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.

<sup>11</sup> G/L/1195.

Republic, Pakistan, Peru, the Russian Federation, Turkey, 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, considering 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 possible unreported subsidy programs (Article 25.8) and counter notify possible subsidy measures (Article 25.10) that, in the view of the United States, should have been notified by China. Close to 500 Chinese subsidy measures have now been counter notified by the United States.

At both meetings of the Subsidies Committee in 2017, the United States continued to press China to notify the outstanding measures identified in the U.S. counter notifications. See the above 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 considering 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 who have not provided complete and timely subsidy notifications. Of primary concern in this regard was China. As noted above, in 2017 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.

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 comprehensively notifying sub-central government programs. Considering the efforts by 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 2017, 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 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>12</sup> The United States continued to advocate for its proposal, which sets out specific deadlines for responses to questions.<sup>13</sup> Many Members supported the proposal, while several other Members, such as China, India, South Africa, and Brazil, voiced concerns. In recognition of the concern raised by some developing country Members that strict deadlines for responding to 25.8 questions would be overly burdensome, in 2017, the United States submitted a revised proposal that would allow Members to mutually agree to

an appropriate timeframe to respond to such questions.<sup>14</sup> Notably, far fewer Members raised concerns with the revised proposal than had previously done so, with only one Member expressing outright opposition.

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.

### *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

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<sup>12</sup> G/SCM/W/555; 21 October 2011.

<sup>13</sup> G/SCM/W/557/Rev.1; September 22, 2014.

<sup>14</sup> G/SCM/W/557/Rev.2.

exports from India.<sup>15</sup> The Secretariat released its computation on March 23, 2010,<sup>16</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 several 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 textile and apparel industries.

As it has done at prior meetings of the Subsidies Committee, in 2017, 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 textile and apparel products before the start of 2015. Also, as noted above, India has graduated from Annex VII, which requires India to eliminate all export subsidies provided by the government of India. 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.

#### *"Graduation" from Annex VII (b) of the Subsidies Agreement*

Annex VII of the Subsidies Agreement identifies certain lesser developed country Members that are eligible for 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>17</sup> A country automatically "graduates" from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. At the WTO's Fourth Ministerial Conference, Ministers decided that the calculation of the \$1,000 threshold would

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<sup>15</sup> G/SCM/132.

<sup>16</sup> G/SCM/132/Add.1; G/SCM/132/Add.1/Rev.1.

<sup>17</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 Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

be based on constant 1990 dollars. The WTO Secretariat updated these calculations in 2017.<sup>18</sup> Importantly, these latest calculations show that India has now “graduated” from Annex VII(b) and must now terminate all its export subsidies in all sectors (not just textiles and apparel, as discussed above).<sup>19</sup>

In 2018, the United States will continue to press India to comply with its obligation to eliminate all its export subsidies.

### *Overcapacity Submission*

At the fall 2016 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.<sup>20</sup> 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 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.

Prior to the spring 2017 meeting of the Subsidies Committee, a follow-up paper was submitted by the European Union, Japan, and the United States.<sup>21</sup> This paper described in greater detail the role of subsidies in creating overcapacity and

discussed options for addressing this issue through changes to the Subsidies Agreement and in the Subsidies Committee. It also called upon Members to heed the call of world leaders in the G20 for transparency and collective action to tackle harmful subsidies that contribute to severe overcapacity experienced in several sectors today.

Prior to the fall 2017 meeting of the Subsidies Committee, the United States and the European Union organized a panel discussion on this topic, which included academics and international trade lawyers. The purpose of the seminar was to have experts discuss the relationship between subsidies and overcapacity from different perspectives and consider how the Subsidies Agreement could be strengthened and improved to address the problem. The United States, along with the other proponents of this issue, will continue to seek ways in which the Subsidies Committee can play a role in addressing the role of subsidies in contributing to overcapacity in key industrial sectors.

### *Enhanced Fisheries Subsidies Notification*

Considering 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

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<sup>18</sup> G/SCM/110/Add.14.

<sup>19</sup> Excluding India, the other countries that have graduated from Annex VII(b) are: Dominican Republic, Egypt, Guatemala, Morocco, Philippines,

and Sri Lanka.

<sup>20</sup> G/SCM/W/579/Rev.1.

<sup>21</sup> G/SCM/W/572/Rev.1.

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. During the spring 2017 meeting of the Committee, the United States circulated questions for Members aimed at advancing and organizing the discussion of this issue.<sup>22</sup> The questions seek information from Members on their views as to the relevant scope of information needed to properly assess the trade and resource impacts of fisheries subsidies, the current information gaps experienced by international fishing organizations, and other challenges in developing the necessary information. The United States will continue to advance this discussion in the coming year.

#### *Article 27.4 Update*

Under the Subsidies Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the Subsidies Agreement authorizes the Subsidies Committee to extend this deadline for 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 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 made yearly requests for extensions under this special procedure when it was still in place.

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 like 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>23</sup> (Attachment 3 contains a chart of all the programs for which extensions were granted previously).

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<sup>22</sup> RD/SCM/28.

<sup>23</sup> WT/L/691.

In 2017, 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. As agreed by Members in 2016, the WTO Secretariat circulated a report indicating the status of notifications and of actions reported by Members who were given extensions under Article 27.4 at the spring 2017 Subsidies Committee meeting.<sup>24</sup> In 2018, the United States will continue to press these Members to comply with their obligation to terminate all programs at issue.

#### *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.

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. At the beginning of 2017, the members of the Permanent Group of Experts were: Mr. Welber Barral (Brazil), Mr. Chris Parlin (United States), Mr. Subash Pillai (Malaysia); Mr. Ichiro Araki (Japan), and Ms. Luz Elena Reyes de la Torre (Mexico). In the spring of 2017, the term of Mr. Barral expired. However, the Subsidies Committee was unable to agree on a replacement, so his position remained open. Therefore, at the end of 2017, the four members of the PGE were: Mr. Chris Parlin (until 2018), Mr. Subash Pillai (until 2019), Mr. Ichiro Araki (until 2020), and Ms. Luz Elena Reyes de la Torre (2021).

#### *Committee Prospects for 2018*

In 2018, the United States will follow up on the questions submitted to China on possible unnotified subsidy programs to its steel industry; continue to analyze the latest subsidy notifications submitted by China, particularly China’s first sub-central notification; and examine new programs being implemented under the 13th Five Year Plan, especially those that may be prohibited under the Subsidies Agreement. The United States will seek to continue the discussion of subsidy-induced overcapacity and the further development of disciplines to address this issue. The United States will also continue to engage India bilaterally to commit to the termination of all its export subsidy programs as it is now obligated to

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<sup>24</sup> RD/SCM/29/Rev.1.

do following its graduation from Annex VII(b). More generally, the Subsidies Committee will continue to work in 2018 to improve the timeliness and completeness of Members' subsidy notifications and will continue to discuss the proposal made by the United States to improve and strengthen the Subsidies Committee's procedures under Article 25.8 of the Subsidies Agreement. 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 United States will submit in 2018 a subsidy notification covering fiscal years 2014 and 2015.

## **WTO DISPUTE SETTLEMENT**

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

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

The panel issued its report on June 30, 2010. It agreed with the United States that the disputed measures of the EU, France, Germany, Spain, and the United Kingdom were inconsistent with the Subsidies Agreement, 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 the first half of 2018.

*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 regarding 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 compliance Panel circulated its report on June 9, 2017, with the following findings:

*Findings against the EU:*

- The EU alleged that DoD provided Boeing with funding and other resources worth \$2.9 billion to conduct research that assisted Boeing's development of large civil aircraft. The Panel rejected most of the EU claims for procedural reasons. It found that the remaining claims were worth only \$41 million, and that most of those programs were not subsidies. The Panel subsequently found that the DoD funding found to constitute subsidies did not cause adverse effects to Airbus.
- The EU alleged that the National Aeronautics and Space Administration ("NASA") provided funding and resources to Boeing worth \$1.8 billion. The Panel found that NASA research and development programs conferred subsidies, but that the total value was approximately \$158 million. It found that these subsidies did not cause adverse effects to Airbus.
- The EU alleged that the Federal Aviation Administration ("FAA") provided funding and resources worth \$28 million to Boeing. The Panel found that the FAA program in question was a subsidy, and agreed that it was worth \$28 million. However, it found that these subsidies did not cause adverse effects to Airbus.
- The EU alleged that Boeing received \$51 million in tax benefits from 2007 through 2014 under the FSC/ETI program that Congress discontinued in

2006. The Panel found that there was no evidence that Boeing benefitted from this program in the 2007-2014 period.

- The EU asserted that the City of Wichita issued "industrial revenue bonds" in a way that gave Boeing tax subsidies. The Panel found that this program was a subsidy, but that it did not constitute a WTO breach because it was not "specific," *i.e.*, targeted toward particular entities or industries.
- The EU brought claims with respect to a number of Washington State programs. The Panel rejected one of the EU claims for procedural reasons. The Panel found that all of the remaining programs were subsidies. However, with one exception, the Panel found that these programs did not cause any adverse effects to Airbus.
- The EU alleged that several South Carolina programs worth a total of \$1.7 billion caused adverse effects to Airbus. The Panel found that all but three of these programs either were not subsidies or were not "specific," *i.e.*, did not involve the type of targeting needed to establish a WTO inconsistency. Although it found that three South Carolina programs, worth a total of \$78 million, were subsidies, the Panel concluded that they did not cause adverse effects to Airbus.

*Findings against the United States*

- The EU argued that Washington State's adjustment to its Business and Occupation ("B&O") tax applicable to aerospace manufacturing foregoes

revenue that could otherwise be collected from Boeing, making it a subsidy for WTO purposes. The Panel found that this program confers a subsidy on Boeing, worth an average value of \$100-110 million per year during the period of review. The Panel further found that these subsidies cause adverse effects, but only with respect to certain sales of the Airbus A320 aircraft.

On June 29, 2017, the EU filed a notice of appeal on certain findings, and the United States filed a notice of other appeal on August 10, 2017. The Division assigned to hear the appeal consists of Mr. Peter Van den Bossche (Presiding Member), Mr. Thomas R. Graham, and Mr. Shree B.C. Servansing. The parties and third parties filed written submissions during the second half of 2017. The Appellate Body is planning to hold the first of two substantive hearings with the parties and third parties on April 17-20, 2018.

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.

*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 circulated its report on September 4, 2017. The Appellate Body found that none of the seven challenged programs were prohibited import-substitution subsidies, as alleged by the EU. Accordingly, the United States had no compliance obligations, and the dispute ended with a complete U.S. victory.

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

On April 24, 2012, India requested consultations concerning countervailing measures on certain hot-rolled carbon steel flat products from India. India challenged the Tariff Act of 1930, in particular sections 771(7)(G) regarding accumulation of imports for purposes of an injury determination and 776(b) regarding the use of “facts available.” India also challenged Title 19 of the Code of Federal Regulations, sections 351.308 regarding “facts available” and 351.511(a)(2)(i)-(iv), which relates to Commerce’s calculation of benchmarks. In addition, India challenged the application of

these and other measures in Commerce's countervailing duty determinations and the USITC's injury determination. Specifically, India argued that these determinations were inconsistent with Articles I and IV of the GATT 1994 and Articles 1, 2, 10, 11, 12, 13, 14, 15, 19, 21, 22, and 32 of the SCM Agreement. The DSB established a panel to examine the matter on August 31, 2012. The panel was composed by the Director General on February 18, 2013, as follows: Mr. Hugh McPhail, Chair; Mr. Anthony Abad and Mr. Hanspeter Tschaeni, Members.

The Panel met with the parties on July 9-10, 2013, and on October 8-9, 2013. The Panel circulated its report on July 14, 2014. The Panel rejected India's claims against the U.S. statutes and regulations concerning facts available and benchmarks under Articles 12.7 and 14(d) of the SCM Agreement, respectively, but found that the U.S. statute governing accumulation was inconsistent with Article 15 of the SCM Agreement because it required the accumulation of both dumped and subsidized imports in the context of countervailing investigations. Consequently, the Panel also found that the ITC's injury determination breached U.S. obligations under Article 15.

The Panel rejected India's challenges under Article 1.1(a)(1) of the SCM Agreement to Commerce's "public body" findings in two instances, as well as most of India's claims with respect to Commerce's application of facts available under Article 12.7 in the determination at issue. The Panel also rejected most of India's claims against Commerce's specificity determinations under Article 2.1, and its calculation of certain benchmarks used in the proceedings under Article 14(d). The

Panel found that Commerce's determination that certain low-interest loans constituted "direct transfers" of funds was consistent with Article 1.1(a)(1), but that Commerce's determination that a captive mining program constituted a financial contribution was not consistent with Article 1.1(a). Finally, the Panel found that Commerce did not act inconsistently with Articles 11, 13, 21 and 22 of the SCM Agreement when it analyzed new subsidy allegations in the context of review proceedings.

On August 8, 2014, India appealed the Panel's findings; on August 13, 2014, the United States also appealed certain of the Panel's findings. The Appellate Body released its report on December 8, 2014.

The Appellate Body upheld the Panel's findings regarding the U.S. benchmarks regulation, but found that certain instances of Commerce's application of these regulations were inconsistent with Article 14(d). The Appellate Body also upheld the Panel's findings regarding accumulation, finding that the application of the U.S. statute in the injury determination at issue was inconsistent with Article 15 of the SCM Agreement, and that the U.S. statute was inconsistent with that provision, although on different grounds than those found by the Panel. The Appellate Body rejected India's interpretation of "public body" under Article 1.1(a)(1), but reversed the Panel's finding that Commerce acted consistently in making the public body determination at issue on appeal. Regarding specificity, the Appellate Body rejected each of India's appeals under Article 2.1(c), as it did with respect to India's challenge to the Panel's finding under Article 1.1(a)(1)(i) relating to

“direct transfers of funds.” The Appellate Body also reversed the Panel’s finding that Commerce had acted inconsistently with Article 1.1(a)(1)(iii) in finding that captive mining program constituted a provision of goods. Finally, the Appellate Body upheld the Panel’s rejection of India’s claims under Articles 11, 13 and 21 regarding new subsidy allegations. The Appellate Body reversed the Panel’s findings under Article 22 of the SCM Agreement, but was unable to complete the analysis. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, 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 a RPT of 15 months, ending on March 19, 2016. At the United States’ request, India then agreed to a 30 day extension to April 18, 2016.

On March 7, 2016, USITC issued a Section 129 determination in the hot-rolled steel from India countervailing duty (CVD) proceeding to comply with the findings of the Appellate Body. On March 18, 2016, DOC issued its preliminary determination memos in the Section 129 proceedings, and on April 14, 2016, DOC issued its final Section 129 determinations. On April 22, 2016, the United States informed the DSB that it had complied with the recommendations and rulings in this dispute.

On June 5, 2017, India requested consultations regarding the U.S. implementation. On July 13, 2017,

consultations were held between India and the United States.

*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 like those raised in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379), and 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 Subsidies 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 Subsidies 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 Subsidies 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 proceedings under section 129 of the *Uruguay Round Agreement Act* 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 Subsidies 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. The compliance proceeding covers 15 investigations as well as 12 administrative reviews and 10 sunset reviews. There are four main issues in the compliance dispute, which concern

Commerce’s new methodologies for determining whether SOEs are “public bodies” and when to use out-of-country benchmarks, additional analyses regarding the specificity of input subsidies, and whether implementation should include additional periodic and sunset reviews and so-called “ongoing conduct” (collection of duties and cash deposits).

The compliance panel conducted an in-person meeting in Geneva on May 10 and 11, 2017. The compliance panel is expected to release its final report sometime in early 2018.

#### *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.

On January 18, 2018, the compliance panel report was made public. The compliance panel agreed with U.S. claims that China continues to act inconsistently with WTO rules. The panel found that China's determinations were flawed including China's determinations that U.S. exporters were dumping and that China's industry suffered injury. The United States will continue to press for full compliance in this dispute.

*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, later, 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 claimed that Commerce's CVD 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 challenged Commerce's determinations in the washers CVD 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 criticized 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 Subsidies 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 Subsidies 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 Subsidies Agreement and Article VI:3 of the GATT 1994.

On September 26, 2016, the DSB adopted the panel and Appellate Body reports. Subsequently, the United States and Korea entered arbitration pursuant to Article 21.3(c) of the Dispute Settlement Understanding to arrive at the reasonable



period of time for the United States to bring its AD and CVD measures into conformity with the DSB rulings. The arbitrator established a reasonable period of time for compliance expiring on December 26, 2017.

On December 15, 2017, USTR requested that Commerce initiate a proceeding under section 129 of the *Uruguay Round Agreements Act* to address the DSB's recommendations relating to Commerce's CVD investigation of washers from Korea. On December 18, 2017, Commerce initiated a section 129 proceeding. The section 129 proceeding is expected to be completed in 2018.

*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 challenged Commerce's determinations that Indonesia's provision of standing timber, log export ban and debt forgiveness program are countervailable subsidies. Indonesia claimed 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 alleged, 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 claimed 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 challenged DOC's facts available determination in which it concluded that the Government of Indonesia forgave debt.

Indonesia alleged 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 alleged that, with respect to threat of injury determinations, the requirement contained in 19 U.S.C. § 1677(11)(B) that a tie vote 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. The Panel's report was circulated on December 6, 2017. The Panel rejected all of Indonesia's claims. Indonesia chose not to appeal, and the Panel's report was adopted by the DSB at its meeting on January 22, 2018.

*United States — CVD 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 Commerce with respect to the CVD investigation and final determination, the CVD 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 CVD 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 Subsidies 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. The panel held meetings with the parties in March and June of 2017 and is expected to release its report to the public in early 2018.

*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 Subsidies Agreement. Consultations between India and the United States took place in Geneva on November 16-17, 2016.

India requested the establishment of a WTO panel to examine the challenged measures on January 17, 2017. A panel was established on March 21, 2017; no panelists have been selected to hear the dispute.

*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 Subsidies Agreement. Brazil alleges that the United States initiated CVD 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 Subsidies Agreement; that the United States failed to demonstrate that the tax legislation is specific within the meaning of the Subsidies 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 Subsidies 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. The United States’ request alleges that China’s subsidies appear to be inconsistent with Article XVI:1 of the GATT 1994 and Articles 5(c), 6.3(a), 6.3(b), 6.3(c) and 6.3(d) of the SCM Agreement.

*United States – Certain Systemic Trade Remedies Measures (DS535)*

On December 20, 2017, Canada requested consultations with the United States concerning certain laws, regulations and practices that Canada claims are maintained by the United States in its AD and CVD proceedings. Specifically, Canada alleges that the United States: (1) fails to implement WTO-inconsistent findings by liquidating final duties in excess of WTO-consistent rates, and failing to refund cash deposits collected in excess of WTO-consistent rates; (2) retroactively collects provisional AD and CVD duties following preliminary affirmative critical circumstances determinations; (3) treats export controls as a financial contribution and improperly initiates investigations into and/or imposes duties; (4) improperly calculates the benefit in determining whether there is a provision of goods for less than adequate remuneration; (5) effectively closes the evidentiary record before the preliminary determination and fails to exercise its discretion to accept additional factual information; and (6) creates an institutional bias in favor of affirmative results in injury, threat of injury, or material retardation when the commissioners of the International Trade Commission are evenly divided on whether a determination should be affirmative or negative.

Canada claims these alleged measures are inconsistent with Articles VI (in particular, VI:2 and VI:3) and X:3(a) of the GATT 1994; Articles 1, 3.1, 6 (in particular, 6.1, 6.2, and 6.9), 7 (in particular, 7.4 and 7.5), 9 (in particular, 9.2, 9.3, 9.3.1, and 9.4), 10 (in particular, 10.1 and 10.6), 11 (in particular 11.1 and 11.2), 18 (in particular, 18.1 and 18.4) of the AD Agreement; Articles 1 (in particular, 1.1(a) and 1.1(b)), 10, 11 (in particular, 11.2, 11.3, and 11.6), 12 (in particular, 12.1 and 12.8), 14(d), 15.1, 17 (in particular, 17.3, 17.4, and 17.5), 19 (in particular, 19.1, 19.3 and 19.4), 20 (in particular, 20.1 and 20.6), 21 (in particular, 21.1 and 21.2), and 32 (in particular, 32.1 and 32.5) of the SCM Agreement, and Articles 21.1 and 21.3 of the DSU.

Consultations between the United States and Canada have not yet occurred.

#### **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. Imports of softwood lumber from Canada in 2016 were valued at an estimated \$5.66 billion.

On November 25, 2016, the United States domestic industry filed antidumping and CVD 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.

On November 2, 2017, Commerce announced its affirmative final determinations in both the CVD investigation and the AD investigation of imports of softwood lumber. The final calculated subsidy rates for the five investigated Canadian lumber producers ranged from 3.34 to 18.19 percent. The subsidy rate established for all other Canadian lumber producers and exporters was 14.25 percent. The final dumping margins ranged from 3.20 to 8.89 percent. On December 22, the USITC determined that an industry in the United States is materially injured by reason of imports of softwood lumber from Canada that Commerce had determined were sold in the U.S. market at less-than-fair value and subsidized by the government of Canada.

The majority of the subsidies conferred to Canadian softwood lumber producers were from the provision of stumpage by the Provinces of Alberta, British Columbia, New Brunswick, Ontario,

and Quebec at rates that do not adequately reflect a market-determined price. The term stumpage refers to the sales price of standing timber. Commerce also determined that softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in these three provinces are excluded from the scope of the AD and CVD investigations.

On November 14, 2017, the Government of Canada formally requested a NAFTA panel review of Commerce's CVD findings.

On November 28, 2017, the Government of Canada filed two separate requests for WTO consultations regarding the final AD and CVD determinations. If the United States and Canada are unable to resolve the matters during the 60-day consultation period, Canada may request the establishment of dispute settlement panels to review the AD and CVD determinations.

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

In 2017, USTR and Commerce helped to defend U.S. commercial interests in CVD investigations by China that involved exports of products from the United States.

##### *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 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.

##### *CVD Investigation of U.S. Ethanol*

On May 10, 2017, the Government of Peru initiated a CVD investigation on imports of ethanol from the United States (there is no accompanying antidumping proceeding). The investigation is being conducted by Peru's Antidumping and Countervailing Duty Commission (CDS) within the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI). The case covers eight federal government subsidy programs and 28 programs administered by 17 different states. The final determination is expected in early 2018.

#### **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 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 2017 include the Working Party meeting for the accession of Belarus on September 13. For Sudan, the Working Party meetings occurred on January 31 and July 14.

### *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.<sup>25</sup> 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.

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<sup>25</sup> These review cycles will be three, five and seven years respectively, beginning on January 1, 2019.

See, WT/L/1014.

In 2017, USTR and Commerce reviewed the TPR reports of 15 Members, including The Gambia, Cambodia, Bolivia, West African Economic and Monetary Union (WAEMU), Iceland, Jamaica, Paraguay, Brazil, the European Union, Nigeria, Switzerland, Liechtenstein, Mozambique, Belize, Mexico, and Japan.

## **CONCLUSION**

China continues to be the most common source of dumped and subsidized imports into the United States (accounting for 32 percent of the new AD/CVD orders issued in 2017). Both the number of cases filed in the United States and other countries, and the numerous strategies and tactics the Chinese Government uses to implement its industrial and mercantilist policies in pursuit of a so-called “socialist market economy,” underscore the need to more closely monitor and counter China’s behavior as well as to defend Commerce’s factual finding that China remains a nonmarket economy.

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 – especially in those sectors experiencing overcapacity, such as steel and primary aluminum, 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. The establishment and growth of the Center in 2017 is one example of these efforts.

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.

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## **ATTACHMENT 1**

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## 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.

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## ATTACHMENT 2

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# THE ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY

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

## First Screen

The screenshot shows the ESEL search interface within a web browser. The browser's address bar displays <http://esel.trade.gov/esel/group/public/documents>. The page header features 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" and includes a "Link to Advanced Search" option. It contains several search filters: "Case Name" (text input), "Country" (dropdown menu), "Program Name" (text input), "Industry" (dropdown menu), and "Full-Text Search" (text input). A note below the "Full-Text Search" field states: "Keywords or phrase enclose in quotation marks: " " ". Below these filters are "Results Per Page" (set to 100) and "Sort By" (set to "Release Date" in "Descending" order). "Search" and "Reset" buttons are located at the bottom of the filter section.

On the left side, there are two expandable sections: "ITA Goals" (listing "Promote U.S. Trade and Investment", "Strengthen U.S. Industry Competitiveness", and "Ensure Fair Trade") and "ITA Organizations" (listing "Global Markets", "Industry and Analysis", and "Enforcement and Compliance"). On the right side, there are three sections: "SEO" (with links to "Home", "Overview", "FAQ", "Contact Us", and "WTO Agreement"), "Subsidy Programs" (with links for "Since 2007" and "Prior to 2007"), and "WTO Notifications" (with links to "Official WTO Doc" and "Search Page"). A "Reports to Congress" section includes a "Select a Year" dropdown menu.

At the bottom of the page, a disclaimer states: "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 the disclaimer are links for "USA.Gov", "FOIA", "Privacy Policy", "Disclaimer", "Information Quality Guidelines", and "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.

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## **ATTACHMENT 3**

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<b>Programs Granted Extension Under Article 27.4 of the Subsidies Agreement</b>	
<b>WTO MEMBER</b>	<b>NAME OF PROGRAM</b>
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