

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



2021 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-sixth annual report to Congress describing the activities and actions taken by the Office of the United States Trade Representative (USTR) and the U.S. Department of Commerce (Commerce) to identify, monitor, and address trade-distorting foreign government subsidies.<sup>1</sup> Strong enforcement of international trade rules is vital to providing U.S. manufacturers, workers and exporters the opportunity to compete on a level playing field at home and abroad. In 2020, USTR and Commerce continued to monitor and evaluate foreign government subsidies, engage with trading partners on subsidy issues, advocate for stronger subsidy disciplines and pursue concrete action against foreign government practices that appear to be inconsistent with international subsidy rules. Through these actions, USTR and Commerce identified, deterred, and challenged foreign government subsidization that harms the United States.

The principal tools available to the U.S. Government to address harmful subsidy practices are the World Trade Organization (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 and the U.S. CVD law to challenge and 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.

The U.S. Government's subsidies enforcement program helps to ensure that American companies and workers can compete globally on a level playing-field and are not placed at a competitive disadvantage by trade-distorting foreign government subsidies. In 2021, USTR and Commerce will continue to challenge unfair trade practices, including harmful foreign government subsidization, through rigorous enforcement of domestic trade remedy laws and U.S. rights under international trade agreements, as well as robust monitoring of foreign subsidies.

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<sup>1</sup> This report is mandated by Section 281(f)(4) of the Uruguay Round Agreements Act.

## 2020 Subsidies Enforcement Highlights

**Enhanced Ability to Address Subsidies under the United States-Mexico-Canada Agreement (USMCA):** On January 29, 2020, the USMCA was signed into law. The USMCA strengthens the United States' ability of the government to address trade-distorting subsidies, including through enforcement of trade remedy laws, and new prohibitions on the most egregious subsidies to state-owned enterprises (SOEs) and the most harmful types of fisheries subsidies.

**United States-United Kingdom Free Trade Agreement Negotiation (US-UK FTA):** On May 5, 2020, the United States and the United Kingdom launched trade agreement negotiations and held five sets of negotiating sessions in 2020. Relevant key negotiating objectives of a prospective US-UK FTA seek to strengthen the ability of the government to address trade-distorting subsidies, including through enforcement of trade remedy laws, a broader definition of an SOE, and strong disciplines on the most egregious subsidies involving SOEs and a prohibition of harmful fisheries subsidies.

**Countervailing Undervalued Currency:** On February 4, 2020, Commerce published a final rule modifying its regulations related to possible countervailable subsidies associated with unfairly undervalued currency. These regulations became effective on April 6, 2020. Commerce has applied these regulations in preliminary CVD determinations on imports from China and Vietnam, preliminarily finding that government action contributed to currency undervaluation conferring a countervailable subsidy to exporters from those countries of the products under investigation. Final determinations in these investigations are expected to be made in spring of 2021.

**Rigorous Enforcement of Trade Remedies:** In 2020, Commerce brought trade-enforcement to an all-time high: 550 orders, of which 144 are CVD and 406 AD, of which 205 involve products from China and 269 involve steel products.

**Stopping circumvention of trade remedies:** Commerce issued 14 affirmative preliminary or final circumvention determinations in 2020 – the most in any single year. Furthermore, in May and November, Commerce self-initiated three inquiries into possible circumvention of steel-related AD/CVD orders on products from China based on Commerce's own monitoring of trade patterns.

**Trilateral Initiative and Other Bilateral Efforts:** The United States continued to work with the European Union and Japan to develop stronger and more effective subsidy rules and pushed bilaterally, in particular, for more effective disciplines on the market-distorting behavior of SOEs.

**WTO Fisheries Subsidies Negotiations:** In 2020, the United States continued to advocate for strong fisheries subsidies constraints, such as a proposal to "cap and reduce" subsidies, and prohibitions on subsidies to vessels determined to be engaged in IUU fishing, subsidies regarding overfished stocks, subsidies contingent on fishing outside the Member's exclusive economic zone, and subsidies to vessels not flying the Member's own flag.

**Holding China Accountable for its Subsidies Notification Obligations:** The United States pressed China on its failure to notify the full range of its steel and other industrial subsidy programs and utilized a rarely used mechanism to request that China provide certain legal measures - apparently not publicly available – related to government support programs for its fisheries and semiconductor industries.

**Seasonal and Perishable Fruits and Vegetables:** Commerce has established an outreach program to connect with farmers of seasonal and perishable fruits and vegetables, to enhance their understanding of applicable trade remedy laws and processes. Commerce has also created a new channel for stakeholders to convey information relating to foreign subsidies provided to exporters/producers of seasonal and perishable fruits and vegetables through accessing the Subsidies Enforcement Office's "inbox" via <https://www.trade.gov/get-help-foreign-subsidies>.

## INTRODUCTION

The WTO Subsidies Agreement establishes multilateral disciplines on the use of subsidies and provides mechanisms for challenging government measures that contravene these disciplines.<sup>2</sup> The disciplines established by the Subsidies Agreement are subject to WTO dispute settlement procedures. 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 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; representing the United States in the WTO, including the Committee on Subsidies and Countervailing Measures (Subsidies Committee); and chairing the U.S. interagency process on matters of subsidy trade policy. 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 under U.S. law. 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

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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.

issues. Moreover, E&C works closely with USTR in responding to foreign government requests for information, and in defending the interests of U.S. exporters in foreign CVD cases involving imports from the United States. Within E&C, subsidy monitoring and enforcement activities are carried out by the Subsidies Enforcement Office (SEO). See **Attachment 1**.

## **NEGOTIATIONS AND INITIATIVES**

### **UNITED STATES-MEXICO-CANADA AGREEMENT**

On September 30, 2019, the United States, Mexico, and Canada concluded negotiations aimed at modernizing the North American Free Trade Agreement (NAFTA) of 1994. The result was the United States-Mexico-Canada Agreement (USMCA), a 21st century, high-standard agreement. Representatives of the three countries subsequently signed the USMCA on November 30, 2019, and in December 2019, the agreement was submitted to the countries' respective legislatures for approval. On July 1, 2020, USMCA entered into force.

The process to modernize NAFTA began on May 18, 2017, when USTR sent a letter notifying the United States Congress of the Administration's intent to initiate renegotiation of the NAFTA.

In accordance with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, USTR released negotiating objectives 30 days prior to formal negotiations. One item the United States included in the objectives was a commitment to ensuring that a revised NAFTA strengthen the ability of the government to address trade-distorting

subsidization and the market-distorting practices of state-owned enterprises (SOEs). The resulting USMCA achieves this objective.

Specifically, in the realm of trade remedies, the United States preserved its ability to enforce rigorously its trade laws, including the CVD law. Additionally, the USMCA promotes cooperation among the trade remedies administrators of the three countries, particularly with regard to the sharing of information that would improve the ability of administrators to effectively monitor and address unfair trade. The USMCA also enshrines cooperation between the parties in the conduct of duty evasion proceedings.

In the chapter of USMCA covering SOEs, the United States has built upon previously negotiated agreements. In particular, the USMCA: (1) broadens the definition of an SOE to include instances of government-minority ownership in which government control can be established; (2) adopts SOE-subsidy disciplines that go significantly beyond the WTO Subsidies Agreement, such as prohibitions on financing to insolvent or uncreditworthy SOEs; and (3) contains enhanced transparency provisions.

With respect to marine fisheries, the USMCA achieved the goal of establishing rules to prohibit certain harmful subsidies, such as those that negatively affect overfished fish stocks, and those provided to operators caught engaged in illegal, unreported and unregulated (IUU) fishing. It also enhances the transparency and reporting of fisheries subsidies programs beyond what the Subsidies Agreement already requires and

obligates the Parties to make their best efforts to refrain from introducing new or extending or enhancing existing subsidy programs that contribute to overfishing or overcapacity. Parties also agreed to work together in the WTO towards strengthening rules on the provision of fisheries subsidies. Such rules 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.

#### UNITED STATES-UNITED KINGDOM TRADE AGREEMENT NEGOTIATIONS

On October 16, 2018, the U.S. Trade Representative notified Congress of the Administration's intent to negotiate a trade agreement with the United Kingdom. On May 5, 2020, the U.S. Trade Representative and United Kingdom Secretary of State for International Trade Elizabeth Truss announced the formal launch of trade agreement negotiations between the United States and the United Kingdom. Since the launch, U.S. and UK negotiators have held five sets of negotiating sessions in May, June, July-August, September and October 2020.

In the chapter of the US-UK FTA covering SOEs, the United States' negotiation objective is to build upon previously negotiated agreements, including USMCA, to achieve ambitious new disciplines for SOEs. In particular, the negotiation objectives include: (1) define SOEs on the basis of government ownership or control; (2) adopt SOE-subsidy disciplines that go beyond the WTO Subsidies Agreement and USMCA; and (3) further develop transparency provisions, including

with respect to government equity investments into an SOE.

With respect to marine fisheries, similar to USMCA, the United States' negotiation objective is to establish rules to prohibit harmful fisheries subsidies, such as those that contribute to overfishing and IUU fishing and pursue transparency in fisheries subsidies programs.

#### UNITED STATES-KENYA TRADE AGREEMENT NEGOTIATIONS

On March 17, 2020, the U.S. Trade Representative notified Congress of the Administration's intent to negotiate a trade agreement with Kenya. On July 8, 2020, the U.S. Trade Representative and Kenya Cabinet Secretary for Industrialization, Trade, and Enterprise Development Betty Maina formally launched trade agreement negotiations between the United States and the Republic of Kenya. Since the launch, negotiations have commenced.

In the chapter of the US-Kenya FTA covering SOEs, the United States' negotiation objective is to build upon previously negotiated agreements, including USMCA. In particular, the United States seeks to: (1) build on the definition of an SOE in the USMCA; (2) adopt SOE-subsidy disciplines that go beyond the WTO Subsidies Agreement; and (3) develop enhanced transparency provisions, including those related to third-party SOEs operating in Kenya.

#### WTO NEGOTIATIONS

During the WTO Ministerial Conference in December 2015 (MC10), no agreement was reached among Ministers to continue the Doha Development Round



mandate. While delegations expressed diverging views on whether and how to continue to engage on the various Rules Negotiating Group (RNG) issues in a post-MC10 environment, a large number of delegations stressed the importance of continuing to work on fisheries subsidies as an issue that stands on its own merits, moving away from old linkages and stalemates that have been obstacles to reaching consensus. Thus, between MC10 and MC11, there was intensive work on the fisheries subsidies negotiations.

At MC11, in December 2017, 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.” The United States, for its part, continued to play a leadership role in the negotiations and to press for comprehensive and effective disciplines of the most harmful types of subsidies that would apply to all Members, regardless of development status.

#### FISHERIES SUBSIDIES

As previously reported, the United States has long been an active and constructive participant in the fisheries subsidies negotiations in the RNG, pressing for a meaningful agreement to prohibit the most harmful types of fisheries subsidies. The United States and various like-minded

Members have put forward several proposals designed to bridge gaps and bypass continued abstract debates in the RNG.

Following MC11, the RNG engaged in a rigorous negotiating schedule, with negotiating rounds on a near-monthly basis and intense intersessional work. During this period, in the spring of 2019, the United States worked to refocus the negotiations away from the desire by many Members to preserve policy space to grow their fisheries and rather focused on the actual subsidies currently being provided with a creative proposal that would set limits on Members subsidy programs.<sup>4</sup> The proposal, cosponsored with Australia, Argentina and Uruguay, would constrain the total value of fisheries subsidies provided by the WTO Members with the largest marine capture production, and require commitments to reduce subsidy levels from the largest subsidizers, otherwise known as a “cap and reduce” approach. This proposed approach was intended to complement and was in addition to the prohibitions under negotiation on some of the most harmful subsidies, such as those that support IUU fishing and fishing on overfished stocks.

The United States also cosponsored new text proposals with numerous Members, including enhanced transparency and notification requirements, and proposals to prohibit subsidies to vessels and operators determined to have engaged in IUU fishing, subsidies contingent on fishing outside the Member’s jurisdiction, and subsidies to vessels not flying the Member’s own flag.<sup>5</sup> While these proposals directly address the worst forms

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<sup>4</sup> TN/RL/GEN/197/Rev.2

<sup>5</sup> TN/RL/GEN/201/Rev.1 (cosponsored with

Argentina, Australia, Indonesia, Japan, New Zealand and Uruguay).

of industrial fishing subsidies, Members at all levels of development continued to press for exceptions and other carve-outs from the prohibitions, in particular to preserve policy space for continued or future subsidization.

Toward the end of 2019, after it became clear that the RNG would not meet its December deadline for completing the negotiations, the Rules Group committed to an intensive work program in 2020 with the aim of reaching agreement by the planned Twelfth Ministerial Conference in June 2020. The RNG held negotiating sessions in January, February and March, during which Members continued their intensive discussions on the full range of potential fisheries subsidies disciplines. Unfortunately, following the March session, in-person negotiations were put on hold due to the coronavirus (COVID-19) pandemic. Although Members continued to have some limited exchange of views in writing, including on proposals by India on special and differential treatment, and by the Least Developed Country (LDC) Group on several issues, there was otherwise limited engagement in the Spring.

In late June, the RNG Chair, Ambassador Wills from Colombia, initiated a return to active negotiations through circulation of a draft consolidated text. In late July, at a meeting of Heads of Delegation, the RNG agreed to resume continuous negotiations starting in September, using the draft consolidated text as a basis. Negotiating sessions were held in a virtual format with some in hybrid form, allowing for in-person Geneva participation and virtual participation of capital-based officials. In the late fall, when additional COVID-19 restrictions were put in

place, all sessions reverted to a virtual format.

The RNG held week-long negotiating “clusters” in September, October, November, and December, along with Heads of Delegation level meetings throughout the period and an intensive intersessional schedule. This included meetings in various configurations, with the intention for dynamic engagement to try to bridge the continued wide gaps in Members’ negotiating positions.

Throughout 2020, the United States continued to press for a meaningful outcome, one that would change the status quo, constrain the largest subsidizers, and prohibit the most harmful fisheries subsidies. Although there was modest progress, several Members continued to debate broad principles rather than engage in constructive, text-based negotiations. In addition to the challenges posed by the COVID-19 pandemic, strong divergences among Members remain and conclusion by 2020 was not possible. The negotiations will continue in 2021.

The United States will continue to engage actively and constructively in the negotiations in 2021 to press for effective disciplines to prohibit that most drive overfishing or support IUU fishing. The United States also will continue to advocate for enhanced transparency and notification of fisheries subsidy programs.

#### TRILATERAL INITIATIVE AND OTHER BILATERAL NEGOTIATIONS

During the past year, the United States continued work in various fora to address ongoing concerns regarding non-market-oriented policies and practices in

third countries that lead to severe overcapacity, and undermine the proper functioning of international trade, including where existing rules are not effective.

Toward that end, technical experts from the European Union (EU), Japan and the United States held in-depth discussions in the early months of 2020 to develop possible stronger and more effective rules on industrial subsidies and SOEs to promote a more level playing field. One of the key issues under discussion by this technical group deals with how to address market-distorting behavior of SOEs.

In addition, the group is working to develop rules to prohibit outright certain particularly egregious subsidy practices and, for other particularly distortive subsidy types, to obligate the subsidizing country to prove that the subsidy does not cause commercial harm to others. Further, the group is considering a revised rule on the use of external benchmarks, a new rule that provides a targeted remedy to address subsidies related to excess capacity, a definition of the “threat of serious prejudice,” and enhanced rules to increase the costs of transparency and notification failures.

On January 14, 2020, the trade ministers from Japan, the EU, and the United States met and issued a statement, detailing areas of agreement and issues that continue to be worked upon. Beyond the topics noted above, the trade ministers agreed that on the issue of “public body”, the interpretation by the WTO Appellate Body in several reports undermines the effectiveness of WTO subsidy rules and that

to determine that an entity is a public body, it is not necessary to find that the entity “possesses, exercises or is vested with governmental authority.”<sup>6</sup>

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

In 2020, the United States continued its active engagement in the Global Forum on Steel Excess Capacity (Global Forum), the North American Steel Trade Committee (NASTC), and the Steel Committee of the Organization for Economic Cooperation and Development (OECD), as well as its strong enforcement efforts with respect to steel.

Excess capacity in global steelmaking remains a significant problem, with capacity continuing to exceed demand for steel by a wide margin. The COVID-19 pandemic exacerbated global imbalances in 2020 by diminishing demand in key steel-consuming sectors, while steelmaking capacity continued its increase in regions already characterized by excess capacity. According to the OECD, the gap between global steelmaking capacity and demand was expected to increase to at least 700 million metric tons in 2020, after narrowing slightly between 2016 and 2019. This excess of capacity over consumption is twice the combined annual steel consumption of the United States, the European Union, and Japan. China continues to account for the largest share of existing and new global steelmaking capacity, and in 2020 achieved a record-high volume of annual steel production. These sustained high levels of steelmaking capacity and associated production remain out of line with market realities, and

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<sup>6</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement->

[trilateral-meeting-trade-ministers-japan-united-states-and-european-union.](#)

continue to cause distortions in trade patterns and global prices.

#### ENGAGEMENT

During 2020, the United States hosted the 30<sup>th</sup> meeting of the NASTC, a longstanding platform for government-industry cooperation among the United States, Mexico, and Canada on steel policy matters, and for coordination on issues in multilateral fora of importance to the steel sector. NASTC efforts include monitoring and information-sharing regarding developments in key steel-producing third countries with a view to identifying and addressing distortions in the global steel market.

The United States is also an active participant in the Steel Committee of the OECD, which convened one meeting and undertook various workstreams remotely in 2020. The OECD Steel Committee provides a forum for government, industry, and labor representatives from 30 economies (including several non-OECD members) to discuss evolving challenges facing the steel industry. Reducing market-distorting subsidies affecting the steel sector and encouraging structural adjustment are key objectives of the Committee's work. The United States and like-minded trading partners are working through the OECD Steel Committee and the separate Global Forum to develop data and analyses on the prevalence of subsidies and other government support measures in the steel sector, and the role of those measures in creating or sustaining excess capacity.

The United States is also working closely with the European Union and Japan to address non-market-oriented policies

and practices of third countries that have led to severe excess capacity and that undermine the proper functioning of international trade. Among other things, this trilateral work, as noted above, entails exploring the development of rules to confront particularly egregious subsidy practices, including subsidies contributing to overcapacity, and to address the market-distorting behavior of state enterprises. In parallel to this initiative, the United States, the European Union, and Japan have made joint submissions to the WTO concerning the myriad ways in which state intervention and the conduct of state enterprises contribute to overcapacity in steel and other industrial sectors. (For further information, see *WTO Subsidies Committee* section, below.)

In addition to these cooperative efforts with like-minded trading partners, USTR and Commerce continue to use bilateral engagement with other countries to press for change in foreign government conduct that distorts steel markets and international trade in the steel sector.

#### TRADE REMEDY ENFORCEMENT

Overall, Commerce administered a total of 269 AD/CVD orders on steel-related products in 2020 – nearly half of the 550 orders in place.

Commerce has also focused on anti-circumvention efforts, particularly involving circumvention of U.S. AD and CVD orders on steel products. For example, in May 2018, Commerce made affirmative final circumvention determinations for corrosion-resistant steel products (CORE) and cold-rolled steel products (CRS) made with substrate from China, shipped to

Vietnam for minor processing, and then exported to the United States – in circumvention of existing AD and CVD orders on CORE and CRS from China. On December 16, 2019, Commerce made affirmative final circumvention determinations involving CORE and CRS that are made with substrate from Korea or Taiwan, shipped to Vietnam for minor processing, and then exported to the United States – in circumvention of existing AD and CVD orders on CORE and CRS from Korea and Taiwan.

In August 2019, Commerce broke new ground by self-initiating inquiries into possible circumvention of the AD/CVD orders on CORE from China and Taiwan. Specifically, Commerce examined whether steel substrate from China or Taiwan is exported to any of 5 third countries (Costa Rica, Guatemala, Malaysia, South Africa, and the UAE) for completion, and then exported to the United States. This was the first time that Commerce self-initiated circumvention inquiries based on its own monitoring of trade patterns. It was also the first self-initiation of multi-country circumvention inquiries. In 2020, Commerce made affirmative anti-circumvention findings regarding CORE completed in Costa Rica, Malaysia, and the UAE.

In May 2020, Commerce self-initiated an inquiry into possible circumvention of AD/CVD orders involving stainless steel sheet and strip made with substrate from China, completed in Vietnam, and then exported to the United States. A final determination is expected in early-2021. Also, in November 2020, Commerce self-initiated new inquiries into possible circumvention of AD/CVD orders

involving oil country tubular goods (OCTG) made with substrate from China, completed in Brunei and the Philippines, and then exported to the United States. Final determinations are expected in mid-2021.

In addition, Commerce published new regulations that strengthen its current steel import monitoring program. The new regulations allow for a continuation of the timely monitoring of steel import trends but also new data collection that will help detect circumvention and evasion involving steel products. The new regulations include:

- a new requirement to identify the steel import licenses and the country where imported steel products are melted and poured; an aggregate version of this country of melt and pour data will be included in the public Steel Import Monitoring and Analysis (SIMA system);
- expand the scope of the steel import monitoring program to include all steel products subject to Section 232 tariffs; and
- extend the duration of the steel import monitoring program.

## **U.S. TRADE REMEDY PROCEEDINGS**

### **OVERVIEW AND TRENDS**

Commerce's E&C unit rigorously enforces U.S. trade laws by conducting CVD investigations of imports into the United States that are allegedly subsidized by foreign governments and that cause harm to U.S. industries. Commerce also conducts AD investigations of imports that are alleged to be dumped at prices that are less

than fair value that cause harm to U.S. industries and workers. In addition, the U.S. International Trade Commission (USITC) – an independent agency – determines whether the imports at issue materially injure, threaten material injury to, or materially retard the establishment of the competing U.S. industry. Investigations vary widely in scope and complexity and will result in a CVD order (and/or AD order) upon affirmative determinations by both Commerce and the USITC. These orders direct the U.S. Customs and Border Protection to collect duties on unfairly subsidized or dumped goods entering the country, giving relief to domestic industries harmed by unfair trading practices.

Commerce continues to monitor and enforce its AD and CVD orders through various proceedings, including circumvention inquiries. Such inquiries determine if an existing AD/CVD order is being circumvented. In addition, Commerce defends its determinations in U.S. courts and, as discussed in detail further below, before WTO dispute settlement panels and NAFTA or USMCA binational panels.

As of December 28, 2020, there were a total of 550 AD and CVD orders in place covering a broad array of industries and products, providing relief to domestic industries and workers from unfairly traded goods. Of these 550 total orders, 144 are CVD orders. Based on available data, roughly 0.75 percent of U.S. imports for consumption were subject to AD or CVD orders. The following table shows the

estimated breakdown of the share of AD/CVD orders by industry grouping:

#### **CURRENT AD/CVD ORDERS BY PRODUCT**

<b>PRODUCT/GROUP</b>	<b>SHARE OF TOTAL (%)</b>
Steel	49
Chemicals	13
Other Metals	8
Plastics & Rubber	8
Foodstuffs	4
Paper & Paperboard	4
Textiles	4
Other Manufacture	4
Machinery & Auto	4
Cement & Ceramics	2
Minerals	<1

Details on all of Commerce’s CVD proceedings that were active from January 1, 2020, through June 30, 2020, as reported by the United States to the WTO Subsidies Committee in accordance with Article 25.11 of the Subsidies Agreement, are available in WTO document G/SCM/N/363/USA (October 16, 2020), available at the WTO public document web site at <https://docs.wto.org/>.<sup>7</sup> Detailed analysis of the individual subsidy programs that Commerce has investigated in each CVD proceeding since 1980 can be accessed through the SEO’s Electronic Subsidies Enforcement Library website at <https://esel.trade.gov>.

#### **PETITIONER COUNSELLING**

Historically, most of Commerce’s AD and CVD proceedings have been initiated in response to formal petitions received by Commerce from U.S. industries who are seeking relief from injury caused by

<sup>7</sup> Similar detailed information for the period July 1, 2020 through December 31, 2020 was not available at the time of drafting this report, but should

become available to the public around April 2021, also on the WTO’s public document site.

allegedly dumped and unfairly subsidized imports into the United States. U.S. law (the Tariff Act of 1930, as amended) establishes specific elements that a petition must include before Commerce can initiate an investigation on the basis of a petition.<sup>8</sup> In order to assist U.S. companies in understanding those statutory requirements and the general process of compiling and submitting an AD or CVD petition, E&C maintains an AD/CVD Petition Counseling and Analysis Unit (PCAU), which has a dedicated staff of professionals that provide help and advice to domestic industries as to the remedies to which they may be entitled under the trade remedy laws. For example, the PCAU:

- Helps industries (i.e., potential petitioners) to understand the U.S. unfair trade laws and the requirements for filing a petition and requesting the initiation of an investigation;
- Advises potential petitioners in determining what types of information will be required in order to pursue action against a foreign industry suspected of unfair trade practices;
- Assists potential petitioners to ensure their petition is in compliance with statutory initiation standards; and

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<sup>8</sup> Specifically, the petition must provide a reasonable basis to believe or suspect that dumping and/or subsidization of a particular product is occurring, that the domestic industry has suffered material injury, threat thereof, or the establishment of a domestic industry is materially retarded, and that there is a causal link between them. In order to allege that a subsidy exists, the petition must allege and support with reasonably available information

- Provides potential petitioners with publicly available tariff and trade data from Commerce, the U.S. Department of Treasury and the USITC.

In fiscal year 2020 alone, the PCAU conducted over 950 counseling sessions, to ensure that domestic industries obtain the relief that they are entitled to under the trade remedy laws.<sup>9</sup>

#### SELF-INITIATION OF CIRCUMVENTION INQUIRIES IN AD AND CVD ORDERS

Under U.S. law, Commerce may conduct a circumvention inquiry when evidence suggests that merchandise subject to an AD or CVD order undergoes a minor alteration that brings the product outside the scope of the order. Commerce may also conduct circumvention inquiries when evidence suggests that merchandise subject to an order is completed or assembled in the United States or third countries from parts and components imported from the country subject to the order. Commerce can also find that later-developed merchandise (*i.e.*, merchandise developed after the initiation of an AD/CVD investigation) may also be covered by an existing order.

Typically, circumvention inquiries are initiated in response to allegations filed by the domestic industry. However,

that a government financial contribution has been made, which bestows a benefit on the foreign producer/exporter, and that the subsidy is “specific,” *e.g.*, limited to a particular company, or industry or group of companies or industries.

<sup>9</sup> Additional information on the statutory requirements and process for filing a trade remedies petition is available at: <https://www.trade.gov/ec-petition-counseling>.

Commerce's regulations provide that a circumvention inquiry may be self-initiated when Commerce determines from available information that an inquiry is warranted. Commerce has developed the capacity to more fully utilize self-initiation to stop circumvention of U.S. trade laws.

On May 12, 2020, Commerce announced the self-initiation of a new inquiry into possible circumvention of AD/CVD orders involving stainless steel sheet and strip made with substrate from China, completed in Vietnam, and then exported to the United States. Also, on November 5, 2020, Commerce announced the self-initiation of new inquiries into possible circumvention of AD/CVD orders involving oil country tubular goods made with substrate from China, completed in Brunei and the Philippines, and then exported to the United States. These actions demonstrate Commerce's vigilance to stop circumvention of U.S. trade laws, wherever it occurs.

#### RULE ON CURRENCY UNDERVALUATION

While the existing statute provides Commerce with the authority to address subsidies resulting from unfair currency undervaluation, in order to provide additional guidance to the public on how Commerce will determine the existence of a benefit when examining a potential subsidy resulting from currency undervaluation and clarify that companies in the traded goods

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<sup>10</sup> See, *Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*; 2020, 85 FR 71607-71610 (November 10, 2020), and accompanying Preliminary Decision Memorandum;

sector of the economy can constitute a group of enterprises for purposes of determining whether a subsidy is specific, on February 4, 2020, Commerce published the *Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings (Currency Rule)*(85 FR 6031).

The *Currency Rule* sets forth Commerce's approach to analyzing the specificity of domestic subsidies and the determinations of undervaluation and benefit when examining potential subsidies arising where government action on the exchange rate contributes to an undervaluation of a currency. The *Currency Rule* became effective on April 6, 2020. Commerce has applied this new regulation in preliminary determinations for cases from China and Vietnam, preliminarily finding that currency undervaluation conferred a countervailable benefit to exporters from those countries.<sup>10</sup> Final determinations in those investigations are expected to be made in early spring of 2021, and, pursuant to the regulation, Commerce will continue to evaluate allegations of currency undervaluation supported by reasonably available information.

#### APPLICATION OF U.S. CVD LAW TO CHINA

Starting in the 1980s, Commerce declined to apply the CVD law to nonmarket economies (NMEs) because Soviet-era

and *Twist Ties From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*; 2020, 85 FR 77167-77169 (December 1, 2020), and accompanying Preliminary Decision Memorandum.



economies presented obstacles to its application. In 2006, based on a CVD petition filed by the U.S. coated free sheet paper industry, Commerce determined that reforms in China's economy had removed those obstacles, and began to apply U.S. CVD law to China. 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 when those imports benefit from countervailable subsidies and materially injure a U.S. industry. 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, numerous U.S. industries concerned about subsidized imports from China have filed CVD petitions. At the end of December 2020, Commerce had in place 205 AD and CVD orders on imports from China, involving many different products and industries, 71 of which were CVD orders.

There is a broad array of alleged subsidies that Commerce has investigated or is investigating in these CVD cases, including currency, preferential government policy loans; income tax and value-added tax 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 the U.S. WTO

disputes challenging WTO Members' maintenance of subsidy programs that appear to be prohibited are discussed below in the WTO Dispute Settlement section.

## **OTHER MONITORING AND ENFORCEMENT**

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

In 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTE) statutorily established the Interagency Center on Trade Implementation, Monitoring and Enforcement (the "Center") within USTR to support the trade enforcement function across the U.S. government.

By 2020, the Center had analysts with subject matter expertise in subsidies analysis and economics, the political economies of China and other major trading partners, and in a diverse set of language skills – including Mandarin, Japanese, Korean, French, German, and Turkish.

In 2020, the Center continued to enhance USTR's trade enforcement activities with respect to Section 301 trade actions and in the context of WTO dispute settlement. Specifically, the Center continued to support the U.S. challenge to India's export subsidies at the WTO, and to research and identify foreign government subsidies in order to advance the U.S. agenda of enhancing subsidies transparency in various multilateral fora: the WTO Subsidies and Agriculture committees, the OECD Global Steel Forum on Excess Capacity, OECD Trade Policy Papers, a new OECD initiative on fossil fuel subsidies, and

at the Government/Authorities Meeting on Semiconductors.

#### ADVOCACY EFFORTS AND MONITORING SUBSIDY PRACTICES WORLDWIDE

The United States is strongly committed to enforcing its rights under the Subsidies Agreement. Specifically, the U.S. Government is focusing its monitoring and enforcement activities in key overseas markets by working to address harmful foreign government subsidies and ensuring foreign government compliance with existing trade agreements. By 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.

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. The work includes performing research and in-depth analysis of potential subsidies 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.

#### SUPPORT FOR AMERICAN PRODUCERS OF SEASONAL AND PERISHABLE FRUITS AND VEGETABLES

On September 1, 2020, USTR, the Department of Agriculture (USDA), and

Commerce announced a comprehensive plan - the Action Plan to Support American Producers of Seasonal and Perishable Fruits and Vegetables (Action Plan) - to address threats that increased imports pose to American producers of seasonal and perishable fruits and vegetables. The plan resulted from over 300 written submissions and two days of hearings in August 2020, in which the agencies heard live testimony from over 60 witnesses concerning seasonal and perishable products. The witnesses included 11 Members of Congress, elected state officials from Florida and Georgia, leadership from national and state agricultural associations, academics, and dozens of producers of seasonal and perishable products from Florida, Georgia, and other states. Numerous witnesses testified that Mexico's trade practices harm southeastern and other growers of seasonal and perishable fruits and vegetables and that urgent relief is needed.

Commerce followed through on two important elements of the Action Plan to Support American Producers of Seasonal and Perishable Fruits and Vegetables in 2020. First, Commerce established an outreach program to connect with growers of seasonal and perishable fruits and vegetables to enhance their understanding of applicable trade remedy laws and processes. Second, Commerce established a new formal internet channel ([ECSEO@trade.gov](mailto:ECSEO@trade.gov)) for stakeholders to provide information related to unfair subsidies for foreign producers and exporters of seasonal and perishable products, including those in Mexico. The internet channel is a concrete step to address potential threats of increased imports that may injure U.S. producers.

Commerce will continue to monitor foreign subsidy practices that have a direct impact on American producers of seasonal and perishable fruits and vegetables.

#### STEEL AND ALUMINIUM MONITORING

Commerce administers the Steel Import Monitoring and Analysis (SIMA) program. SIMA provides early and reliable statistical information on steel mill imports to the government and the public by combining the data reported on steel import licenses with other publicly available data in the Steel Import Monitor on Commerce's website. SIMA posts a variety of tables that alert U.S. steel producers to increases in certain kinds of imports and rapid price changes. Steel is the only sector for which the U.S. Government currently collects early import information.

On September 11, 2020, Commerce published a final rule (85 FR 56162) implementing changes to its steel import licensing system, with an effective date of October 13, 2020. In the final rule, Commerce modified its regulations pertaining to the SIMA system to require steel import license applicants to identify the country where the steel used in the manufacture of the imported steel product was melted and poured (the country of melt and pour); expand the scope of steel products subject to the SIMA licensing requirement to an additional eight tariff lines (at the ten-digit level); extend the SIMA system indefinitely by eliminating the regulatory provision concerning the duration of the SIMA system; and codify eligibility for use of the low-value license for certain steel entries up to \$5,000.

The SIMA team also publishes a series of comprehensive reports detailing current steel trade flows involving the top importing and exporting countries. These reports cover steel trade flows that may impact U.S. markets, and the reports provide U.S. business with updated market intelligence on the changing trade patterns globally. Users of the reports are able to compare markets and objectively evaluate and react to market trends, allowing a "deep dive" analysis of steel trends.

In addition, SIMA has developed an Interactive Global Steel Trade Monitor that provides extensive and timely steel trade data for the top 20 global steel importing countries and top 20 global steel exporting countries. This tool gives users flexibility to select online customized import and export flows in intuitive graphic form and detailed charts for five aggregate steel mill product groups: flat, long, pipe & tube, semi-finished, and stainless products.

The interactive monitor provides customized access to detailed data in tables and graphs about the top countries that play an integral role in global steel trade. Both the reports and the interactive monitor include annual and year-to-date global export and import trends, import and export composition by type of products, and export and import market share by country and type of steel product.

In addition to the enhancements to the SIMA system, Commerce is undertaking to establish a system of import licensing to facilitate the monitoring of imports of aluminum articles. An aluminum import monitoring and analysis program will provide internal and external parties earlier advanced warning of potential import

concerns. A proposed rule was published in April 2020 (85 FR 23748) announcing the Department's proposal and requesting public comments. A final rule was published on December 23, 2020 (85 FR 83804).

## U.S. ACTIONS TAKEN TO COUNTER CHINESE GOVERNMENT SUBSIDY PRACTICES

### OVERVIEW

Despite its insistence that it be treated as a market economy, the Chinese government has continued to reinforce the state's significant role in China's economy, which relies 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 to which it agreed when it joined the WTO in 2001. With subsidy transparency obligations, 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 dozens, if not hundreds of 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 obfuscation and 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 these 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 notifying a limited range of sub-central government subsidy programs since becoming a WTO Member in 2001. The notification covered the period 2001-2014. Unfortunately, the number and range of sub-central government subsidy programs covered represent a very small sample of the programs administered at the sub-central levels of government. Moreover, many of the programs were first raised by the United States in dispute settlement proceedings and terminated because they were prohibited under the Subsidies Agreement. Notifying a program several

years after its implementation, or after a program has been terminated, as was the case with most of the reported sub-central government subsidy programs, contributes little to the transparency of China's subsidies regime.

In 2018, the day before its trade policy review, China submitted its fourth subsidy notification covering the years 2015-2016, well over a year past the deadline. This was the first subsidy notification of China, since becoming a WTO Member in 2001, that included in a single document both central and sub-central subsidies. Unfortunately, the notification suffered from the same over-reporting and under-reporting. Numerous insignificant programs and programs that should not have been notified, were over-reported, while important programs were drastically under-reported, such as those for steel, aluminum, semiconductors, and fish. This is another example of China's subterfuge when it comes to meeting its WTO obligations.

In July of 2019, China submitted its most extensive subsidy notification to date, covering 2017-2018. This notification covered approximately 500 programs and was the first to include at least two subsidy programs from all of the provinces, centrally administered cities, and autonomous regions. While there continued to be some over-reporting of programs that are not actionable subsidies under the Subsidies Agreement, and under-reporting of important programs, especially at the sub-central levels of government, the 2019 notification was a step forward for China in meeting its transparency obligations under the Subsidies Agreement.

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.

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 new funding recently announced at the central and provincial levels including, for example, National IC Fund Phase 2). Moreover, the government has announced nearly a thousand government "guidance funds" with targeted fundraising of RMB 3.3 trillion (\$476 billion) to support strategic industries.

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. Additionally, China is obligated pursuant to its WTO accession commitments to provide trade-related legal measures upon request through an "inquiry point". A request made by the United States in 2020 for certain trade-related measures relating to semiconductors and wild capture fisheries was rejected without a valid reason. 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.

#### 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>11</sup>

In its 2012 Article 25.8 request, the United States included 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 industrial policies 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 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 the 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, in April the United States submitted a counter notification under Article 25.10 of the Subsidies Agreement (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, many of which appear to meet

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<sup>11</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.

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 to this request and notify all 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 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 SEIs 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 80 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.

#### WTO SUBSIDIES COMMITTEE

Due to the global pandemic, in 2020, the WTO Subsidies Committee did not hold its formal semi-annual meeting in April of 2020. Instead, the Subsidies Committee

met only once, in October of 2020, covering the agenda items for both the spring and fall meetings. The October meeting was conducted with Geneva-based delegates and capital-based officials participating virtually.

At the October meeting, 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 were the following: the role of subsidies in the creation of overcapacity; submission of questions to China under Article 25.8 of the Subsidies Agreement on potential subsidies to its steel industry (see discussion above); subsidy transparency and China's publication and inquiry point obligations under its protocol of accession; examination of ways to improve the timeliness and completeness of subsidy notifications; "graduation" of certain developing countries from Annex VII(b) of the Subsidies Agreement; and review of the export subsidy program extension mechanism for certain small economy developing country Members. Further information on these various activities is provided below.

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<sup>12</sup> During the October 2020 meeting, the Subsidies Committee reviewed the 2019 new and full subsidies notifications of Argentina, Australia, Brazil, Brunei Darussalam, Burkina Faso, Canada, Chile, China, Ecuador, El Salvador, the European Union, Georgia, Honduras, Iceland, India, Indonesia, Japan, Jordan, Kazakhstan, Republic of Korea, Mexico, Moldova, New Zealand, North Macedonia, Philippines, Russian Federation, Saint Lucia, Switzerland, Togo, Turkey,

#### 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 2020, the Subsidies Committee reviewed subsidies notifications from 35 Members.<sup>12</sup> Numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.<sup>13</sup>

#### REVIEW OF CVD LEGISLATION, REGULATIONS, AND MEASURES

Throughout 2019 and 2020, 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 October 2020 meeting. In reviewing notified CVD

Ukraine, United States, Uruguay, and Vietnam; the 2017 new and full subsidy notifications of Brazil, China, India, Mexico, and Vietnam; the 2015 new and full notification of China; and the 2009 new and full subsidies notification of Gabon.

<sup>13</sup> See Report (2020) of the WTO Committee on Subsidies and Countervailing Measures (G/L/1368), 2 November 2020.

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, 116 WTO Members<sup>14</sup> have notified that they have CVD legislation in place or stated they do not have such legislation. In 2020, the Subsidies Committee reviewed notifications of new or amended CVD laws and regulations from Angola, Argentina, Plurinational State of Bolivia, Cameroon, Costa Rica, Ghana, India, Japan, Kenya, People's Democratic Republic of Lao, Liberia, United Arab Emirates, the United Kingdom, the United States, and Vietnam.<sup>15</sup>

During the October meeting, China made a statement regarding the United States' final currency regulation, which is described earlier in this report. Despite not being on the agenda for the October 2020 meeting, China stated that the U.S. currency regulation is inconsistent with the SCM Agreement, has systemic implications beyond the WTO's jurisdiction, and poses a threat to the multilateral trading system. The United States responded that it would be prepared to engage more fully when the

regulation is on the agenda during the regular Spring 2021 meeting of the Subsidies Committee.

As for CVD measures, 10 WTO Members notified CVD actions taken during the latter half of 2019, and 10 Members notified actions taken in the first half of 2020.<sup>16</sup> In 2020, the Subsidies Committee reviewed actions taken by Australia, Canada, China, Chinese Taipei, Colombia, the European Union, India, Mexico, Peru, United Kingdom, and the United States.

#### NOTIFICATION IMPROVEMENTS

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

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. In 2020, the United States continued to devote significant time and resources to researching, translating, monitoring, and analyzing China's subsidy measures and practices, such as those for semiconductors

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<sup>14</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>15</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>16</sup> G/L/1368.

and wild capture fisheries. The United States has also been working with several other large exporting country Members bilaterally to assist and encourage them to meet their subsidy notification obligations. Pursuant to our efforts, Indonesia submitted its first notification since 1996.

The United States has also been concerned with 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 Canada, Mexico, and Brazil also seem to have difficulty comprehensively notifying sub-central government programs. Considering the efforts the United States makes to notify its state programs, the United States has focused on identifying such gaps in other Members' subsidy notifications and pressed these Members to notify their sub-central government programs.

In 2020, 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>17</sup> The United States' original proposal set out specific deadlines for responses to questions.<sup>18</sup> Although many Members supported the proposal, several other Members, such as China, India, South Africa, and Brazil had in prior years voiced concerns that strict, mandatory deadlines for responding to Article 25.8 questions would be overly burdensome. To acknowledge that concern, the United States submitted a revised proposal in 2019 that would allow Members to mutually agree to an appropriate timeframe to respond to such questions. Specifically, under the revised proposal, Members would agree to non-mandatory deadlines for the submission of answers in writing. Under this proposal, Members would endeavor to submit written answers to Article 25.8 questions within 60 days and respond to follow-up questions within 30 days, to the extent possible.<sup>19</sup> Several Members who were previously opposed to the proposal signaled that these revisions

<sup>17</sup> G/SCM/W/555; October 21, 2011.

<sup>18</sup> G/SCM/W/557/Rev.1; September 22, 2014.

<sup>19</sup> G/SCM/W/557/Rev.3.

were a positive step and might form a basis to continue discussions and seek consensus.

To further address concerns raised by some members regarding the need to consult with sub-central governments, the United States submitted another revised proposal prior to the October 2020 meeting.<sup>20</sup> The revision noted that Members may need to take into account the time necessary to consult with sub-central governments. It is notable that for the first time since the proposal had been presented to the Subsidies Committee, China was the only member that objected outright to the proposal. China continues to maintain that Article 25.8 of the Subsidies Agreement does not specifically require that replies be in writing or that specific deadlines be met, and that the United States' proposal would impose new obligations and burdens on Members. Notably, China is the only Member that is regularly subject to requests under Article 25.8, and consistently refused to respond to such requests in writing (see above).

In 2021, the United States will continue to work on finding a pragmatic solution that satisfies the underlying objective of enhancing the information exchange, and will continue to promote its revised proposal and other means to improve compliance with the subsidy notification obligations of the Subsidies Agreement.

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<sup>20</sup> G/SCM/W/557/Rev.4.

<sup>21</sup> Members identified in Annex VII(b) are Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Senegal, Sri Lanka, and Zimbabwe. In

#### "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>21</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 be based on constant 1990 dollars. The WTO Secretariat updated these calculations in 2020.<sup>22</sup>

#### SUBSIDIES AND OVERCAPACITY SUBMISSION

At the fall 2016 meeting of the Subsidies Committee, the European Union, Japan, Mexico, and the United States submitted a paper on the problem of overcapacity in certain sectors (*e.g.*, steel and aluminum).<sup>23</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

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.

<sup>22</sup> G/SCM/110/Add.17.

<sup>23</sup> G/SCM/W/579/Rev.1.

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, the European Union, Japan, and the United States submitted a follow-up paper.<sup>24</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.

On the margins of 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.

Before the spring 2018 meeting of the Subsidies Committee, Canada, the European Union, Japan, Mexico, and the United States submitted a paper concerning the role of below-market financing in the context of overcapacity.<sup>25</sup> The paper

specifically examined the provision of low-cost lending by state-owned banks to state-owned industrial enterprises to increase aggregate demand during times of severe recession, and subsequent steps taken by governments to convert the loans to equity. As the paper notes, this type of lending is often made without regard of the borrowers' risk and may be explicitly or implicitly guaranteed by the government. The key question raised by this paper is whether and under what circumstances such below-market financing should be subject to stronger subsidy disciplines and what those disciplines should be.

As part of the WTO Public Forum held in October 2018, the European Union, Japan, and the United States sponsored a working session titled "Make the playing field level again! (Ensuring global fair trade by 2030)." The speakers, who included representatives from industry, government and the legal profession, discussed the extent to which WTO Members have the tools to defend themselves against the most harmful types of subsidies that lead to overcapacity and distort international trade, and whether the WTO rulebook on subsidies needs to be improved and updated.

To continue the work of highlighting the role of government intervention in certain key industries in creating and maintaining overcapacity, during the spring 2019 meeting of the Subsidies Committee, the United States, the EU, and Japan hosted a presentation by the OECD authors of the report, "Measuring distortions in international markets: the aluminum value

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<sup>24</sup> G/SCM/W/572/Rev.1.

<sup>25</sup> G/SCM/W/575.

chain”.<sup>26</sup> The presentation focused on the contribution of government support to large aluminum producers in China. A key message of the presentation was that government support along each stage of the aluminum value chain has been critical to the build-up in capacity, which raises concerns about the nature of global competition in the aluminum market. The OECD report noted the importance of the need to strengthen the current subsidy rules, notably to enhance transparency and to better capture state influence in the economy, including through SOEs.

During the November 2019 meeting of the Subsidies Committee, the United States delivered an intervention focusing on the work of the Global Forum on Steel Excess Capacity, which was established by G20 Leaders in 2016. The United States drew attention to the Global Forum’s work to provide recommendations to reduce excess capacity and enhance market function in the steel sector, including by removing and refraining from granting market distorting subsidies and other types of support measures. Notably, the United States summarized the numerous types of direct and indirect government measures identified by the Global Forum that can fuel excess capacity and which should be removed, including certain types of non-market financing, such as debt forgiveness and policy loans; equity investments not on market terms; grants; tax benefits; the preferential provision of goods and services; and other distortive policy measures such as export subsidies, and lax

regulatory enforcement in the sector. The United States also drew attention to the departure of China, the world’s largest producer of steel, from the Forum’s work, but noted that the vast majority of Global Forum Members will continue to work towards achieving the goals set out by the G20 leaders.

At the October 2020 meeting of the Subsidies Committee, the United States, European Union, Japan, Canada, and Norway made coordinated interventions on this agenda item, highlighting concerns regarding the contribution of subsidies to overcapacity in the semiconductor and steel sectors. In particular, the United States highlighted the OECD report titled, “Measuring Distortions in International Markets: The Semiconductor Value Chain”.<sup>27</sup> Specifically, the United States noted the report’s findings regarding the importance of subsidies and other support measures in the global semiconductor market, which the OECD estimated to exceed \$50 billion during the period 2014 to 2018. The vast majority of this support stems from regular budgetary sources and thus does not include government equity investments, state-owned bank lending, or targeted R&D support. The United States also highlighted the report’s focus on support by China, including through the National Integrated Circuit Fund, which was established in 2014 and which China has not yet notified to the WTO. This fund, along with many local government funds, have made large equity investments in China’s semiconductor industry, resulting in

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<sup>26</sup> OECD (2019), "Measuring distortions in international markets: the aluminium value chain", *OECD Trade Policy Papers*, No. 218, OECD Publishing, Paris, <https://doi.org/10.1787/c82911ab-en>.

<sup>27</sup> OECD (2019), "Measuring distortions in international markets: The semiconductor value chain", *OECD Trade Policy Papers*, No. 234, OECD Publishing, Paris, <https://doi.org/10.1787/8fe4491d-en>.

very significant government ownership and control over the sector. Notably, the report found that China is the country that dedicates the largest amount of state support to its semiconductor industry. The United States also described several important recommendations included in the report, such as a call for greater transparency for support measures, enhanced scrutiny of government equity investments, and specific disciplines on SOEs, among others. The statements made by Canada, the EU, Japan, and Norway echoed those of the United States, and including the need to reengage in the Global Forum.

In 2021, 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 subsidies that contribute to overcapacity in key industrial sectors.

#### SUBSIDY TRANSPARENCY AND CHINA'S PUBLICATION AND INQUIRY POINT OBLIGATIONS UNDER CHINA'S PROTOCOL OF ACCESSION

Under this agenda item, the United States explained its long-standing concerns with China's failure to adequately comply with its transparency obligation for industrial subsidies and its continued efforts to obtain information about China's support measures in light of China's reluctance to provide information about such subsidies. Although the United States has been able to identify many such measures, and has obtained legal citations for some, many have not been published in a single official journal (*i.e.*, the MOFCOM Gazette) – as required by China's commitments in its Protocol of Accession to the WTO – and are not otherwise publicly accessible. In that

regard, the United States uncovered information on certain Chinese support measures relating to the fishing and semiconductor industries, for which public references exist. Because these measures are not published however, the United States submitted a request pursuant to China's commitments in its Protocol of Accession to publish all measures pertaining to, or affecting trade in goods and services, and to provide all the relevant information regarding such measures whenever asked by another WTO Member. Specifically, under China's *Protocol of Accession*, China agreed to "establish or designate an enquiry point where, upon request of any individual, enterprise or WTO Member all information relating to the measures required to be published ... may be obtained." Despite having submitted an initial request in April 2020 and being required to re-submit it in May 2020, the United States has not yet received a formal response from China. The United States therefore urged China to respond to its request by providing all the requested documents as soon as possible in accordance with its obligations under its *Protocol of Accession*. In 2021, the United States will continue to press China to provide the requested trade-related measures subject to the U.S. inquiry point request.

#### 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>28</sup> (Attachment 3 contains a chart of all the programs for which extensions were granted previously).

In 2020, 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 2018 Subsidies Committee meeting.<sup>29</sup>

#### 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.

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<sup>28</sup> WT/L/691.

<sup>29</sup> RD/SCM/36/Rev.3.

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 2019, the Permanent Group of Experts had five members: Mr. Ichiro Araki (Japan), Ms. Luz Elena Reyes de la Torre (Mexico); Mr. Jaemin Lee (Korea); Mr. Rabih Nasser (Brazil); and Ms. Marina Foleta (Moldova).

The term of Mr. Ichiro Araki expired in spring 2020 but the Committee was unable to reach a consensus on a replacement. In the spring of 2021, the term Ms. Reyes de la Torre will expire. It has recently been proposed that Ms. Tomoko Ota (Japan) fill the slot of Mr. Araki and that Mr. Donald Orth (Canada) fill the slot of Ms. Reyes de la Torre. The Committee will likely formally approve these two nominations at the spring meeting of the Committee.

#### COMMITTEE PROSPECTS FOR 2021

In 2021, the United States will follow up on the answers to our questions received from China on its 2019 notification and two prior notifications, as well as the Article 25.8 questions on the possibly unnotified subsidy programs to its steel industry. The United States will also seek to continue the discussion of subsidy-induced overcapacity and the further development of disciplines to address this issue. More generally, the Subsidies Committee will continue to work in 2021 to improve the timeliness and completeness of

Members' subsidy notifications, including the notification of fisheries subsidies (due June 30, 2021), 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. Finally, the United States will submit its own "new and full" subsidies notification in the summer of 2021.

#### 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 General Agreement on Tariffs and Trade 1994 (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 reversed 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 showed that the EU had not withdrawn the subsidies in question and had, 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 preceding the request 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. The Arbitrator accordingly suspended its work. 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. In May 2018, the appellate report confirmed that the EU and four member States failed to comply with the earlier WTO determination finding launch aid for the A380 aircraft to be inconsistent with their WTO obligations. The appellate report further confirmed that almost \$5 billion in additional launch aid that Airbus received from EU member states for the A350 XWB was also WTO-

inconsistent. The appellate report found that the WTO-inconsistent subsidies continue to cause significant lost sales of Boeing aircraft in the twin-aisle and very large aircraft markets and that these subsidies impede exports of Boeing 747 aircraft to numerous geographic markets.

On July 13, 2018, at the request of the United States, the arbitration regarding the level of countermeasures (suspended in January 2012) was resumed. On October 2, 2019, the arbitrator issued its decision that the level of countermeasures commensurate with the degree and nature of the adverse effects determined to exist is up to \$7.5 billion annually.

On May 17, 2018, the EU represented to the DSB that it had taken new steps to achieve compliance with its WTO obligations. However, following consultations, the United States did not agree that the EU had achieved compliance. At the request of the EU, the WTO established a second compliance panel on August 27, 2018. The parties filed submissions in late 2018 and early 2019, and the second compliance Panel held a meeting with the parties on May 7-8, 2019.

On December 2, 2019, the second compliance panel issued its report. The panel found that the EU continued to be in breach of Articles 5(c) and 6.3(a), (b), and (c) of the SCM agreement, and that the EU and certain member States had accordingly failed to comply with the DSB recommendations under Article 7.8 of the SCM Agreement to “take appropriate steps to remove the adverse effects or ... withdraw the subsidy.” The panel agreed with the United States that none of the measures taken by the four EU member

States amounted to a withdrawal of the launch aid for the A350XWB and A380. The panel also found that that launch aid for the A380 and A350XWB continue to be a genuine and substantial cause of lost sales to U.S. aircraft, and impedance of exports of U.S. aircraft to China, India, Korea, Singapore, and the United Arab Emirates.

On December 6, 2019, the EU notified the Dispute Settlement Body of its decision to appeal certain findings.

#### 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 less than \$50 million, and that most of those programs were not subsidies. The Panel subsequently found the DoD funding 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 less than \$200 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. Oral hearings before the Appellate Body took place in April and September 2018. On March 28, 2019, the Appellate Body circulated its report with the following relevant findings:

- The panel did not err in including DoD procurement contracts within its terms of reference, but the panel did not sufficiently engage with evidence and arguments regarding whether the funding conferred a benefit. However, there were insufficient factual findings by the panel or undisputed facts on the record for the Appellate Body to complete the analysis in this respect.
- The panel erred when considering whether revenue was "foregone" with respect to the FSC/ETI tax concessions by focusing on the conduct of eligible taxpayers rather than the government. The Appellate Body completed the legal

analysis and found that the measure was inconsistent with the SCM Agreement to the extent that Boeing remains entitled to FSC/ETI tax concessions.

- The panel did not err in using the period following the end of the implementation period to assess whether the Wichita industrial revenue bonds were specific because of the granting of disproportionately large amounts of subsidy to certain enterprises, but the panel erred in finding that no disparity existed between the expected and actual distribution of the subsidy. However, there were insufficient factual findings by the panel or undisputed facts on the record for the Appellate Body to complete its legal analysis in this respect.
- The panel did not err in its interpretation of the term "limited number" of certain enterprises with respect to the specificity of the South Carolina economic development bonds, but the panel erred by excluding evidence as to the percentage of bonds by value used by certain enterprises from its evaluation of whether the subsidy was specific by reason of predominant use by certain enterprises. However, there were insufficient factual findings by the panel or undisputed facts on the record for the Appellate Body to complete its legal analysis in this respect.
- The panel erred in the application of the term "designated geographical region" in assessing the specificity of the South Carolina MCIP job tax credits. The Appellate Body completed the legal analysis with respect to this and found that the subsidy was specific.

- The panel correctly found that the EU had failed to establish that there was a continuation of the original adverse effects of the pre-2007 aeronautics R&D subsidies into the post-implementation period in the form of present serious prejudice in relation to the A330 and A350XWB.
- The panel erred in its analysis of whether the technology effects of the pre-2007 aeronautics R&D subsidies in relation to certain U.S. aircraft continued into the post-implementation period, and therefore, the panel's finding that the EU failed to establish that the pre-2007 R&D subsidies was a genuine and substantial cause of adverse effects to the A350XWB and A320neo in the post-implementation period was reversed. However, there were insufficient factual findings by the panel or undisputed facts on the record for the Appellate Body to complete its legal analysis in this respect, and there was no basis to conclude that the original adverse effects, in the form of technology effects, continued into the post-implementation period.
- The panel correctly found that the EU failed to establish that the tied tax subsidies cause adverse effects in the twin-aisle LCA market in the post-implementation period, but that there were adverse effects in the post-implementation period in the form of significant lost sales in the single-aisle LCA and in the form of threat of impedance of imports of Airbus single-aisle LCA in the U.S. and United Arab Emirates markets.

On September 27, 2012, the EU requested authorization from the DSB to impose countermeasures. On October 22,

2012, the United States objected to the level of suspension of concessions requested by the EU, referring the matter to arbitration pursuant to Article 22.6 of the DSU. On November 27, 2012, the United States and the EU each requested that the arbitration be suspended pending the conclusion of the compliance proceeding. On June 5, 2019, at the request of the European Union, the arbitration regarding the level of countermeasures was resumed. On October 13, 2020, the arbitrator issued its decision that the level of countermeasures commensurate with the degree and nature of the adverse effects determined to exist for the Washington B&O tax rate subsidy is up to approximately \$4 billion annually. The arbitrator did not take account of Washington State's elimination of the B&O tax rate subsidy on April 1, 2020.

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 cumulation 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 CVD 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 Subsidies Agreement, respectively. It also rejected India's "as such" claim regarding the U.S. statutory cumulation provision for five-year reviews but found that the statute governing cumulation in original investigations was inconsistent with Article 15 of the SCM Agreement because it required the cumulation of subsidized imports with dumped non-subsidized imports in the context of countervailing duty investigations.

Applying this reasoning, the Panel also found that the USITC acted inconsistently with Article 15.3 insofar as it cross-cumulated subsidized and dumped non-subsidized imports in the countervailing duty investigation of hot-rolled steel from India.

The Panel rejected all of India's claims regarding consideration of economic factors under Article 15.4 of the SCM Agreement. The Panel also 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 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 Appellate Body found that the Panel had failed to conduct an objective examination of the U.S. cumulation statute, and the Appellate Body itself completed the analysis of this "as such" claim. The Appellate Body found that, for the most part, the U.S. cumulation statute is not inconsistent with the SCM Agreement. The Appellate Body found, however, that one subsection of the cumulation provision - 1677(7)(G)(i)(III) - is inconsistent with the SCM Agreement because it requires the USITC to assess cumulatively the effects of imports that are subject to simultaneous CVD investigations with the effects of imports that are subject to only AD investigations. That subsection would only apply however, if Commerce self-initiated an investigation on the same day that a petition was filed covering the same products. The USITC has never applied this subsection, however, because there are no instances in which the Commerce has taken action to trigger it.

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 reasonable period of time (RPT) to do so. On March 24, 2015, the United States and India informed the DSB that they had agreed on an RPT of 15 months, ending on March 19, 2016. At the United States' request, India then agreed to a 30-day extension to April 18, 2016.

On March 7, 2016, the USITC issued a Section 129 determination in the hot-rolled steel from India CVD proceeding to comply with the findings of the Appellate Body. On March 18, 2016, Commerce issued its preliminary determination memos in the Section 129 proceedings, and on April 14, 2016, Commerce 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. Despite consultations with the United States in July and October 2017, India continued to have concerns that the United States failed to implement the DSB's recommendations and rulings in the underlying dispute. Consequently, in April 2018, India requested the establishment of a panel pursuant to Article 21.5 of the DSU. Subsequently on May 25, 2018, the WTO established a compliance panel to examine India's challenges regarding the Section 129 determinations by Commerce and the USITC.

On November 15, 2019, the WTO dispute panel under Article 21.5 issued its public Final Report. The compliance Panel rejected the majority of India's claims that the United States failed to bring its countervailing duty determination and injury determination into compliance. The United States prevailed on eight sets of claims, including on finding the National Mineral Development Corporation as a public body, rejection of in-country benchmarks, use of out-of-country benchmarks, the calculation of the benefit under the Steel Development Fund program, new subsidies, disclosure of essential facts, the "appropriateness" of exceeding a terminated domestic settlement rate, and all but one aspect of the injury determination. The compliance Panel found in favor of India on a certain aspect of specificity, and on one aspect of the USITC's non-attribution analysis. The compliance Panel also found that the United States' failure to amend the cumulation statute was inconsistent with the DSB recommendation concerning 19 USC § 1677(7)(G)(i)(III) made in the original proceedings of the dispute.

On December 18, 2019, the United States notified the Dispute Settlement Body of its decision to appeal issues of law covered in the report of the compliance Panel and legal interpretations developed by the compliance Panel. Because no division of the Appellate Body can be established to hear this appeal, the United States is conferring with India so the parties may determine the way forward in this dispute.

UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN PRODUCTS FROM CHINA (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 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 its 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 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 covered 15 investigations as well as 12 administrative reviews and 10 sunset reviews. There were four main issues in the compliance dispute, which concerned Commerce’s new methodologies for determining whether SOEs are “public bodies”, 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 and circulated its report to WTO members on March 19, 2018. Regarding public bodies, the United States prevailed on China’s “as applied” challenge to the public bodies determinations in the twelve challenged section 129 determinations. Although the panel disagreed with the United States and found Commerce’s May 2012 Public Bodies Memorandum to be a challengeable measure and of general/prospective application, the United States prevailed on China’s “as such” challenge to the memorandum. Regarding input specificity, the panel found that 11 section 129 determinations are inconsistent with Article 2.1(c) of the Subsidies Agreement. Regarding benchmarks, the panel rejected China’s interpretation of Article 14(d) of the Subsidies Agreement but found that Commerce’s factual findings did not support its use of out-of-country benchmarks in four section 129 determinations. The United States also prevailed on China’s claim that the use of out-of-country benchmarks in four section 129 determinations was inconsistent with Article 32.1 of the Subsidies Agreement. Regarding the additional administrative and sunset reviews, the panel found the challenged reviews to be within its jurisdiction and concluded that the public body and input specificity determinations in nine administrative reviews were WTO-inconsistent. However, the United States prevailed on China’s challenge to the other determinations in the 12 administrative reviews at issue and prevailed on China’s claims regarding 10 sunset reviews. Finally,

the United States prevailed on China's "ongoing conduct" claim.

On April 27, 2018, the United States appealed certain findings of the compliance Panel regarding the Public Bodies Memorandum, Commerce's benchmark and input specificity redeterminations, and whether certain Commerce determinations were within the compliance Panel's terms of reference. On May 2, 2018, China appealed certain findings of the compliance Panel regarding Commerce's redeterminations that certain state-owned enterprises were "public bodies", the Public Bodies Memorandum, and the legal interpretation of Articles 1.1(b) and 14(d) of the SCM Agreement. The three persons hearing the appeal were Thomas R. Graham as Presiding Member, and Ujal Singh Battia and Shree B.C. Servansing. An appellate report was circulated on July 16, 2019. The appellate majority upheld the findings of the compliance Panel. The appellate report includes a lengthy dissent that calls into question the reasoning and interpretative analysis of the appellate majority and prior Appellate Body reports.

The DSB considered the appellate report and the compliance Panel report, as modified by the appellate report, at its meeting on August 15, 2019. The United States noted in its DSB statement that, through the interpretations applied in this proceeding, based primarily on erroneous approaches by the Appellate Body in past reports, the WTO dispute settlement system is weakening the ability of WTO Members to use WTO tools to discipline injurious subsidies. The Subsidies Agreement is not meant to provide cover for, and render untouchable, one Member's policy of providing massive subsidies to its

industries through a complex web of laws, regulations, policies, and industrial plans. Finding that the kinds of subsidies at issue in this dispute cannot be addressed using existing WTO remedies, such as countervailing duties, calls into question the usefulness of the WTO to help WTO Members address the most urgent economic problems in today's world economy. The United States noted specific aspects of the findings of the appellate report that are erroneous and undermine the interests of all WTO Members in a fair trading system, including erroneous interpretations of "public body" and out-of-country benchmark, diminishing U.S. rights and adding to U.S. obligations, engaging in fact-finding, and treating prior reports as "precedent."

On October 17, 2019, China requested authorization to suspend concessions and other obligations pursuant to Article 22.2 of the DSU. On October 25, 2019, the United States objected to China's request, referring the matter to arbitration pursuant to Article 22.6 of the DSU. On November 15, 2019, the WTO notified the parties that the arbitration would be carried out by the panelists who served during the compliance proceeding: Mr. Hugo Perezcano Diaz, Chair; and Mr. Luis Catibayan and Mr. Thinus Jacobsz, Members. The arbitration proceedings are ongoing.

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. 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 presented claims with respect to alleged U.S. “ongoing conduct” or, in the alternative, a purported rule or norm, with respect to the application of adverse facts available in relation to subsidies discovered during the course of a CVD investigation.

Canada alleged that the U.S. measures at issue were 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 GATT 1994.

A panel was established in July 2016 and subsequently composed by the Director-General in August 2016. The panel held meetings with the parties in March and June of 2017.

On July 5, 2018, the panel publicly released its report. The panel sided with Canada on most issues, including Commerce’s determination to countervail the provision of electricity in the province of Nova Scotia for less than adequate remuneration. Most significantly, the panel found that the application of adverse facts available to subsidies discovered at verification constitutes “ongoing conduct,” which, the panel concluded, is inconsistent with Article 12.7 of the Subsidies Agreement.

On July 12, 2018, Commerce rescinded the CVD order on supercalendered paper from Canada as part of a changed circumstances review because the domestic industry was no longer interested in the remedy provided by such an order. Notwithstanding revocation of the order, the United States appealed certain aspects of the panel report to the Appellate Body in August 2018. Specifically, the United States appealed the panel’s adverse finding of “ongoing conduct” related to the application of adverse facts available to subsidies discovered at verification.

On February 6, 2020, the Appellate Body upheld the panel’s adverse finding of “ongoing conduct” related to the application of adverse facts available to subsidies discovered at verification, although one Appellate Body Member issued a separate opinion casting doubt on the panel’s ability to define the precise content, repeated application, and likelihood of continued application of the “ongoing conduct” measure. That same Appellate Body Member also questioned whether there was an actual dispute between the parties because the CVD order on supercalendered paper from Canada, the only CVD proceeding involving Canada in the dispute, had been revoked in 2018.

At its meeting on March 5, 2020, the DSB considered the appellate and panel report, as modified by the appellate report. The United States noted in its DSB statement that there were serious procedural and substantive concerns with the report and objected to the adoption of the report as an Appellate Body Report. The United States explained that the report cannot be an Appellate Body report

because an individual who served on the appeal is not a valid member of the Appellate Body given that the individual is affiliated with a government in breach of Article 17.3 of the DSU. The concern related to the individual's service was further compounded because the appeal directly implicated the interests of that government. The United States also reiterated its concerns of ex-Appellate Body members' continuation of service without authorization by the DSB, and the failure to adhere to the deadline in Article 17.5 of the DSU. Accordingly, the United States did not join in a consensus to adopt the reports that were before the DSB. The United States explained that because there was no valid Appellate Body report in this dispute, the reports could only be adopted by positive consensus. Because there was no consensus on adoption, the DSB did not validly adopt any reports in this dispute, and therefore there was no valid recommendation of the DSB with which to bring a measure into conformity with a covered agreement.

On June 18, 2020, Canada requested authorization to suspend concessions and other obligations pursuant to Article 22.2 of the DSU on grounds that the United States had failed to inform the DSB of its intention with respect to implementation of the recommendations and rulings in accordance with Article 21.3 of the DSU or to propose a reasonable period of time to comply. On June 26, 2020, the United States objected to Canada's request, referring the matter to arbitration pursuant to Article 22.6 of the DSU. In August 2020, the WTO notified the parties that the arbitration would be carried out by the original panelists who heard the dispute. The arbitration proceedings are ongoing.

#### 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.

The panel circulated its report on June 27, 2019. The Panel found that certain measures maintained by the states of California, Massachusetts, Minnesota, and Washington were not within its terms of reference. With respect to the measures that the panel found to be within its terms of reference, the panel found that each of those measures were inconsistent with Article III:4 of the GATT 1994 because they accorded less favorable treatment to imported products as compared to like domestic products. The Panel exercised judicial economy on India's claims under Articles 2.1 and 2.2 of the TRIMS Agreement and Articles 3.1(b) and 3.2 of the SCM Agreement.

On August 15, 2019, the United States notified the DSB of its decision to



appeal to the Appellate Body certain issues of law and legal interpretations in the panel report. On August 20, 2019, India notified the DSB of its decision to cross-appeal. On December 10, 2019, the Appellate Body Division in this appeal informed the parties that it had not completed its work on the appeal.

UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN PIPE AND TUBE PRODUCTS FROM TURKEY (DS523)

On March 8, 2017, Turkey requested consultations with the United States concerning several CVD measures against Turkish steel products. Specifically, Turkey requested consultations regarding the following CVD proceedings: oil country tubular goods from Turkey; welded line pipe from Turkey; heavy walled rectangular welded carbon steel pipes and tubes from Turkey; and circular welded carbon steel pipes and tubes from Turkey.

After consultations failed to resolve the dispute, Turkey requested the establishment of a WTO panel to hear its claims. The panel was established on June 19, 2017.

Turkey challenges the following aspects of Commerce’s CVD determinations: (1) Commerce’s findings that two Turkish hot-rolled steel producers are “public bodies” capable of providing financial contributions under the SCM Agreement; (2) Commerce’s decision to use out-of-country benchmarks for measuring the benefit from the provision of hot-rolled steel, and its alleged practice of frequently using out-of-country benchmarks; (3) Commerce’s determinations that the provision of hot-rolled steel is a specific

subsidy under the SCM Agreement; and (4) several applications of facts available in the CVD proceedings at issue. Turkey also challenges the USITC’s cumulative assessment of the effects of subsidized imports with those of dumped, unsubsidized imports both “as such” and “as applied.”

The panel report was circulated in December 2018 and found against the United States on public body, specificity, the application of facts available, and cross-cumulation in original investigations. The panel rejected India’s “as applied” and “as such” claim on benchmarks and on cumulation in five-year reviews.

On January 25, 2019, the United States notified the DSB of its decision to appeal the panel’s findings on its terms of reference, public body, specificity, the application of facts available, and cross-cumulation. On January 30, 2019, Turkey also notified the DSB of its decision to appeal on the issue of public body. The United States filed appellant and appellee submissions in January and February 2019. On December 10, 2019, the Appellate Body Division hearing this appeal informed the parties that it had not completed its work on the appeal.

INDIA -- EXPORT RELATED MEASURES (DS541)

Export subsidies provide an unfair competitive advantage to recipients, and WTO rules expressly prohibit them. As noted above, there is a limited exception to this rule for specified developing countries that may continue to provide export subsidies temporarily until they reach a defined economic benchmark. India was initially within this group, but it eventually

surpassed the benchmark. Because India's exemption has expired, India is expected to immediately withdraw its export subsidies, but to date India has not done so. In fact, India has expanded benefits under several of its export subsidies programs.

On March 14, 2018, the United States requested consultations with India with regard to certain prohibited export subsidy schemes. It appears that India continues to provide export subsidies through: (1) the Export Oriented Units Scheme and sector specific schemes, including Electronics Hardware Technology Parks Scheme and BioTechnology Parks Scheme, (2) the Merchandise Exports from India Scheme, (3) the Export Promotion Capital Goods Scheme, (4) Special Economic Zones, and (5) a duty-free imports for exporters program. The United States held consultations with India on April 11, 2018. Those consultations unfortunately did not resolve the dispute.

On May 17, 2018, the United States filed a request for the establishment of a Panel and submitted its first written and second written submission on September 20, 2018 and October 11, 2018, respectively. On February 12-13, 2019, the Panel held a substantive meeting with the parties, and on February 13, 2019, the Panel held a meeting with the third parties. On October 31, 2019, the Panel released its final report where the United States prevailed on the vast majority of the issues. Specifically, the Panel found that India provided export subsidies through five schemes: EOU schemes; MEIS scheme; EPCG scheme; SEZ scheme; and DFIS scheme which were found to be inconsistent with the Subsidies Agreement and rejected India's defenses. On

November 19, 2019, India notified the DSB of its decision to appeal nearly every finding of the Panel. On November 28, 2019, the United States filed its appellee submission. Because no division of the Appellate Body can be established to hear this appeal, the United States is conferring with India to seek a positive solution to this dispute.

#### UNITED STATES — CERTAIN SYSTEMIC TRADE REMEDY 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 determinations due to the U.S. statutory provision treating a tie vote by the USITC Commissioners as an affirmative determination.

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. The United States disagrees with every aspect of Canada's wide-ranging challenge to U.S. laws, regulations, and approaches. Consultations between the United States and Canada occurred in February 2018.

#### UNITED STATES – COUNTERVAILING MEASURES ON SOFTWOOD LUMBER FROM CANADA (DS533)

On November 28, 2017, the Government of Canada filed two separate requests for WTO consultations regarding the final AD and CVD determinations in the softwood lumber investigations. Dispute settlement panels were subsequently established in both disputes on April 9, 2018.

In the CVD WTO dispute, Canada challenges various aspects of Commerce's final determination related to stumpage and non-stumpage programs. Canada alleges that the U.S. measures at issue are inconsistent with Articles 1.1(a)(1), 1.1(b), 2.1(a), 2.1(b), 10, 11.2, 11.3, 14(d), 19.1,

19.3, 19.4, 21.1, 21.2, 32.1 and 32.5 of the Subsidies Agreement; and Article VI:3 of the GATT.

At the request of Canada, the WTO Director-General composed a panel in the CVD dispute on July 6, 2018.

On August 24, 2020, the panel hearing the CVD dispute circulated its final report, in which it ruled against the United States on most issues, including Commerce's selection of benchmarks used to determine the adequacy of remuneration for stumpage (*i.e.*, the right to harvest timber from government lands). In particular, the panel adopted Canada's "regional markets" framework in interpreting the second sentence of Article 14(d) of the SCM Agreement. As a result, the panel concluded that it is not sufficient for an investigating authority to use as a benchmark a market-determined price from anywhere in the country of provision where evidence shows the prevailing market conditions for the government-provided good differ from the prevailing market conditions for the same or similar goods sold in other parts of the country of provision. In that scenario, an investigating authority is required to consider using, at least as a starting point in its benefit assessment, a benchmark price resulting from the prevailing market conditions within that region, because that price would necessarily relate to the prevailing market conditions for the government-provided good. The Panel also made adverse findings regarding Commerce's determination not to offset comparison results with "negative benefits" as well as Commerce's finding of entrustment or direction with respect to log export restrictions in the Canadian province of British Columbia.

On September 28, 2020, the United States notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretations in the panel report. No division of the Appellate Body has been established to hear this appeal.

UNITED STATES — ANTI-DUMPING AND  
COUNTERVAILING DUTIES ON CERTAIN PRODUCTS AND  
THE USE OF FACTS AVAILABLE (DS539)

On February 14, 2018, Korea requested consultations with the United States concerning certain AD and CVD determinations involving various products from Korea, and certain laws, regulations and other alleged measures maintained by the United States with respect to the use of facts available in AD and CVD proceedings.

On April 16, 2018, Korea requested the establishment of a WTO dispute settlement panel regarding the use of facts available in various segments of the following investigations:

- *Anti-Dumping Duties on Certain Corrosion-Resistant Steel Products from the Republic of Korea* (investigation number A-580-878).
- *Anti-Dumping Duties on Certain Cold-Rolled Steel Flat Products from the Republic of Korea* (investigation number A-580-881).
- *Countervailing Duties on Certain Cold-Rolled Steel Flat Products from the Republic of Korea* (investigation number C-580-882).
- *Anti-Dumping Duties on Certain Hot-Rolled Steel Flat Products from the Republic of Korea* (investigation number A-580-883).
- *Countervailing Duties on Certain Hot-Rolled Steel Flat Products from the Republic of Korea* (investigation number C-580-884).

- *Anti-Dumping Duties on Large Power Transformers from the Republic of Korea* (investigation number A-580-867).

Korea alleged that the challenged measures are inconsistent with U.S. WTO obligations under Article 6.8 and Annex II of the Anti-Dumping Agreement and Article 12.7 of the SCM Agreement. Korea further alleged that the United States failed to comply with a number of supposedly related procedural and substantive obligations under various other provisions of the Anti-Dumping Agreement and the SCM Agreement.

In addition, Korea alleged that section 776 of the Tariff Act of 1930, codified at 19 U.S.C. § 1677e, as amended by section 502 of the Trade Preferences Extension Act of 2015, and the certain related legal provisions governing the use of facts available, are "as such" inconsistent with the Anti-Dumping Agreement and the SCM Agreement. Korea also challenged Commerce's "use of adverse facts available" as a purported "ongoing conduct, or rule or norm" when Commerce allegedly "selects facts from the record that are adverse to the interests of the foreign producers or exporters without (i) establishing that the adverse inferences can reasonably be drawn in light of the degree of cooperation received, and (ii) ensuring that such facts are the best information available' in the particular circumstances."

At its meeting on May 28, 2018, the DSB established a panel. Brazil, Canada, China, Egypt, the European Union, India, Japan, Kazakhstan, Mexico, Norway and the Russian Federation reserved their third-party rights. Following agreement of the

parties, the panel was composed on December 5, 2018.

UNITED STATES — CERTAIN MEASURES RELATED TO  
RENEWABLE ENERGY (DS563)

On August 2018, China requested consultations with the United States concerning certain measures allegedly adopted and maintained in the states of Washington, California, and Michigan in relation to alleged subsidies or domestic content requirements in the energy sector. China alleges that the measures appear to be inconsistent with United States' obligations under Articles 3.1(b) and 3.2 of the Subsidies Agreement, Articles 2.1 and 2.2 of the Trade-Related Investment Measures (TRIMS Agreement), and Article III:4 of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The United States and China held consultations in Geneva on October 23, 2018.

UNITED STATES — ANTI-DUMPING AND  
COUNTERVAILING DUTIES ON RIPE OLIVES FROM SPAIN  
(DS577)

On January 28, 2019, the EU requested consultations concerning the imposition of AD/CVDs on ripe olives from Spain. Consultations between the EU and the United States took place on March 20, 2019. After consultations failed to resolve the dispute, the EU requested the establishment of a panel on May 16, 2019. The EU's panel request challenges several aspects of Commerce's final CVD determination and the USITC's injury determination.

With respect to Commerce's CVD determination, the EU challenges:  
(1) Commerce's determination that certain grants provided to olive growers pursuant

to the Government of Spain's implementation of the EU's Common Agricultural Policy are *de jure* specific; (2) Commerce's application of section 771B of the Tariff Act of 1930, as amended (codified at 19 U.S.C. § 1677-2), with respect to the processed agricultural product subject to the investigation (*i.e.*, ripe olives) and the decision to deem countervailable subsidies provided to raw olive growers as though they were provided with respect to the manufacture, production, or exportation of ripe olives; and (3) Commerce's calculation of the 27.02 percent subsidy rate for one of the three investigated ripe olive processors in Spain, which was subsequently used in the calculation of the 14.97 percent subsidy rate established for "all other" producers and exporters of ripe olives from Spain.

The EU alleges that Commerce's determinations are inconsistent with Article VI:3 of the GATT 1994, and Articles 1.1(a), 1.1(b), 1.2, 2.1, 2.2, 2.4, 10, 12.1, 12.5, 12.8, 14, 19.1, 19.3, 19.4, and 32.1 of the SCM Agreement. In addition, the EU claims that section 771B of the Tariff Act of 1930, as amended (codified at 19 U.S.C. § 1677-2), is "as such" inconsistent with Article VI:3 of the GATT 1994 and Articles 1.1(b), 10, 14, 19.1, 19.3, 19.4, and 32.1 of the SCM Agreement.

With respect to the USITC's injury determination, the EU's panel request alleges that the USITC's injury determination is inconsistent with Articles VI:1, VI:2, and VI:3 of the GATT 1994, and Articles 15.1, 15.2, 15.5, and 22.5 of the SCM Agreement, as well as Articles 3.1, 3.2, 3.5, and 12.2.2 of the AD Agreement.

On June 24, 2019, the DSB established a panel to examine the EU's claims. The panel was composed on October 18, 2019. Panel proceedings are ongoing.

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

In 2020, USTR and Commerce helped to defend U.S. commercial interests in CVD investigations that involved exports of products from the United States.

#### CVD INVESTIGATION OF U.S. ETHANOL – PERU

On May 10, 2017, the Government of Peru initiated a CVD investigation on imports of ethanol from the United States (there is no accompanying AD proceeding). The investigation was 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 U.S. federal programs and 28 programs administered by 17 different states. Peru released the "essential facts" report on August 29, 2018, which presaged its affirmative subsidy findings for several U.S. Department of Agriculture subsidy programs found to benefit U.S. corn production, the main input into ethanol production. The United States submitted detailed comments on Peru's findings. On November 6, 2018, Peru announced the release of its final determination. The final CVD rate for all U.S. companies was approximately 10 percent. On November 30, 2018, the United States and the U.S. domestic industry filed administrative appeals regarding various aspects of the final determination to INDECOPI. A hearing

was held on December 17, 2019, in connection with this administrative appeal.

On October 23, 2020, the Competition Chamber of INDECOPI reversed the Commission's determination, resulting in the revocation of countervailing duties on U.S. exports of ethanol to Peru.

#### CVD INVESTIGATION OF U.S. CORN - PERU

On July 24, 2018, the Government of Peru self-initiated a CVD investigation on imports of corn from the United States (there is no accompanying AD proceeding). As with the Peru ethanol proceeding, this investigation was conducted by Peru's Antidumping and Countervailing Duty Commission (INDECOPI). INDECOPI issued the "essential facts" report on November 14, 2019, in which it found injury to the Peruvian corn industry and countervailable subsidization to the U.S. corn industry through 10 federal programs. The United States and U.S. domestic industry filed written comments on the essential facts report on December 10, 2019. A hearing before INDECOPI was held on December 16, 2019. On January 17, 2020, Peru ended the investigation without imposing duties, which was a major victory for U.S. farmers.

#### CVD INVESTIGATION OF U.S. ETHANOL – COLOMBIA

On January 28, 2019, the Government of Colombia initiated a CVD investigation on imports of ethanol from the United States (there is no accompanying AD proceeding). The investigation was requested by the Colombian ethanol industry and is being conducted by Colombia's Ministry of Commerce, Industry, and Tourism (MINCIT). Several federal government programs are being examined, as well as numerous state

programs. On May 3<sup>rd</sup>, the Government of Colombia released its preliminary findings which included the investigation of 31 federal and state level aid programs. The provisional duties imposed were at 9.36 percent *ad valorem*. On April 30, 2020, MINCIT released its final determination, in which it found affirmative injury and countervailable subsidization for various USDA and state corn and ethanol programs. Colombia has imposed a final country-wide duty rate of \$USD 0.06646 per kilogram on ethanol exported from the United States to Colombia, which will remain in place for two years.

#### CVD INVESTIGATION OF U.S. N-PROPANOL – CHINA

On July 29, 2019, the Government of China announced the initiation of a CVD investigation on U.S. exports of normal propyl alcohol (N-propanol) to China, with an accompanying AD investigation initiated on July 23, 2019. The CVD investigation was conducted by China's Ministry of Commerce (MOFCOM), which examined over one hundred federal and state government programs in the United States. In the preliminary determination published on September 4, 2020, MOFCOM found that several dozen federal and state programs had provided subsidy benefits to upstream oil and natural gas producers, and those benefits were deemed to have passed through to U.S. producers of N-propanol. MOFCOM's final determination published on November 17, 2020 had no material changes from the preliminary determination, and resulted in final CVD rates between 34.2 and 37.7 percent *ad valorem* for the U.S. company respondents.

#### CVD INVESTIGATION OF U.S. POLYPHENYLENE ETHER (PPE) – CHINA

On August 14, 2020, China announced the initiation of a CVD investigation of U.S. exports of polyphenylene ether (PPE) to China (an accompanying AD investigation was initiated on August 3). The investigation is being conducted by MOFCOM. Over one hundred programs are being examined, which overlap significantly with those programs investigated in the N-propanol investigation. These include several dozen federal and state government programs allegedly provided to upstream oil and natural gas producers. A preliminary determination is expected in mid-2021.

#### CVD INVESTIGATION OF U.S. GLYCOL ETHERS – CHINA

On September 14, 2020, China announced the initiation of a CVD investigation of U.S. exports of certain monoalkyl ethers of ethylene glycol and propylene glycol (glycol ethers) to China (an accompanying AD proceeding was initiated on August 31). The investigation is being conducted by China's MOFCOM. Over one hundred programs are being examined, many of which are the same programs at issue in the N-propanol matter, including several dozen federal and state government programs allegedly provided to upstream oil and natural gas producers. A preliminary determination is expected in mid-2021.

#### CVD INVESTIGATION OF U.S. POLYVINYL CHLORIDE (PVC) – CHINA

On September 25, 2020, China notified the U.S. Embassy in Beijing that a CVD petition had been filed on August 18, 2020 with respect to U.S. exports of PVC. The investigation is being conducted by MOFCOM. There is significant overlap between this petition and the N-propanol,

PPE, and glycol ethers petitions, in which the vast majority of subsidy programs are alleged upstream subsidies to the oil and gas industries. A preliminary determination is expected in mid-2021.

#### CHINA'S AD/CVD MEASURES ON SOLAR-GRADE POLYSILICON FROM THE UNITED STATES — EXPIRY REVIEW

China's Ministry of Commerce imposed definitive AD (53.3% - 57%) and CVD duties (0% to 2.1%) on imports of U.S. solar-grade polysilicon (a high-purity form of polysilicon used in the production of CSPV cells) on January 20, 2014. In November 2018, China allowed its AD/CVD duties on solar-grade polysilicon from the EU to expire. However, instead of allowing the AD/CVD duties on U.S. imports to expire after their five-year imposition, China initiated expiry reviews of these measures, at the Chinese domestic industry's request, on January 18, 2019.

On January 19, 2020, MOFCOM issued the final determination in the expiry reviews of its AD and CVD measures on solar-grade polysilicon from the United States. According to the notice, effective January 20, 2020, MOFCOM will continue the duties for an additional five years at the same rates imposed in the original investigation (i.e., AD duty rates ranging from 53.3% - 57%; CVD rates ranging from 0% - 2.1%).

#### 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 other subsidies in a specific country that are of particular concern to U.S. industries.

In 2020, USTR and Commerce reviewed information regarding the accession of numerous countries. Working Party meetings occurred during 2020 for Ethiopia, Uzbekistan, Union of the Comoros, and Timor-Leste.



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 three years. The next 16 largest Members, based on their share of world trade, have been reviewed every five years. The remaining Members have been reviewed every seven years, with the possibility of a longer interim period for least-developed Members. For each review, two documents are prepared: a policy statement by the government of the Member under review and a detailed report written independently by the WTO Secretariat.

By describing Members' subsidy practices, these reviews play an important role in ensuring that WTO Members meet their obligations under the WTO agreements, including the Subsidies Agreement. In reviewing these TPR reports, USTR and Commerce scrutinize the information concerning the subsidy practices detailed in the report, but also conduct additional research on potential omissions regarding known subsidies – especially prohibited subsidies – that have not been reported.

In 2020, USTR and Commerce reviewed the TPR reports of 7 Members, including the European Union, Australia, Japan, Zimbabwe, Thailand, Indonesia, and Macao, China.

## CONCLUSION

China continues to be the most common source of dumped and subsidized imports into the United States. 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, to consider how the subsidy rules could be strengthened and 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 for 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 fisheries, steel, and primary aluminum), and closely monitoring the actions of all 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 of the Center in 2017 and its continued growth 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

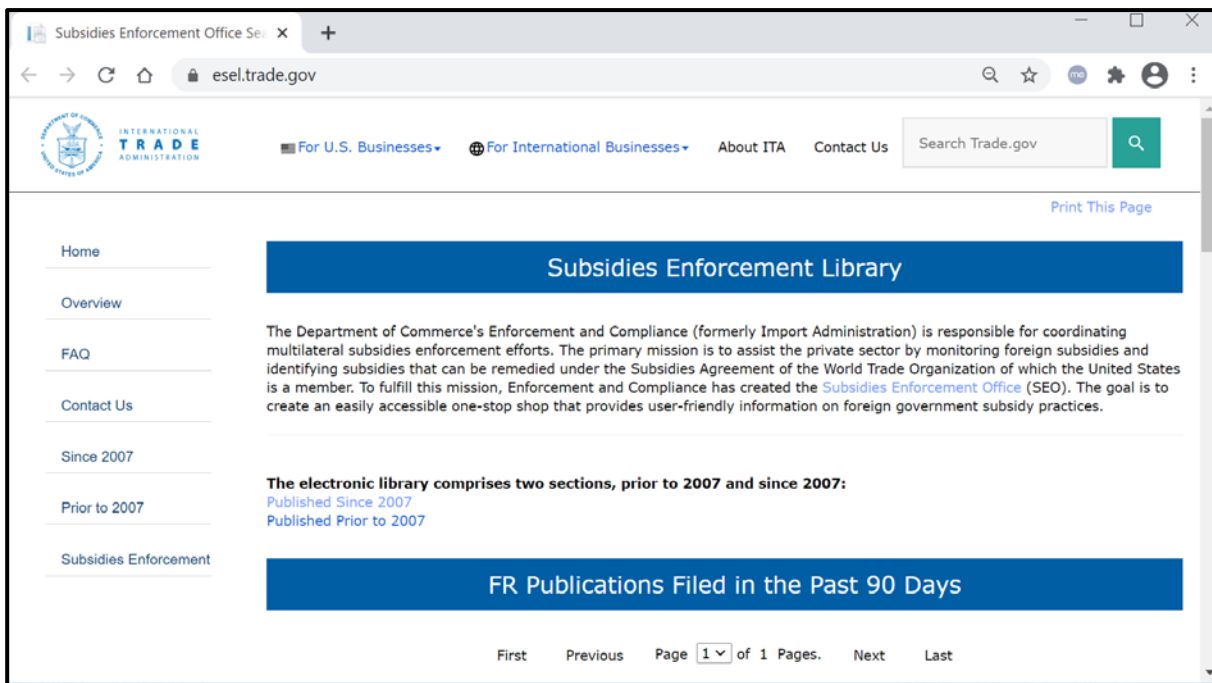
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# THE ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY

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

## First Screen



## Main Features of the Webpage

### **Subsidies Enforcement 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.

### **Subsidies Enforcement**

This link opens to the SEO webpage where additional information and links are provided for other relevant material, such as the Subsidy Reports to Congress and the WTO Subsidies Agreement.

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## **ATTACHMENT 3**

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Programs Granted Extension Under Article 27.4 of the Subsidies Agreement	
WTO MEMBER	NAME OF PROGRAM
ANTIGUA & BARBUDA	Fiscal Incentives Act
	Free Trade/Processing Zones
BARBADOS	Fiscal Incentive Program
	Export Allowance
	Research & Development Allowance
	International Business Incentives
	Societies with Restricted Liability
	Export Re-Discount Facility
	Export Credit Insurance Scheme
	Export Finance Guarantee Scheme
	Export Grant & Incentive Scheme
BELIZE	Fiscal Incentives Program
	Export Processing Zone Act
	Commercial Free Zone Act
	Conditional Duty Exemption Facility
BOLIVIA (Annex VII Country)	Free Zone
	Temporary Admission Regime for Inward Processing
COSTA RICA	Duty Free Zone Regime
	Inward Processing Regime
DOMINICA	Fiscal Incentives Program
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones"
EL SALVADOR	Export Processing Zones & Marketing Act
	Export Reactivation Law
FIJI	Short-Terms Export Profit Deduction
	Export Processing Factories/Zones Scheme
	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)
GRENADA	Fiscal Incentives Act No. 41 of 1974

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

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