

**SUBSIDIES ENFORCEMENT
ANNUAL REPORT TO THE CONGRESS**

**Joint Report of the
Office of the United States Trade Representative
and the U.S. Department of Commerce
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EXECUTIVE SUMMARY

The use of trade-distorting subsidies by foreign governments can seriously threaten American workers and industries. The United States Government is committed to eliminating or neutralizing such practices when they harm U.S. interests. Toward that end, the Office of the U.S. Trade Representative (USTR) and the U.S. Department of Commerce (Commerce) working closely with other trade agencies continued their close cooperation in 2004 to monitor and challenge unfair foreign government subsidy practices by pursuing the United States' rights under the agreements of the World Trade Organization (WTO) and by ensuring that our trading partners adhere to their obligations under those agreements. Among the joint responsibilities assigned to USTR and Commerce is the submission of a report to the Congress describing the Administration's monitoring and enforcement activities throughout the previous year. This report is the tenth annual report submitted to the Congress.

Multilateral disciplines on subsidies are established under the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement, or Agreement), which is the principal tool available to WTO Members to remedy harmful subsidy practices worldwide. The United States ensured the continued effectiveness of the Subsidies Agreement through its active participation in the WTO Subsidies Committee, which oversees WTO Members' subsidy-related activities. The United States also sought to deter or remedy harm caused to U.S. producers and workers from distortive subsidies through bilateral contacts, multilateral pressure and, where justified, WTO dispute settlement proceedings.

The United States also continued its ongoing efforts to strengthen and deepen existing multilateral disciplines on subsidies through the Doha Development Agenda negotiations and in the steel talks at the Organization for Economic Cooperation and Development (OECD). By working to address some of the most important causes of unfair trade distortions, the subsidies enforcement program continues to help strengthen the open, competitive trading environment that is of enormous benefit to American consumers, producers and workers alike.

Doha Development Agenda

In November 2001, a new round of global trade negotiations – known as the Doha Development Agenda (DDA) – was launched at the WTO's Fourth Ministerial Conference. In the Ministerial declaration, the United States secured a mandate to improve the disciplines under the Subsidies and Antidumping (AD) Agreements and address the trade-distorting practices that often give rise to the imposition of countervailing and antidumping duties. Importantly, the mandate recognizes that the negotiations must preserve the basic concepts, principles and effectiveness of the two Agreements and that Members' trade remedy laws are legitimate tools for addressing unfair trade practices that cause injury. In light of this mandate, the United States outlined in a 2002 submission its view of the basic concepts and principles of the trade

remedy rules. In 2002 – in the subsidies context specifically – the United States made a submission regarding the issue of special and differential treatment, describing the perspective of the United States and highlighting the substantial and existing special and differential provisions of the Subsidies Agreement.

In March of 2003, the United States submitted its principal subsidies paper to the Rules Negotiating Group (Rules Group) outlining the basic parameters the United States will follow in seeking to strengthen the subsidy rules. The paper calls for enhancing subsidy disciplines and identifies a broad array of issues with respect to the existing rules as well as the need to develop new disciplines where none currently exist. Addressed within the ambit of our negotiating position on subsidies are issues relating to the negotiating objectives set forth in the Trade Act of 2002 (which encompasses Trade Promotion Authority), including addressing the existing rules on the treatment of indirect taxes. The development of enhanced disciplines on trade distorting practices, including subsidies (broadly defined), is particularly important because these practices are among the root causes of trade friction. In particular, the U.S. paper argues for the expansion of the prohibited (“red light”) category of subsidies – beyond the two types currently prohibited, export and import substitution subsidies – and tougher rules on indirect subsidies, government investment in private sector companies, and government pricing of natural resources.

In 2004, the United States made three submissions, specifically focusing on the further development of subsidy calculation methodologies. While the Uruguay Round was successful in defining broad methodological concepts in the Subsidies Agreement regarding the benefit measurement of various types of subsidies, greater detail is needed in certain areas so as to clarify the precise nature of Members’ obligations under the Subsidies Agreement and to establish a firmer basis for strengthened rules (e.g., quantitative limitations on subsidy benefit amounts). The U.S. submissions cover the related topics of when to allocate a subsidy over time and how to do it, including the length of time over which the allocation should occur. The papers were generally well received in that they raised the next set of questions that must be answered to continue the historical development of a general set of subsidy benefit calculation rules needed to strengthen and increase the predictability of the Subsidies Agreement disciplines.

With regard to fisheries subsidies, the United States continued to play a major role in advancing the discussion of fisheries subsidies reform in the Rules Group, working closely with a broad coalition of developed and developing countries. In 2004, the discussion moved beyond a debate over interpretation of the mandate toward consideration of possible frameworks for improved disciplines. The United States and other proponents of stronger disciplines advocated a framework that would center on a prohibition, combined with appropriate exceptions (referred to as the “top-down” approach). In December 2004, the United States made an important contribution building on a previous submission by other Members. The United States believes that, grounded in a general prohibition, the top-down approach offers a simple, administrable, enforceable, and realistic structure for strengthened disciplines. Going

forward, the United States will seek to move the discussions forward through more detailed consideration of the types of fisheries subsidies that should be prohibited and the scope of possible exceptions.

Steel

The Administration continued to dedicate significant resources towards fulfillment of the President's 2001 Initiative on Steel, which seeks to address the structural problems of the global steel industry that have contributed to a decades-long, cyclical proliferation of unfair trade competition and trade remedy responses. U.S. government officials have helped to spearhead regional and global efforts to bring about market-driven rationalization of the world's excess, inefficient steelmaking capacity, while also formulating proposals for better disciplines over practices that can distort markets and artificially sustain such capacity.

One example of such efforts has been the continued work in the OECD on assessing current market conditions and industry trends as well on developing the elements of an agreement that would substantially reduce or eliminate trade-distorting government subsidies to the steel sector. Formal work on such a steel subsidies agreement continued through the first half of 2004, but then was suspended in favor of ongoing, informal bilateral discussions among the participants over how to best to move the discussions beyond certain key areas of dispute. Also, in January 2005, the OECD sponsored an "Outlook for Steel" Conference that included participants from more than 30 countries as well as a large contingent of industry representatives. The conference provided the industry an opportunity to take stock of current steel market conditions and to consider the current and likely future impact on steel of various important developments outside the industry.

Another example has been the continued success of a collaborative group including representatives from the Canadian, Mexican and U.S. governments and steel industries, which has provided a useful forum for promoting continued cooperation on policy matters affecting the North American steel market and industry. During the last year, the three governments engaged in a comprehensive information-sharing exercise which involved the publicly-available sources used by each country for monitoring unfair trade practices in the steel sector. In addition, the three governments presented a joint statement at the January 2005 OECD steel conference which highlighted the continued urgency for addressing the underlying structural problems associated with government intervention in the global steel sector.

The United States remains concerned that, despite the strength of the international steel market, governments throughout the world continue to play too much of a role in financially supporting the creation of new steelmaking capacity or the retention of older capacity. Over the coming year, the United States intends to continue working with other key steel participants in the OECD context and in other regional and multilateral fora in addressing the structural problems of the industry and in identifying a

feasible and effective means for strengthening multilateral subsidy disciplines in this sector. In the interim, the Administration also reserves its right to take action, as warranted, under the WTO Subsidies Agreement and U.S. trade laws with respect to such instances of foreign government support to the steel sector.

China

China's third year of membership in the WTO concluded in 2004 and with it the third examination of China's implementation of its accession commitments under the Transitional Review Mechanism (TRM). In accordance with the terms of China's protocol of accession, the TRM is a special multilateral procedure used to assess the extent and quality of China's compliance with its WTO obligations on an annual basis during the first eight years of China's membership, culminating in a final review by the tenth year. Reviews are conducted in a number of councils and committees, including the Subsidies Committee. The third annual review in the Subsidies Committee took place in November. The United States sought to clarify further the extent of China's compliance with WTO subsidy-related rules and disciplines. Although the TRM procedures allow the United States to focus on issues and commitments specific to China designed to produce important information about China's WTO implementation activities, a fully meaningful review of China's WTO compliance record has continued to be stymied by China's failure to notify required information about its subsidies. As a result of these shortcomings and the rapidly growing public concern about the potential impact of China's subsidy practices, the United States has stepped up its unilateral surveillance of China's government practices in order to better identify and, as appropriate, respond to possible subsidy problems.

In the Subsidies Committee – beyond the TRM process – the United States has taken a more assertive and proactive stance. In November, the United States exercised its rights under the Subsidies Agreement to request that China provide information about several Chinese government programs that may confer subsidies and confronted China with U.S. concerns during the Subsidies Committee meeting. On a broader scale, the United States will be examining structural problems and distortions in China's economy in the new Structural Issues Working Group established under the U.S.-China Joint Commission on Commerce and Trade (JCCT) last April. This is an area where considerable time and resources will continue to be devoted throughout the coming year.

Conclusion

The U.S. Government's subsidies enforcement program remains committed to assisting American workers and companies harmed by distortive subsidy practices in both domestic and foreign markets. During 2004, USTR and Commerce, working with the other trade agencies, continued to focus their efforts on identifying and challenging a wide range of unfair foreign government practices that adversely affect the interests

of the United States, whether through advocacy, negotiation or legal action. The United States will continue to strengthen the subsidies enforcement program's monitoring, counseling and advocacy activities during 2005. The fundamental aim of these activities is to seek ways of addressing the interests of those U.S. parties facing particular problems from subsidized competition without imposing additional costs and obstacles to international commerce and investment. Although alternatives to WTO dispute resolution will always be sought, the United States will not shy away from initiating WTO dispute settlement proceedings if its interests cannot be adequately addressed through advocacy and negotiation. Our fundamental aim in these activities remains to ensure that U.S. consumers enjoy the full range of choice, quality and affordable prices that can only be obtained through engagement in a dynamic and competitive global economy.

INTRODUCTION

The current WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) establishes multilateral disciplines on subsidies and provides mechanisms for challenging government programs that violate these disciplines. In addition to setting forth rules and procedures to govern the application of countervailing duty (CVD) measures by WTO Members with respect to injurious, subsidized imports, the Subsidies Agreement also contains disciplines to address the impact of subsidies on trade in foreign markets. These disciplines are enforceable through binding dispute settlement, which specifies strict time lines for bringing an offending practice into conformity with the pertinent obligation. The remedies in such circumstances can include the withdrawal or modification of a subsidy program, or the elimination of the subsidy's adverse effects.

The Subsidies Agreement nominally divides subsidy practices among three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted, non-actionable (green light) subsidies.¹ Export subsidies and import substitution subsidies are prohibited. All other subsidies are permitted, but are actionable (through CVD or dispute settlement action) if they are (i) "specific", *i.e.*, limited to a firm, industry or group thereof within the territory of a WTO Member and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another WTO Member. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those which are not specific, as defined above.

U.S. trade policy responses to the problems associated with foreign subsidized competition provide USTR and Commerce with both unique and complementary roles. In general, it is USTR's role to coordinate the development and implementation of overall U.S. trade policy with respect to subsidy matters, represent the United States in the World Trade Organization (WTO), including its Subsidies Committee, and chair the interagency process on matters of policy. The role of Commerce, through Import Administration (IA), is to enforce the CVD law, monitor the subsidy practices of other

¹ Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would be treated as non-actionable subsidies. In addition, Article 6.1 of the Agreement provided that certain other subsidies (*e.g.*, subsidies to cover a firm's operating losses), referred to as dark amber subsidies, could be presumed to cause serious prejudice. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had *not* resulted from the subsidy. However, as explained in our 1999 report, these provisions expired on January 1, 2000 because a consensus could not be reached among WTO Members on whether to extend or the terms by which these provisions might be extended beyond their five-year period of provisional application.

countries, and provide the technical expertise needed to analyze and understand the impact of foreign subsidies on U.S. commerce.² Within IA, subsidy monitoring and enforcement activities are carried out by the Subsidies Enforcement Office (SEO). These activities are also supported and complemented by the Trade Remedy Compliance Staff (TRCS), also located in IA. (See, Attachments 1 and 2, which contain full descriptions of the SEO and TRCS.) More recently, IA has built upon and improved coordination of these different efforts to pro-actively address foreign unfair trade practices through the creation of an Unfair Trade Practices Task Force, as called for by the Congress and in the U.S. Department of Commerce Report, "Manufacturing in America: A Comprehensive Strategy to Address the Challenge in U.S. Manufacturing (January 2004). USTR and Commerce also work closely with, and receive valuable input and advice from, other federal agencies represented in the Trade Policy Staff Committee – such as the Departments of State, Treasury and Agriculture, and Council of Economic Advisors – concerning the full range of issues pertaining to the obligations of our trading partners under the Subsidies Agreement.

With the enactment of the Uruguay Round Agreements Act (URAA) in 1994, the two agencies' roles were further articulated and mutually reinforced in order to facilitate the exercise of U.S. multilateral rights with respect to subsidies that harm the interests of U.S. firms and workers. Among the joint responsibilities assigned to USTR and Commerce, as set forth in section 281(f)(4) of the URAA, is the submission of an annual report to the Congress describing the Administration's monitoring and enforcement activities throughout the previous year. This report constitutes the tenth annual report to be transmitted to the Congress pursuant to this provision.

MULTILATERAL INITIATIVES

A. WTO NEGOTIATIONS

1. General

In November 2001, a new round of global trade negotiations – known as the Doha Development Agenda (DDA) – was launched at the WTO's Fourth Ministerial Conference. In the Ministerial declaration, the United States secured a mandate to improve the disciplines under the Subsidies and Antidumping (AD) Agreements and address the trade-distorting practices that often give rise to the imposition of CVD and AD duties. Critically, the mandate recognizes that the negotiations must preserve the basic concepts, principles and effectiveness of the two Agreements and that Members' trade remedy laws are legitimate tools for addressing unfair trade practices that cause injury. Under this mandate, the United States has pursued an aggressive, affirmative

² The Department of Commerce determines whether there are countervailable subsidies; the U.S. International Trade Commission determines whether subsidized imports materially injure a domestic industry.

agenda, aimed at strengthening the rules and addressing the underlying causes of unfair trade practices.

As noted above, the existing WTO disciplines on subsidies prohibit only two types of subsidies. However, other permitted subsidies also distort markets and international trade patterns. The specific language of the mandate agreed to at the Fourth Ministerial Conference is particularly important because it provides an avenue to address these other practices and to inform the discussions of trade remedies in a constructive manner. Moreover, it provides an avenue to address the negotiating objectives of the Trade Act of 2002 and other subsidy concerns in key sectors of the U.S. economy.

The negotiating mandate has also permitted the United States to include in its affirmative agenda proposals that will protect the legitimate interests of U.S. exporters, who are often subject to unfair trade cases abroad. As discussed below, in 2004, the United States presented submissions to the Rules Group identifying issues in this area and laying the groundwork for clarifying and strengthening the rules on trade remedy procedures to ensure that the practices of other countries are as transparent and fair as those in the United States. Our aim is to enable U.S. exporters to compete abroad with the assurance that they will not be denied fundamental procedural due process protections.

An important accomplishment of the United States at the Fourth Ministerial Conference was the inclusion of disciplines on fisheries subsidies as part of the rules negotiations. The United States has believed for some time that the depleted state of the world's fisheries is a major economic and environmental concern, and that subsidies that contribute to overcapacity and over-fishing, or that have other trade-distorting effects, are a significant part of the problem. The inclusion of fisheries subsidies in the rules negotiations represents a significant opportunity for all countries to advance simultaneously the goals of trade liberalization, environmental protection, and economic development.

2. Progress to Date

a. General

The Rules Group held seven meetings in 2004, at first under the Chairmanship of Ambassador Eduardo Perez Motta from Mexico, and subsequently under the Chairmanship of Ambassador Guillermo Valles Galmes of Uruguay. The Group based its work primarily on the written submissions from Members, organizing its work in the following categories: (1) antidumping (often including similar issues relating to countervailing duty remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements.

Given the Doha mandate that the basic concepts and principles underlying the Antidumping and Subsidies Agreements must be preserved, the United States outlined in a 2002 submission four principles to guide U.S. proposals for the Rules Group. The United States' work in the Rules Group in 2004 continued to be guided by these principles:

- First, the negotiations must maintain the strength and effectiveness of the trade remedy laws and complement a fully effective dispute settlement system that enjoys the confidence of all Members;
- Second, trade remedy laws must operate in an open and transparent manner, which is fundamental to the rules-based trading system as a whole;
- Third, disciplines must be enhanced to address more effectively underlying trade-distorting practices; and
- Fourth, it is essential that dispute settlement panels and the Appellate Body, in interpreting obligations related to trade remedy laws, follow the appropriate standard of review and not impose on Members obligations that are not contained in the Agreements.

In accordance with these principles, the United States has continued to be very active in the discussions in the Rules Group, identifying specific issues for consideration, following up with elaborated proposals, and raising detailed questions with respect to the issues raised by other Members.

Pursuant to the first principle, the United States has continued to emphasize that the Doha mandate to preserve the effectiveness of the trade remedy rules must be strictly adhered to in evaluating proposals for changes to the Antidumping or Subsidies Agreements, and has raised a number of questions to evaluate whether issues raised by other Members are consistent with that mandate. The United States has also raised particular issues relevant to ensuring that these trade remedies remain effective, such as addressing the problem of circumvention of antidumping and countervailing duty orders, as well as the related problem of abuse of provisions for "new shipper" reviews. The United States has also highlighted the need for the unique characteristics of perishable and seasonal agricultural products to be reflected in the trade remedy rules.

As to the second principle, the United States has identified a number of respects in which investigatory procedures in antidumping and countervailing duty investigations could be improved, highlighting areas in which interested parties and the public could benefit from greater openness and transparency, as well as some areas where improved procedures could reduce costs. Since U.S. exporters are frequently subject to foreign trade remedy proceedings, it is essential to improve transparency and due process so that U.S. exporters are treated fairly.

Regarding the third principle, the United States has stressed the need to address trade-distorting practices that are often the root causes of unfair trade, and has made a

number of submissions to the Rules Group with respect to the strengthening of subsidies disciplines, generally, as well as the work in the OECD addressing trade-distorting practices in the steel sector.

With respect to the fourth principle, the United States has emphasized in its submissions the importance of ensuring that the WTO panels and the Appellate Body adhere to the special standard of review in the Antidumping Agreement, and the need to address several issues raised by certain past findings of the WTO Appellate Body in trade remedy cases.

The United States has in its submissions to the Rules Group identified over 30 issues for discussion related to antidumping and countervailing duty remedies, in accordance with the principles listed above, and followed up with elaborated proposals on nine issues in 2004. A group calling itself the “Friends of Antidumping Negotiations” has also presented a series of papers identifying over 30 issues (mostly related to antidumping remedies but also implicating identical or similar questions – such as the injury determination – relevant to the countervailing duty remedies) for discussion by the Rules Group, following up with elaborated proposals on twelve of these issues in 2004. The “Friends” group consists of Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey, although not all of its members have joined in each paper by the Friends. From the proposals submitted by the Friends group thus far, it is clear that its goal is to impose additional restrictions on the use of trade remedies. In addition to the proposals submitted by the United States and the Friends group, in 2004 Canada submitted six elaborated proposals and Australia submitted one such proposal.

The United States has been a leading contributor to the recent technical discussions aimed at deepening the understanding of all Members of the issues raised in the Rules Group, drawing upon extensive U.S. experience and expertise as both a user of trade remedies and as a country whose exporters are often subject to other Members’ use of trade remedies. In addition to presenting its submissions, the United States has been engaged actively in addressing the submissions from other Members, carefully scrutinizing and vigorously questioning the technical merits of the issues they have raised, as well as seeking to ensure that the Doha mandate for the Rules Group is fulfilled. The United States will continue to pursue an aggressive affirmative agenda and build upon its 2004 submissions.

b. Subsidies

In addition to the issues described in the previous section, the United States has been active in the subsidies work of the Rules Group. At the November 2002 meeting, the United States submitted a paper on special and differential treatment.³ The purpose of the paper was to: (1) review the generally accepted view on the trade-distorting nature of subsidies; (2) outline the perspective of the United States on the

³ See, TN/RL/W/33.

issue of special and differential treatment; and, (3) highlight the substantial and existing special and differential provisions of the Subsidies Agreement, as well as the significant practical implementation problems addressed in the lead-up to and at the Fourth Ministerial Conference at Doha. These issues are important as negotiations overall in the DDA progress and intensify.

While recognizing the integral role that special and differential treatment plays in the WTO system, the U.S. submission notes that the Subsidies Agreement envisions that, over time, all countries will be subject to a single set of disciplines and that the special and differential treatment provisions were not intended to be in effect in perpetuity. The submission makes clear the U.S. view that the Subsidies Agreement does not endorse indiscriminate subsidization policies as an effective, permanent economic development tool or that it is necessary to expand the special and differential treatment provisions of the Subsidies Agreement to allow greater undisciplined subsidization on the part of developing and lesser-developed countries. Rather, the special and differential provisions of the Subsidies Agreement should be seen as temporary deviations from the normal disciplines necessary to promote trade liberalization and growth, which should only be invoked to the extent necessary and consistent with an individual country's particular economic, financial and development needs.

In March 2003, the United States submitted its second subsidies-specific paper on the need for improved disciplines.⁴ In this paper, the United States identified a broad array of subsidy issues with respect to the existing rules, and suggested areas for new disciplines where none currently exist. The United States' position on subsidies is firmly grounded in the negotiating objectives of the Trade Act of 2002, including addressing the existing rules on the treatment of indirect taxes. As noted above, the development of enhanced disciplines on trade-distorting practices, including subsidies (broadly defined), is particularly important because these practices are often the root cause of trade friction. As a general matter, our paper advocates the continued progressive deepening of subsidy disciplines, which has been an integral component of the historical development of the rules governing the world trading system.⁵

In 2004, the United States made three additional submissions, specifically focusing on the further development of subsidy calculation methodologies. While the Uruguay Round was successful in defining broad methodological concepts in the Subsidies Agreement regarding the benefit measurement of various types of subsidies, greater detail is needed in certain areas so as to clarify the precise nature of Members'

⁴ See, TN/RL/W/78.

⁵ Specifically, our March 2003 paper covered ten general topics: (1) expansion of the prohibited category of subsidies; (2) the "serious prejudice" provisions of the Subsidies Agreement (*i.e.*, Article 6); (3) indirect subsidies; (4) natural resource and energy pricing; (5) the provision of equity capital; (6) taxation; (7) royalty-based financing; (8) codification of analytical and calculation methodologies; (9) procedural issues; and, (10) subsidy notifications. See, also, the *Subsidies Enforcement Annual Report to the Congress*, February 2004.

obligations under the Subsidies Agreement and to establish a firmer basis for strengthened rules (e.g., quantitative limitations on subsidy benefit amounts). The issues covered in the submissions were: (1) when to allocate a subsidy over time; (2) how to allocate a subsidy over time; and, (3) when allocating a subsidy over time, how to determine the length of time over which the allocation should occur.

The first topic addresses the question of which subsidies should be allocated over time and which should be “expensed” (i.e., attributed entirely to a single year). The submission describes the United States’ approach in countervailing duty investigations for distinguishing between subsidies that should be allocated over time versus subsidies that should be expensed. In countervailing duty investigations, the U.S. Department of Commerce allocates “non-recurring” subsidies over time and attributes entirely to a single year “recurring” subsidies. The paper explains that the rationale behind allocating non-recurring subsidies over time is that these types of subsidies, by their nature, generally are infrequent, exceptional and linked more directly to the longer term financial structure (i.e., debt and equity) and fixed assets (e.g., plant and equipment) of the firm. Therefore, these types of subsidies continue to benefit the firm beyond the year of receipt. Recurring subsidy benefits, on the other hand, are normally related to, or consumed in, a firm’s regular/ongoing production and sales activity and thus, are more appropriately attributable to the year of receipt. The paper concludes by suggesting that the Rules Group work towards reaching a consensus on a single methodology or set of guidelines for dispute settlement panels and Members to use in determining both how and when to allocate subsidies.

Once it is determined that a subsidy benefit should be allocated over time, the next question is how to do so. The U.S. paper submitted in this regard makes the point that the Subsidies Agreement should be improved through the adoption of a methodology to allocate subsidy benefits over time. While it is widely recognized that certain subsidy benefits should be allocated over time, the Subsidy Agreement provides no rules as to how it should be done. The U.S. paper examines the issues that need to be confronted when allocating a subsidy benefit over time and, most importantly, argues that any methodology must recognize the “time value of money” (e.g., allocated subsidy benefits must reflect constant, rather than nominal values). After describing in great detail the longstanding U.S. methodology, the U.S. paper discusses a GATT dispute settlement report which ruled that the U.S. approach was consistent with the existing GATT rules.⁶

Finally, a subsidiary question of how to allocate a subsidy benefit over time is the appropriate length of time over which to allocate the benefit. While most Members recognize that the benefit from certain large, non-recurring subsidies should be allocated over some period of time, the Subsidies Agreement is silent as to the appropriate length of the period. The U.S. paper describes the U.S. countervailing duty practice of relying on the average useful life of assets in the industry of the subsidy recipient as shown in the U.S. tax depreciation tables. The paper concludes by

⁶ SCM/185, *United States – Imposition of Countervailing Duties on Certain Lead and Bismuth Steel Products Originating in France, Germany and the United Kingdom*, 15 November 1994.

suggesting that ideally, there would be an objective allocation period for every industry upon which all Members could agree. Alternatively, the Rules Group could attempt to develop a consensus on a general set of guidelines based on the average useful life of assets of the subsidy recipient – not distorted by accelerated depreciation or revaluation of assets considerations – that will lead to reasonably accurate results, predictability, consistency and relatively simple administration for dispute settlement and Members to use.

The U.S. submissions were well received by Members in that they raised the next set of questions that must be answered to continue the historical development of a general set of subsidy benefit calculation rules needed to strengthen and increase the predictability of the subsidy disciplines of the Subsidies Agreement.

In 2004, the only other countries to make subsidy-related elaborated submissions were Canada and Australia. In one of its submissions, Canada proposed reinstating the “dark amber” category of subsidies (see Article 6.1 of the Subsidies Agreement), which as noted above, established a presumption of serious prejudice if the subsidy is over a certain amount or is of a particular type. Canada also argued that the cost-to-government approach mandated for the quantification of a subsidy under Article 6.1(a) (*i.e.*, subsidies over five percent) be abandoned in favor of the benefit-to-recipient approach. Limits on subsidization in company start-up situations – also related to dark amber rules (see Annex IV, paragraph four) – was raised by Canada as well as an area in need of clarification.

More generally, beyond the dark amber issue, the Canadian paper proposed to clarify and strengthen the serious prejudice rules still currently in place. Specifically, Canada is advocating that the Rules Group: (1) clarify the causation requirement; (2) provide rules for subsidies fully disbursed prior to the implementation of a dispute settlement ruling – which is related to the “expense versus allocate” issue addressed in detail in the U.S. paper discussed above – and (3) require a higher evidentiary threshold prior to a request for consultations under the serious prejudice procedural provisions and permit such evidence to be part of the record, if a dispute settlement panel is established. Reacting to this paper, the United States reiterated its support for strengthening the subsidy rules but noted that, in its view, the best way to do so was to expand the prohibited category of subsidies. More generally, the United States spoke in favor of clarifying and improving the serious prejudice rules.

Canada submitted two other papers in 2004 on subsidies: one on the concept of “specificity” and the second on the “pass-through” of subsidy benefits. As discussed above, under the Subsidies Agreement, a subsidy must be “specific” to be actionable. While prohibited subsidies – export subsidies and import substitution subsidies – are deemed specific, other subsidies, must be limited to an “enterprise,” “industry” or “group of industries” to be considered specific. The limitation can be *de jure* (in law; *e.g.*, limited by statute or regulation) or *de facto* (in fact; *e.g.*, although there is no legal limitation, there is a relatively small number of recipients). The Canadian paper makes the point that the Subsidies Agreement provides no clear guidance on the meaning of enterprise, industry or group. To address this problem, the paper proposes, in part, that

the Subsidies Agreement be amended to state that any determination of specificity be made in accordance with the international standard industrial classification (ISIC) system.

Regarding the *de facto* specificity test, the Canadian paper argues that the existence of only one of the four factors listed in the Subsidies Agreement (*i.e.*, the number of recipients, predominant use, disproportionate use, or the government exercise of discretion to target recipients) is an insufficient basis to establish *de facto* specificity and that all four factors should be evaluated based on the totality of the facts. As to the issue of how “disproportionate use” is determined, the Canadians propose that the determination be made by reference to a relevant objective benchmark, such as GNP share of the subsidy recipient industries. In response to this submission, the United States noted the intractable nature of some of the specificity issues, and stated a willingness to re-examine some of the *de facto* specificity questions, but emphasized the fact-intensive nature of most specificity analyses and expressed disagreement with the proposal that all of the four factors necessarily needed to be analyzed in all cases.

In its benefit pass-through paper, Canada proposes that the Subsidies Agreement provide guidance as to the conduct of subsidy benefit pass-through analyses. In its paper, Canada suggests that where the recipient of a financial contribution and the alleged recipient of the resulting benefit are different entities, the investigating authority cannot presume a benefit pass-through. Essentially, Canada is arguing that an investigating authority cannot assume that a financial contribution and benefit provided to one entity – an input supplier, for example – is automatically passed-through to an unrelated entity – a downstream purchaser, for example – following an arm’s-length transaction. To address this issue, Canada proposes that the Subsidies Agreement be amended such that benefit pass-through cannot be presumed and that an annex to the Subsidies Agreement be developed on “Guidelines for Benefit Pass-Through Analyses.” The United States made the point that its countervailing duty statute already contained provisions on “upstream subsidies,” and noted, along with several other Members, that the rules proposed by Canada were excessively complex and would lead to numerous issues as to their appropriate implementation.

Australia’s paper, *inter alia*, proposes the clarification of the definition of a *de facto* export subsidy. As a WTO Member with a small domestic economy but with a considerable export presence, Australia is concerned that subsidies it provides to its export-oriented industries will be more likely to be found to be contingent *in fact* on export performance and, therefore, prohibited rather than merely actionable.⁷

Australia’s paper appears to suggest that existing WTO dispute settlement reports do not provide sufficient clarity or predictability on this matter and therefore,

⁷ There have been a handful of WTO disputes involving export subsidies (including one on Australian leather) in which panels and the Appellate Body have generally upheld the principle that the export orientation of a subsidy can be one, but not the only, consideration in determining whether a subsidy is contingent on export performance.

proposes an explicit rule that export propensity should not be the sole factor in determining whether a subsidy is, in fact, contingent upon export performance. Moreover, the Australian submission advocates that an illustrative list be added to the Subsidies Agreement enumerating other factors that should be considered as well. In particular, Australia's paper proposes incorporating into this list the concept of "export competitiveness." Currently, this concept is only found in the Article 27 provisions providing special and differential treatment to developing countries. Australia's paper suggests a rule (applicable to all Members) that a subsidy will only be considered to be export contingent if it can be linked to an increase in the recipient's share of world trade. Expressing opinions shared by numerous other Members, the United States stated that the existing language in the Subsidies Agreement is sufficient in this area and that numerous WTO dispute settlement reports have already examined the issue. The United States and others particularly objected to use of the export competitiveness concept as a type of "effects test" not envisioned by the Subsidies Agreement.

In 2005, the United States will continue to pursue an aggressive negotiating strategy on subsidy issues in the Rules Group. In keeping with this strategy, the United States looks forward to introducing additional submissions to strengthen the disciplines set forth in the Subsidies Agreement.

c. *Fisheries Subsidies*

With regard to fisheries subsidies, members have committed to negotiations that "aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries." The United States continued to play a major role in advancing the discussion of fisheries subsidies reform in the Rules Group in 2004, working closely with a broad coalition of developed and developing countries, including Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, Norway, Peru and the Philippines (collectively known as the "Friends of Fish"). Improving WTO disciplines on harmful fisheries subsidies is an important objective that will provide a concrete, real world demonstration that trade liberalization benefits the environment and contributes to sustainable development.

In 2002 and much of 2003, Japan and Korea questioned whether the Doha mandate allowed for stronger WTO disciplines over fisheries subsidies. In 2004, the discussion moved beyond a debate over interpretation of the mandate toward consideration of possible frameworks for improved disciplines. The United States and other proponents of stronger disciplines advocated a framework that would center on a prohibition, with appropriate, well-defined exceptions (referred to as the "top-down" approach). In December 2004, the United States submitted a paper building on a previous submission by six Members (Argentina, Chile, Ecuador, New Zealand, Peru and the Philippines) and offering additional ideas on how such an approach could work. Specifically, the United States advocated a prohibition focused on subsidies that contributed to overcapacity and overfishing and consideration of carefully targeted exceptions to allow appropriate flexibility. The United States also stressed that, to be effective as well as to increase the transparency of existing subsidies, the negotiation of exceptions should be focused on the actual, particular subsidy programs and concerns

of Members rather than on broad, open-ended categories of support programs. The United States believes that, grounded in a general prohibition, the top-down approach offers a simple, administrable, enforceable, and realistic structure for strengthened disciplines.

In contrast, Japan and Korea, supported by Chinese Taipei, advocated a “bottom-up” approach premised on a potentially large number of permitted subsidies and a small number of prohibited subsidies (*i.e.*, those that cause demonstrable adverse resource and trade effects). In response, the United States and the other Friends of Fish noted that such an approach appeared to put too much emphasis on resource effects and that it introduces concepts (*e.g.*, “properly managed fisheries”) that lie outside the competence and objectives of the WTO. In light of its inherent practical and other difficulties, the United States suggested that the bottom-up approach could actually lead to a set of disciplines weaker than the current rules.

In 2004, several other countries, including Brazil, China, Malaysia, India, Pakistan and Sri Lanka, became more active in the discussions. While these countries generally did not take a position on the appropriate framework, they stressed the need for special and differential treatment of developing country members.

Going forward, the United States will seek to move the discussions forward through more detailed consideration of the types of subsidies that should be prohibited and the scope of possible exceptions.

4. Agriculture

At the Fourth WTO Ministerial Conference in Doha, Members agreed to an ambitious mandate for agriculture, including “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.” Following disagreement at the Cancun Ministerial meeting in September 2003 over the scope and speed of agriculture reform, the United States initiated a series of informal consultations with WTO Members. The United States has long advocated fundamental reform of all trade-distorting measures by all WTO members and in 2002 made specific proposals to phase-out all tariffs, trade-distorting domestic support, and export subsidies in the Doha negotiations. The fundamental challenge after Cancun was to determine if other countries were prepared to undertake reform and, if so, how to negotiate specific commitments to reduce protection and trade-distorting support. Building on the U.S. initiative, WTO members engaged in intensive discussions in the first half of 2004. The discussions focused on the core issues in the three pillars of market access, export competition, and domestic support with a view toward identifying agreed approaches to achieve reform.

U.S. negotiators met bilaterally with interested participants, with small groups of like-minded countries, in informal groups of countries with varied interests in the negotiations, and in large informal and formal meetings. Through this process, and in particular, the work of a group of five WTO Members (the United States, the European

Union, Australia, Brazil, and India) common ground was developed on some of the fundamental issues in the negotiations. These ideas were provided to Chairman Tim Groser who presented a draft agricultural framework to WTO Members in mid-July.

After further revisions, developed through intensive negotiations at the Ministerial level at the end of July, WTO Members agreed to an agriculture framework to guide further progress in the negotiations. In the Fall of 2004, technical discussions continued in Geneva to prepare the way for specific negotiations over the depth of tariff and subsidy cuts, time frames for implementing reforms, and other issues.

On export subsidies, the framework specifies, for the first time, that all export subsidies will be eliminated by a date certain. Export credit and credit guarantee programs with repayment terms over 180 days will also be eliminated in a parallel manner with direct export subsidies. Disciplines will be developed on export credits and credit guarantees with repayment terms under 180 days. The framework prohibits all trade-distorting elements of export state trading enterprises. Disciplines will also be established on food aid programs to ensure that food aid does not displace commercial sales. Further discussions will be held on export restrictions, including export taxes.

Regarding domestic support, the framework specifies the use of a tiered formula that ensures countries with higher levels of allowed trade-distorting domestic support (the Aggregate Measurement of Support) make larger reductions to deliver greater harmonization in subsidy levels across countries. Payments partially decoupled from production decisions or linked to production-limiting programs will be capped for the first time, and rules for disciplining these programs will be subject to further discussions. Allowances for *de minimis* support will be subject to reductions as well. The total level of all these forms of trade-distorting support will be subject to a maximum level and reductions, with higher levels of allowed support subject to greater cuts. Members agreed to a 20 percent cut in the overall level of trade distorting domestic support in the first year of implementation of the agreement. Product-specific caps, but no reductions, for the Aggregate Measurement of Support will be established. Criteria for "green box" programs that have minimal or no trade-distorting effects will be reviewed. Special and differential treatment will be established to address the particular needs of developing countries.

The framework on market access specifies the use of a tiered formula that ensures higher tariffs receive deeper cuts. For a certain number of sensitive products, less than formula reductions will be permitted with access to be provided through tariff-rate quotas. In addition, WTO members will negotiate a tariff cap, new rules for administering tariff-rate quotas, and disposition of the special agricultural safeguard. Provisions are also established for special and differential treatment for developing countries, including the development of a new safeguard mechanism and recognition of special treatment for special products related to development and food security needs of these countries.

In 2005, negotiations will focus on establishing specific modalities in each of the three pillars. In addition to negotiating the specific parameters of the reduction formulas

for tariffs and the elements of trade-distorting domestic support, a time period for phasing in the reductions as well as the elimination of export subsidies will need to be agreed. In parallel, negotiations will focus on the rules and criteria for allowed subsidy measures, administration of tariff-rate quotas and safeguard measures. As talks move forward, the United States will work to achieve the high level of ambition that all countries bring to all three pillars.

B. STEEL: MULTILATERAL EFFORTS TO ADDRESS MARKET-DISTORTING PRACTICES

STEEL

Although the global steel industry returned to relatively good health in 2004 on the heels of rising demand and prices, the industry tends to be heavily influenced by the business cycle. A major contributor to this cycle, among others, has been the frequency and magnitude of inappropriate government intervention in the global steel industry and the distorting impact that such intervention has on business planning and international trade. The Administration remains committed to the goals in the President's Initiative on Steel, implemented in 2001, to seek more lasting solutions to the industry's long-term, structural problems and to bring an end to the decades-long, cyclical proliferation of oversupply, unfair trade competition and trade remedy responses in the sector. Accordingly, since the last report, the United States has continued to spearhead efforts globally (e.g., through the Organization for Economic Cooperation and Development) and regionally (e.g., through the North American Steel Trade Committee) among the major steel-producing countries to bring about market-driven rationalization of the world's excess, inefficient steelmaking capacity, while also formulating better disciplines over practices which can distort markets and trade.

1. Organization for Economic Cooperation and Development

In 2001, the United States and other major steel-producing countries launched talks in the Organization for Economic Cooperation and Development (OECD), via the creation of a High-Level Group (HLG), to address the inter-related problems of global uneconomic steel capacity and the market distorting practices which help to sustain such capacity. Prior reports have detailed the scope and progress through 2003 of the work of the HLG's two subsidiary bodies: the Capacity Working Group and the Disciplines Study Group. Although the Capacity Working Group was essentially dormant in 2004, the Disciplines Study Group continued its work throughout the first half of the year in fleshing out the possible elements of an agreement to reduce or eliminate trade-distorting subsidies to the global steel industry.

While the DSG made important progress on a Steel Subsidies Agreement (SSA), by mid-2004, the talks reached an impasse due to the differences among participants in key areas, particularly: exceptions to the overall subsidies prohibition, special and

differential treatment for developing countries (including China), and whether excepted subsidies should be countervailable. In light of this impasse, participants agreed at the HLG meeting in June 2004 to shift the focus of the talks over the coming months to a more informal mode of bilateral and plurilateral consultations as the best way to explore bridging the differences on the key issues. Participants also agreed that the HLG should reconvene in 2005 (date not yet determined) to evaluate prospects for successfully concluding the SSA negotiations.

Since this exercise moved into informal mode, the United States has had several bilateral and plurilateral discussions with key participants on the future of the SSA talks in the OECD. The general view of the participants with whom the United States has met is that this exercise has played a constructive role in focusing international attention on the chronic problem of steel subsidies and has made good progress in developing the basic elements of an agreement to reduce or eliminate trade-distorting steel subsidies. That said, none of the participants has been able to identify viable options for bridging the current differences on the key issues so that the formal negotiations could resume.

In addition to the work of the HLG, the OECD has provided other fora in which to focus on the global steel industry. In January 2005, Import Administration and USTR officials attended the "Outlook for Steel" Conference in Paris, organized by the OECD in conjunction with the International Iron and Steel Institute. Participation included more than 30 countries as well as a large contingent of industry representatives and private sector analysts. The conference provided an opportunity for the industry to take stock of current strong steel market conditions, to discuss public policy issues and to consider the current and likely future impact of new capacity growth, particularly in China and developing countries. The conference was also viewed as affording governments and industry the first opportunity to reconvene in an international forum since the last HLG meeting in June, 2004.

At the time of this writing, the future of the HLG exercise and the SSA negotiations in the OECD remains unclear. Regardless of its future, however, this exercise has been instrumental in identifying more generally the problems in this industry and the shortcomings in the applicable rules. Accordingly, the United States intends to continue working with other key steel participants in the OECD context and in other multilateral fora (*e.g.*, the WTO) in identifying a feasible and effective means for strengthening multilateral subsidy disciplines in this sector.

2. North American Steel Trade Committee

The North American Steel Trade Committee (NASTC) was established by the governments of the United States, Canada and Mexico in the context of our work together in the OECD's HLG work on steel. Since its inception two years ago, this government-industry collaboration has been a successful forum for promoting continued cooperation on policy matters affecting the North American steel market and industry. While the work of the committee is broad-ranging, our efforts have primarily focused on the frequency and magnitude of government intervention in the global steel

sector and the resulting distortions of such intervention on international trade. Consistent with this focus, the NAFTA governments engaged in a comprehensive information-sharing exercise during 2003 which involved the publicly-available sources used by each country for monitoring unfair trade practices in the steel sector. In addition, the NAFTA governments presented a joint statement at the January 2005 OECD steel conference which highlighted the continued urgency for addressing the underlying structural problems associated with government intervention in the global steel sector. There are two formal meetings planned for the NASTC during 2005, with the possibility left open for *ad hoc* meetings in order to address particular issues should the need arise.

MONITORING AND ENFORCEMENT

A. ADVOCACY EFFORTS

_____ 1. Counseling U.S. Industry

USTR and IA staff within Commerce regularly respond to inquiries from, and meet with representatives of, U.S. industries concerned with the subsidization of foreign competitors. Our goal is to resolve problems arising from unfair foreign government subsidization through a combination of formal and informal contacts. However, where appropriate, the United States will also advise U.S. companies of other options for action, such as a CVD investigation, WTO dispute settlement or an action taken under Section 301 of the Trade Act of 1974.

As in prior years, a number of U.S. industries sought our assistance in this regard in 2004. USTR and IA are currently counseling and advocating on their behalf. The nature of the inquiries and information provided by U.S. companies to USTR and IA varies greatly. Some companies have basic questions concerning the Subsidies Agreement and U.S. rights to address unfair and harmful foreign subsidies under that Agreement. Others complaints relate to particular subsidies and allegations that these practices have adversely affected a U.S. industry or company in either the U.S. or overseas markets. In these cases, USTR and IA work closely with the industry or company to collect information concerning the potential subsidies and to determine how its commercial interests may have been harmed, whether in the United States or overseas.

The firm or industry in question is usually the best source of information concerning the harm resulting from the subsidization. This information is critical to support a claim of adverse trade effects in a WTO subsidy enforcement proceeding.⁸ In

⁸ In order for subsidies, other than prohibited subsidies, to be actionable they must be specific (*e.g.*, provided to a specific firm or industry or a group thereof) and cause adverse effects to the interests of another WTO Member. Adverse trade effects can include (1) material injury to a domestic industry, or the threat thereof, as in CVD proceedings, (2) the nullification or impairment of benefits accruing directly or indirectly to another WTO Member under the GATT 1994, and (3) "serious prejudice" which includes the displacement or impeding of sales

most instances, USTR and IA also conduct significant additional research to determine the legal framework under which the foreign government is offering the assistance and whether other U.S. exporters have been facing similar problems.

USTR and IA staff also draw upon additional internal and external sources to develop information concerning potentially harmful foreign subsidies. These include Commerce offices with country and industry specialists that routinely collect information on regional or sector specific subsidies. If appropriate, U.S. Embassies in the relevant foreign countries are contacted for additional “on the ground” information they may be able to provide. On occasion it has also been useful to contact our counterparts in other foreign governments to learn whether similar complaints about the same third-country subsidy have been identified by their exporters. Where appropriate, USTR and IA may also seek public comment and/or consult with representatives of U.S. state and local governments.

Working with an interagency team, USTR and IA staff then evaluate the information and determine the most effective way to proceed. As noted above, it is often advantageous to pursue resolution of these problems through a combination of informal and formal contacts. For example, raising the matter with the foreign government authorities through informal contacts, formal bilateral meetings or through discussions in the WTO Subsidies Committee may produce more expeditious and practical solutions to the problem than resorting to WTO dispute settlement or the filing of a CVD petition. These contacts may also lead to additional information about the practice which, in turn, can affect the decision concerning the appropriate measures to take. However, if these efforts fail to resolve the issue, bringing a formal dispute settlement action in the WTO always remains a viable option.

2. Outreach Efforts

USTR and IA staff work with government personnel who have daily contact with the U.S. exporting community, both in the United States and abroad, to make them aware of the resources and services available regarding subsidy enforcement efforts. Senior Import Administration officers also have been stationed in Beijing, China and Seoul, Korea, as mandated by Congress. Working closely with their colleagues in U.S. Embassies and with IA personnel in Washington, these officers have proved invaluable in undertaking primary source research of potential unfair trade problems in their host countries. Overseas personnel have also been an important part of the outreach of the U.S. government, as they have participated in numerous trade-related seminars in their host countries, which normally cover a country’s subsidy-related obligations under the WTO. Additionally, a senior Import Administration officer stationed in Geneva, Switzerland has been a key member of teams on Rules negotiation issues and dispute settlement activities.

or significant price undercutting, price suppression or price depression in so-called “serious prejudice” disputes brought to the WTO.

IA staff also maintain close contacts with other units within Commerce's International Trade Administration (ITA) through the Compliance Coordinators Group (CCG). The CCG is comprised of all of ITA's units (Market Access and Compliance, Manufacturing and Services, Import Administration, and the United States Commercial Service (USCS)), as well as the Patent and Trademark Office. The CCG serves as the central coordinating point for ITA's market access and agreement compliance activities. The group meets regularly to share information on issues that may be common across regions or industrial sectors, and works to resolve these issues by drawing upon the full range of expertise available within ITA. The USCS, which is charged with counseling U.S. companies through its network of domestic and foreign posts, draws upon SEO resources to inform other USCS officers and the U.S. business community of the work done, and services offered by, the SEO. IA staff also benefit from information provided by USCS officers about the types of subsidy problems U.S. companies are facing in their host countries.

USTR and IA staff also work closely with the other U.S. Government Agencies, including the Department of State and the U.S. Department of Agriculture, to involve foreign service economic and agriculture officers in subsidies enforcement activities.⁹ To this end, USTR and IA personnel train foreign service officers on how to identify and evaluate foreign subsidy practices that may be inconsistent with the Subsidies Agreement and that may involve unfair trade actions against U.S. companies. Cooperation of this type occurs not only when initiated by IA or USTR, but on an ongoing basis whereby foreign service officers develop and share information with Commerce, USTR and the interagency team concerning foreign government subsidy practices and the administration of foreign governments' unfair trade laws.¹⁰ This type of collaboration between government agencies is critically important to help effectively exercise U.S. rights under the Subsidies Agreement.

IA also arranges and participates in training sessions for foreign government officials. A major focus of these programs is a detailed discussion of the Subsidies Agreement. In 2004, IA staff worked with officials from several countries, stressing procedural issues, calculation methodologies, and the importance of transparency. The training activities form part of a comprehensive program to strengthen ties between foreign officials and their U.S. counterparts, and to help ensure that the administration of trade remedy laws by our trading partners is consistent with their international obligations.

3. Monitoring Subsidy Practices Worldwide

⁹ Section 281(g) of the URAA requires that Commerce secure the cooperation of other federal agencies in these activities.

¹⁰ As described above, an important factor in a U.S. company's ability to do business in any given market is the manner in which the foreign government administers its unfair trade laws and, in particular, its CVD and AD laws. IA monitors these foreign AD and CVD actions involving U.S. companies to ensure that the foreign governments are conducting these investigations in accordance with their international obligations.

In 2004, USTR and IA staff expanded their efforts to monitor market and trade distorting practices by governments worldwide, including the provision by governments of harmful subsidies. These monitoring activities are ongoing and, as outlined above, are conducted in response to concerns raised directly by U.S. industries and individual companies. The research, which is conducted by experienced analysts in IA, involves daily searches of worldwide business journals, periodicals, news publications, as well as online resources maintained by governments, industries and international organizations. Analysts fluent in a variety of foreign languages also conduct research in their language of expertise. Information is obtained from U.S. Embassies overseas through cable reports and through direct inquiries by our analysts for in-depth country-related research. IA research activities are also aided by ongoing relationships with U.S. industry contacts, both in the United States and overseas.

The online 'Electronic Subsidies Enforcement Library' (ESEL) website is a key tool used by IA to organize subsidy-related material and convey it to the public. The website, available at <http://ia.ita.doc.gov/esel/>, is used by USTR, IA, and other Commerce staff to review foreign governments' subsidies notifications made to the WTO, present an overview of the SEO, provide a link to the Subsidies Agreement, and furnish an easily navigable tool which provides information about each subsidy program investigated by Commerce in CVD cases since 1980. (See Attachment 3.) Another useful aspect of the ESEL is the links it provides to other U.S. and foreign government websites such as USTR, the U.S. Export-Import Bank, the International Monetary Fund, the WTO (which maintains databases of Members' CVD actions, and their subsidy notifications to the WTO), the Canadian and Mexican government trade agencies and the NAFTA secretariat. The website is updated frequently to provide the most recently available information to the public in a timely manner.

B. CHINA

1. Transitional Review Mechanism and Subsidy and Pricing Commitments

Paragraph 18 of the Protocol of Accession of the People's Republic of China to the WTO provides that all subsidiary bodies, including the Subsidies Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession . . . review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol." Paragraph 18 states further that such reviews shall be conducted on an annual basis for eight years, with a final review occurring by the tenth year after accession. In November 2004, the United States took part in the third annual transitional review with respect to China's implementation of its WTO obligations in the areas of subsidies, countervailing measures and pricing policies. Taking a leading role, the United States, along with other Members, presented written and oral questions and concerns to China in these areas. China provided substantial information with respect to its countervailing duty laws and regulations, as well as some information regarding its pricing policies. However, China only superficially responded to questions posed about

its subsidy practices. Reciting detailed, publicly-available information for several of China's subsidy programs, the United States effectively questioned the comprehensiveness of China's answers.

The lack of a subsidy notification by China has been of particular concern to the United States, as well as numerous other WTO Members. Although China became a WTO Member in 2001, it has yet to provide a subsidy notification as required under Article 25.1 of the Agreement and China's Protocol of Accession. The obligation to notify subsidies is a key element of the Subsidies Agreement, because it provides WTO Members with the ability to evaluate a Member's compliance with the disciplines contained in the Agreement. Full compliance with the Article 25.1 reporting requirement is critical in the case of China because of the general lack of detailed, specific, publicly available data on PRC government subsidy policies and practices, particularly at the sub-central level. For this reason, the United States has repeatedly urged China to submit a full subsidy notification.

At the November 2004 Subsidies Committee meeting, China cited numerous practical difficulties in assembling and submitting the appropriate information. While recognizing the problems inherent in compiling a comprehensive subsidy notification for a large country, the United States remained emphatic concerning China's subsidy notification obligation under the Subsidies Agreement. The intervention by the United States prompted similar responses from other Members to press China for a full and complete notification. Although China made no commitment at the November meeting that it would comply with its subsidy notification obligation, at the Council for Trade in Goods meeting in late 2004, China did commit to provide a subsidies notification within the year.

In addition, to obtain specific information regarding known assistance programs that potentially should be notified, the United States exercised its rights under Article 25.8 of the Agreement and submitted detailed written questions to China requesting information on the nature and extent of the programs in question. Article 25.8 of the Subsidies Agreement permits any WTO Member to request information on the nature and extent of any subsidy granted or maintained by another Member. The U.S. request identified programs and practices providing benefits to agricultural products, forest and paper products, textiles and various high technology products, among others, as well as programs and practices that appeared to constitute prohibited export and import substitution subsidies within the meaning of Article 3 of the Subsidies Agreement. Under Article 25.9 of the Agreement, China is obligated to provide a written, comprehensive response to the U.S. questions. Finally, U.S. subsidies experts will continue to examine China's subsidy practices in 2005, including through the expansion of information gathering techniques.¹¹

¹¹ See, also, 2004 Report to Congress on China's WTO Compliance, United States Trade Representative, December 11, 2004, pp. 38-39.

2. JCCT - Structural Working Group

Established in 1983, the U.S.-China Joint Commission on Commerce and Trade (JCCT) is a government-to-government consultative mechanism that provides a forum to resolve trade concerns and promote bilateral commercial opportunities. Previously led by the U.S. Secretary of Commerce and the Chinese Commerce Minister, the status of the JCCT was elevated following the December 2003 meeting of President Bush and Chinese Premier Wen to focus higher-level attention on outstanding trade disputes. The April 2004 JCCT meeting, chaired by Commerce Secretary Don Evans, U.S. Trade Representative Robert Zoellick and Chinese Vice Premier Wu Yi, achieved concrete results on key U.S. systemic concerns and laid the foundation for further progress.

In the case of China, the surest means to ensure that the playing field is level is to encourage China's ongoing structural reforms, which are intended to create a market economy. China, on the other hand, contends that it already is a market economy and, in particular, objects to its treatment as a non-market economy under U.S. law – an issue of substantial concern and importance to the Chinese government. In order to assess China's reforms to date, as well as to identify the steps China would have to take under U.S. law to achieve market economy status, China and the United States agreed during the April JCCT meetings to the establishment of a new working group, the Structural Issues Working Group (SIWG), to be jointly chaired by the Assistant Secretary for Import Administration from the Department of Commerce, the Assistant USTR for China and the Director General of the Bureau of Fair Trade from MOFCOM.

The Administration attaches great importance to the SIWG, which provides a forum for the U.S. and Chinese governments to explore and discuss China's economy and its ongoing economic reform program, pragmatically address concerns about trade- and market-distorting practices that might otherwise lead to bilateral trade frictions, and consider the Government of China's concerns about China's non-market economy status under U.S. law.¹² The first meeting of the SIWG took place in Beijing in July 2004, wherein a U.S. delegation led by the Department of Commerce and including officials from USTR, CEA, Treasury, State, and Labor, met with a Chinese government delegation led by China's Ministry of Commerce. The meeting was successful in that the United States agreed generally with the Chinese on how to proceed with this dialogue, although outstanding differences on the content of the talks remain. At the initial meeting of the SIWG, both sides agreed that the group would normally meet twice per year, and that the United States would host the next meeting in early 2005. Discussions with China are underway to set a time and develop the agenda for the meeting.

¹² Some concern has been raised that the SIWG is to be used as a platform to grant China market economy status under the antidumping law. This is not the case. Under U.S. law, any review of China's non-market economy status must follow a quasi-judicial process to examine information relevant to the six factors specified in the U.S. antidumping statute. The Chinese have yet to formally request such a review.

C. WTO DISPUTE SETTLEMENT CASES OF SIGNIFICANCE TO SUBSIDIES DISCIPLINES

1. European Union Support for Airbus

For many years, the United States has had serious concerns about the continued EU subsidization of Airbus, a company with more than a 50 percent share of the world market for large civil aircraft ("LCA"). In 2004, the United States sought to address its concerns through the negotiation of a new agreement with the EU that would end new subsidies for LCA. The EU was unwilling to commit to such a negotiation, however. The EU's refusal to negotiate, coupled with indications that Airbus was planning to launch a new aircraft (the "A350") with the benefit of \$1 billion in new EU subsidies, led the United States to initiate WTO dispute settlement proceedings challenging past and present EU subsidies to Airbus. The EU responded by filing its own case challenging alleged U.S. subsidies to the Boeing Company. The United States and the EU met for WTO consultations in November 2004, but failed to resolve their dispute.

On January 11, 2005, U.S. and EU officials reached agreement on a framework for the negotiation of a new agreement to end subsidies for LCA. The parties established a three month time frame for the negotiations. They also agreed that, during the negotiations, neither side would commit to provide any new government subsidies for LCA (such as the proposed Airbus A350), and each side would refrain from requesting the establishment of WTO dispute settlement panels to review the other side's alleged subsidies.

The United States is committed to eliminating further subsidies to Airbus, either through the negotiation of a new agreement, or through WTO dispute settlement. Therefore, if the ongoing negotiations are unsuccessful, the United States is prepared to return to the WTO.

2. United States Support for Upland Cotton

On September 27, 2002, Brazil requested WTO consultations pursuant to Articles 4.1, 7.1 and 30 of the Agreement on Subsidies and Countervailing Measures, Article 19 of the Agreement on Agriculture, Article XXII of the General Agreement on Tariffs and Trade 1994, and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Brazilian consultation request on U.S. support measures that benefit upland cotton claims that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the Subsidies Agreement, the Agreement on Agriculture, and the General Agreement on Tariffs and Trade 1994. Consultations were held on December 3, 4 and 19 of 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertains to "prohibited and actionable subsidies provided to US producers, users and/or exporters of upland cotton, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit

guarantees), grants, and any other assistance to the US producers, users and exporters of upland cotton". Brazil's principal claims were that:

- (1) U.S. domestic support for cotton causes "serious prejudice" to Brazilian interests by depressing or suppressing world cotton prices and unfairly expanding or maintaining U.S. world market share,
- (2) U.S. export credit guarantees for all commodities confer export subsidies,
- (3) Step 2 payments for cotton are both prohibited export subsidies and prohibited import substitution subsidies; and
- (4) FSC/ETI tax benefits are prohibited export subsidies.

The Dispute Settlement Body established the panel on March 18, 2003.

Following briefing by both parties, on June 20, 2003, the panel decided to bifurcate the proceeding and first consider whether the Peace Clause (Article 13 of the Agreement on Agriculture) exempted the challenged U.S. measures from Brazil's action. After additional briefing on September 5, the panel declined to make findings on the Peace Clause issue.

On September 8, 2004, the panel circulated its final report. The panel made findings that side with Brazil on certain of its claims in this dispute and other findings that side with the United States:

- The panel found that the "Peace Clause" in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees for "unscheduled commodities"¹³ and rice (a "scheduled commodity"¹⁴). Therefore, Brazil could proceed with certain of its challenges.
- The panel found that export credit guarantees for "unscheduled commodities" (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other "scheduled commodities" exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO

¹³ "Unscheduled commodities" are agricultural products for which the United States is not permitted to provide export subsidies because they are not set out in the export subsidy part of the U.S. WTO schedule.

¹⁴ "Scheduled commodities" are agricultural products set out in the U.S. WTO schedule, and the United States is permitted to provide export subsidies up to the scheduled level. Besides rice, U.S. "scheduled commodities" are wheat, skim milk powder, coarse grains, butter, bovine meat, other milk products, poultry meat, vegetable oils, live dairy cattle, cheese, eggs, and pigmeat.

reduction commitments for other “scheduled commodities” and for “unscheduled commodities” not currently receiving guarantees.

- Some U.S. domestic support programs (marketing loan, counter-cyclical, market loss assistance, and Step 2 payments) were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil’s interests.
- However, the panel found that other U.S. domestic support programs (production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil’s interests because Brazil failed to show that these programs caused significant price suppression.
- The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.
- The panel did not reach Brazil’s claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil’s interests in marketing years 2003-2007. The panel also did not reach Brazil’s claim that U.S. domestic support programs *per se* cause serious prejudice in those years.
- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.
- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal with the WTO Appellate Body concerning several issues of law covered in the panel report and legal interpretations developed by the panel. On October 28, the United States filed its appellant submission. On November 2, Brazil filed its other appellant submission, and on November 16, the United States and Brazil simultaneously filed their appellee submissions. The Appellate Body will circulate its report by March 3, 2005.

3. Canada’s Challenge of the CVD Investigation of Canadian Lumber

On May 3, 2002, Canada requested consultations with the United States regarding the U.S. Department of Commerce’s final countervailing duty determination concerning certain softwood lumber from Canada. Among other things, Canada challenged the evidence upon which the investigation was initiated, claimed that the Commerce Department imposed countervailing duties against programs and policies that are not subsidies and are not “specific” within the meaning of the Subsidies Agreement, and that the Commerce Department failed to conduct its investigation properly. Consultations were held on June 18, 2002, and a panel was established at Canada’s request on October 1, 2002.

In its report, circulated on August 29, 2003, the panel found that the United States acted consistently with the Subsidies Agreement and GATT 1994 in determining that the programs at issue provided a financial contribution and that those programs were “specific” within the meaning of the Subsidies Agreement. It also found, however, that the United States had acted inconsistently with the Subsidies Agreement when it rejected private timber prices in Canada as the benchmark to determine whether – and to what extent – Canada was subsidizing lumber companies by providing low-cost timber. (The Commerce Department had used U.S. prices as the basis for the benchmark, rejecting Canadian private prices because they were distorted by the government’s dominance in the timber market.) The panel also found that the United States had improperly failed to conduct a “pass-through” analysis to determine whether subsidies granted to one producer were passed through to other producers. The United States appealed these issues to the WTO Appellate Body on October 21, 2003, and Canada appealed the “financial contribution” issue on November 5.

On January 19, 2004, the WTO Appellate Body issued a report in which it reversed the panel’s unfavorable finding with respect to the rejection of Canadian prices as a benchmark; upheld the panel’s favorable finding that the provincial governments’ provision of low-cost timber to lumber producers constituted a “financial contribution” under the Subsidies Agreement; and reversed the panel’s unfavorable finding that the Commerce Department should have conducted a “pass-through” analysis to determine whether subsidies granted to one lumber company were passed through to other lumber companies through the sale of subsidized lumber. The Appellate Body’s only finding against the United States was that the Commerce Department should have conducted such a pass-through analysis with respect to the sale of *logs* from harvester/sawmills to unrelated sawmills.

On March 5, 2004, the United States notified the DSB of its intention to implement the findings of the Appellate Body. The Government of Canada and the United States agreed that 10 months was a reasonable period of time for implementation. On November 9, 2004, pursuant to section 129 of the Uruguay Round Agreements Act, the USTR requested that the Department issue by December 17, 2004, a revised determination not inconsistent with the findings of the Appellate Body. On December 6, 2004, Commerce issued its section 129 determination reflecting its analysis of Canada’s claims for an adjustment to the subsidy rate to account for “arm’s-length” sales of logs (from provincial government land) in which some or all of the stumpage subsidy benefit did not “pass through” to the purchasing sawmills. On December 10, 2004, the USTR after consultations with the Department and congressional committees directed the Department to implement the revised determination. The notice of implementation was published in the Federal Register on December 16, 2004. Canada is pursuing a challenge to the implementation decision in the WTO, pursuant to Article 21.5 of the DSU. Canada is also seeking authority to suspend WTO concessions pursuant to Article 22.2 of the DSU.

4. Korea’s Challenge to the CVD Investigation of DRAMs from Korea

Following final affirmative determinations by both Commerce and the ITC, on August 11, 2003, Commerce published a CVD order on dynamic random access

memory semiconductors (“DRAMS”) from Korea. The order imposed cash deposits of 44.29 percent on imports of DRAMS produced by Hynix. This deposit rate was based largely on Commerce’s finding that the Korean Government had provided, or had entrusted or directed private bodies to provide, massive subsidies to Hynix in order to save it from going out of business. Commerce excluded the other major Korean producer, Samsung, from the order, because Commerce found that the subsidies Samsung received were *de minimis*.

On June 30, 2003, Korea instituted dispute settlement proceedings in the WTO. On January 23, 2004, a panel was established to review Commerce’s subsidy determination. On December 21, 2004, the Panel submitted its final report to the parties; however, that report is confidential until it is released to all Members.

D. WTO SUBSIDIES COMMITTEE

The Subsidies Committee’s active agenda in 2004 included its routine activities concerned with reviewing and clarifying the consistency of WTO Members’ domestic laws, regulations and actions with Agreement requirements. The Committee, and the United States, continued to accord special attention to the general matter of subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. During the fall meeting, the Committee undertook its third annual transitional review with respect to China’s implementation of the Agreement (see discussion in the section above regarding China’s Transitional Review Mechanism). Other issues addressed in the course of the year included: the examination of the export subsidy program extension requests of certain developing countries, the calculation update of the per capita GNP threshold in Annex VII of the Agreement, and the election of one person to the Permanent Group of Experts.

1. Subsidy Notifications

Subsidy notification and surveillance is one means by which the Subsidies Committee and its Members seek to ensure adherence to the disciplines of the Subsidies Agreement. In some instances, notification is mandatory, while in others it is an optional feature that can be used to secure a benefit provided by the Agreement – such as to make use of transition periods during which time a Member would come into conformity with Agreement norms. In keeping with the objectives and directives expressed in the URAA, and as demonstrated by the extensive use of the SEO’s Electronic Subsidies Enforcement Library, WTO subsidy notifications also play an important role in the United States’ monitoring and enforcement activities to protect U.S. rights and benefits under the Subsidies Agreement.

Under Article 25.2 of the Subsidies Agreement, Members are required to report certain information on all measures, practices and activities that, as set forth in Articles 1 and 2 of the Agreement, meet the definition of a subsidy and are specific within the territory of a Member. Last year, 54 subsidy notifications for 2003 were reviewed. The Committee also continued its examination of new and full notifications and updating notifications for earlier time periods. Unfortunately, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed

countries.¹⁵ (For further information regarding the lack of a subsidy notification by China, see discussion in the section above regarding China's Transitional Review Mechanism).

2. Review of CVD Legislation, Regulations and Measures

Throughout the year, WTO Members continued to submit notifications of new or amended CVD legislation and regulations and of CVD investigations initiated and decisions taken. These notifications were reviewed and discussed by the Committee at both of its regular meetings. In reviewing notified CVD legislation and regulations, the Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the Agreement. The United States continued to play an important role in the Committee's examination of the operation of other Members' CVD laws and their consistency with the obligations of the Agreement.

To date, 97 Members of the WTO (counting the European Union as one) have notified that they currently have CVD legislation in place, while 37 Members have not, as yet, made a notification. Among the notifications of CVD laws and regulations reviewed in 2004 were those of: Argentina, Canada, China, the European Communities, Japan, Jordan, Mexico, Peru and South Africa.¹⁶

As for CVD measures, eleven WTO Members notified CVD actions taken during the latter half of 2003, and eight Members notified actions taken in the first half of 2004. Specifically, the Committee reviewed actions taken by Argentina, Australia, Brazil, Canada, Costa Rica, the European Union, Latvia, Mexico, New Zealand, the United States and Venezuela.

3. Article 27.4 Update

Under the Agreement, most developing countries were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Committee by the end of 2001. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.¹⁷ If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

¹⁵ For further information, see the Annual Report of the WTO Committee on Subsidies and Countervailing Measures (G/L/711; November 9, 2004).

¹⁶ In keeping with WTO practice, the review of legislative provisions which pertain or apply to both antidumping and CVD actions by a Member generally took place in the Antidumping Committee.

¹⁷ Any extension granted by the Committee would only preclude a WTO dispute settlement case from being brought against the export subsidies at issue. A Member's ability to bring a countervailing duty action under its national laws would not be affected.

To try and address the concerns of certain small developing countries, a special procedure within the context of Article 27.4 of the Agreement was adopted at the Fourth WTO Ministerial Conference. Under this procedure, countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than \$20 billion could be granted a limited extension for particular types of export subsidy programs subject to rigorous transparency and standstill provisions. Members meeting all the qualifications for the agreed upon special procedures were eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.¹⁸

At the end of 2001, Antigua and Barbuda, Barbados, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Honduras, Jamaica, Jordan, Kenya, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Sri Lanka, and Suriname made requests under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.¹⁹ Uruguay requested an extension for one program under both the normal and special procedures. Additionally, Colombia sought an extension for two of its export subsidy programs under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries. These requests were approved by the Committee in 2002 and again in 2003.

In 2004, requests were made by all the countries which had received extensions under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.²⁰ All these requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the Committee conducted a detailed review of more than 40 export subsidy programs. At the end of the process, all of the requests under the special procedures were granted. (A chart showing how each of the requests was addressed, as well as the current status of other programs which were not granted extensions, is found in Attachment 4.) Throughout the review and approval process, the United States

¹⁸ In addition to agreement on the specific length of the extension, it was also agreed at the Fourth Ministerial Conference, in essence, that the Committee should look favorably upon the extension requests of Members which do not meet all the specific eligibility criteria for the special small exporter procedures but which are similarly situated to those that do meet all the criteria. This provision was added at the request of Colombia.

¹⁹ Bolivia, Honduras, Kenya and Sri Lanka are all listed in Annex VII of the Subsidies Agreement and thus, may continue to provide export subsidies until their "graduation". Therefore, these countries have only reserved their rights under the special procedures in the event they graduate during the five-year extension period contemplated by the special procedures. Because these countries are only reserving their rights at this time, the Committee did need to make any decisions as to whether their particular programs qualify under the special procedures.

²⁰ Colombia did not request an extension for two of its export subsidies programs for which extensions were granted under the procedure agreed to at the Fourth Ministerial Conference. Consequently, the two export subsidy programs of Colombia which had been granted extensions under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries, must be phased out within two years (*i.e.*, the end of 2006).

actively participated in ensuring close adherence to all of the preconditions necessary for continuation of the extensions, and the faithful implementation of the decisions taken at the Fourth Ministerial Conference.

4. Update of Annex VII Calculations

Annex VII of the Agreement identifies certain lesser developed countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited and, therefore, are not actionable as prohibited subsidies under the dispute settlement process. The countries 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 had, at the time of the negotiation of the Agreement, a per capita GNP under \$1,000 per annum and are specifically listed in Annex VII(b).²¹ A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. When a Member crosses this threshold it becomes subject to the subsidy disciplines of other developing country Members.

Since the adoption of the Agreement in 1995, the *de facto* interpretation by the Committee of the \$1,000 threshold was that it reflected current (*i.e.*, nominal or inflated) dollars. The concern with this interpretation, however, was that a Member could graduate from Annex VII on the basis of inflation alone, rather than on the basis of real economic growth.

In 2001, the Chairman of the Committee, in conjunction with the WTO Secretariat, developed an alternative approach to calculate the \$1,000 threshold in constant 1990 dollars. At the Fourth Ministerial Conference, decisions were made which led to the adoption of this methodology. The WTO Secretariat updated these calculations in 2004.²²

5. Permanent Group of Experts

Article 24 of the Agreement directs the 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 Agreement articulates three possible roles for the PGE: (i) 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 Agreement; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a WTO Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that

²¹ 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, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of the 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.

²² See G/SCM/110/Add. 1.

Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties. Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

As of the beginning of 2004, the members of the Permanent Group of Experts were: Professor Okan Aktan (Turkey); Dr. Marco Bronckers (Netherlands); Mr. Yuji Iwasawa (Japan); Mr. Hyung-Jin Kim (Korea); and Mr. Terence P. Stewart (United States). Dr. Bronckers' term expired in the spring of 2004. Mr. Asger Petersen (Denmark) was elected to replace Dr. Bronckers, assuming the term until the spring of 2009.

6. Areas of Focus in 2005

In 2005, the United States will continue to work with others to encourage Members' to meet their subsidy notification obligations, and to provide technical assistance with their notifications when available and where appropriate. (The United States is scheduled to provide its new and full subsidy notification in 2005.) Second, the United States will focus particularly on China's Transitional Review Mechanism, continuing the effort to ensure that China meets its obligations under its Protocol of Accession and the Agreement. Thirdly, the United States will continue to ensure the close adherence to the provisions of the agreed upon export subsidy extension procedures for small exporter developing countries. Finally, the United States is prepared to contribute significantly in addressing any technical questions or developing country issues that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

E. SECTOR-SPECIFIC ACTIVITIES

As described above, during 2004, USTR and Commerce continued to advocate on behalf of U.S. industries and companies that complained about unfair foreign government subsidy practices. Our activities included ongoing work on behalf of the U.S. textile, steel, aerospace and paper industries, among others.

1. India Export Competitiveness in Textiles and Apparel

Throughout 2004, IA and USTR staff worked closely on issues of importance to the U.S. textile industry. One aspect of this work has been to continue efforts to fully utilize the Subsidies Agreement to discipline potentially harmful subsidy practices. As noted earlier, the Subsidies Agreement provides for special and differential treatment of developing countries specifically listed in Annex VII of the Agreement, which allows these countries to maintain export subsidies until their GNP per capita reaches a specified amount. However, under Article 27.6 of the Agreement, once a product of an Annex VII country, such as India, achieves export competitiveness, any export subsidies given on that product must be phased out over an eight-year period. Article 27.6 defines export competitiveness as the point when an exported product reaches a share of 3.25 percent of world trade for two consecutive calendar years.

In January 2003, the United States submitted a request to the WTO Secretariat regarding India's textile manufacturing exports. The WTO Secretariat reported its findings, which, although not conclusive, provide strong evidence that India may be export competitive in several textile and apparel categories.²³

IA staff have identified several export subsidy programs which it believes are benefitting India's textile and apparel manufacturers. The WTO Secretariat, in its most recent Trade Policy Review of India,²⁴ identified Government of India assistance programs available to textile exporters. Several of these programs have been investigated by Commerce in CVD investigations involving non-textile-related Indian exports, and have been found to constitute export subsidies. IA staff are continuing to monitor India's use of these programs and explore possible WTO strategies to address the issue.

2. Subsidies Provided to Fertilizer Industry in India

USTR and IA continued to monitor developments throughout 2004 related to India's diammonium phosphate (DAP) policies. DAP, a fertilizer product, is subsidized through a program benefitting Indian producers of DAP that the U.S. industry believes adversely affects its ability to export to the Indian market. In 1992, India introduced a Maximum Retail Price ("MRP") and an ad-hoc concession subsidy scheme for DAP. The MRP is designed to promote DAP consumption by farmers by establishing a price ceiling for end users. To ensure that DAP producers and importers have an incentive to continue selling DAP at the MRP, the Indian government makes direct subsidy payments to producers and importers at regulated levels. The subsidy levels are adjusted periodically. Over the past few years, the Indian subsidy program has provided a higher level of subsidy payment to domestic producers than to importers of DAP. Numerous Commerce and USTR officials have raised concerns related to this program with their Indian counterparts since late 2001.

More generally, the U.S. industry has also raised concerns related to India's failure to publish timely information about the subsidy amounts, which are subject to change on a quarterly basis. The U.S. industry's ability to export effectively is further undermined by the non-transparent and retrospective nature of the program's administration.

In July 2004, the Government of India announced that it would equalize the subsidy amount paid to importers and domestic producers of DAP. If implemented permanently, this new policy would address one of the concerns of the U.S. industry. USTR and IA will continue to work with the U.S. industry to monitor closely the DAP subsidy program and seek to address any continuing concerns.

²³ See, "Request to the Secretariat from the United States, Note by the Secretariat, Addendum", SCM/103/Add.,1, March 12, 2003.

²⁴ See, "Trade Policy Review - India, Report by the Secretariat", WT/TPR/S/100, May 22, 2002, pg. 112.

3. Government Support to Paper Production in Korea

USTR and IA continued their aggressive efforts this year to address the concerns raised by the U.S. paper industry regarding subsidies allegedly provided by the Government of Korea in support of its paper industry, specifically producers of coated free sheet printing paper (CFS). U.S. industry alleges that subsidies in the form of low-cost facility investment loans and loan guarantees, tax benefits for facility expansion, government sale of debt obligations and the Korean government practice of bailing out bankrupt and inefficient paper producers have caused harm to the U.S. industry.

During the February 2004 quarterly bilateral trade discussions in Seoul, at which U.S. officials insisted on holding a special experts meeting on this matter, the Korean Government committed to providing the U.S. Government with a substantive proposal of how to resolve this issue. Despite continued U.S. pressure, the Korean Government had not delivered a proposal by the subsequent quarterly bilateral talks, held in Washington in June 2004. Subsequent to the June meetings, the Korean Government proposed as a solution that it provide a letter confirming that it does not currently subsidize its paper industry now and pledging that it will not do so in the future. Both U.S. industry and Government officials agree that while Korea's proposed pledge held a certain amount of symbolic value, it did not provide a substantive solution to the problems raised by U.S. industry. Accordingly, the U.S. Government delegation rejected the Korean proposal during the November 2004 quarterly bilateral trade talks in Seoul, again pressuring the Korean Government for a substantive proposal.

Meanwhile, USTR and IA worked closely with U.S. industry in 2004 to further refine and evaluate information on the alleged subsidies to the Korean CFS industry and their impact on U.S. producers. In 2005, USTR and IA will continue to cooperate closely with industry in determining the next steps towards a resolution of this problem.

4. Government Support to the Aerospace Industry in Canada under Trade Partnership Canada

During 2004, Commerce continued to examine subsidies provided by Technology Partnerships Canada (TPC), a Canadian Government program that supports the research and development activities of selected industries. According to U.S. aerospace manufacturers, TPC funding provides their Canadian competitors with an unfair competitive advantage.

Established in 1996, TPC provides funding for pre-competitive research and development activities for companies incorporated in Canada that operate in three strategic areas, including aerospace and defense. Funding covers approximately 25 to 30 percent of a project's total costs, but may be significantly higher. Applicants must demonstrate that they have the capabilities to perform the R&D and that the project proposal has economic and commercial merit. To date, the program has made well over \$2.7 billion (Canadian dollars) in funding commitments for over 600 projects, of which about 70 percent has been disbursed. Recent Canadian press coverage suggests that repayment rates are very low. Publicly available information also indicates that the aerospace and defense industries receive the largest amount of funds under the TPC.

The principal concerns raised by U.S. companies with regard to this program relate to the terms under which the funding is provided. TPC support is in the form of royalty-based financing, the terms of which are negotiated individually for each project. Upon completion of a project, the TPC recipient is required to start repaying the funds under these negotiated terms. Royalties are collected over a period of five to 15 years, depending on the project. The specific amount of repayment to be made is fixed as a percentage of the TPC recipient's revenues and that percentage varies depending on the size of the company and the level of its revenues. U.S. aerospace manufacturers are particularly concerned that this type of royalty-based financing is not commercially available and, therefore, provides their Canadian competitors with an unfair competitive advantage. Royalty-based financing is a subsidy issue that the United States has examined in the context of government support for the European civil aircraft manufacturer, Airbus, and has raised in the ongoing WTO rules negotiations.

During 2004, the Canadian government notified its TPC program to the WTO Subsidies Committee as part of its annual subsidies notification under Article 25 of the Subsidies Agreement. The United States submitted detailed clarifying questions to Canada regarding the TPC program, in particular with respect to the financing terms. USTR and IA will also continue to work with U.S. industry, and explore how best to address its concerns.

F. U.S. MONITORING OF SUBSIDY-RELATED COMMITMENTS

1. Accessions, Trade Policy Reviews

Any country or customs territory, which has full autonomy in the conduct of its trade policy, may become a member of the WTO. Candidates must provide detailed information concerning their economic and trade policies that have a bearing on WTO agreements. This information is reviewed by a working party of existing WTO Members established to facilitate the accession and ensure that the candidate has adequately fulfilled the requirements of WTO membership. Parallel negotiations are held between existing Members and the accession candidate to address bilateral trading interests. All interested WTO Members must be in agreement that their individual concerns have been met and that outstanding issues have been resolved in the course of their bilateral and multilateral negotiations before a new Member may accede.

The economic and trade information reviewed by the Working Party includes the acceding candidate's subsidies regime. USTR and Commerce, along with an interagency team, review the compatibility of acceding countries' subsidy regimes with WTO subsidy rules. Specifically, information on the nature and extent of the candidate's subsidies is examined, with particular emphasis on subsidies that are prohibited under the Subsidies Agreement.²⁵ Additionally, an accession candidate's trade remedy laws are examined to determine their compatibility with the relevant WTO obligations.

²⁵ Article 3 of the Subsidies Agreement prohibits WTO members from providing subsidies that are contingent upon exportation or the use of domestic over imported goods.

Subsidy-related information is summarized in a memorandum an applicant country submits detailing its foreign trade regime, which is supplemented and corroborated by independent research throughout the accession negotiation. The United States seeks commitments from accession candidates that they eliminate all prohibited subsidies upon joining the WTO, and that they will not introduce any such subsidies in the future. Additional commitments may be sought regarding any subsidies that are of particular concern to U.S. industries.

Work on accessions in 2004 culminated in Nepal and Cambodia becoming the 147th and 148th Members of the WTO. In addition, the General Council established working parties to examine the membership applications of Libya, Afghanistan and Iraq. With the addition of these three countries, the number of applicants with established Working Parties in the WTO rose to 28.²⁶

Subsidies continued to be a significant topic of concern for the United States during 2004 in the accession negotiations with the Russian Federation, among others. The United States and other Working Party Members continue to seek a full notification by the Russian Government of all subsidies at the federal and sub-federal levels. The United States is also seeking commitments from Russia with regard to a number of subsidies, including some potentially prohibited subsidies such as those provided through production sharing agreements, as well as incentives to the automotive and aircraft industries.

Russia's current natural gas pricing policies remain the most contentious subsidies issue in these negotiations. The United States and the EU have both raised concerns in this area. In particular, the potentially distortive effect that low-priced gas has on Russian industrial production and internationally-traded energy-intensive products has been a key issue because of the possible resulting adverse impact on U.S. industries. This issue was addressed in the bilateral agreement negotiated between the EU and Russia. The United States will continue to pursue its concerns in the ongoing negotiations.

²⁶ Accession applicants with Working Parties established are Afghanistan, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cape Verde, Ethiopia, Iraq, Kazakhstan, Laos, Lebanon, Libya, Russia, Samoa, Saudi Arabia, Serbia and Montenegro, Seychelles, Sudan, Tajikistan, Tonga, Ukraine, Uzbekistan, Vanuatu, Vietnam and Yemen .

2. WTO Trade Policy Reviews

The WTO's Trade Policy Review Mechanism provides USTR and Commerce with another opportunity to review the subsidy practices of WTO Members. These reviews were agreed to as part of the Uruguay Round Agreement with the aim of (1) increasing transparency and promoting the understanding of other countries' trade policies and practices; (2) improving the quality of public and intergovernmental debate on important issues; and (3) enabling a multilateral assessment of the effects of trade policy on the world trading system. These "peer reviews" encourage WTO Members to follow WTO rules and disciplines more closely and to fulfill their multilateral commitments.

Trade Policy Reviews (TPRs) focus on the trade policies and practices of a particular country while also taking into account overall economic and developmental needs, policies and objectives, as well as the external economic environment that a country faces. The four largest traders in the WTO (the European Union, the United States, Japan and China) are examined once every two years. The next 16 largest countries, based on their share of world trade, are reviewed every four years. The remaining countries are reviewed every six years, with the possibility of a longer interim period for the least-developed countries. For each review, two documents are prepared: a policy statement by the government under review, and a detailed report written independently by the WTO Secretariat.

These reviews play an important role in ensuring that WTO Members meet transparency requirements concerning their subsidy practices. TPRs also provide a broader context than Subsidies Committee notification reviews in which to assess a Member's subsidy policies and their role in that Member's economy. In reviewing these trade policy reports, USTR and Commerce focus on the information concerning the subsidy practices detailed in the report, but also conduct additional research on potential omissions regarding known subsidy practices that have not been reported. In 2004, USTR and Commerce reviewed 14 Members' trade policy reports, including those of the European Communities, Korea and Brazil.²⁷ The Secretariate also reviewed the trade policy regime of the United States during 2004.

CONCLUSION

In the coming year, USTR and Commerce will continue the vigorous enforcement of U.S. rights under the WTO Subsidies Agreement and take advantage of the opportunity provided by Doha Development Agenda rules negotiations to take strong, proactive steps to address the injurious impact of distortive subsidies – in both the United States and foreign markets – on American firms and their workers. To accomplish this, the Administration, working together with Congress, will assertively push its affirmative agenda consistent with its negotiating objectives in order to achieve

²⁷ Fifteen Members were reviewed in 2004: the United States, Gambia, Sri Lanka, Singapore, Benin, Burkina Faso, Mali, Belize, Suriname, the Republic of Korea, Rwanda, Norway, the European Union, Brazil, Switzerland and Liechtenstein.

its goal of strengthening the international subsidy discipline regime and addressing the subsidy concerns of key sectors of the U.S. economy.

In the Doha Development Agenda negotiations, the United States is clearly on record with its WTO partners as strongly supportive of the need for improved subsidy disciplines and has identified a broad array of subsidy issues with respect to the existing rules as well as the need to develop new disciplines where none currently exist. Identification of enhanced disciplines on trade distorting practices, including subsidies (broadly defined), is particularly important because it is these practices that are often one of the root causes of trade friction. In 2004, the United States worked towards defining in greater detail the critical issues that need to be confronted to establish the proper calculation of subsidy benefits and thereby clarify the precise nature of Members' obligations under the Subsidies Agreement and establish a firmer basis for strengthened rules. It was encouraging that other Members recognized the issues identified as the next set of questions that must be answered to continue the historical development of a general set of subsidy benefit calculation rules needed to strengthen and increase the predictability of the Subsidies Agreement disciplines.

China's third year of membership in the WTO concluded in 2004 and with it the third examination of China's accession under the TRM. In the Subsidies Committee, the United States vigorously sought to clarify the extent of China's compliance with WTO subsidy-related rules and disciplines. Unfortunately, a fully meaningful review of China's WTO compliance record has continued to be stymied by China's failure to notify required information about its subsidy programs. Consequently, the United States has stepped up its unilateral surveillance of China's government practices in order to better identify and, as appropriate, respond to possible subsidy problems. In 2005, the United States will continue to devote significant resources to China subsidy issues and ensure that China follows through with its commitment to come into compliance with its Subsidy Agreement obligation to provide a complete subsidy notification. On a broader scale, the United States will continue to examine structural problems and distortions in China's economy and pragmatically address concerns about trade- and market-distorting practices in the Structural Issues Working Group.

Throughout the upcoming year, USTR and Commerce will continue to work with the Congress as the United States pursues a proactive agenda to safeguard the interests of U.S. industries and workers facing unfairly subsidized foreign competition.

ATTACHMENT 1

SUBSIDIES ENFORCEMENT: *ASSISTING U.S. EXPORTERS TO COMPETE EFFECTIVELY*

Subsidies Enforcement Office: The Department of Commerce's Import Administration is responsible for coordinating multilateral subsidies enforcement efforts. The primary mission is to assist the private sector by monitoring foreign subsidies and identifying government assistance programs that can be remedied under the Subsidies Agreement of the World Trade Organization, of which the United States is a member. To fulfill this mission, Import Administration has created the Subsidies Enforcement Office (SEO). As part of its monitoring efforts, the SEO has created a Subsidies Library, which is available to the public via the Internet (<http://ia.ita.doc.gov/esel>). The goal is to create an easily accessible one-stop shop that provides user-friendly information on foreign government subsidy practices.

Types of Subsidies: A subsidy can be almost anything a government does, if the following conditions are met: (1) a financial contribution is made by a government or public body and (2) a benefit is received by the company. Trade rules permit remedies in circumstances when subsidies are "specific" (*i.e.*, provided to a limited number of companies, such as all exporters) and have caused adverse trade effects. Subsidies can take a variety of forms. Following are some of the types of foreign subsidies that could place a U.S. exporter at a competitive disadvantage vis-a-vis a foreign competitor.

- o **Export financing** at preferential rates.
- o **Grants or Tax exemptions** for favored companies or industries.
- o **Loans that are conditioned on meeting local content requirements**, or are contingent upon the use of domestic goods over U.S. exports (commonly referred to as "import substitution subsidies").

As an illustration:

A U.S. exporter is bidding on a project in Country A and is competing against an exporter from Country B. The company from Country B offers a bid that is extremely low, possibly even below what one would assume to be the cost of production. The U.S. exporter may have knowledge that the reason the company from Country B is able to bid so low is that it is being assisted by its government with low cost loans and payment of various export related expenses. In such a situation, we would encourage the U.S. exporter to collect as much information as possible concerning the potential subsidies and then contact us with all of the relevant information. We would then check further into the types of subsidies being received and determine whether any action should be taken.

Types of Remedies: Remedies for violations of the Subsidies Agreement could involve requiring the foreign government to eliminate the subsidy program or its adverse effect, or, as a last resort, to authorize offsetting compensation.

Working Together to Assist U.S. Exporters: The SEO welcomes any information about foreign subsidy practices that may adversely affect U.S. companies' export efforts. The SEO can evaluate the subsidy in relation to U.S. and multilateral trade rules to determine what action may be possible to take to counteract such adverse effects. By working together to monitor foreign subsidies and enforce the WTO

Subsidies Agreement, we can ensure that U.S. companies are competing in a fair international trading system.

Questions and information can be referred to:
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ATTACHMENT 2

TRADE REMEDY COMPLIANCE STAFF: *PRO-ACTIVELY ADDRESSING UNFAIR TRADE PROBLEMS*

THE TRADE REMEDY COMPLIANCE STAFF

In recent years, Congress has called for more pro-active steps to address unfair practices hindering U.S. trade. To this end, it has provided both resources and a mandate for increased monitoring of other countries' trade policies and practices, as well as the strengthening of U.S. trade law enforcement. Import Administration (IA) has taken up that charge, in part through the creation of the Trade Remedy Compliance Staff (TRCS). The TRCS is a team of trade analysts working in tandem with new IA officers stationed overseas in such locations as China and Korea. Their mission is to support administration of the U.S. unfair trade laws, including by monitoring foreign policies and trade trends in order to better detect and address developing unfair trade problems.

THE TRCS ROLE AND SERVICE

IA's central role remains the enforcement of the U.S. antidumping (AD) and countervailing duty (CVD) laws. However, IA has built upon its law enforcement duties by instituting a variety of import monitoring and subsidies enforcement activities designed to help American industry deal more effectively with a broader range of unfair trade problems. The TRCS is the latest extension of this commitment to provide assistance to U.S. businesses which feel that their trade problems may stem from unfair practices or the improper application of foreign unfair trade laws. Focused initially on our major trading partners in east Asia, the TRCS has in place an ongoing monitoring program which tracks import trends as well as certain government policies, business conditions and company practices in the countries concerned. The goal is to help pinpoint and analyze problematic policies and trade trends so that governments have an opportunity to avert unfair trade frictions and prevent harm to U.S. interests. The placement of IA officers overseas gives the TRCS better access to various sources of information with which to more effectively identify and understand these potential unfair trade problems, as well as the ability to immediately address such problems, through discussion with government counterparts and technical assistance.

TRCS INITIATIVES UNDER WAY

For its key focus countries, TRCS personnel in Washington and abroad continually develop key information sources and databases to study imports into the United States and evaluate the status and evolution of foreign government policies and market developments that might contribute to unfair trade. On a wider front, TRCS keeps watch on all our trading partners' AD and CVD activity to identify potential difficulties for U.S. exporters and/or conflicts with WTO obligations or basic precepts of transparency and due process. One example of the TRCS's contributions thus far is its monitoring of China's WTO-related subsidies and unfair trade law obligations as part of the U.S. Government's broader efforts to verify Chinese compliance with WTO accession commitments.

TRCS Activities

Washington, D.C.

- For key countries, monitor data on imports into the United States, as well as foreign government policies and economic/business trends that may contribute to unfair trade problems.

- Monitor other countries' development and use of their AD, CVD and other trade remedy statutes.

- Provide information related to the enforcement of U.S. AD/CVD laws to foreign and domestic parties.

Overseas

- Support Washington-based case analysts in matters directly related to the administration of U.S. AD/CVD laws.

- Collect, assess, and confirm information about certain foreign market conditions, trade practices, and governmental policies that would facilitate administration of U.S. unfair trade laws or U.S. monitoring of unfair trade commitments.

- Report on developments in use of foreign unfair trade laws, particularly as they affect U.S. interests.

- Actively assist countries to meet WTO obligations, through discussion and technical assistance.

Need further information?

Please contact:

Trade Remedy Compliance Staff

Tel: 202-482-3415/Fax: 202-482-6190/email: trcs@ita.doc.gov

ATTACHMENT 3

THE SUBSIDIES ENFORCEMENT LIBRARY

[<http://ia.ita.doc.gov/esel/>]

First Screen

ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY

- ▶ **WTO Agreement on Subsidies and Countervailing Measures**
- ▶ **Overview of the Subsidies Enforcement Office**
- ▶ **Subsidy Programs Investigated by DOC**
- ▶ **WTO Subsidies Notifications**

Annual Reports to Congress on Subsidies Enforcement

- ▶ **1998 Annual Report on Subsidies Enforcement** - February 1998
- ▶ **1999 Annual Report on Subsidies Enforcement** - February 1999
- ▶ **2000 Annual Report on Subsidies Enforcement** - February 2000
- ▶ **2001 Annual Report on Subsidies Enforcement** - February 2001
- ▶ **2002 Annual Report on Subsidies Enforcement** - February 2002
- ▶ **2003 Annual Report on Subsidies Enforcement** - February 2003
- ▶ **2004 Annual Report on Subsidies Enforcement** - February 2004
- ▶ **2005 Annual Report on Subsidies Enforcement** - February 2005

- ▶ **Review and Operation of the WTO Subsidies Agreement** - June 1999

Description of Choices

WTO Agreement on Subsidies and Countervailing Measures

This links the visitor to the World Trade Organization Agreement on Subsidies and Countervailing Measures as found in the Multilateral Agreement on Trade in Goods. Information in this Agreement includes the definition of a subsidy and provides general guidelines under which remedies may be put in place.

Overview of the Subsidies Enforcement Office

This links the visitor to the informational page found in Attachment 1 of this Report, which includes a general overview of the SEO as well as contact information.

Subsidy Programs Investigated by DOC

This links the visitor to information regarding subsidy programs which have been analyzed by Import Administration staff during countervailing duty (CVD) proceedings since 1980. The information is provided by country and then subdivided into various categories, based on the DOC'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. As of December 2004, the number of countries which have had programs investigated in U.S. CVD proceedings was 52.

WTO Subsidies Notifications

This will link the visitor to all unrestricted WTO subsidy notifications, listed either by date or by country. Beside each country's name is a description of the document, the document number and document symbol as well as the date the document was submitted to the WTO. Clicking on the name of a country will lead the visitor to that country's subsidy notification. The notification will provide a list of notified subsidies, in addition to specific information concerning each subsidy program, such as the type of incentive provided, the duration and purpose of the program, and the governing law or provision of the incentive. Although the Subsidies Agreement stipulates that the notification of a subsidy practice does not prejudice its legal status under the Agreement, these notifications do provide detailed information concerning a number of countries' subsidy measures. In the event that less than full information about the program is provided, the Subsidies Enforcement Office, working with other Agencies, seeks more detailed information.

Annual Reports to Congress on Subsidies Enforcement

Links are provided for the visitor to review the most recent SEO Annual Report to Congress as well as past Annual Reports.

Reports to Congress

- ▶ **Review and Operation of the WTO Subsidies Agreement - June 1999**

This links the visitor to the June 1999 Report to Congress that reviews the operation of the WTO Subsidies Agreement.

ATTACHMENT 4

**Extension of the Transition Period Pursuant to Article 27.4
of the Agreement on Subsidies and Countervailing Measures**

WTO MEMBER	NAME OF PROGRAM	SUBSIDIES COMMITTEE ACTION**
ANTIGUA & BARBUDA	Fiscal Incentives Act*	Third one-year extension granted
	Free Trade/Processing Zones*	Third one-year extension granted.
BARBADOS	Fiscal Incentive Program*	Third one-year extension granted.
	Export Allowance*	Third one-year extension granted.
	Research & Development Allowance*	Third one-year extension granted.
	International Business Incentives*	Third one-year extension granted.
	Societies with Restricted Liability*	Third one-year extension granted.
	Export Re-discount Facility	No extension requested.
	Export Credit Insurance Scheme	No extension requested.
	Export Finance Guarantee Scheme	No extension requested.
Export Grant & Incentive Scheme	No extension requested.	
BELIZE	Fiscal Incentives Program*	Third one-year extension granted.
	Export Processing Zone Act*	Third one-year extension granted.
	Commercial Free Zone Act*	Third one-year extension granted.
	Conditional Duty Exemption Facility*	Third one-year extension granted
BOLIVIA (Annex VII Country)	Free Zone	Reservation of rights. No action taken.
	Temporary Admission Regime for Inward Processing	Reservation of rights. No action taken.
COSTA RICA	Duty Free Zone Regime*	Third one-year extension granted.
	Inward Processing Regime*	Third one-year extension granted.
COLOMBIA	Free Zone Regime	No extension requested.
	Special Import-Export System for Capital Goods & Spare Parts (SIEX)	No extension requested.
	Transport Compensation Mechanism	No extension requested.
DOMINICA	Fiscal Incentives Program*	Third one-year extension granted.
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones"	Third one-year extension granted.
EL SALVADOR	Export Processing Zones & Marketing Act*	Third one-year extension granted.
	Export Reactivation Law	No extension requested.
FIJI	Short-Terms Export Profit Deduction	Third one-year extension granted.
	Export Processing Factories/Zones Scheme	Third one-year extension granted.
	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)	Third one-year extension granted.
GRENADA	Fiscal Incentives Act No. 41 of 1974*	Third one-year extension granted.

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

WTO MEMBER	NAME OF PROGRAM	SUBSIDIES COMMITTEE ACTION**
ST. LUCIA	Fiscal Incentives Act*	Third one-year extension granted.
	Micro & Small Scale Business Enterprise Act*	Third one-year extension granted.
	Free Zone Act*	Third one-year extension granted.
ST. VINCENT AND THE GRENADINES	Fiscal Incentives Act*	Third one-year extension granted.
THAILAND	Investment Promotion Incentives	No extension requested.
	Industrial Estate Authority of Thailand	No extension requested.
	Export Market Diversification Program	No extension requested.
URUGUAY	Automotive Industry Export Promotion Regime*	Third one-year extension granted.

* Program qualifies under special procedures adopted at the Fourth Ministerial Conference.

** All programs for which an extension was requested are permitted a two-year phase-out period after the extension period sanctioned by the Subsidies Committee. If no extension period was approved, Members must phase-out the program in two years.

Programs in bold are programs for which no further extension has been requested. Therefore, these programs are subject to the two-year phase-out period. The following programs were granted extensions in 2002, however no extension was requested during the 2003 review: Barbados' Export Re-discount Facility, Export Credit Insurance Scheme, Export Finance Guarantee Scheme and Export Grant & Incentive Scheme; Colombia's Transport Compensation Mechanism; Panama's Tax Credit Certificates (CAT) program; and Thailand's Investment Promotion Incentives, Industrial Estate Authority of Thailand and Export Market Diversification Programs. The following programs were granted extensions in 2003, however no extension was requested during the 2004 review: Colombia's Free Zone Regime and Special Import-Export System for Capital Goods & Spare Parts (SIEX) program; and El Salvador's Export Reactivation Law.