SUBSIDIES ENFORCEMENT
ANNUAL REPORT
TO THE CONGRESS

2023 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-eighth 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.[1] 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 2022, 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 Organization for Economic Cooperation and Development (OECD) Steel and Trade Committees and Global Forum on Steel Excess Capacity (GFSEC), 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 some 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 2023, 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.

[1] This report is mandated by Section 281(f)(4) of the Uruguay Round Agreements Act.

2022 Subsidies Enforcement Highlights

WTO Agreement on Fisheries Subsidies: In 2022, the United States continued to play a leadership role in the negotiations, pressing for strong fisheries subsidies disciplines. At the WTO's 12th Ministerial Conference in June 2022, WTO Members were able to achieve a groundbreaking agreement. The WTO Agreement on Fisheries Subsidies contains several important disciplines, including prohibitions on subsidies to vessels or operators engaged in IUU fishing, subsidies to fishing regarding stocks that are overfished, and subsidies to fishing on the unregulated high seas. The Agreement will enter into force when it has been accepted by two-thirds of WTO Members.

US-EU Global Arrangement to Restore Market-Oriented Conditions and Address Carbon Intensity: On October 31, 2021, the United States and European Union announced their intention to negotiate future arrangements for trade in the steel and aluminum sectors that take into account both global non-market excess capacity as well as the carbon intensity of these industries. The negotiations between the United States and the European Union are ongoing.

OECD "Level Playing Field" Reports: In 2022, the OECD continued its analysis of various "level playing field" issues, focusing on the role of government subsidies and state-owned enterprises, in specific industries, as well as across major industry groupings. The specific industries examined were aluminum, semiconductors and rolling stock. Two cross-cutting reports analyzed below-market finance and below-market energy inputs. The recurring theme in most of these reports has been the role of China, specifically the outsized role of the Chinese government in subsidizing key industries and the important role played by Chinese SOEs as both the recipients and providers of subsidies. Overarching findings have been that below-market borrowings were positively correlated with increases in manufacturing capacity and negatively correlated with firm productivity, implying that the recipients of support are generally less productive firms.

Holding China Accountable for its Subsidies Notification Obligations: The United States pressed China on its failure to notify the full range of its 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. The United States continued to use bilateral and multilateral fora to push for increased transparency from China on the full scope of its subsidy programs.

Rigorous Enforcement of Trade Remedies: As of January 2023, Commerce has brought trade enforcement to an all-time high – 663 trade remedies orders. This includes: 173 CVD and 490 AD orders; 233 AD/CVD orders on products from China; and 306 AD/CVD orders on steel products from multiple countries.

Stopping Circumvention of Trade Remedies: In 2022, Commerce initiated 25 circumvention inquiries and issued 11 preliminary determinations, 10 of which were affirmative, and three final determinations. Furthermore, in September, Commerce reached an affirmative preliminary determination in the circumvention inquiry involving the AD/CVD orders on stainless steel sheet and strip from China, which was self-initiated in 2020 based on Commerce's own monitoring of trade patterns.

INTRODUCTION

The WTO Subsidies Agreement establishes multilateral disciplines on the use of subsidies and provides mechanisms for challenging government measures that contravene these disciplines.[2] 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.[3] 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

[2] 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.

[3] 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.

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

NEGOTIATIONS AND INITIATIVES

WTO Negotiations – Fisheries Subsidies

As previously reported, the United States has long been an active and constructive participant in the fisheries subsidies negotiations in the Rules Negotiating Group (RNG), pressing for a meaningful outcome to prohibit the most harmful types of fisheries subsidies. In the course of these negotiations, the United States and various like-minded Members put forward several proposals designed to achieve an ambitious outcome. The United States also submitted a proposal to ensure an outcome can contribute to Members' efforts to address the use of forced labor on fishing vessels.

In 2022, the United States continued to play a leadership role in the negotiations and to press for strong fisheries subsidies disciplines. At the WTO's 12th Ministerial Conference (MC12) in June 2022, WTO Members were able to achieve a groundbreaking agreement. The WTO Agreement on Fisheries Subsidies contains several important disciplines, including prohibitions on subsidies to vessels or operators engaged in IUU fishing, subsidies to fishing regarding stocks that are overfished, and subsidies to fishing on the high seas outside of the competence of a relevant RFMO/A. The Agreement also includes robust transparency provisions to strengthen WTO Members' notification of harmful fisheries subsidies and to enable effective monitoring of Members' implementation of their obligations. The Agreement will enter into force when it has been accepted by two-thirds of WTO Members.

At MC12, WTO Members also committed to continue the fisheries subsidies negotiations with a view to making recommendations to the WTO's 13th Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing. The United States will continue to engage constructively and urge Members to support additional, ambitious disciplines through these negotiations.

Trilateral Initiative

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, especially China, that lead to severe overcapacity, and undermine the proper functioning of international trade.

On November 30, 2021, the Trade Ministers of the United States, Japan, and the European Union agreed to renew their Trilateral partnership to address the global challenges posed by non-market policies and practices of third countries that undermine and negatively affect our

workers and businesses. They agreed to focus their work as trilateral partners in three areas:

1) Identification of problems due to non-market practices;

2) Identification of gaps in existing enforcement tools, and where further work is needed to develop new tools to address such practices, as well as discussing cooperation in utilizing existing tools; and

3) Identification of areas where further work is needed to develop rules to address such practices.

Discussions on these objectives continued in 2022.

TRADE COMMITTEE OF THE OECD

Starting in 2019, the Trade Committee of the OECD began examination of a broad range of "level playing field" (LPF) issues both in a variety of specific industries and, across multiple industrial sectors. This work has largely focused on the role of government subsidies and state-owned enterprises, but has also covered a broad range of other government economic interventions that have potential distortionary trade effects. One recurring theme in these reports has been the role of China, and specifically the outsized role of the Chinese government in subsidizing key industries and the important role played by Chinese SOEs as both the recipients and providers of subsidies.

The first LPF report was on aluminum.[4] By analyzing corporate filings, annual reports, and other public sources of information, the OECD was able to identify and quantify government support in the form of government grants, tax concessions, intermediate inputs sold at below-market prices, and below-market borrowings (e.g., loans that state banks offer at below-market interest rates). Although all of the 17 firms examined received some form of government assistance, the top five recipients obtained as much as 85 percent of all support, mostly at the smelting stage of the value chain. That support primarily took the form of energy subsidies and below-market borrowings, which in both cases were provided by SOEs, such as local public utilities and state banks. Notably, Chinese authorities provided the majority of all support identified by the OECD, with that support largely benefitting Chinese smelters. The aluminum report also raised important issues regarding state involvement in industrial production, given that SOEs were found to be both recipients and providers of government support. Importantly, the report noted that the fluid relationship between the government and companies resulted in greater opacity around the nature and scale of government support.

The OECD's second report was on semiconductors.[5] Given the lack of

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

[5] OECD (2019), "Measuring distortions in international markets: The semiconductor value

information at the government level, the OECD had to look for information at the level of individual firms operating along the semiconductor value chain. This was done for 21 large semiconductor firms that were either vertically integrated or specialized in particular segments of the chain, such as chip design, contract manufacturing, and outsourced assembly and testing. Together, these 21 firms represented about two-thirds of global semiconductor revenue in 2018. Although the larger firms received significant government support in absolute terms, expressing support as a share of annual firm revenue showed SMIC (China), Tsinghua Unigroup (China), Hua Hong (China), JCET (China), and STMicroelectronics (Europe) to be the largest recipients of support relative to their size.

The OECD found that while support for R&D through grants and tax breaks was very common in the semiconductor value chain, support provided through the financial system in the form of below-market debt and equity was another significant contributor to total government support in semiconductors. Specifically, below market equity amounted to $5-15 billion for just six government-invested firms in the sample and more than 30 percent of annual consolidated revenue for two of these firms. It was also largely concentrated in China, which provided 86 percent of all below-market equity, linked to the construction of new production facilities, as well as 98 percent of all below-market debt. The semiconductor report also made the crucial point that in addition to being among the hardest forms of support to measure, below-market equity reflects greater state involvement in semiconductor production, which creates possible channels for the provision of a range of further support, as well as posing specific challenges for trade rules.

The third OECD report on below-market finance covered 13 industrial sectors, during the period 2005-2019: aerospace and defense; aluminum; automobiles; cement; chemicals; glass and ceramics; rail rolling stock; semiconductors; shipbuilding; solar photovoltaic panels; steel; telecom network equipment; and wind turbines.[6] The analysis found below-market borrowings to be generally larger in heavy industries, including those with reported excess capacity. The OECD estimated that below-market borrowings averaged about 3-4 percent of recipient firms' revenue in sectors such as aluminum, cement, glass and ceramics, and semiconductors. In addition to being positively correlated with increases in manufacturing capacity, below-market borrowings were also found to be negatively correlated with firm productivity, which implied that the recipients of support were generally less productive firms. In contrast, below-market equity returns were found to be more prevalent in high tech sectors that rely on intangible assets and equity financing. This was particularly the case for semiconductors, where the creation of government investment funds increased government ownership of

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chain", *OECD Trade Policy Papers*, No. 234, OECD Publishing, Paris, https://dx.doi.org/10.1787/8fe4491d-en.

[6] OECD (2021), "Measuring distortions in international markets: Below-market finance", *OECD Trade Policy Papers*, No. 247, OECD Publishing, Paris, https://dx.doi.org/10.1787/a1a5aa8a-en.

semiconductor assets, but also in aerospace and defense. Governments were estimated to own more than 40 percent of all company assets covered by the analysis. The OECD also found that companies with more than 25 percent government ownership tended to obtain more support in the form of both government grants and below-market borrowings.

The fourth OECD report was on below-market energy inputs.[7] The OECD found the firms covered to have received below-market energy amounting to between $63 billion (low estimate) and $155 billion (high estimate) over the entire period 2010-2020. Almost all the support identified was for natural gas and electricity. The OECD observed that low relative prices for coal (not accounting for negative environmental externalities) made it generally affordable to industrial users without the need for subsidies, absent sudden and large fluctuations in coal markets. (This generally explains the lower profile of China in this report.) In some cases, estimates indicated that subsidies were a multiple of firms' energy costs, thus suggesting a sizable impact on firms' profits and operating margins. Support was generally found to be larger for firms based in countries of the Gulf Cooperation Council and for SOEs. Argentina, Egypt, and Russia were other jurisdictions where firms displayed relatively large amounts of below market energy inputs over the period 2010-2020.

The most recent report was on rolling stock.[8] Rolling stock refers to the entire set of vehicles used for the transportation of people and goods by rail, including high-speed trains, multiple units, metro systems, locomotives, and freight cars. Relying on a sample of 22 firms, whose combined revenue represented more than 70 percent of the global rolling-stock market in 2020, the OECD found these companies to have received about $5 billion over the period 2016-2020 in government grants (34 percent), tax concessions (54 percent), and below-market borrowings (12 percent). China's state-owned rolling stock manufacturer, CRRC, alone obtained almost 60 percent of all the below-market borrowings that the OECD identified and quantified.

Besides government support, the OECD noted that there was a broad range of other tools that governments employed to support domestic rolling stock manufacturers. This includes a range of explicit (e.g., mandatory joint-venture requirements, non-transparent prior licensing requirements, or local-content requirements) and implicit policies (e.g., standardization), which could have the effect of giving preference to domestic firms or incumbents in government procurement contracts and thus represent important barriers to market access. Rolling-stock manufacturers have also at times been required to transfer their technology to local, often state-owned, partners to access a foreign market. Moreover, the industry has witnessed

[7] OECD (2022), "Measuring distortions in international markets: The rolling stock value chain", *OECD Trade Policy Papers*, forthcoming, OECD Publishing, Paris.

[8] OECD (2022), "Measuring distortions in international markets: Below market energy inputs", *OECD Trade Policy Papers*, forthcoming, OECD Publishing, Paris.

significant consolidation through mergers and acquisitions, as well as instances of bid rigging and low-pricing strategies by foreign bidders that might have benefitted from government support. In describing these government policies, the OECD noted while these measures do not always lend themselves to quantification and economic analysis, they can be important sources of trade distortions in the rolling stock market.

ADDRESSING MARKET-DISTORTING TRADE PRACTICES IN THE STEEL AND ALUMINUM INDUSTRIES

In 2022, the United States continued its active engagement in the North American Steel Trade Committee (NASTC), Global Forum on Steel Excess Capacity, and the Steel Committee of the OECD, as well as its strong enforcement efforts with respect to steel.

In recent years, steel market conditions have been unstable; they worsened in 2022, particularly as a consequence of Russia's full-scale invasion of Ukraine, after a slight recovery in 2021. This followed a 2020 collapse in consumption in key steel-consuming sectors due to the COVID-19 pandemic, while steelmaking capacity continued its increase in regions already characterized by excess capacity, leading to exacerbated global imbalances.

Steel production in the United States in 2022 decreased over five percent from its level in 2021. U.S. capacity utilization declined over three percentage points to 78.3 percent, with excess capacity in global steelmaking remaining a significant concern. According to the OECD, the gap between global steelmaking capacity and demand was expected to remain very large at over 550 million metric tons in 2022, up from 520 million metric tons in 2021, after narrowing slightly between 2016 and 2019. China continues to account for the largest share of existing and new global steelmaking capacity. In 2022, China's steel capacity was approximately 1.2 billion metric tons, with annual domestic consumption of approximately 1 billion metric tons. Slowing demand in China and abroad remains concerning. Further, new capacity projects throughout Southeast Asia and the Middle East are a cause for concern to the extent that such investments are driven by government subsidies and support which are inconsistent with market mechanisms. Sustained high levels of steelmaking capacity and associated production that remain out of line with market realities continue to cause distortions in trade patterns and global prices.

ENGAGEMENT

1. NASTC

The United States participated in the 32nd meeting of the NASTC, hosted virtually by Canada in 2022. Started in 2003, the NASTC is a longstanding initiative 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.

2. OECD

The United States is also an active participant in the Steel Committee of the OECD, which convened one remote meeting and one in-person meeting and undertook various workstreams in 2022. 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 market-based 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 GFSEC 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.

3. GLOBAL ARRANGEMENT

In October 2021, the United States and the European Union agreed to negotiate, in accordance with their respective institutional frameworks, future arrangements for trade in steel and aluminum that take into account both global non-market excess capacity as well as the carbon intensity of these industries (Global Arrangement). The negotiations between the United States and the European Union are ongoing. The United States and the EU will invite like-minded economies to participate in the arrangement and contribute to achieving the goals of restoring market-oriented conditions and supporting the reduction of carbon intensity of steel and aluminum across modes of production. In order to encourage similar efforts by other steel producing economies, the United States and the EU agreed to consult with respect to bringing these matters into relevant international fora for discussion, as appropriate.

Under the Global Arrangement, it is envisioned that each participant in the arrangement, consistent with international obligations and the multilateral rules, including potential rules to be jointly developed in the coming years, would undertake the following actions: (i) restrict market access for non-participants that do not meet conditions of market orientation and that contribute to non-market excess capacity, through application of appropriate measures including trade defense instruments; (ii) restrict market access for non-participants that do not meet standards for low-carbon intensity; (iii) ensure that domestic policies support the objectives of the arrangement and support lowering carbon intensity across all modes of production; (iv) refrain from non-market practices that contribute to carbon-intensive, non-market oriented capacity; (v) consult on government investment in decarbonization; and (vi) screen inward investments from non-market-oriented actors in accordance with their respective domestic legal framework.

In addition to these cooperative efforts with like-minded trading partners, USTR and Commerce continue to engage bilaterally with other countries to press for change in foreign government conduct that distorts steel and aluminum markets, as well as international trade in the two sectors.

4. TRADE REMEDY ENFORCEMENT

Overall, Commerce administered a total of 306 AD/CVD orders on steel-related products as of January 2023 – nearly half of the total 663 orders in place. There are also 34 orders in place related to aluminum products.

Commerce has also focused on anti-circumvention efforts, particularly involving circumvention of U.S. AD and CVD orders on steel and aluminum products. In 2020, 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 included a new requirement for license applicants to identify on the steel import licenses the country where the steel used in the imported steel products was melted and poured. An aggregate version of this country of melt and pour data is now included in the public Steel Import Monitoring and Analysis (SIMA system). Commerce went through a similar regulatory process in 2020-21 to establish a new import licensing and monitoring program for aluminum, known as AIM. AIM's regulations require information on the import licenses about the country where the aluminum was last cast and the country where the primary aluminum used in the imported aluminum product was smelt. Aggregate versions of these data are now included in the public AIM, providing supply chain information to the import trends and statistical information for monitor users to interpret.

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. 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.

As of January 2023, there were a total of 663 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 663 total orders, 173 are CVD orders. Based on available data, in fiscal year 2022, roughly 1.1 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

PRODUCT/GROUP	SHARE OF TOTAL (%)
Steel	46%
Chemicals	13%
Other Metals	10%
Plastics & Rubber	7%
Foodstuffs	4%
Paper & Paperboard	3%
Textiles	4%
Other Manufacturing	5%
Machinery & Auto	5%
Cement & Ceramics	2%
Minerals	<1

Up-to-date information and statistics on all of E&C's CVD (and AD) orders are available on Commerce's website at https://www.trade.gov/data-visualization/adcvd-proceedings (See Attachment 2 for an example visualization). Likewise, details on all of Commerce's CVD proceedings that were active from January 1, 2022, through June 30, 2022, 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/392/USA (October 17, 2022), available at the WTO public document web site at https://docs.wto.org/.[1] 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 (See Attachment 3 for more information).

TRADE REMEDY COUNSELING

E&C's Trade Remedy Counseling and Initiations office ensures that all U.S. industries with concerns about unfairly traded imports can understand how to take full advantage of the trade remedy laws available to them. Within this office, the AD/CVD Petition Counseling and Analysis Unit (PCAU) provides a variety of services and resources to U.S. industries with issues related to unfairly traded imports to help them understand the U.S. laws dealing with dumping and unfair foreign government subsidization and the actions they can take against these unfair trade practices. Under U.S. law (the Tariff Act of 1930, as amended), industries who are seeking relief from injury caused by allegedly dumped and/or unfairly subsidized imports into the United States may petition the U.S. government to investigate the unfair imports. U.S. law establishes specific requirements that a petition must meet in order for Commerce to initiate an investigation on the basis of the petition.[2]

[1] Similar detailed information for the period July 1, 2022 through December 31, 2022 was not available at the time of drafting this report, but should become available to the public around April 2023, also on the WTO's public document site.

[2] Specifically, the petitioner 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 the domestic industry is materially retarded, and that there is a causal link between them. In a countervailing duty petition, the petitioner must allege and support with reasonably available information that a government financial contribution has been provided, which bestows a benefit on the foreign producer/exporter, and that the subsidy is "specific," *e.g.*, limited to a particular company, industry, or group of companies or industries. Additional information on the statutory requirements and the process for filing an antidumping duty and/or countervailing duty petition is available on the PCAU's website at https://www.trade.gov/ec-petition-counseling.

The PCAU[11] helps U.S. industries understand these statutory requirements and the petition filing process and also offers technical assistance to help potential petitioners:

- Determine what types of information will be required to file a petition that requests an investigation into the unfairly traded imports;
- Ensure draft petitions are in compliance with the statutory initiation requirements; and
- Obtain publicly available data and information.

In Fiscal Year 2022, the PCAU conducted over 350 counseling sessions, to ensure that U.S. industries can access and utilize the options available under the U.S. antidumping and countervailing duty laws to obtain relief from unfairly traded imports.

The Trade Remedy Counseling and Initiations office also helps U.S. industries facing issues with existing AD/CVD orders understand options to address these issues, including working with U.S. Customs and Border Protection to address fraud and/or evasion, pursuing scope or circumvention inquiries, or developing potential new AD/CVD investigations.

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, 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 address circumvention of U.S. trade laws.

In 2022 Commerce announced the self-initiation of new inquiries into possible circumvention of AD/CVD orders involving aluminum foil assembled and completed in, and exported from, Korea and Thailand, using inputs manufactured in China, and into possible circumvention of AD/CVD orders involving imports of quartz surface products completed in, and exported from, Malaysia, using inputs manufactured in China. Commerce self-initiated these inquiries based on its own research and monitoring of trade patterns.

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requirements and the process for filing an antidumping duty and/or countervailing duty petition is available on the PCAU's website at https://www.trade.gov/ec-petition-counseling.

[11] See Attachment 4 for more information.

In addition, on September 15, 2022, Commerce announced its preliminary affirmative determination that imports of stainless steel sheet and strip completed in Vietnam using certain stainless steel flat-rolled inputs sourced from China are circumventing the AD/CVD orders on stainless steel sheet and strip from China. Commerce self-initiated this circumvention inquiry in 2020 based on its own research and monitoring of trade patterns.

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 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. As of January 2023, Commerce had in place 233 AD and CVD orders on imports from China, involving many different products and industries, 85 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 myriad 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 Trade 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 2021, the Center had deployed analysts with subject matter expertise in subsidies analysis and economics, the political economies of China and other major trading partners, and analysts with language skills – including principally Mandarin Chinese.

In 2022, the Center continued to enhance USTR's trade enforcement activities in the context of WTO dispute settlement and with respect to Members' transparency obligations related to subsidies. Specifically, the Center continued to monitor the status of China's support to various agricultural commodities as litigated in multiple cases at the WTO, and to research and identify foreign government support in order to advance the U.S. agenda of enhancing subsidies transparency in various multilateral fora, including the WTO Subsidies and Agriculture committees, the OECD Global Forum on Steel Excess Capacity, OECD Trade Policy Papers, and at the Government/Authorities Meeting on Semiconductors. The Center also provided data-driven expertise in fisheries subsidies negotiations undertaken at the WTO with research into policies that lead to fishing overcapacity and encourage IUU fishing by China. In addition, the Center provided data-driven analysis as it relates to China in support of both the Trilateral and Trade and Technology Council discussions.

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.

Steel and Aluminum 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 changing trends in certain kinds of imports and rapid price changes. The U.S. Government has collected early steel import information via the licenses for two decades. The rules were revised in 2020 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) along with other changes.

A dashboard to include the new data collected on the licenses regarding the country of original melt and pour used in the imported steel product was added to the public SIMA monitor in January 2021. Having this data publicly available is designed to assist the industry identify supply chain information about steel imports; this was a feature that the industry was very interested in obtaining. To familiarize the public with the changes to the SIMA system and the new monitors, Commerce engaged in extensive outreach.

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 (GSTM) 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 milsl product groups: flat, long, pipe & tube, semi-finished, and stainless products. GSTM allows for transparency regarding changing aggregate global steel trade patterns, some of which could impact the United States market.

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, in June 2021 Commerce established a system of import licensing to facilitate the early monitoring of imports of aluminum articles. An aluminum import monitoring and analysis (AIM) program provides 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). The rule was delayed in January by the publication of a notice entitled Aluminum Import Monitoring and Analysis System: Delay of Effective Date (86 FR 7237). Additional notices were published on April 1, 2021 and May 21, 2021 entitled Aluminum Import Monitoring and Analysis System: Stay and Delay of Compliance Date (86 FR 17058) and Aluminum Import Monitoring and Analysis system: Effective Date and Response to Comments (86 FR 27513), respectively. The license requirement went into effect on June 28, 2021, and in September 2021, the AIM

public monitor was released to show early aggregated information collected from the aluminum licenses. Aluminum import licenses require the applicant to state in which country the primary (new) aluminum was smelted and which country it was last cast in a solid shape. To ensure a smooth adoption of the licensing requirement and familiarize the public with the AIM monitor, Commerce engaged in extensive outreach.

Since June 2021, Commerce released public monitors aggregating the data collected on the import licenses to publicly display the country from where U.S. imported aluminum was last cast and country from where those aluminum imports sourced primary aluminum. This increased monitoring provides greater transparency regarding the increasing aluminum imports into the United States and where they were manufactured. These two new dashboards are integrated into the Aluminum Import Monitoring System.

As it did for steel, Commerce also launched a Global Aluminum Trade Monitor (GATM), allowing user to track aggregate global trade flows in aluminum that may impact their markets. Having such timely comprehensive data increases transparency in the market.

Commerce intends to issue a request for information (RFI) to solicit comments on potential improvements or changes to its Aluminum Import Monitoring and Analysis (AIM) System. In the final rule establishing the AIM system, *see* 85 FR 83804, Commerce stated that it intended to solicit comments on potential improvements or changes in a subsequent notice after the AIM system was in place. Commerce is issuing this RFI to provide parties with the opportunity to provide further comments on the system.

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 state-owned enterprises (SOEs).

Against this backdrop, there continue to be serious concerns regarding China's poor record of compliance with its WTO obligations and its unwillingness to play by the rules to which it agreed when it joined the WTO in 2001. With regard to

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 thousands 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 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. All three notifications were late and 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 recognized 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 contained 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 significantly under-reporting of important programs, especially at the sub-central levels of government, the 2019 notification was a minor 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.

There is a large magnitude of governmental support in pursuit of industrial plans and related policies at all levels of government. This can be seen in the various industrial plans emanating from China's Five-Year Plans, among others. There is a large magnitude of governmental support in pursuit of industrial plans and related policies at all levels of government. This can be seen in the various industrial plans emanating from China's Five-Year Plans, among others. For example, to date, the Chinese government is estimated to have provided as much as an estimated $750 billion for the implementation of its Made in China 2025 industrial plan[12] and approximately $50.4 billion for the National Integrated Circuit Fund. Moreover, as of 2021, it is estimated that nearly 2,000

[12] Zhuang Jian, "5 trillion fund allocated for Made in China 2025 will invest 100 billion," *Sina Finance*, October 29, 2015, https://finance.sina.com.cn/china/20151029/083123616583.shtml?cre=financepagepc&mod=f&loc=4&r=a&rfunc=-1.

"government guidance funds" exist in China with targeted fundraising of more than $1.8 trillion, of which approximately $1 trillion has reportedly been raised to support strategic industries.[13]

Pursuant to its WTO Protocol of Accession commitments, China is also obligated to publish all trade-related measures – which would include 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 "enquiry point". The United States made a formal request to China's enquiry point in 2020 for certain trade-related measures relating to semiconductors and wild capture fisheries, but the request was rejected without a valid reason. In 2022, the United States again raised its concern over China's fisheries and semiconductor subsidies.

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.

WTO Subsidies Committee

The WTO Subsidies Committee held its two formal semi-annual meetings in April and October of 2022. The meetings were conducted with Geneva-based delegates and capital-based officials participating both in-person and virtually.

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 the other items addressed in the course of the year were the following: the role of subsidies in the creation of overcapacity; notification improvements and U.S. Article 25.8/25.9 proposal; China's subsidy transparency, publication and inquiry point obligations under its Protocol of Accession; proposal to amend notification procedures; review of the export subsidy program extension mechanism for certain small economy developing country Members; "graduation" of certain developing countries from Annex VII(b) of the Subsidies Agreement; and the Permanent Group of Experts. Further information on these various activities is provided below.

Subsidy Notifications by Other WTO Members

Subsidy notification and surveillance is one means by which the Subsidies Committee and its Members seek to ensure

[13] 2021 Government Guidance Fund Data Inventory - Fund Optimization and Integration Is Imminent," *Zero2IPO*, February 17, 2022, https://free.pedata.cn/1440998437368886.html.

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 2022, the Subsidies Committee reviewed subsidies notifications from 48 Members.[14] Numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.[15]

REVIEW OF CVD LEGISLATION, REGULATIONS, AND MEASURES

Throughout 2021 and 2022, 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 April and October 2022 meetings. In reviewing notified CVD legislation and regulations, the Subsidies Committee procedures provide for the exchange in advance of written questions and answers to clarify the operation of the notified laws and regulations and their relationship to the obligations of the Subsidies Agreement. The United States expanded its efforts to ask questions of Members' subsidy notifications in 2022 and 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, 117 WTO Members[16] have notified that they have CVD legislation in place or stated they do not have such legislation. In 2022, the Subsidies Committee reviewed notifications of new or

[14] During the April 2022 meeting, the Subsidies Committee reviewed the 2021 new and full subsidies notifications of Albania, Australia, Brazil, Cambodia, Canada, Chile, China, Costa Rica, Ecuador, El Salvador, the European Union, Georgia, Honduras, Hong Kong China, Iceland, Israel, Japan, Kazakhstan, Korea, Lao People's Democratic Republic, Liechtenstein, Macao China, Madagascar, Malaysia, Mauritius, Montenegro, Norway, Philippines, Seychelles, Singapore, Chinese Taipei, Thailand, Ukraine, United Kingdom, and the United States; the 2019 new and full subsidy notifications of Argentina, Canada, Dominican Republic, the European Union, Indonesia, Mexico, Philippines, Russian Federation, and the United States; the 2017 new and full notification of Mexico; the 2015 new and full subsidy notification of China; and the 2009 new and full subsidies notification of Gabon. During the October 2022 meeting, the Subsidies Committee reviewed the 2021 new and full subsidies notifications of Albania, Argentina, Brazil, Canada, Chile, China, Costa Rica, Cuba, Ecuador, El Salvador, the European Union, Hong Kong China, India, Israel, Japan, Korea, Lao People's Democratic Republic, Malaysia, Mexico, Republic of Moldova, Montenegro, New Zealand, Philippines, Kingdom of Saudi Arabia, Switzerland, Turkiye, United Kingdom, and the United States; the 2019 new and full subsidy notifications of China, Dominican Republic, the European Union, Indonesia, and the Russian Federation; and the 2015 new and full subsidy notifications of China.

[15] See Report (2022) of the WTO Committee on Subsidies and Countervailing Measures (G/L/1438), Octobber 2021.

[16] 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.

amended CVD laws and regulations from Brazil, Cameroon, Canada, Colombia, the European Union, Ghana, India, Saint Kitts and Nevis, Turkiye, United Kingdom, and the United States.[17]

During the October meeting, China made a statement regarding the Inflation Reduction Act (IRA) and CHIPS and Science Act. China stated its view that certain incentives provided under these measures are discriminatory and WTO-inconsistent. The United States substantively responded to concerns highlighted by China, specifically noting that the assistance contemplated by these laws are WTO-consistent, and highlighting the United States' transparency in providing these measures in a public and accessible forum for other Members.

As for CVD measures, 11 WTO Members notified CVD actions taken during the latter half of 2021, and 11 Members notified actions taken in the first half of 2022.[18] In 2022, the Subsidies Committee reviewed actions taken by Australia, Brazil, Canada, China, the European Union, India, Mexico, Turkiye, United Kingdom, and the United States.

NOTIFICATION IMPROVEMENTS; ARTICLE 25.8/25.9 PROPOSAL

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 2022, 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 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.

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 comprehensively notify their sub-central government programs.

[17] 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.

[18] G/L/1438.

In 2022, under the notification improvement 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 25.8/25.9 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.[19] The United States' original proposal sets out specific deadlines for responses to questions.[20]

Although many Members supported the proposal, several other Members, such as China, Russia, 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.[21] Several Members who were previously opposed to the proposal signaled that these revisions 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.[22] The revision noted that Members may need to take into account the time necessary to consult with sub-central governments. It is notable that only China and Russia were the only members that continued to object outright to the proposal.

In 2023, the United States will continue to work on finding a pragmatic solution that satisfies the underlying objective of enhancing the information exchange, and doing so in a timely manner,

[19] G/SCM/W/555; October 21, 2011.
[20] G/SCM/W/557/Rev.1; September 22, 2014.
[21] G/SCM/W/557/Rev.3.
[22] G/SCM/W/557/Rev.4.

and will continue to promote its revised proposal and other means to improve compliance with the subsidy notification obligations of the Subsidies Agreement.

"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).[23] 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 2022.[24]

Subsidies and Overcapacity Discussion

United States efforts to draw attention to the harmful, and growing, excess capacity in various industrial sectors largely began at the fall 2016 meeting of the Subsidies Committee, where 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).[25] The United States and other like-minded partners continued these efforts through the years making interventions on topics such as below-market financing in the context of overcapacity, hosting panel discussions on overcapacity with experts, sponsoring sessions at the WTO Forum, and hosting OECD experts to discuss the link between government support and overcapacity in certain sectors.

In 2022 the United States continued with its efforts on this issue, with the continued support of co-sponsors: Australia, Canada, the European Union, Japan, and the United Kingdom. At the April 2022 meeting of the Committee, the United States continued to draw attention to the chronic issues associated with overcapacity focusing in particular on the role of SOEs in China. Citing various academics studies and reports from international financial institutions, the United States highlighted the crucial role played by SOEs in creating and maintaining excess capacity in various industries such as steel, aluminum, cement, solar and shipbuilding. These sources support the conclusions that: SOEs generally receive more government support than their private counterparts; SOEs are not only

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[23] 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 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.

[24] G/SCM/110/Add.19.

[25] G/SCM/W/579/Rev.1.

recipients of government support but also play a key role in indirectly providing government support; and SOEs are significantly less likely to cut excess capacity than private companies.

The United States and its allies continued to highlight the subsidies and overcapacity issue at the fall 2022 meeting of the Subsidies Committee by reviewing a report on subsidies, authored by the World Bank, IMF, OECD and WTO, titled *Subsidies, Trade and International Cooperation* (4IOs Report). This report focused on the problem of trade distortions caused by industrial subsidization that, among other things, can lead to overcapacity. The report references three of the "level playing field" reports of the OECD on aluminum, semiconductors and below-market financing, all of which implicitly point the finger at China's industrial policies as the main problem. Largely based on this and other OECD work, the report explicitly highlights in several places the role of state-owned enterprises as both recipients and providers of subsidies and calls for additional rules to address the problem. In terms of next steps, the report notes that "improving transparency is a fundamental first step in addressing subsidies."

In 2023, 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.

CHINA'S SUBSIDY TRANSPARENCY, PUBLICATION AND ENQUIRY 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 subsidy transparency obligations and the United States continued efforts to obtain information about China's support measures in the face of China's obfuscation. Pursuant to China's *Protocol of Accession* to the WTO, China is obligated to publish all of its trade-related measures in a single official journal (*i.e.,* the China Foreign Trade and Economic Cooperation Gazette published by MOFCOM). However, while conducting research on fishing and semiconductor industry government support measures, the United States uncovered legal citations for certain support measures. Upon learning that these measures were not published - contrary to China's obligations - the United States submitted a request pursuant to China's inquiry point. 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 yet to receive 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. As of December 2022, despite its obligation to respond in writing within 45 days, China has yet to provide the required written response or any of the requested legal measures, despite repeated requests from the United States, including follow-up

requests before the WTO's Subsidies Committee and Council for Trade in Goods.

In 2023, the United States will continue to press China to provide the requested trade-related measures subject to the U.S. enquiry point request.

Proposal to Amend Subsidy Notification Review Procedures

The Subsidies Committee has an accepted procedure in place for the review of Members' subsidy notifications (See G/SCM/117). These procedures allow Members to ask written questions concerning another Member's subsidy programs and require written answers from the Member whose subsidy notification is being reviewed. Among the questions asked, it is not uncommon for questions to be asked about programs that were not included in a Member's notification. All but one Member, historically, has answered these questions. China has been the only Member to refuse to answer questions about subsidy programs that were not in its notifications.

To address this issue, the United States made a proposal to clarify the rules such that a Member would be required to answer all the questions in writing posed to it, even if the program was not included in the Member's subsidy notification.[26] Australia, Canada, the EU, Japan and UK co-sponsored the proposal and many Members spoke in favor, while others posed questions. In the 2022 meetings of the Subsidies Committee, the United States and many other Members continued to argue for this very simple proposal. Both China and Russia, at various points, have opposed this proposal arguing that it seeks to impose additional obligations on Members

In 2023, the United States will continue to argue for adoption of this proposal.

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.

[26] G/SCM/W/583

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.[27] (Attachment 5 contains a chart of all the programs for which extensions were granted previously).

In 2022, 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.[28]

PERMANENT GROUP OF EXPERTS

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

Article 24 further provides for the Subsidies Committee to elect experts to the PGE, with one of the five experts being replaced every year. The election to replace an expert whose term has expired is normally taken by the Subsidies Committee during its regular spring meeting in the year following the expiration.

At the beginning of 2022, the PGE had five members: Mr Jaemin Lee (Republic of Korea); Mr Rabih Nasser (Brazil); Ms Marina Foltea (Moldova); Ms Tomoko Ota (Japan); and Mr Donald Cameron Orth (Canada). The Committee did not agree on the appointment of a new member to succeed Mr Jaemin Lee whose term expired in April 2022.

[27] WT/L/691.

[28] RD/SCM/36/Rev.3.

At the end of 2022, the existing members of the PGE are: Mr Rabih Nasser (until spring 2023); Ms Marina Foltea (until spring 2024); Ms Tomoko Ota (until spring 2025); and Mr Donald Cameron Orth (until spring 2026). Two new members should be appointed in April 2023.

COMMITTEE PROSPECTS FOR 2023

In 2023, the United States will continue the discussion of subsidy-induced overcapacity. More generally, the Subsidies Committee will continue to work in 2023 to improve the timeliness and completeness of Members' subsidy notifications and will continue to discuss the proposals made by the United States to improve and strengthen the Subsidies Committee's procedures under Article 25.8 of the Subsidies Agreement and the procedures for review of subsidy notifications. At the spring meeting, two new members of the PGE should be appointed. New notifications for the years 2021 and 2022 will be due June 30, 2023.

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.

On June 15 and June 17, 2021, the United States reached understandings on cooperative frameworks with the EU and the UK, respectively, on the parallel aircraft disputes (DS316 and DS353). In accordance with the understandings, each side intends not to impose the WTO-authorized countermeasures for a period of 5 years starting from July 4, 2021. Each side also intends to provide any financing to its large civil aircraft producer (LCA producer) for the production or development of large civil

aircraft on market terms. Additionally, each side intends to provide any funding for research and development (R&D) for large civil aircraft to its LCA producer through an open and transparent process while making the results of fully government funded R&D widely available.

A working group is also established under each framework to analyze and overcome any disagreements in the sector, including on any existing support measures. The working group collaborates on jointly analyzing and addressing non-market practices of third parties that may harm their respective large civil aircraft industries. On December 4, 2022, the United States and the EU held a ministerial meeting of the U.S.-EU working group. Principals from both sides affirmed the cooperative framework and agreed to continue the analytical work on non-market policies and practices and to consider the policies and tools needed to counter such practices.

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.

On June 15 and June 17, 2021, the United States reached understandings on cooperative frameworks with the EU and the UK, respectively, on the parallel aircraft disputes (DS316 and DS353). In accordance with the understandings, each side intends not to impose the WTO-authorized countermeasures for a period of 5 years starting from July 4, 2021. Each side also intends to provide any financing to its large civil aircraft producer (LCA producer) for the production or development of large civil aircraft on market terms. Additionally, each side intends to provide any funding for research and development (R&D) for large civil aircraft to its LCA producer through an open and transparent process while making the results of fully government funded R&D widely available.

A working group is also established under each framework to analyze and overcome any disagreements in the sector, including on any existing support measures. The working group collaborates on jointly analyzing and addressing non-market practices of third parties that may harm their respective large civil aircraft industries. On December 4, 2022, the United States and the EU held a ministerial meeting of the U.S.-EU working group. Principals from both sides affirmed the cooperative framework and agreed to continue the analytical work on non-market policies and practices and to consider the policies and tools needed to counter such practices.

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 continues to confer 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 arbitrator held a virtual hearing with the parties in November 2020 and, on January 26, 2022, released its public decision. The arbitrator determined that the level of nullification or impairment of benefits to China was $645.121 million annually and that China may request authorization from the DSB to suspend concessions or other obligations at a level not to exceed that amount.

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 or DSU or to propose a reasonable period of time 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. A virtual hearing was held with the parties in September 2021.

On July 13, 2022, the Arbitrator issued its Article 22.6 decision that, following a "triggering event," a term explained in the decision, Canada may request authorization from the DSB to suspend concessions or other obligations at a level not to exceed the amount determined by the "four-variety Armington model," an economic model advanced by the United States with one minor modification. However, during the arbitration, the United States disputed Canada's ability to pursue countermeasures and the Arbitrator's ability to issue a decision, given that the challenged "ongoing conduct" measure had been removed with the revocation of the CVD order. The United States argued that Canada did not suffer from any economic harm from the disputed conduct, and may never experience any economic effect. Therefore, following the issuance of the Arbitrator's decision, there was no monetary award for Canada to seek from the CVD order on supercalendered paper.

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 Turkey'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 suspended its work on the appeal.

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 – 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 – 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.

On January 21, 2021, the panel circulated its report to Members. Having examined the arguments and evidence presented by Korea — which were the same for both the "as such" and "ongoing conduct" of measures — the Panel found that Korea had failed to establish the existence of the alleged unwritten measures with the precise content alleged by it.

Korea also raised "as applied" claims pertaining to eight segments of various proceedings, including three anti-dumping and two countervailing duty investigations, on steel products, and three anti-dumping administrative reviews, on large power transformers. In the context of the countervailing duty investigations, Korea challenged Commerce's resort to facts available and selection of replacement facts as inconsistent with Article 12.7 of the SCM Agreement. Korea's claims pertained to the three subsidy programs in each investigation. The panel concluded that Commerce's resort to facts available was inconsistent with WTO obligations with respect to determinations on five of the programs across both investigations, and with respect to the sixth that Commerce's selection of replacement facts was inconsistent with WTO obligations. The panel also observed that Commerce failed to consider information submitted on the record by interested parties or did not consider whether the information was submitted within a reasonable period.

The United States notified the DSB of its decision to appeal certain issues of law to the Appellate Body on March 19, 2021. Korea took notice of the United States' decision to appeal the panel report and, on March 25, 2021, notified the DSB that it considered all the procedural deadlines of the Appellate Body to be

suspended, due to the Appellate Body's non-functioning status. Korea also reserved its right to file its own appeal, and it indicated that it was awaiting instructions from the Appellate Body. No division of the Appellate Body has been established yet to hear this 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 continues to confer with India to seek a positive solution to this dispute.

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

In 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. The panel held virtual meetings with the parties in October 2020 and March 2021. On November 19, 2021, the panel publicly released its final report, in which it ruled against the United States with respect to the EU's challenges to Commerce's CVD determination.

First, although the panel agreed with the United States that Article 2.1(a) of the SCM Agreement does not exclude the possibility of grounding a finding of *de jure* specificity on the criteria or conditions governing the amount of the subsidy, the panel found certain aspects of Commerce's examination of grants provided to Spanish

olive growers to be inconsistent with Articles 2.1, 2.1(a), and 2.4 of the SCM Agreement, having concluded that it was not based on a reasoned and adequate explanation and not clearly substantiated on the basis of positive evidence.

Second, the panel concluded that section 771B of the Tariff Act of 1930, as amended (19 U.S.C. § 1677-2) is "as such" inconsistent with the United States' obligations under Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement because it requires Commerce to presume that the entire benefit of a subsidy provided in respect of a raw agricultural product passes through to the downstream processed agricultural product, based on a consideration of the two factual circumstances prescribed in the statutory provision, without leaving open the possibility of taking into account any other relevant factors about the existence and extent of pass-through. For the same reason, the panel found the application of section 771B of the Tariff Act of 1930, as amended (19 U.S.C. § 1677-2) in the ripe olives investigation to be inconsistent with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement.

And, third, the panel found that the United States acted inconsistently with: (i) Article 12.1 of the SCM Agreement by failing to notify interested parties that Commerce required purchase data for the volume of raw olives that were processed into ripe olives; (ii) Article 12.8 of the SCM Agreement by failing to disclose to interested parties that the volume of raw olives processed into ripe olives were an essential fact under consideration; and (iii) Article VI:3 of the GATT 1994 by using purchase data that the record indicates represented total volume of raw olive purchases (and not limited to those raw olive purchases that were processed into ripe olives) in the calculation of the 27.02 percent subsidy rate for mandatory respondent Aceitunas Guadalquivir and, consequently, the 14.97 percent subsidy rate for "all other" producers and exporters of ripe olives from Spain.

The DSB adopted the panel's final report during the meeting held on December 20, 2021. At the DSB meeting held on January 19, 2022, the United States informed the DSB that the United States intended to implement the DSB's recommendations and rulings, and indicated it would need a reasonable period of time (RPT) to do so. On July 1, 2022, the United States and the European Union agreed on an RPT of 12 months and 25 days, ending on January 14, 2023.

On July 6, 2022, Commerce opened a section 129 segment in the ripe olives from Spain proceeding. Commerce issued its preliminary section 129 determination on September 26, 2022, and its final section 129 determination on December 20, 2022. In its final section 129 determination Commerce: (1) reconsidered its specificity analysis of the basic payment scheme (BPS) program and found that the program is de facto specific under section 771(5A)(D)(iii)(III) of the Tariff Act of 1930, as amended; (2) modified its definition of the "prior stage product" from all raw olives to four biologically distinct table and dual-use olive varietals and found that 55.28 percent of these varietals were processed into table olives; and, (3) revised Aceitunas Guadalquivir S.L.U.'s total subsidy rate from 27.02 percent to 11.63 percent and the all-others rate from 14.97 percent to 11.08

percent. In accordance with section 129(b)(4) of the Uruguay Round Agreements Act, USTR may, after consulting with Commerce and Congress, direct Commerce to implement this final section 129 determination in whole or in part.

Foreign CVD and Subsidy Investigations of U.S. Exports

In 2022, 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. 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). China's Ministry of Commerce (MOFCOM) conducted the investigation, examining over one hundred federal and state level programs that were largely consistent with a prior MOFCOM investigation of U.S. chemical producers of N-propanol. On October 14, 2021, MOFCOM released its Preliminary Determination, finding that dozens of federal and state programs provided subsidy benefits to upstream oil and natural gas producers, and those benefits were deemed to have passed through to U.S. producers of PPE at an *ad valorem* subsidy rate of 17.7 percent. However, in the final determination, released on January 6, 2022, MOFCOM made certain changes to its preliminary determination methodology that resulted in *de minimis* calculated CVD rates of 0.9 percent *ad valorem*. Given that the final calculated rates for the U.S. respondent were *de minimis*, no CVD duties were imposed.

CVD Investigation of U.S. Glycol Ethers – China

On September 14, 2020, China announced an investigation into U.S. exports of certain monoalkyl ethers of ethylene glycol and propylene glycol (glycol ethers) to China. On September 18, 2021, China released the preliminary determination in this case (the preliminary determination in an accompanying AD proceeding was issued on September 10). While over one hundred programs are being examined, only about half of these programs were addressed in the preliminary determination. Many of these programs are the same programs at issue in the N-propanol, PPE, and PVC matters. These include several dozen federal and state government programs allegedly provided to upstream oil and natural gas producers which were determined to be countervailable in the preliminary determination. On January 10, 2022, MOFCOM released the final determination in this investigation, and continued to find that countervailable subsidies had been provided to U.S. producers of glycol ethers. MOFCOM calculated a final CVD rate of 16.8 percent *ad valorem* for the U.S. respondent and all other companies that were not individually examined. However, despite the calculated rate and affirmative injury determination, MOFCOM decided temporarily not to impose CVD duties on U.S. imports of glycol ethers.

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). MINCIT investigated alleged subsidies provided at the federal and state levels. On May 3, 2019, 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 and final measures were imposed in 2020. On April 29, 2022, MINCIT announced initiation of an expiry review (*i.e.,* sunset review) of their CVD measures on U.S. imports of ethanol into Colombia. The preliminary results of the expiry review were released in January 2023 resulting in 6.87 percent ad valorem rate.

Expiry Review of CVD Measures on U.S. Distiller's Dried Grains with or without Solubles (DDGS) – China

On January 11, 2022, MOFCOM initiated expiry reviews of its AD and CVD measures on imports of distiller's dried grains with or without solubles (DDGS) from the United States. Should MOFCOM issue an affirmative determination, the existing duties on imports of DDGS from the U.S. may be continued. The existing AD duties on imports range from 42.2 to 53.7 percent, and the existing CVD duties range from 11.2 to 12.0 percent. On December 15, 2022, MOFCOM issued its disclosure in the expiry review of the CVD measures foreshadowing that the final determination would likely be affirmative. If so, the existing rates would continue. The expiry review should be completed by January 11, 2023.

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 2022, USTR and Commerce reviewed information regarding the accession of numerous countries including Comoros, Timor Leste and Uzbekistan.

WTO Trade Policy Reviews

The WTO's Trade Policy Review (TPR) mechanism provides USTR and Commerce with another opportunity to review the subsidy practices of WTO Members. The four largest traders in the WTO (the EU, the United States, Japan, and China) have been examined once every 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 2022, USTR and Commerce reviewed the TPR reports of 16 Members, including Brazil, Barbados, Djibouti, Dominican Republic, Mexico, Republic of Moldova, Ghana, New Zealand, Switzerland, Seychelles, Liechtenstein, Pakistan, United Arab Emirates, Guyana, Panama and Georgia. The United States posed numerous questions related to these Members' industrial support programs.

CONCLUSION

China continues to be the most common source of subsidized imports into the United States. The meaningful number of cases filed in both 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.

ATTACHMENT 1

Fostering U.S. Global Competitiveness by Combating Unfair Foreign Subsidies
E&C's Subsidies Enforcement Office is Here to Help

What are Unfair Foreign Subsidies and How Do They Affect American Companies and Workers?

U.S. companies--large and small--are increasingly selling American-made products in markets across the globe. When selling overseas, many companies find themselves at a disadvantage to foreign competitors who benefit unfairly from financial assistance from foreign governments. Such "subsidies" can take many forms, including:

- *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 takes an active role in such cases to defend U.S. interests.

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?

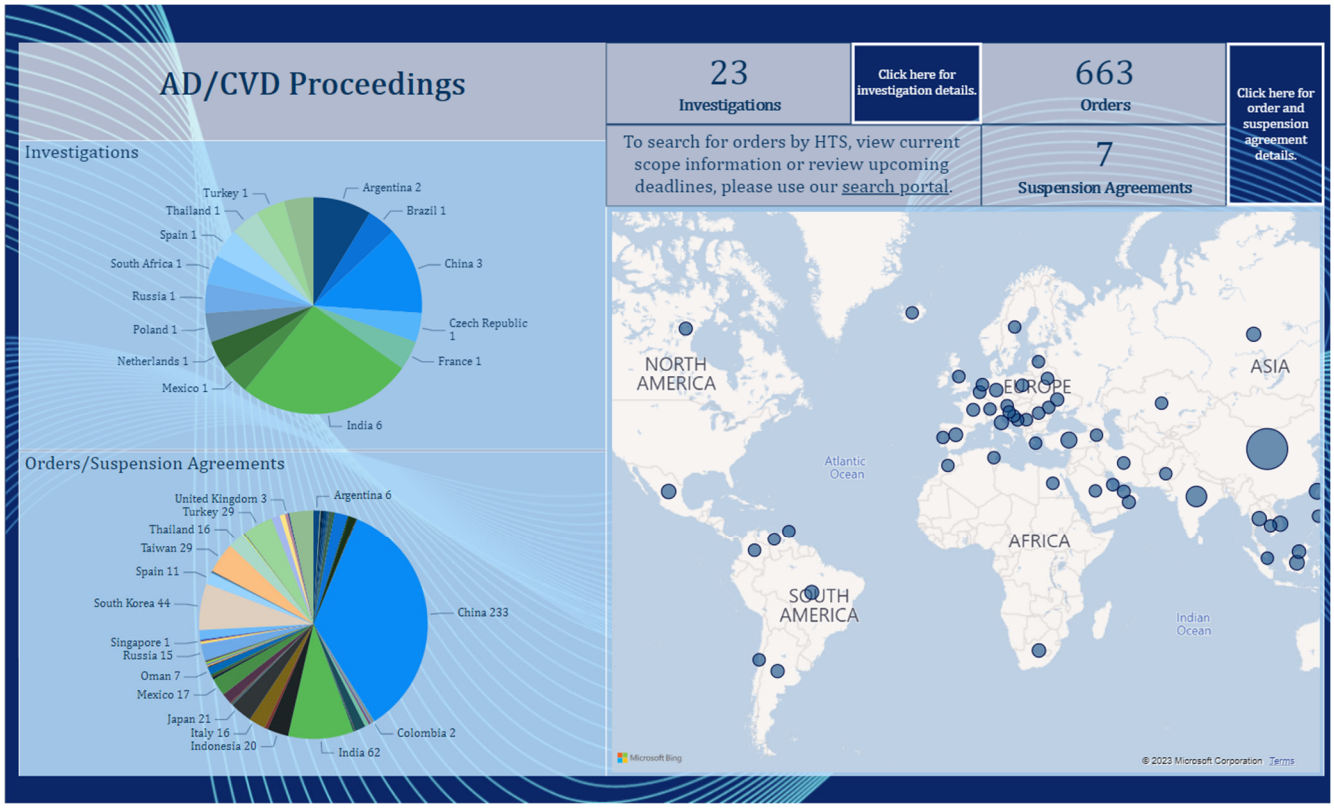
Contact the SEO if you believe subsidized imports are harming your company, or foreign subsidies or foreign countervailing duty proceedings are impeding your ability to export and compete abroad. SEO experts can evaluate the situation to determine what tools under U.S. law and international trade rules 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.

Subsidies Enforcement Office/E&C/Office of Policy, 1401 Constitution Ave. NW, Rm 3713, Washington, DC 20230
Questions can be referred to Gregory Campbell at (202) 482-2239 or Gregory.Campbell@trade.gov

ATTACHMENT 2

GEOGRAPHICAL DISTRIBUTION OF US AD/CVD ACTIONS

Data visualization chart from https://www.trade.gov/data-visualization/adcvd-proceedings on current AD/CVD investigations, orders and suspension agreements administered by the U.S. Department of Commerce.

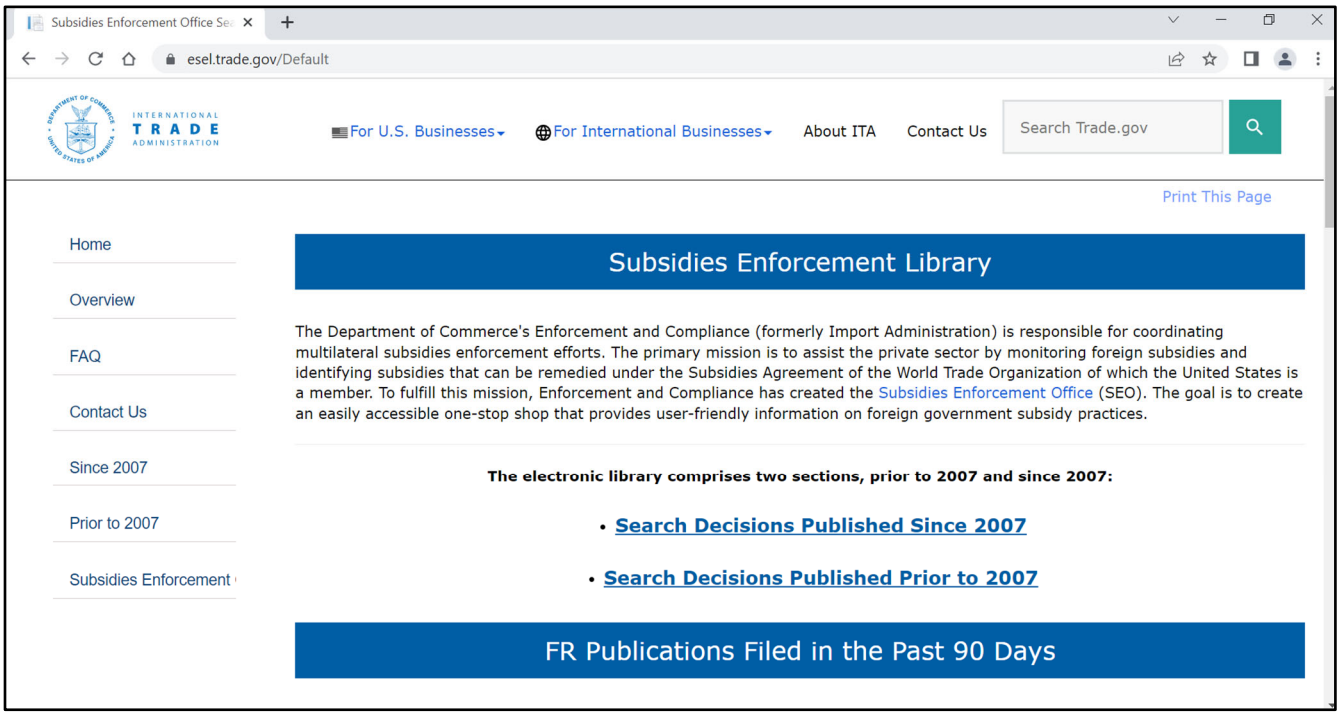


ATTACHMENT 3

THE ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY

[http://esel.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.

ATTACHMENT 4

Antidumping and Countervailing Duty Petition Counseling

Are you a U.S. business that has been harmed by unfairly traded imports?
Do you have questions about available relief? We can help.

About Our Services:

- We recognize that U.S. companies need a level playing field to be competitive in the U.S. market, maintain or increase market share domestically or abroad, or expand into new export markets.

- Enforcement and Compliance's (E&C) Petition Counseling and Analysis Unit (PCAU) experts are here to help you understand the options available under U.S. antidumping (AD) and countervailing duty (CVD) trade law for relief from injurious, unfair imports.

- Our experienced staff can assist you free of charge in understanding the petition process for an investigation of the unfairly traded imports, guide you step-by-step in compiling the information necessary for a petition, and review any draft petition to ensure it meets the requirements for initiating an investigation.

- PCAU staff members have counseled numerous companies, including small and medium sized businesses, and their workers, in understanding the AD/CVD laws. Since the establishment of the PCAU, companies and workers have filed hundreds of AD and CVD petitions on a wide range of imported products with assistance from PCAU staff.

Unfair Trade Practices Covered by Our Services:

- Dumping – Dumping occurs when a foreign producer sells a product in the United States at a price below that producer's sales price in its own country or in other primary markets, or at a price that is below its production costs.

- Countervailable Subsidy – Foreign governments subsidize industries when they provide financial assistance to benefit the production, manufacture, or exportation of goods. Subsidies can take many forms such as, direct cash payments, credits against taxes, and loans at terms that do not reflect market conditions.

How to Get Relief:

- The first step is the official filing of a petition for relief under the U.S. AD/CVD laws. If E&C determines that the petition meets all of the relevant statutory and regulatory requirements, it initiates an investigation to determine the exact amount of dumping and/or unfair subsidization that are occurring.

- An investigation has several phases, each of which follows a legally mandated time frame. Full investigations, which are run concurrently by both E&C and the U.S. International Trade Commission (ITC), are usually completed within 12 to 18 months after initiation. Relief can begin as early as a preliminary decision in an investigation – typically within three to six months.

- If E&C determines that dumping and/or unfair subsidization has occurred, and the ITC determines that the unfair imports have materially injured the U.S. industry, offsetting duty rates are applied to the imports of the dumped and/or subsidized goods.

- Contact PCAU staff to learn more about how unfairly traded imports can be remedied and how your company could get relief.

ATTACHMENT 5

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