



**Joint Report of the
Office of the United States Trade Representative and the
United States Department of Commerce**

February 2011



**SUBSIDIES ENFORCEMENT
ANNUAL REPORT TO THE CONGRESS**

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EXECUTIVE SUMMARY

Among the joint responsibilities assigned to the Office of the United States Trade Representative (USTR) and the U.S. Department of Commerce (Commerce), as set forth in section 281(f)(4) of the Uruguay Round Agreements Act (URAA), is the submission of an annual report to the Congress describing the U.S. subsidies enforcement program and its accomplishments throughout the previous year. This report represents the sixteenth annual report to the Congress and, as such, describes the U.S. government's activities and key actions taken during 2010 to identify, monitor and address unfair, trade-distorting foreign government subsidies.

The Administration's strong commitment to enforcement was highlighted early in 2010 by President Obama with his announcement of the launch of the U.S. National Export Initiative (NEI). Designed to double U.S. exports in five years and encourage job growth, the NEI's comprehensive agenda to significantly strengthen the competitiveness of U.S. products in markets overseas is well under way. As the U.S. economy continues on its path to recovery, more U.S. companies are selling American-made products across the globe. At the same time, however, many companies find themselves at a considerable disadvantage when competing with foreign companies who benefit unfairly from government subsidies and other questionable trade practices.

Based on the clear recognition that U.S. manufacturers, workers and exporters can be highly successful at home and abroad when they have the opportunity to compete on a level playing field, strong enforcement of our trade laws is a critical component of the NEI. Consistent with this focus, the goal of USTR's and Commerce's subsidies enforcement activities is to deter, identify and confront distortive foreign-government subsidization and to prevent or remedy the harm that these foreign subsidies can cause to U.S. manufacturing and agricultural industries, including the exporting sector. During 2010, this was accomplished through a wide range of actions, including enhanced monitoring, intensive engagement with trading partners, advocacy for stronger subsidy disciplines, and decisive action to confront foreign government practices inconsistent with international subsidy rules. Key actions in this regard are highlighted on the following page.

The principal tool available to Members of the World Trade Organization (WTO) to confront and address harmful subsidy practices is the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). All WTO Members are obligated to ensure that their actions and support measures are consistent with the disciplines established by the Subsidies Agreement. The United States relies on the disciplines and tools provided under the Subsidies Agreement, as well as U.S. domestic countervailing duty (CVD) law, to deter or remedy harm caused to U.S. industries, workers and exporters from distortive foreign subsidies.

Subsidies Enforcement Highlights for 2010

- ***Enforcing and Preserving Effective Subsidies Disciplines and Remedies through Dispute Settlement:*** 2010 witnessed the release of two important WTO dispute settlement panel findings that upheld U.S. positions on key issues, thus helping to ensure that the disciplines and remedies under the Subsidies Agreement remain strong and effective. The cases involved:
 - a dispute brought by the United States in which a WTO panel determined that European governments had provided billions of dollars of subsidies to Airbus that were prohibited or had caused serious prejudice to U.S. trade interests; and
 - a dispute brought by China against Commerce's findings in four concurrent antidumping (AD) and CVD investigations in which the panel upheld Commerce's findings on important aspects of its CVD practice.
- ***Pursuing Foreign Subsidies Harming U.S. Green Technologies:*** In October 2010, in response to a petition filed by the United Steelworkers (USW), USTR initiated an investigation under Section 301 of the Trade Act of 1974 regarding a wide range of Chinese government policies and practices, including many subsidy programs, that affect trade and investment in green technologies. On December 22, 2010, USTR requested WTO dispute settlement consultations with China regarding one of the subsidy programs alleged to be a subsidy and related transparency issues. Further investigatory work continues on the other alleged practices in the USW petition.
- ***Pressing for Stronger Subsidies Disciplines in the Doha Development Agenda:*** In 2010, the Rules Negotiating Group considered several new proposals in the areas of horizontal and fisheries subsidies and began a new, more intensive phase to facilitate the conclusion of the negotiations.
- ***Countering China's Subsidies under the U.S. CVD Law:*** Through January 2011, Commerce issued final determinations in 22 CVD investigations involving a wide range of imports from China. During 2010, Commerce initiated three new CVD investigations of imports from China.
- ***Defending U.S. Interests in Foreign CVD Cases:*** In 2010, USTR and Commerce defended U.S. interests in several foreign CVD investigations involving U.S. exports. These included CVD proceedings in Australia, the EU, China and Peru. In September 2010, the United States requested WTO dispute settlement consultations with China regarding China's imposition of AD and CVD duties on imports of grain-oriented electrical steel (GOES) from the United States, alleging that several aspects of China's final determination and its conduct of the investigation appear to be inconsistent with CVD rules under the Subsidies Agreement.
- ***Promoting Improved Transparency in the WTO Committee on Subsidies and Countervailing Measures (Subsidies Committee):*** The United States continued to play an active role in the WTO Subsidies Committee by pressing to improve the timeliness and completeness of subsidy notifications and to enhance transparency across a range of reporting obligations. These efforts prompted a number of WTO Members to take action in 2010 to meet their subsidy notification obligations.

Looking forward, in 2011, USTR and Commerce will continue to identify and confront trade distorting subsidies worldwide, providing support to the enforcement goals of the NEI. Collaborating closely with American manufacturers, workers and exporters, we will address potential unfair trade practices that impact not only the U.S. domestic market, but U.S. exporters' access to important foreign markets. We also will continue to exercise U.S. rights under the Subsidies Agreement, including in the context of foreign trade remedy actions against U.S. exports. Where possible and appropriate, we will work to resolve issues of concern through bilateral and multilateral engagement, advocacy, and negotiation. In those instances where our rights and interests cannot be readily and effectively defended through these means, we will not refrain from initiating WTO dispute settlement proceedings, as appropriate. The United States will also continue to pursue an aggressive affirmative agenda in the Doha Development Round regarding trade remedies and subsidies disciplines, consistent with the negotiating objectives established by Congress, and will press for an ambitious outcome in the fisheries subsidies negotiations.

By actively working to address foreign government subsidies, the U.S. government's subsidies enforcement program is helping to meet the NEI's goal of expanding U.S. exports and creating and supporting U.S. jobs. Ultimately, a trading environment that is free from the most trade-distorting government subsidies will be stronger, more open and more competitive, and will bring benefits to American producers, workers and consumers alike.

INTRODUCTION

The WTO Subsidies Agreement establishes multilateral disciplines on the use of subsidies and provides mechanisms for challenging government measures that contravene these disciplines. The disciplines established by the Subsidies Agreement are subject to dispute settlement procedures, which specify 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, or the elimination of a subsidy's adverse effects. In addition, the Subsidies Agreement sets forth rules and procedures to govern the application of CVD measures by WTO Members with respect to subsidized imports.

The Subsidies Agreement nominally divides subsidy practices into three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted non-actionable (green light) subsidies.¹ Subsidies contingent upon export performance (export subsidies) and subsidies contingent upon the use of domestic over imported goods (import substitution subsidies) are prohibited. All other subsidies are permitted, but are actionable (through CVD or dispute settlement action) if they are (i) "specific", e.g., 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.

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 WTO, including its Subsidies Committee; and chair the interagency process on matters of subsidy trade policy.

The role of Commerce, through the International Trade Administration's Import Administration (IA), is to administer and enforce the CVD law, identify and monitor the subsidy practices of other countries, and provide the technical expertise needed to analyze and understand the impact of foreign subsidies on U.S. commerce. In addition, USTR and IA defend U.S. interests in CVD proceedings brought by foreign governments against U.S. exports. IA also helps to identify appropriate and effective strategies and opportunities to address problematic foreign subsidies and works with USTR to engage foreign governments on subsidies issues. Within IA, subsidy monitoring and enforcement activities are carried out by the Subsidies Enforcement Office (SEO). (See Attachment 1). In addition, IA provides assistance and advice to interested U.S. parties concerning the remedies available under the Subsidies Agreement and the procedures relating to these remedies. Where warranted, IA recommends action to USTR.

¹ With the expiration in 2000 of certain provisions in the Agreement regarding green light subsidies, the only non-actionable subsidies at present are those that are not specific, as defined below.

MULTILATERAL INITIATIVES

A. WTO Negotiations

At the Doha Ministerial Conference in 2001 – which launched the Doha Development Agenda (DDA) – Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Subsidies Agreement and the WTO Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement, or AD Agreement) and to address trade-distorting practices that often give rise to CVD and AD proceedings. Under this agreement – hereafter referred to as the Rules Mandate – the United States has pursued an aggressive, affirmative 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: export subsidies and import-substitution subsidies. However, other types of permitted subsidies can significantly distort trade. The specific language of the Rules Mandate is particularly important in this regard, 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 a basis to take up the negotiating objectives that Congress had previously laid out in the Trade Act of 2002, as well as other subsidy concerns that affect key sectors of the U.S. economy.

The Rules Mandate also calls for clarified and improved WTO disciplines on fisheries subsidies. The U.S. position is that the depleted state of the world's fisheries is a major economic and environmental concern, and that subsidies that contribute to overcapacity and overfishing, or that have other trade-distorting effects, are a significant part of the problem. The inclusion of fisheries subsidies in the Rules Mandate represents a significant opportunity for all countries to advance simultaneously the goals of trade liberalization, environmental protection, and economic development.

The Negotiating Group on Rules (Rules Group) has based its work primarily on written submissions from Members, organizing its work into the following categories: (1) AD (often including issues that are also relevant to CVD remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements. Since the Rules Group began its work in 2002, Members have submitted hundreds of formal and informal papers and proposals to the Group.²

At the Hong Kong Ministerial Conference in December 2005, Ministers directed the Rules Group to intensify and accelerate the negotiating process in all areas of its mandate on the basis of detailed textual proposals. On fisheries subsidies, Ministers acknowledged broad agreement on the need for stronger rules, including a prohibition

² Both types of Rules papers are publicly available on the WTO website (<http://wto.org>): the formal papers may be found using the “TN/RL/W” document prefix, and the elaborated informal proposals may be found using the “TN/RL/GEN” prefix.

of the most harmful subsidies contributing to overcapacity and overfishing, and appropriate and effective special and differential treatment (S&DT) for developing country Members. Ministers also directed the Chairman of the Rules Group to prepare consolidated negotiating texts of the AD and Subsidies Agreements, taking account of progress in other areas of the negotiations.

In November 2007, the Chairman of the Rules Group issued *Draft Consolidated Chair Texts of the AD and SCM Agreements* (2007 text).³ The United States publicly stated that, while it was very disappointed with important aspects of the 2007 text, it believed that it provided a basis for further negotiations. Other Members expressed similar views. However, during the subsequent discussions of the Rules Group in 2008, it became clear that many Members were dissatisfied with the balance reflected in this text with respect to certain key, controversial proposals.

After Ministers reached an impasse in July 2008 on how to advance the DDA in other areas, work in the Rules Group remained relatively quiet until December 18, 2008, when the Chairman issued *New Draft Consolidated Chair Texts of the AD and SCM Agreements* (2008 text).⁴ In a cover note to the 2008 text, the Chairman noted that this new document reflected a “bottom-up approach” (e.g., based on proposals by Members and convergence on new text among Members) and included new draft language on AD and subsidies/CVD issues only in those areas where some degree of convergence among the Members appeared to exist. More contentious issues for which the Chairman felt that he had no basis to propose compromise solutions were bracketed, along with a general summary of the range of Members’ views regarding those issues. The Chairman observed further that few, if any, of the areas in which new draft language has been proposed could be characterized as having consensus support. As to the fisheries subsidies negotiations, the Chairman issued a roadmap (consisting of an outline of the issues and numerous discussion questions for each issue) to further elicit Members’ views on the critical issues.

1. Major Issues and Developments in 2010

a. General:

In July 2010, the Rules Group formally elected a new Chairman, Ambassador Dennis Francis of Trinidad and Tobago, who replaced Ambassador Guillermo Valles of Uruguay. Also in 2010, in addition to the ongoing meetings of the various negotiating groups, Members began to hold separate “brainstorming” sessions at the WTO Ambassador level in an attempt to narrow differences in certain areas of the negotiations. These groups were formed after senior trade officials met and agreed that such small group meetings could be used to address unresolved issues outside of those involving agriculture and non-agricultural market access. Among the several groups formed, there was one devoted to fisheries subsidies issues and one devoted to

³ TN/RL/W/213 (November 30, 2007).

⁴ TN/RL/W/236 (December 18, 2008).

horizontal subsidies and AD/CVD issues. These two groups met several times throughout the fall to discuss selected issues in the Rules negotiations. While regular meetings of these Ambassador-level groupings were discontinued by the end of 2010, expectations are that various configurations of these groups may meet on an *ad hoc* basis in 2011.

b. Subsidies/CVDs:

The Rules Group met several times throughout 2010 to discuss CVD and horizontal subsidies issues. As in previous years, the discussions on horizontal subsidies generally followed a “three pillars” organizational approach according to which each meeting covered a selection of: (1) bracketed proposals (*i.e.*, the most contentious), (2) unbracketed draft text, and (3) proposals previously made by Members, but not addressed in the draft text. The key bracketed proposals discussed were: low-cost financing (*i.e.*, state-owned banking practices), export credit benchmarks, export credit successor undertakings and export competitiveness. The major unbracketed issues covered were: dual/regulated pricing, subsidy benefit pass-through and subsidy allocation rules. “Unaddressed” issues included: withdrawal of a subsidy, appropriate interest rate benchmarks for subsidy calculations and duty drawback rules.

The Chairman’s 2008 draft text makes only limited changes to the existing Subsidies Agreement, but it does include some important clarifications. For example, the 2008 text establishes that the amount of a subsidy should be calculated based upon the “benefit-to-recipient” approach, an approach long advocated by the United States in all areas except for export credits (where the existing Subsidies Agreement text, in the U.S. view, explicitly establishes a cost-to-government approach). The discussions to date in the Group have demonstrated that, in principle, these clarifications are not fundamentally controversial, although the United States and others suggested several technical refinements. The provisions in the Chairman’s text on subsidy allocation methodologies – derived from a U.S. proposal – largely represent a technical advancement in the rules and were generally well-received. On the other hand, the issues of dual/regulated pricing and state-owned banking practices have been much more contentious. In the area of export credits, many Members, including the United States, have expressed serious reservations regarding the provisions in the Chairman’s proposed text, as it would significantly change certain rules that were developed over time and that have functioned reasonably well.

In 2010, the Rules Group also considered new textual proposals by China and India covering various aspects of CVD investigations. One of China’s proposals relates to pre-initiation consultations in CVD investigations, and would significantly increase obligations on the investigating Member during the pre-initiation stage of the proceeding. For example, China proposes that the invitation to consultations include information on the names and legal bases of all alleged subsidy programs, and be accompanied by any other documentary evidence in possession of the investigating authorities. Further, China proposes that, as part of fully considering issues raised

during the consultations, the investigating authority should be required to provide a written reply, prior to the initiation, to all of the points raised in the consultations by the allegedly subsidizing government. Another proposal by China addresses the treatment of new subsidy allegations in the course of an ongoing investigation, and would restrict an authority's ability to accept any new allegations that might arise after initiation of a CVD investigation. For example, China proposes a cut-off date for new subsidy allegations (*i.e.*, 40 days prior to the preliminary determination). Further, China's proposal would require the domestic industry, when submitting a new subsidy allegation during an ongoing investigation, to explain why it could not have included the allegation in its original petition. Lastly, China proposes a requirement that the allegedly subsidizing Member be invited for consultations on any new subsidy allegations received during the investigation *prior to* initiation with respect to such subsidies, and that a notice of initiation be published prior to investigating the newly alleged programs.

In addition, both China and India submitted new proposals on the use of "facts available" in CVD cases. Both proposals would further limit the proper use of facts available by shifting more responsibility to administering authorities to gather the information necessary during CVD cases, while remaining silent on the responsibility of the respondent company and government to provide the requested information. Lastly, India submitted a proposal regarding interest rate benchmarks for developing country export loans, replacing the existing benefit-to-recipient standard for determining the benefit of such loans to a cost-to-government standard. The facts available proposals as well as the interest rate proposal were generally viewed as representing a significant departure from existing Subsidies Agreement rules and received little support from other Members.

The Rules Group also continued in 2010 the process of considering whether certain provisions in the Antidumping Agreement and the Chairman's draft AD text should be "transposed" into or "harmonized" with the Subsidies Agreement. The initial phase of this exercise, in 2009, examined whether existing differences between the Antidumping and Subsidies Agreements are justified by inherent differences between the AD and CVD remedies and, if not, whether the differences are appropriate topics for possible transposition/harmonization. In the second phase of this exercise, in 2010, the Rules Group discussed unbracketed language that appears in the Chairman's draft AD text that may also be relevant to CVD proceedings. However, as with the first phase, although a range of views was expressed, no definitive conclusions were reached.

As a general matter, throughout the year the United States continued to express concern that the 2008 text and many of the new proposals submitted would result in insufficient strengthening or -- in some cases, a significant weakening -- of the current general subsidy disciplines, despite the Rules Mandate to clarify and improve the rules and address trade-distorting practices.

c. Fisheries Subsidies:

The United States views the negotiations on fisheries subsidies as a groundbreaking opportunity for the WTO to show that trade liberalization can benefit the environment and contribute to sustainable development as well as address traditional trade concerns. The United States has played 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, including Argentina, Australia, Chile, Ecuador, New Zealand and Peru, among others (collectively known as the “Friends of Fish”).

Discussions during 2009 focused on the questions contained in the Chairman’s “roadmap,” geared off of elements of the draft text issued by the Chairman in November 2007. That text identifies a broad range of prohibited subsidies that contribute to fleet overcapacity and overfishing in wild marine capture fisheries, and also prohibits subsidies that affect fishing on “unequivocally overfished” stocks. The text also provides for a limited list of general exceptions available to all Members and additional exceptions for developing countries. Subsidies under both sets of exceptions would remain actionable under the existing Subsidies Agreement. In addition, the text would require Members not to cause depletion of or harm to, or create overcapacity with respect to, the fisheries resources of another Member. Finally, the text contains provisions concerning fisheries management systems, peer review through the UN Food and Agricultural Organization (FAO), notification and surveillance of Members’ fisheries subsidies, dispute settlement, and transition arrangements.

In 2010, the Group’s focus turned to new proposals by Members on various aspects of fisheries subsidy disciplines. Several proposals were submitted on the issue of S&DT for developing countries. The Chairman’s text provided considerable flexibility for subsistence level and small-scale developing country fishing, while limiting exceptions for developing countries to fishing activities within each country’s Exclusive Economic Zone. Several of the proposals discussed in the Group during 2010 advocated increased S&DT for certain developing countries. For example, a new proposal was submitted by a group of Small and Vulnerable Economies (SVEs) that would provide a carve-out on disciplines involving certain subsidies for vessel construction and operating costs such as fuel. Further, Brazil, China, India and Mexico also submitted a proposal advocating extensive S&DT for developing countries. Specifically, this proposal would provide an exemption to the prohibitions set out in the Chairman’s Text for small-scale artisanal fishing based on socioeconomic criteria (as opposed to more objective parameters, such as vessel length). For larger scale fisheries, the proposal would provide a similar carve out based on the rights Members have under international law such as their sovereign jurisdiction over certain waters or fishing rights established by regional fisheries management organizations. Given the prominence of developing countries in the global fishing industry, these positions, particularly among the major developing country players, have the potential to create large carve outs that could undermine the objective of the negotiations to strengthen disciplines on subsidies that promote overcapacity and overfishing.

Other proposals discussed during 2010 include a submission by Korea that would create a new category of “actionable” fisheries subsidies to replace the prohibition in the Chairman’s text regarding several categories of subsidies. Specifically, Korea proposed moving certain prohibited subsidies in the Chairman’s text to a new article that required a showing of adverse effects before a remedy could be invoked. Australia also submitted a proposal that, while maintaining the basic architecture of the Chairman’s 2007 text, identified a new category of prohibited fisheries subsidies: subsidies “which support destructive fishing practices.”

Lastly, in 2010 the United States submitted a technical proposal, the goal of which was to clarify several aspects of the Chairman’s 2007 text. The premise behind this proposal was that the general structure of the Chairman’s 2007 text should be maintained, particularly with regard to a broad prohibition as the core discipline. In an attempt to promote a technical discussion on certain aspects of the Chairman’s text, the proposal focused on some provisions in the text that the United States viewed as important complements to the core prohibition; specifically, the prohibition of subsidies to “manifestly over-fished” stocks; general exceptions to the prohibition; adverse effects on fisheries; and fisheries management and review. With this paper, the United States attempted to clarify and expand on how these provisions would work, with the aim of ensuring that they could be effectively implemented. The overall response to the U.S. proposal was quite positive, especially for its technical advancement of the text.

In 2010, the Group also held its first plurilateral meetings on fisheries issues, which involved a smaller group of WTO Members with a particular interest in the topics covered and which reflected a broad spectrum of negotiating positions. Topics covered in these smaller groups included: (1) the general prohibition; (2) the definition of “small scale” fisheries and how it relates to developed country Members; (3) the U.S. technical proposal on various provisions in the Chairman’s text; (4) the proposal on S&DT submitted by Brazil, India, China, and Mexico; (5) Korea’s proposal and (6) Australia’s proposal. By year’s end, it was clear that Members remain divided on fundamental questions of ambition, developed versus developing country needs, the architecture of the disciplines, and other questions of scope, including whether and how the Subsidies Agreement’s specificity provisions should apply.

d. Prospects for Rules in 2011

During 2010, the Rules Group continued its in-depth discussion of many of the bracketed and unbracketed horizontal subsidies issues in the 2008 draft text, as well as many of the critical issues with respect to fisheries subsidies. In 2011, the Rules Group will intensify its work with the goal of enabling the Chair to issue new texts at the end of the first quarter. Throughout any future discussions, the United States will continue to pursue an aggressive affirmative agenda consistent with the negotiating objective established by Congress to preserve the effectiveness of the trade remedy rules. In the fisheries subsidies negotiations, the United States will continue to press for an

ambitious outcome and work to further improve and refine many of the provisions included in the Chairman's 2007 text.

B. Steel: Multilateral Efforts to Address Market-Distorting Practices

The United States continued its multilateral efforts during 2010 to address concerns related to the rapidly changing trade situation in the global steel sector, particularly through its work at the Organization of Economic Cooperation and Development (OECD) and within the North American Steel Trade Committee (NASTC).

As an active participant in the OECD Steel Committee (Steel Committee), the United States has worked closely with the governments of other steel-producing economies to take up policy issues affecting the global steel industry. A broad range of issues was covered by the Steel Committee in 2010, including government subsidies and other trade policy issues in the steel sector, raw materials and other steel input policies, and environmental issues. The steel market in the wake of the global economic downturn, along with stimulus and other responses of governments to the downturn, were central to the Committee's discussions.

The NASTC continued to be a valuable forum for the governments and steel industries of North America to examine and pursue common policy approaches to promote the competitiveness of North American steel producers. The NASTC developed a North American Steel Strategy in 2006 that includes cooperation on issues of importance to steel in multilateral fora (e.g., the OECD Steel Committee and the WTO Rules Group). In 2010, these cooperative efforts included coordinated interventions in the OECD Steel Committee urging governments of all steel-producing nations to refrain from the use of administrative measures to control or otherwise influence trade in steel-making raw materials. In the context of the NASTC, the governments of Canada, Mexico and the United States provided joint questions to China's Ministry of Industry and Information Technology (MIIT) regarding China's steel policy and the government's role in efforts to reduce capacity. In May 2010, the governments of Canada, Mexico and the United States similarly cooperated on a joint list of questions submitted in the context of China's WTO trade policy review, which included requests for information regarding policies for assisting small and medium-sized enterprises within the steel sector. In addition, under the NASTC, the three North American governments and steel industries have been tracking developments in certain steel-producing countries to identify, corroborate and address, as appropriate, trade-related concerns and distortions in the global steel market.

Bilaterally, at the OECD and in the WTO, the United States continued to raise specific concerns with other countries about steel policies that contribute to excess capacity and production, including subsidies, border measures on steel and steelmaking raw materials, and other trade-distorting practices. The United States also continued to oppose support by national and multinational financial institutions for projects that increase raw or finished steel capacity.

MONITORING AND ENFORCEMENT

A. Advocacy Efforts and Monitoring Subsidy Practices Worldwide

The United States is strongly committed to pursuing its rights under the Subsidies Agreement. This commitment to enforcement is a critical component of the President's NEI, launched in his State of the Union address in January 2010. As part of the NEI, on September 16, 2010, the Export Promotion Cabinet, whose members include Secretary of Commerce Gary Locke and USTR Ambassador Ronald Kirk, issued a detailed "Plan for Doubling U.S. Exports in Five Years."⁵ A key component of the Export Promotion Cabinet's plan is a focus on trade compliance and enforcement of existing trade agreements, such as the Subsidies Agreement.

Under the NEI, the U.S. government will prioritize monitoring and enforcement in certain key markets. Further, the U.S. government plans to devote the necessary resources to the defense of U.S. commercial interests affected by foreign trade remedy actions, particularly CVD investigations involving U.S. federal and state government programs and practices. U.S. government participation in these cases is extremely important in order for U.S. exporters to maintain their access to key markets. By actively working to address harmful foreign government subsidies and ensuring the compliance of foreign governments with existing trade agreements, the U.S. government's subsidies enforcement program is helping the Administration to meet its goal of expanding U.S. exports and preserving or creating U.S. jobs.

1. Monitoring Efforts

Identifying, researching and evaluating potential foreign government subsidy practices is a core function of the subsidies enforcement program. It is the experienced analysts in IA, with various foreign language skills, that primarily conduct this work, which involves daily searches of worldwide business journals, periodicals, various online resources including foreign government web sites, utilization of numerous legal databases and ongoing relationships with U.S. industry contacts. IA officers stationed overseas (for example, in China) enhance these efforts by helping to gather, clarify, and check the accuracy of information concerning foreign subsidy practices.

USTR and IA staff continued their ongoing efforts this past year to monitor market- and trade-distorting practices by governments worldwide. Important areas of focus include the widespread use of potentially prohibited export subsidies by Chinese governments at the national and sub-national levels; possible export subsidies benefitting Indian textile and apparel manufacturers; alleged subsidies provided by a wide range of WTO Member governments that benefit green technology sectors, such as manufacturers of wind and solar power equipment; and the continued widespread use and concomitant environmental harm of fisheries subsidies.

⁵ See <http://trade.gov/nei/> and <http://www.ustr.gov/nei>

2. Counseling U.S. Industry

USTR and IA regularly engage with U.S. companies and workers affected by unfairly subsidized foreign competitors with the goal of identifying and implementing effective and timely solutions to the problems raised. While solutions can often be pursued through informal and formal contacts with the relevant foreign government, USTR and IA also will advise U.S. companies and workers of other options and legal tools available, such as trade remedy investigations or WTO dispute settlement.

During this process, USTR and IA work closely with affected companies and workers to collect information concerning potential subsidies and to determine how U.S. commercial interests are harmed by these measures. While U.S. companies facing subsidized foreign competition can be expected to have useful information as to the financial health of their industry, they usually require significant technical assistance in identifying and fully understanding the nature and scope of the foreign subsidies practices that they confront. In these instances, USTR and IA conduct additional research to determine the legal framework under which a foreign government may be offering potential subsidies and whether other U.S. firms, industries or workers have been facing similar problems.

Working with an interagency team, USTR and IA fully analyze the information collected to determine the best way to proceed. Often, the most timely and effective approach to resolving these problems is by pursuing the matter with the foreign government authorities through informal contacts, formal bilateral meetings or discussions in the WTO Subsidies Committee. This process may produce more expeditious and practical solutions to the problem than would immediate recourse to formal WTO dispute settlement or the filing of a CVD petition. If these informal efforts fail to adequately resolve the issue, the U.S. government may consider WTO dispute settlement proceedings or may advise an affected firm about procedures for filing a CVD petition.

During 2010, USTR and Commerce worked with a broad array of U.S. companies, industries and workers that had significant concerns about unfair foreign government subsidy practices in a wide range of countries. These activities included new and ongoing work on behalf of the U.S. aerospace, aluminum, chemical, paper, steel, clean energy and textile industries, among others. The foreign subsidy practices examined included those maintained by the central and local governments of Brazil, Canada, China, the European Union (EU), India, Indonesia, Japan, Malaysia, Mexico, Pakistan, South Africa, South Korea, Turkey and Vietnam.

3. Outreach Efforts

USTR and IA coordinate with other U.S. government personnel who have direct contact with the U.S. exporting community, both in the United States and abroad, to make them aware of the resources and services available regarding subsidy enforcement efforts. For example, USTR and IA personnel train Department of State

and Department of Agriculture officers on how to identify and evaluate foreign subsidy practices. This collaboration among U.S. government agencies, each with its own on-the-ground knowledge and expertise, is important to help effectively exercise U.S. rights under the Subsidies Agreement. Also, working closely with their colleagues in U.S. embassies and IA personnel in Washington, IA and USTR officers stationed in Beijing undertake primary-source research of potential unfair trade practices in China and in other countries in the region. Their efforts in this area are critical to successfully monitor China's subsidy practices and enforce the unfair trade rules. Furthermore, both USTR and IA have staff stationed in Geneva, Switzerland, to participate in the ongoing WTO Rules negotiations, the work of the WTO Antidumping, Safeguard and Subsidies Committees and WTO dispute settlement activities relevant to subsidies enforcement and trade remedies.

The United States also held a number of important technical exchanges on trade remedy issues with foreign government officials in 2010. During the past year, IA organized and participated in many of these exchanges, including with officials from China, Japan and Vietnam. These technical exchanges are an important form of outreach as they promote a better understanding of other countries' trade remedy practices and allow a more fulsome evaluation of how other countries are complying with their WTO obligations. Technical exchanges have also provided the opportunity to encourage adoption of "best practices" in the administration of trade remedies rules, strengthen ties with other trade remedy administrators, and foster increased transparency.

Electronic Subsidies Enforcement Library

The "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://esel.trade.gov> -- includes foreign governments' subsidies notifications made to the WTO, an overview of the SEO, information on U.S. domestic AD/CVD proceedings as well as foreign AD/CVD actions with respect to U.S. exports, helpful links, and an easily navigable tool that provides information about each subsidy program investigated by Commerce in CVD cases since 1980. (See Attachment 2.) The website is updated to provide the most recently available information to the public in a timely manner.

B. China

1. Section 301 Investigation of China's Green Energy Policies

On October 15, 2010, in response to a petition filed on September 9, 2010, by the United Steel Workers (USW), USTR initiated an investigation under Section 301 of the Trade Act of 1974 regarding various Chinese measures in support of its green technology sector. The petition alleged that China maintains various measures in this area that are inconsistent with its WTO commitments. The measures identified include several alleged prohibited subsidies, as well as domestic subsidies that are alleged to

cause serious prejudice to U.S. trade interests. Other measures at issue include export restraints on rare earths and other materials, alleged discrimination against foreign companies and imported goods, and technology transfer requirements. The petition alleged that these measures protect and unfairly support China's domestic producers of wind and solar energy products, advanced batteries, and other green technology products, to the detriment of U.S. workers and businesses.

Under Section 301, USTR may request WTO consultations on the date of initiation, but may also, after consulting with the petitioner, delay any request for consultations for up to 90 days in order to "verify or improve" the information provided in petition. In light of the number and diversity of the measures covered by the petition, Ambassador Kirk decided to invoke this 90-day provision. During this period, the Administration sought additional information and input from the petitioner and various advisory committees regarding the allegations in the petition. The Administration also reviewed information from over 30 stakeholders that submitted comments on the petition.

Based on this exhaustive review, on December 22, the United States requested WTO dispute settlement consultations with China concerning a program known as the *Special Fund for Wind Power Manufacturing*. Under this program, China appears to provide grants to Chinese wind power equipment manufacturers contingent on the use of parts and components made in China. This measure could possibly constitute a prohibited import-substitution subsidy. Also included in the consultation request are transparency-related claims, which address China's apparent failure to comply with its obligation to notify the subsidies at issue under the Subsidies Agreement and China's failure to translate the underlying measure into one or more of the official languages of the WTO, as required by paragraph 1.2 of China's Protocol of Accession to the WTO. With respect to the remaining allegations in the USW petition, USTR indicated that it will continue to examine the issues raised, work with stakeholders and take action as appropriate.

2. Monitoring and Evaluating Chinese Subsidy Practices in the Subsidies Committee and Through the WTO Transitional Review Mechanism

Paragraph 18 of Part I of China's Protocol of Accession to the WTO mandates a review of China's implementation of its WTO obligations, and that all subsidiary bodies, including the Subsidies Committee, will "review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol." Paragraph 18 further states that such reviews shall be conducted on an annual basis for eight years, with a final review occurring by the tenth year after accession. As contemplated by China's Accession Protocol, a transitional review was not undertaken in 2010. Nevertheless, the United States continued to closely monitor and evaluate a wide range of subsidies provided by China to various industries.

Upon its accession to the WTO, China agreed to assume the obligations of the WTO Subsidies Agreement. As part of its accession agreement, China committed that

it would eliminate, by the time of its accession, all subsidies prohibited under Article 3 of the Subsidies Agreement, *i.e.*, export subsidies and import-substitution subsidies. The Subsidies Agreement also requires that China, like all other WTO Members, notify all of its subsidies that are specific, whether provided by the national or sub-national governments.

Following the persistent urging of the United States and other WTO Members, China submitted its first subsidies notification to the Subsidies Committee in April 2006. Although the notification covered over 70 subsidy programs, it omitted numerous notifiable programs and failed to include any subsidies provided by Chinese provincial and local government authorities. Subsidy notifications are an important aspect of a WTO Member's transparency obligations. The notifications provide a basis for ensuring that all Members are abiding by their obligations under the Subsidies Agreement. The United States has devoted significant time and resources to researching, monitoring and analyzing China's subsidy practices, which has helped to identify the very significant omissions in China's subsidy notification and to lay the groundwork for pursuing these issues further in the context of the Subsidies Committee's work and WTO dispute settlement.

At the October 2009 meeting of the Subsidies Committee, China indicated that it would finalize a second subsidies notification in the coming months, but also stated that this notification would again not include any subsidies provided by provincial and local government authorities. China repeated this same intention a year later at the October 2010 meeting of the Subsidies Committee, where it unfortunately reconfirmed that its next subsidies notification will not include any information on provincial or local programs. The United States has continued to press its concerns about China's failure to submit an updated and complete subsidy notification in the Subsidies Committee as well as during the WTO's periodic Trade Policy Reviews (TPR)⁶ of China. However, as of December 2010, China has not fulfilled its transparency obligations under the Subsidies Agreement to submit a complete and up-to-date subsidy notification.

In 2011, the United States will continue to research and analyze the various forms of financial support that the Chinese government provides to manufacturers and exporters in China and assess whether this support is consistent with WTO rules. The United States will also continue to highlight its concerns with China's subsidies practices in bilateral meetings with China. At the WTO, through the work of the Subsidies Committee and China's final annual transitional review (to be held in conjunction with the 2011 fall meeting of the Subsidies Committee), the United States will continue to press China to fulfill its subsidy notification obligations and to withdraw any subsidies that are prohibited under WTO rules. Should China continue to fail to submit an adequate subsidy notification, which includes subsidies administered at the provincial and local level levels, the United States will consider alternative approaches to address this outstanding issue, including possible actions (*e.g.*, counter-notification) under Article 25.8 and Article 25.10 of the Subsidies Agreement.

⁶ The TPR process generally is discussed in greater detail towards the end of this report.

3. Application of Countervailing Duty Law to China

In 2006, based on a CVD petition filed by the U.S. coated free sheet paper industry, Commerce changed its longstanding policy of not applying U.S. CVD law to China. This change was based on Commerce finding that reforms to China's economy in recent years had removed the obstacles to applying the CVD law that were present in the "Soviet-era economies" at issue when the Commerce Department first declined to apply the CVD law to nonmarket economies (NMEs) in the 1980s.

Since then, several other U.S. industries concerned about subsidized Chinese imports have filed CVD petitions. The Department initiated three new investigations in 2010 involving drill pipe, aluminum extrusions and wood flooring. Final determinations in each of these investigations are scheduled to be issued in 2011. Through January 2011, Commerce had reached final affirmative CVD determinations in 22 investigations of imports from China involving products in the steel, textile, paper and chemical industries. The alleged subsidies that have been investigated, or are being investigated, include preferential government policy loans, income tax and VAT exemptions and reductions, the provision of goods and services such as land, electricity and steel on non-commercial terms, and a variety of provincial and local government subsidies. Several of the programs investigated have been found to be prohibited export or import-substitution subsidies, including a myriad of export-contingent grants and tax incentives. As discussed in further detail below, a WTO dispute settlement panel report upheld Commerce's findings on several key methodologies applied in these investigations. Details on all of Commerce's CVD proceedings, and the programs investigated in each proceeding, can be found in the SEO's Electronic Subsidies Enforcement Library website at <http://esel.trade.gov>.

4. JCCT - Structural Issues Working Group and the Trade Remedies 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. In 2010, the JCCT was co-chaired for the United States by Secretary Locke and Ambassador Kirk and for China by Vice Premier Wang Qishan. Several other senior-level government representatives participated on both sides.

From a U.S. trade policy standpoint, it is important to engage China on existing structural and operational issues regarding China's economy, particularly those that give rise to trade frictions, and to encourage China's ongoing economic reform efforts. At the same time, China's status as an NME under U.S. AD law is of substantial concern and importance to the Chinese government. To better understand China's reform objectives and the results of reforms to date and various structural and operational aspects of China's economy, as well as to discuss issues that relate to China's desire for market economy status under the U.S. AD law, China and the United States agreed during the April 2004 JCCT meetings to the establishment of the

Structural Issues Working Group (SIWG), to be jointly chaired for the United States by Commerce's Assistant Secretary for Import Administration and the Assistant U.S. Trade Representative for China Affairs, and for China by the Director General of MOFCOM's Bureau of Fair Trade.

The SIWG provides a forum for the U.S. and Chinese governments to explore and discuss China's economy and its ongoing economic reforms, raise concerns about structural issues within China as well as market- and trade-distorting practices (including subsidies) that might otherwise lead to bilateral trade frictions, and consider the Chinese government's concerns about China's NME status under U.S. AD law.⁷ The working group has met a number of times since its launch in July 2004.

In 2010, the SIWG met on January 21 in Washington, DC, and held technical-level meetings in Beijing on November 15 and 16. China's delegation to the November meetings for the first time included a variety of experts and Chinese government officials who offered helpful information about various aspects of China's new property law, land use rights, the role and function of the State-Owned Asset Supervision and Administration Commission, as well the role and effect of industrial policies in China's economy.

The United States and China also agreed in 2004 to establish a second working group, the Trade Remedies Working Group (TRWG), in conjunction with the SIWG, to serve as a forum for both sides to raise issues of concern with regard to the other's trade remedy practices and proceedings, *i.e.*, the application of AD, CVD, and safeguards measures. Importantly, discussions in the TRWG supplement but do not replace engagement on these matters at the WTO.

In 2010, concurrent with the SIWG meetings, the United States and China held a high-level TRWG meeting in Washington, D.C., on January 22 and technical-level meetings in Beijing, China, on November 17-18. At the November meetings, the United States requested information with regard to a number of concerns with China's AD, CVD, and injury analyses, including the sufficiency of information to justify initiation of CVD cases, calculation methodologies used by MOFCOM, overly burdensome information requests to U.S. exporters, and the inability of parties to adequately defend themselves due to the lack of transparency and disclosure in MOFCOM's system. The United States will continue to seek ways to improve the bilateral dialogue in the TRWG, and, where possible, utilize this group as a practical means to address areas of mutual concern.

⁷ While the SIWG is not a forum for resolving or deciding this issue, it provides a constructive setting for the mutual exchange of views and relevant information. Under U.S. Antidumping Law, any review of China's NME status must take place in a formal proceeding before Commerce, open to all interested parties.

C. Subsidy Programs Related to Members' Stimulus Packages and the Trade Policy Review Body

The size and scope of the economic crisis that began in late-2008 prompted numerous developed and developing countries to implement significant economic stimulus and financial sector rescue packages. Despite signs of global economic recovery in 2010, unemployment has remained high, including in several high-income countries. In response, many WTO Members have continued to implement or maintain a wide range of trade-restrictive policy responses, some of which were aimed at specific industry sectors. Without questioning the necessity of the many support measures that have prevailed since 2008, the sheer magnitude of these government interventions poses concerns about the potential impact such support could have on international trade. The overall size of the fiscal stimulus packages in OECD countries has been estimated at 3.5 percent of collective GDP, while many emerging economies also have sizable financial stimulus packages, most notably China, Brazil and Russia. China's stimulus package is reported to be the largest in relative terms, amounting to approximately 13 percent of GDP (fiscal and financial stimulus combined). The continued significant intervention by governments in this regard is reflected in the WTO's 2010 Annual Report of the Trade Policy Review Body ("TPRB").⁸ Each year, the TPRB publishes a report as part of the Trade Policy Review Mechanism regarding developments in the international trading environment that are having an impact on the multilateral trading system. The most recent report covers the period November 2009 to mid-October 2010.

As evidenced from this year's TPRB monitoring exercise, governments continue to provide economic and financial support measures, including those aimed at helping specific industry sectors affected by the global economic downturn. A large number of the measures reported in the 2010 TPRB Report reflect the continuation of existing programs, rather than new actions. A notable example is India's extension of a wide range of support measures to enhance the competitiveness of its export manufacturing sector, including its textile sector. In 2010, India announced that pursuant to its Foreign Trade Policy, it would extend several particular measures.

⁸ WT/TPR/OV/13 (November 24, 2010) and WT/TPR/OV/W/3 (June 14, 2010).

India's TPRB

Many of the measures identified in India's TPRB report appear to be export subsidies or other supports that have recently been renewed by the Government of India, including:

- Duty Entitlement Passbook Scheme (DEPS): enables Indian companies that export to earn import duty exemptions. The program was to expire by the end of 2010; however, according to the Government of India's Ministry of Commerce, the program has been extended until June 30, 2011.
- Focus Product Scheme: provides Indian exporters with additional import duty-related benefits tied to the value of exports.
- Export Promotion Capital Goods Scheme (EPCGS): allows Indian producers to import capital equipment at reduced duty rates by agreeing to meet certain export obligations. This program has been extended until March 31, 2012.
- Cotton Export Ban: an export ban on cotton imposed in April 2010 to boost domestic supplies. The ban was lifted in May 2010, only to be re-imposed with stricter measures at the end of September 2010.

Given their nature and broad scope, a thorough review and analysis of various economic stimulus packages and measures such as those identified by the TPRB can be challenging and, therefore, ensuring transparency of these measures is difficult. Nevertheless, effective monitoring and evaluation of these measures is important, including with respect to those measures that do not appear to be consistent with WTO subsidies rules. Concerns arise in particular with respect to any support measures that are targeted at specific industrial sectors, such as textiles and steel, or that are explicitly prohibited by WTO rules, *i.e.*, export or import-substitution subsidies. The U.S. Government will continue to monitor all WTO Members' activities in this area to ensure that they adhere to WTO rules when implementing policies to address economic and financial instability.

D. WTO Dispute Settlement

1. European Union Support for Airbus

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

July 20, 2005. Several third parties also participated in the dispute, including Australia, Brazil, Canada, China, Japan and Korea.

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

- Every instance of “launch aid” provided to Airbus was found to be an actionable subsidy because, in each case, the terms charged for this unique low-interest, success-dependent financing were more favorable than would have been available in the market.
- Some of the launch aid provided for the A380, Airbus’s newest and largest aircraft, was found to be contingent on exports and, therefore, a prohibited subsidy.
- Several instances in which German and French governments developed infrastructure for Airbus were found to be actionable subsidies because the infrastructure was not generally available and was provided for less than adequate remuneration.
- Several government equity infusions into the Airbus companies were found to be subsidies because they were provided on more favorable terms than available in the market.
- Several EU and Member State research programs were found to provide actionable grants to Airbus to develop technologies used in its aircraft.
- These subsidies were also found to cause adverse effects to the interests of the United States in the form of lost sales, displacement of U.S. imports into the EU market, and displacement of U.S. exports into the markets of Australia, Brazil, China, Chinese Taipei, Korea, Mexico, and Singapore.

The EU filed a notice of appeal on July 21, 2010. The WTO Appellate Body conducted an initial hearing on August 3, 2010 to discuss procedural issues related to the need to protect business confidential information and highly sensitive business information, and issued additional working procedures to that end on August 10, 2010. The Appellate Body held two hearings on the issues raised in the EU’s appeal: the first on November 11-17, 2010, addressing issues associated with launch aid and the other subsidies challenged by the United States, and the second on December 9-14, 2010, focusing on the panel’s findings that the European subsidies caused serious prejudice to the interests of the United States in the form of lost sales and declining market share in the EU and other third country markets. The Appellate Body is expected to issue its findings in spring 2011.

2. U.S. Support for Large Civil Aircraft

On October 6, 2004, the EU requested consultations with respect to “prohibited and actionable subsidies provided to U.S. producers of large civil aircraft.” The EU alleged that such subsidies violate several provisions of the Subsidies Agreement, as well as Article III:4 of the GATT 1994. Consultations were held on November 5, 2004.

On May 31, 2005, the EU requested the establishment of a panel to consider its claims. The EU filed a second request for consultations regarding large civil aircraft subsidies on June 27, 2005. This request addressed many of the measures covered in the initial consultations, as well as several additional measures that were not covered. The EU requested establishment of a panel with regard to its second panel request on January 20, 2006.

The DSB established a panel on February 17, 2006. The parties have filed several written submissions, and the panel heard arguments by the parties at hearings held in September 2007 and January 2008. The panel subsequently issued two sets of written questions to the parties. The final panel report is expected at the end of January, 2011.

3. United States – Subsidies on Upland Cotton

On September 8, 2004, the panel in *United States—Subsidies on Upland Cotton* circulated its final report. The panel, *inter alia*, made the following findings: (1) certain export credit guarantees (under the GSM 102, GSM 103, and SCGP programs) were prohibited export subsidies; (2) some payments under 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 causing serious prejudice to Brazil's interests; and (3) Step 2 payments to exporters of cotton were prohibited export subsidies and Step 2 payments to domestic users were prohibited import substitution subsidies because they were contingent upon the purchase of U.S. cotton.

The United States and Brazil appealed several of the panel's findings. The case went through various arbitration proceedings, a compliance panel (in 2006), and ultimately an Appellate Body review of the compliance panel decision.⁹

Ultimately, the DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on June 20, 2008. Brazil requested resumption of both arbitration proceedings on August 25, 2008. The meetings with the Arbitrators took place on March 2-4, 2009.

The Arbitrators issued their awards on August 31, 2009. They issued one award concerning U.S. subsidies found to cause serious prejudice to Brazil's interests (marketing loan and countercyclical payments for cotton), and another award concerning U.S. subsidies found to be prohibited export subsidies (export credit guarantees under the GSM 102 program for a range of agricultural products plus the repealed "Step 2" program for cotton). The Arbitrators rejected Brazil's request for countermeasures for the Step 2 program.

⁹ See the 2010 Subsidies Enforcement Annual Report to the Congress for a full description of the dispute.

The Arbitrators also found that, in the event that the total level of countermeasures that Brazil would be entitled to in a given year should increase to a level that would exceed a threshold based on a subset of Brazil's consumer goods imports from the United States, then Brazil would also be entitled to suspend certain obligations under the TRIPS Agreement and/or the GATS with respect to any amount of permissible countermeasures applied in excess of that figure. On November 19, 2009, the DSB granted Brazil authorization to suspend the application to the United States of concessions or other obligations consistent with the Arbitrator's awards.

On April 6, 2010, the United States and Brazil reached agreement on certain steps to help make progress in the dispute. Pursuant to this agreement, on April 20, 2010, the United States and Brazil signed a Memorandum of Understanding (MOU) establishing a fund of approximately \$147.3 million per year on a pro rata basis to provide technical assistance and capacity building. The fund is scheduled to continue until the next Farm Bill or a mutually agreed solution to the Cotton dispute is reached. The MOU also provides that the United States may end the fund if Brazil imposes countermeasures.

With the conclusion of the MOU, Brazil announced that countermeasures would not be imposed for at least 60 days from signature of the MOU. During this period, the United States and Brazil negotiated a framework regarding the Cotton dispute. On June 17, 2010, Brazil approved the framework that the governments had negotiated, and on June 21 it announced that it would not impose countermeasures as long as the framework remained in effect. The framework includes elements on cotton support, the GSM-102 program, and further discussion between the United States and Brazil. Brazil and the United States met for discussions under the framework on October 20, 2010.

4. U.S. Application of Countervailing Duties to Chinese Imports

A WTO dispute settlement panel reviewing the consistency of four pairs of Commerce AD and CVD determinations with U.S. obligations under the WTO agreements circulated its report on October 22, 2010.¹⁰ Before the panel, China challenged Commerce's determinations that certain state-owned enterprises (SOEs) and banks provided financial contributions (including production inputs, land-use rights, and loans), that those financial contributions conferred benefits, and that the subsidies identified were specific. China also challenged certain procedural aspects of Commerce's determinations. In addition, China argued that the concurrent application of a countervailing duty and an antidumping duty calculated pursuant to Commerce's NME methodology results in a "double remedy" for domestic subsidies in China.

¹⁰ *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/R. The Commerce AD and CVD determinations at issue in this dispute apply to exports from China of *Circular Welded Pipe, Off-Road Tires, Laminated Woven Sacks, and Light-Walled Rectangular Pipe*.

The panel largely upheld Commerce's determinations. Among other findings, the panel concluded that: (1) Commerce's determinations that Chinese SOEs and state-owned commercial banks (SOCBs) were "public bodies" that provided financial contributions were not inconsistent with the Subsidies Agreement; (2) Commerce was not required to assess whether trading companies were "entrusted or directed" to provide goods for less than adequate remuneration to subject merchandise producers; (3) Commerce properly determined that certain lending by SOCBs was *de jure* specific; (4) Commerce's use of external or "out-of-country" benchmarks to measure the benefit of production inputs, land-use rights, and RMB-denominated loans was appropriate; (5) there was no obligation for Commerce to "offset" positive subsidy benefit amounts with negative subsidy benefit amounts; (6) Commerce acted properly with respect to certain procedural claims by China; and (7) that China failed to establish that the United States acted inconsistently with U.S. WTO obligations when it concurrently imposed countervailing duties and AD duties calculated under the U.S. NME methodology on the same products.

In December 2010, China notified its appeal of certain of the panel's findings to the WTO Appellate Body. China, the United States, and third participants filed written submissions in December and an oral hearing before the Appellate Body was scheduled for January 2011. The Appellate Body is expected to circulate its report in March 2011.

Domestic interested parties are litigating under U.S. law a number of issues similar to those in this dispute. Those cases are pending before the U.S. Court of International Trade and the Court of Appeals for the Federal Circuit (CAFC).¹¹

5. Canada – U.S. Softwood Lumber Agreement

The 2006 Softwood Lumber Agreement between the Government of the United States of America and the Government of Canada (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. Pursuant to a settlement of litigation, Commerce revoked the AD and CVD orders on imports of softwood lumber from Canada. (The settlement ended a large portion of the litigation over trade in softwood lumber). Upon revocation of the orders, U.S. Customs and Border Protection ceased collecting cash deposits and returned previously collected deposits with interest to the importers of record.

The SLA provides for unrestricted trade in softwood lumber in favorable market conditions. However, when the price of lumber is low, Canada must impose export measures. Canadian exporting provinces can choose either to collect an export charge that ranges from 5 percent to 15 percent as prices fall or to collect lower export charges and limit export volumes. The SLA also includes provisions to address potential Canadian import surges, provide for effective dispute settlement, and monitor

¹¹ For example, the "double remedy" issue is on appeal before the CAFC in *GPX v. United States*, Court No. 2011-1107.

administration of the SLA through the establishment of a Softwood Lumber Committee. In addition, the SLA prohibits “circumvention” of the SLA by restricting Canada from taking any action having the effect of reducing or offsetting the export measures. The SLA specifically provides that, with certain enumerated exceptions, grants or benefits provided by a Party, including any public authority of a Party, to producers or exporters of Canadian softwood lumber products shall be deemed to reduce or offset the export measures.

On March 30, 2007, the United States requested consultations with Canada pursuant to Article 14 of the SLA regarding the apparent failure by Canada to calculate export volume limits consistently with the terms of the SLA. Consultations were held in Ottawa on April 19, 2007. On August 13, 2007, the United States requested that an arbitration tribunal be formed pursuant to Article 14 of the SLA and the rules of the London Court of International Arbitration (LCIA). The tribunal was formally appointed by the LCIA on September 19, 2007.

The tribunal issued an award on liability on March 3, 2008. In its award, the tribunal found that Canada breached the SLA by failing to properly calculate the quotas for the Eastern provinces from January to June 2007. The tribunal rejected the U.S. claim that Canada breached the SLA by failing to make a downward adjustment to the export volume limits for BC and Alberta, finding that no such adjustments are required for those provinces.

The tribunal issued an award on remedy on February 26, 2009. In its award, the tribunal found that Canada must cure its breach of the SLA within 30 days of the award. The tribunal further determined that, as an appropriate adjustment to compensate for the breach, Canada must collect an additional 10 percent ad valorem export charge on softwood lumber shipments from Eastern Canadian provinces until CDN \$68.26 million (US \$54.8 million at current exchange rates) has been collected.

Canada failed to cure the breach within 30 days and, on April 7, 2009, the United States imposed 10 percent *ad valorem* customs duties on imports of softwood lumber products from four Canadian provinces (Ontario, Quebec, Manitoba, and Saskatchewan). The United States announced that the duties would remain in place until such time as the United States had collected \$54.8 million.

On April 2, 2009, Canada requested that an arbitration tribunal be formed pursuant to Article 14.29(c) of the SLA to determine whether Canada had cured its breach through an offer to make a payment to the United States of US\$34 million. On April 9, 2009, the LCIA formally appointed a tribunal in *Canada v. United States*, LCIA Case No. 91312. The tribunal issued an award on cure on September 28, 2009. In its award, the tribunal determined that Canada had not cured its breach by offering to make a direct payment to the United States of US\$34 million. The tribunal agreed with the United States that such a direct payment could not cure Canada’s breach. A cure, in the tribunal’s view, must have an economic effect in the market.

Following the arbitration award in LCIA Case No. 91312, on September 1, 2010, Canada imposed a 10 percent *ad valorem* additional export charge on exports of softwood lumber products from Ontario, Quebec, Manitoba, and Saskatchewan, and the United States discontinued collecting import duties. The Canadian export charges will remain in place until CDN \$68.26 million has been collected.

In a separate proceeding, on March 30, 2007, the United States requested consultations with Canada pursuant to Article 14 of the SLA regarding apparent Canadian circumvention of the SLA. Under the SLA, the United States and Canada committed not to take action to circumvent the commitments made in the Agreement. The SLA expressly states that providing certain grants or other benefits to Canadian softwood lumber producers would be considered circumvention. Quebec and Ontario put in place several assistance programs that provide grants or other benefits to softwood lumber producers that appear to violate the SLA's anti-circumvention provisions. These include a number of grant, loan, loan guarantee, and tax credit programs, as well as so-called "forest management" programs and programs that promote wood production. Consultations were held in Ottawa on April 19, 2007.

On January 18, 2008, the United States requested that an arbitration tribunal be formed pursuant to Article 14 of the SLA and the rules of the LCIA. The tribunal was formally appointed by the LCIA on March 7, 2008. The tribunal held several telephone conferences with the parties during 2008-2009, and held a hearing in Ottawa on July 20-24, 2009. On January 21, 2011, the tribunal issued its decision, finding that three programs in Quebec and two programs in Ontario circumvented the terms of the SLA. The tribunal dismissed claims on one additional program in Ontario and three additional programs in Quebec, finding insufficient record evidence that those programs breached the SLA. The tribunal directed Canada to cure the breach within 30 days of its decision; otherwise, the tribunal set compensatory adjustments that would increase export taxes on lumber by 0.10% for Ontario and 2.60% for Quebec.

Lastly, on October 8, 2010, the United States requested consultations with Canada pursuant to Article 14 of the SLA regarding certain pricing practices with respect to timber harvested from public lands in the Interior region of British Columbia. Consultations were held on October 25 in Ottawa. The United States has monitored with growing concern the dramatically increasing share of timber provided by the provincial government to softwood lumber producers for the low fixed price of 25 cents per cubic meter – the price applied to timber graded "lumber reject." The increased amount of timber provided at this price does not appear to be justified by any known factors affecting timber quality in the province (including the mountain pine beetle). The provision of an increasing amount of timber for 25 cents per cubic meter appears to be providing a benefit to producers of Canadian softwood lumber products, which has the effect of offsetting or reducing the export measures provided for in the SLA, contrary to Article 17 of the Agreement. On January 18, 2011, the United States requested arbitration for a third time pursuant to Article 14 of the SLA, seeking a finding from the LCIA that the increased provision of 25-cent timber to Canadian softwood lumber producers by the province of British Columbia breaches the SLA.

E. Foreign CVD Investigations of U.S. Exports

In 2010, USTR and Commerce defended U.S. commercial interests in several subsidy investigations by foreign governments that involved exports of products from the United States. These included CVD proceedings conducted by the EU, China, Peru and Australia.

1. European Union

In June 2008, the Commission of the European Union (Commission) initiated a CVD investigation on imports of biodiesel from the United States. Several alleged state and federal government programs were included in the investigation. USTR and Commerce worked closely with the states, other federal government agencies and U.S. industry to respond to Commission questionnaires and participate in the verification of the questionnaire responses. In July 2009, the Council of the European Union adopted definitive countervailing duties on imports of biodiesel from the United States. The CVD rates ranged from EUR 211 to EUR 237 per ton.

On June 29, 2010, the European Biodiesel Board, the EU petitioner in the original investigation, submitted a request to the Commission to initiate a circumvention review of the AD and CVD order involving imports of biodiesel from the United States. The request alleged that U.S. producers and exporters of biodiesel have circumvented these orders through transshipment of biodiesel originating in the United States *via* Canada and Singapore. Further, the request alleged that the orders have been circumvented through modification of the product, *i.e.*, U.S. producers exporting low blend biodiesel, which is outside of the scope of the original order. The Commission initiated an investigation on August 11, 2010, and is due to complete its investigation in May 2011. As part of its review, the Commission has requested certain information, including trade statistics, from the U.S. government. USTR and Commerce will continue to participate in and actively defend the legitimate interests of U.S. companies and workers during this circumvention review.

2. China

In June 2009, acting on a petition from Chinese steel producers, MOFCOM initiated China's first ever CVD investigation. The petition alleged that U.S. federal and state governments have provided subsidies to U.S. producers of grain-oriented electrical steel (GOES) and that exports of such allegedly subsidized products are causing injury to the Chinese industry. Since then, MOFCOM has initiated two additional CVD investigations involving imports of chicken parts and automobiles from the United States. As USTR explained in its 2010 Report to Congress on China's WTO Compliance, MOFCOM announced its initiation of these investigations under troubling circumstances.

Final determinations have been issued in both the GOES and chicken parts investigations. In its final determination in the GOES investigation, issued in April 2010,

MOFCOM found several of the alleged programs to be countervailable, including the Buy America Act and three state programs, and imposed CVD duties of between 11.7 percent and 44.6 percent. In the final determination of the chicken parts investigation, issued in August 2010, MOFCOM imposed CVD duties between 4 and 30.3 percent. A final decision in the automobiles investigation is currently expected to be issued in May 2011.

Through these investigations, it has become evident that China needs to improve key aspects of transparency and procedural fairness in its CVD proceedings because certain aspects of MOFCOM's procedures and determinations appear to be inconsistent with China's obligations under the WTO Subsidies and Antidumping Agreements. The United States has raised these and other issues bilaterally with MOFCOM as well as at the WTO in regular meetings before the Subsidies and Antidumping Committees, but MOFCOM has not indicated a willingness to revise its processes or findings.

On September 15, 2010, the United States requested dispute settlement consultations with China regarding MOFCOM's imposition of AD and CVD duties on imports of GOES from the United States. The consultation request alleged that China appears to have acted inconsistently with various procedural and substantive WTO obligations, including MOFCOM's:

- improper use of facts available in determining the subsidy benefit under the government procurement program;
- failure to disclose the "essential facts" underlying its determinations and to provide in sufficient detail the findings and conclusions it reached on all issues of fact and law it considered material;
- improper initiation of an investigation despite a lack, in several cases, of information regarding the existence of a subsidy;
- failure to provide, or require the applicant to provide, adequate non-confidential summaries of allegedly confidential information; and
- deficient analysis of the effect of imports under investigation and the alleged causal link, which was not based upon an objective examination on the basis of positive evidence.

Consultations with China on the GOES determinations were held at the WTO in November, 2010. The United States is currently considering the appropriate next steps, possibly including a request for the formation of a WTO dispute settlement panel.

3. Peru

On August 26, 2009, the Government of Peru initiated a CVD investigation on exports of biodiesel from the United States. The petition from the Peruvian industry alleged that U.S. biodiesel exports benefited from two U.S. federal tax subsidy programs. USTR and Commerce worked closely with other federal government agencies to respond to Peru's questionnaire regarding these alleged programs. On August 20, 2010, the Government of Peru issued a "final resolution" in which it found that the two federal tax programs at issue were both countervailable subsidies. As a result, Peru imposed final countervailing duties of \$178 per MT on pure biodiesel and certain blends imported from the United States.

During this investigation, it became clear that there were several aspects of Peru's trade remedies practice that appear to be inconsistent with the rules of the Subsidies Agreement. For example, early in the investigation, U.S. officials met with officials at INDECOPI, Peru's administering authority for trade remedies, to request access to public versions of all documents submitted by the parties in this case. Despite these requests, public versions of numerous submissions, including questionnaire responses and written arguments, were not made available to the United States for review during the investigation. The lack of access to this information has hindered the ability of the United States to prepare its case and make presentations and arguments on the basis of the information on the record. The United States attempted to address this problem bilaterally with Peru on several occasions and made objections on the record of the investigation in an attempt to defend U.S. interests. The United States continues to consider its options for addressing these and similar concerns with Peru's trade remedies practice going forward.

4. Australia

On June 22, 2010, the Australian Customs and Border Protection Service (CBPS) initiated a CVD investigation of imports of biodiesel from the United States. This investigation covered imports of pure biodiesel and blended biodiesel in excess of 20 percent. The original petition from the Australian industry alleged that U.S. biodiesel exports benefited from two U.S. federal tax programs. Later in the investigation, CBPS requested information regarding additional state-level programs. On October 18, 2010, Australia's CBPS announced its preliminary determination in this case, finding the federal tax programs and one state program to be countervailable subsidies. The preliminary CVD rate was determined to be \$1.10/gallon. CBPS is expected to make a final recommendation to the Minister of Home Affairs by early 2011.

F. WTO Subsidies Committee

The Subsidies Committee held two formal meetings in 2010, in April and October. The Subsidies Committee continued its regular work of reviewing WTO Members' notifications of their subsidy programs to the Subsidies Committee, as well as the consistency of Members' domestic laws, regulations, and actions with the

requirements of the Subsidies Agreement. Importantly, the Subsidies Committee implemented certain modifications to its reporting formats that were adopted in 2009 in order to improve the timeliness and completeness of notifications. Other items addressed in the course of the year included: examination and approval of specific export subsidy program extension requests for certain small-economy developing-country Members; election of Mr. Akio Shimizu (Japan) to the five-member Permanent Group of Experts; updating the eligibility threshold for developing countries to provide export subsidies under Annex VII(b) of the Subsidies Agreement; and, the "export competitiveness" of India's textile and apparel industry. Further information on these various activities is provided below.

1. Subsidy Notifications by Other WTO Members

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

Under Article 25.2 of the Subsidies Agreement, Members are required to report certain information on all measures, 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. In 2010, the Subsidies Committee reviewed twenty-eight subsidies notifications covering the period ending 2009 and five notifications covering the period ending 2007.¹² Numerous Members have never made a subsidy notification to the WTO, although many of these are lesser developed countries.¹³

2. Review of CVD Legislation, Regulations and Measures

Throughout 2010, many WTO Members continued to submit notifications of new or amended CVD legislation and regulations, as well as CVD investigations initiated and decisions taken. These notifications were reviewed and discussed by the Subsidies Committee at both of its regular meetings. In reviewing notified CVD legislation and regulations, the Subsidies Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified laws and regulations and their relationship to the obligations of the Agreement. The United States continued to play an important role in the Subsidies Committee's examination of

¹² During the 2010 spring and fall meetings, the Subsidies Committee reviewed the 2009 and 2007 new and full subsidy notifications of Argentina; Australia; Burkina Faso; Canada; Chile; Ecuador; EU; Hong Kong, China; Honduras; Japan; Korea; Kyrgyz Republic; Liechtenstein; Macao, China; Malawi; Malaysia; New Zealand; Nigeria; Norway; Paraguay; Qatar; Switzerland; Taiwan; Thailand; Turkey; Ukraine; and the United States. The Committee also continued the review of 2009 and 2007 new and full subsidy notifications of Argentina; Ecuador; Guatemala; EU; and the United States.

¹³ For further information, see the Report (2010) of the WTO Committee on Subsidies and Countervailing Measures (G/L/937), October 29, 2010.

the operation of other Members' CVD laws and their consistency with the obligations of the Subsidies Agreement.

To date, 93 WTO Members¹⁴ have notified that they have CVD legislation in place, and 33 Members have notified that they have no CVD legislation in place. Among the notifications of CVD laws and regulations reviewed in 2010 were those of Australia, Brazil, Canada, China, EU, India and the United States.

As for CVD measures, nine WTO Members notified CVD actions taken during the latter half of 2009, and seven Members notified actions taken in the first half of 2010.¹⁵ The Subsidies Committee reviewed actions taken by several Members, including Australia, Brazil, Canada, the EU and the United States.

At the April and October 2010 meetings of the Subsidies Committee, the United States and China both made interventions regarding each others' CVD measures imposed during the reporting period. As noted previously in this report, the United States identified a number of ongoing concerns regarding China's conduct in its GOES, chicken and autos CVD investigations. Concerns expressed included the initiation of an investigation of certain subsidies based on insufficient evidence in the petition; the inappropriate use of facts available for the government procurement program in the GOES case; the failure to demonstrate a subsidy pass-through in the chicken case; the lack of transparency in calculating the all other's rates in the chicken and GOES cases; as well as concerns regarding the China's injury determination in GOES. China's intervention focused on the U.S. determination in the investigation of oil-country tubular goods, specifically the findings on material injury and threat, the use of facts available to establish whether certain entities were public bodies and the extent of government ownership in an input supplying industry, and the finding of financial contribution and benefit where input goods were sold by SOEs through trading companies.

3. Notification Improvements

During 2009, the Subsidies Committee adopted several changes to the standard format for semi-annual reports of CVD measures and the minimum information to be provided in connection with the notification of preliminary or final CVD measures, as required under Article 25.11 of the Subsidies Agreement. The implementation of the new format has proceeded smoothly and has resulted in helpful new information being provided in 2010, most notably the names of subsidy programs determined to be countervailable in all CVD proceedings. Members are also now encouraged to submit electronically to the WTO Secretariat copies of the public determinations of CVD actions – even if in a non-WTO language – as attachments to the *ad hoc* notifications of

¹⁴ The EU is counted as one Member. These notifications do not include those submitted by Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic and Slovenia before these Members acceded to the European Communities.

¹⁵ Data for the second half of 2010 were not yet available at the time of this report was written.

preliminary and final determinations. The additional information provided should help to increase the transparency of CVD actions taken and should help Members to identify trade-distorting subsidy practices.

In March 2009, the Chairman of the WTO's Trade Policy Review Body, acting through the Chairman of the General Council, requested that all committees discuss "ways to improve the timeliness and completeness of notifications and other information flows on trade measures." The United States fully supported this initiative in 2009 and developed proposals that would encourage Members to be more transparent in their industrial subsidy policies. As a result of the discussions that took place throughout 2009, the Subsidies Committee agreed that a new annex should be included in the Subsidies Committee's annual report that will provide greater detail regarding the extent to which each Member has or has not met its subsidy notification obligations. Additionally, a new "one-time" notification format was created for Members – largely least-developed-country Members – that have not established a legal framework and competent authorities to conduct CVD investigations. Lastly, Subsidies Committee Members agreed to provide all notifications electronically to the Secretariat, which will facilitate and expedite circulation and posting on the WTO website.

In light of many Members' poor record of compliance with the transparency obligations under the Subsidies Agreement, the United States pressed for the continuation of this transparency initiative in 2010. At the October Subsidies Committee meeting, the United States took the initiative under this agenda item to highlight the chronic failure by several large Members (*i.e.*, China, India and Malaysia) to submit a timely and complete subsidy notification and the fact that Members have not replied to written questions regarding subsidy programs pursuant to Article 25.8 of the Subsidies Agreement (*i.e.*, China).

As discussed elsewhere in this report, since it joined the WTO in 2001, China has only submitted one, largely incomplete subsidy notification in 2006. China has stated for over a year that its next notification is imminent, but has acknowledged that even this late submission will not include any subsidies administered by provincial and local authorities. This failure by one of the WTO's largest exporters to comply with such an important transparency obligation under the Subsidies Agreement is untenable. As noted above, in light of the seriousness of China's behaviour, the United States is considering alternative approaches to satisfactorily resolve this ongoing problem, including potentially taking other actions under Article 25 of the Subsidies Agreement.

The United States also highlighted its concerns regarding India's repeated failure to comply adequately with the subsidy notification requirements under the Subsidies Agreement. In October 2010, for the first time since 2001, India submitted a notification covering the combined reporting periods of 2004 through 2009.¹⁶ This notification included only three programs for the period 2004 through 2009, namely, certain preferential tax policies administered by the Ministry of Finance, including those available

¹⁶ G/SCM/N/186/IND.

to exporting enterprises located in Free Trade, Special Economic and Export Processing Zones. This stands in stark contrast to the numerous central and state-level subsidies programs in India that the United States has investigated and found countervailable in Commerce's CVD proceedings against imports from India during the same period. India's notification is highly problematic for being both untimely and seriously deficient. As noted above, and as was stated by the U.S. delegate at the fall Subsidies Committee meeting, the United States is considering alternative approaches to satisfactorily resolve these ongoing subsidy notification issues, including potentially taking other actions under Article 25 of the Subsidies Agreement.

4. Article 27.4 Update

Under the Subsidies Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the Subsidies Agreement authorizes the Subsidies Committee to extend this deadline, where justified. If the Subsidies Committee does not affirmatively determine that an extension is justified, the export subsidy at issue must be phased out within two years.

To address the concerns of certain small developing-country Members, a special procedure within the context of Article 27.4 of the Subsidies Agreement was adopted at the Fourth WTO Ministerial Conference in 2001. Under this procedure, a developing country Member meeting all of the agreed-upon qualifications became eligible for annual extensions upon request for a five-year period through 2007, in addition to the two years referred to under Article 27.4. Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests for extension since 2002 under this special procedure.

Following a request for further extension after this agreed upon period, in 2007, the Subsidies Committee decided to recommend to the General Council a further extension of the transition period until 2013 under similar special procedures as those that had previously been in place, with a two-year phase-out period ending in 2015. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, was that the beneficiaries have no further recourse to extensions beyond 2015. The General Council adopted the recommendation of the Subsidies Committee in July 2007.

Specific export subsidy program extension requests under the new procedures were made in 2010 by all of the developing country Members listed above.¹⁷ These requests required, *inter alia*, an action plan detailing how each requesting Member intends to eliminate the export subsidies at issue. Also required was "information as to legislative changes, administrative amendments and/or other procedures as may be necessary, and whether any of these actions have been undertaken or are in the process of being undertaken, including how the individual beneficiaries have been

¹⁷ WT/L/691.

notified....”¹⁸ The Subsidies Committee conducted a detailed review of more than 40 export subsidy programs to assess whether the Members had in place an action plan that complied with the obligations under the new procedures for phasing out the programs. The United States submitted detailed written questions to many of the Members requesting an extension. At the end of the process, all of the extension requests were granted. (Attachment 3 contains a chart of all of the programs for which an extension was granted).

5. Permanent Group of Experts

Article 24 of the Subsidies Agreement directs the Subsidies Committee to establish a Permanent Group of Experts (PGE) “composed of five independent persons, highly qualified in the fields of subsidies and trade relations.” The Subsidies Agreement articulates three 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 Subsidies Agreement; (ii) to provide, at the request of the Subsidies Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. Article 24 further provides for the Subsidies Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

In the beginning of 2010, the PGE had five members: Mr. Gerard Depayre (France), Dr. Chang-fa Lo (Chinese Taipei); Dr. Manzoor Ahmad (Pakistan); Mr. Zhang Yuqing (China); and Mr. Jeffrey A. May (United States). Dr. Chang-fa Lo’s term ended in spring 2010 and, as his replacement, the Subsidies Committee elected Mr. Akio Shimizu (Japan).

6. The Methodology for Annex VII (b) of the Subsidies Agreement

Annex VII of the Subsidies Agreement identifies certain lesser developed country Members that are eligible for particular types of S&DT. Specifically, any export subsidies provided by these Members are not prohibited. The Members identified in Annex VII include those WTO Members designated by the United Nations as “least developed countries” (Annex VII(a)) as well as countries that, at the time of the negotiation of the Subsidies Agreement, had a per capita GNP under \$1,000 per annum and that are specifically listed in Annex VII(b).¹⁹ A country automatically “graduates”

¹⁸ Id.

¹⁹ Members identified in Annex VII(b) are: Bolivia, Cameroon, Congo, Cote d’Ivoire, Egypt, Ghana, Guyana, India, Indonesia, Kenya, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of a technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. At the WTO's Fourth Ministerial Conference, Ministers made a decision that the calculation of the \$1,000 threshold would be based on constant 1990 dollars. The WTO Secretariat regularly updates these calculations and, to date, the following countries have graduated from Annex VII(b) status: Morocco, the Dominican Republic and Guatemala.²⁰

7. India's Export Competitiveness

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

On February 26, 2010, the United States submitted a request, in accordance with Article 27.6 of the Subsidies Agreement, that the WTO Secretariat undertake a computation of the export competitiveness of textile and apparel exports from India.²¹ Prior to making the request to the Secretariat, the United States performed its own export competitiveness calculations, which indicated that India's textile and apparel products clearly had become export competitive. The Secretariat released its computation on March 23, 2010,²² which confirmed that India's exports of textile and apparel products exceed the export competitiveness threshold stipulated in the Subsidies Agreement.

The United States has held a number of bilateral discussions with India to review, among other things, the implications of India's textile and apparel industries reaching export competitiveness, including the requirement under Article 27.5 of the Subsidies Agreement that India begin to phase out export subsidies benefitting its textiles and apparel industries. Further, at the April and October, 2010, meetings of the Subsidies Committee, the United States urged India to commit to a schedule to end its export subsidies for products for which it had achieved export competitiveness. This is particularly important because, as explained elsewhere in this report, India appears recently to have extended many of the export subsidy programs that benefit its textile and apparel exporters. The extent of this problem is obscured, however, by the fact that India has failed to adequately notify its subsidies to the WTO in accordance with Article 25.2 of the Subsidies Agreement. As explained above, India's 2010 notification fails to provide a complete accounting of the extent of its subsidy regime.

²⁰ G/SCM/110/Add.7.

²¹ G/SCM/132.

²² G/SCM/132/Add.1; G/SCM/132/Add.1/Rev.1.

In 2011, the United States will continue to seek a resolution to this issue by pressing India to begin the required phase-out of export subsidies that benefit the textile and apparel industries. If India does not show clear progress in taking these necessary steps, the United States will consider appropriate alternative actions afforded under the Subsidies Agreement and other WTO Agreements.

8. Prospects for 2011

In 2011, the United States will continue to press China for its long-overdue subsidy notification and will continue to focus on those programs not notified, particularly those that may be prohibited under the Subsidies Agreement and those administered at the provincial and local levels. The United States will also continue to press India for a complete accounting of all of its notifiable subsidies at both the central and state level and a commitment to phase out its export subsidy programs for its textile and apparel industry. In the continued absence of complete and timely notifications from China and India, the United States will consider other available options provided under the Subsidies Agreement for bringing to the attention of the Subsidies Committee unreported, notifiable subsidies at the central and sub-central levels of government in both countries.

More generally, in 2011, the United States will continue to actively participate in the efforts of the Subsidies Committee to improve the timeliness and completeness of all Members' subsidy notifications. Among the issues that may be addressed further by the Members are three concerns that have already been raised by the United States: (1) the failure by numerous Members to respond to questions regarding subsidy practices made pursuant to Article 25.8 of the Subsidies Agreement; (2) the absence from Members' notifications of subsidy practices administered by sub-central governments; and (3) the submission of patently deficient subsidy notifications by Members that are large exporters.

G. U.S. Monitoring of Subsidy-Related Commitments

1. WTO Accession Negotiations

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

The economic and trade information reviewed by the working party includes the acceding candidate's subsidies regime. Subsidy-related information is summarized in a memorandum submitted by the applicant detailing its foreign trade regime, which is

supplemented and corroborated by independent research throughout the accession negotiation. USTR and Commerce, along with an interagency team, review the compatibility of the applicant party's subsidy regime with WTO subsidy rules. Specifically, the interagency team examines information on the nature and extent of the candidate's subsidies, with particular emphasis on subsidies that are prohibited under the Subsidies Agreement. Additionally, an accession candidate's trade remedy laws are examined to determine their compatibility with relevant WTO obligations.

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

Highlights of developments in 2010 in the accession processes of various candidates include the following. Early in the year, members of the Working Party for Iran had an initial opportunity to submit questions and comments regarding Iran's foreign trade regime. A Working Party for Syria was established in May 2010 and the first Working Party for the Bahamas convened in September 2010. The accession process for Vanuatu, dormant for nearly a decade, was resumed in 2010 on Vanuatu's request, with the WTO Secretariat circulating an updated version of the Draft Report of the Working Party from 2001.

In April 2010, the United States and Yemen held bilateral meetings to discuss accession commitments from Yemen with regard to its investment law and draft subsidies notification, and the transition period being sought by Yemen under Article 27 of the Subsidies Agreement.

In June 2010, Lao PDR submitted its first draft subsidies notification for review by the Working Party, which resulted, in part, from a U.S.-Lao bilateral technical exchange in August 2009 aimed at supporting Lao PDR's stated commitment to submit such a notification. The United States and other Working Party members submitted comments and questions regarding the notification and sought further commitments from Lao PDR to ensure the WTO-consistency of its subsidy programs.

Also during 2010, the United States and Russia made significant progress in negotiations on Russia's WTO accession. Following a June 24 meeting between President Obama and Russian President Medvedev, U.S. and Russian officials held a series of meetings aimed at reaching agreement on Russian commitments concerning several aspects of its trade policy, including intellectual property rights, government procurement, and transparency in the decision-making process on trade-related issues, as well as some subsidy-related issues. On October 1, 2010, USTR announced that the United States and Russia had reached agreement on the substance of these commitments. With regard to commitments on subsidies, Russia agreed that it would not invoke the provisions under Article 28 of the Subsidies Agreement (regarding existing programs), which would have allowed Russia three years to eliminate some of

its prohibited subsidies. This, as well as the other commitments reached during these talks will be reflected in the final terms for Russia's accession.

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

By describing Members' subsidy practices, these reviews play an important role in ensuring that WTO Members meet their obligations under the WTO Agreements, including the Subsidies Agreement. TPRs also provide a broader context in which to assess a Member's subsidy policies and their role in that Member's economy than do the Subsidies Committee's review of Members' subsidies notifications. In reviewing these TPR reports, USTR and Commerce scrutinize the information concerning the subsidy practices detailed in the report, but also conduct additional research on potential omissions regarding known subsidy practices that have not been reported. USTR and Commerce work to ensure that the WTO applies the same thoroughness and scrutiny to the TPRs of other Members, especially the large trading economies, as it applies in TPRs of the United States.

In 2010, USTR and Commerce reviewed 16 Members' TPRs, including those of Armenia, Belize, China, Croatia, Hong Kong, Malawi, Papua New Guinea, and Sri Lanka. With regard to China's TPR, the United States -- individually, as well as jointly with Canada and Mexico -- submitted extensive comments and questions concerning numerous market access and industrial policy measures, such as China's indigenous innovation initiatives. The United States also submitted detailed questions regarding many of China's potential trade-distorting subsidies, some of which appear to be prohibited under WTO rules. USTR and Commerce will continue to engage China on these issues.

CONCLUSION

In 2010, the subsidy discipline enforcement efforts of USTR and Commerce significantly contributed to the trade enforcement component of President's Obama's National Export Initiative. In 2011, the U.S. Government's subsidy enforcement efforts will focus on pursuing several highly significant WTO dispute settlement cases, advocating tougher subsidy disciplines in the context of the Doha Round, pushing for greater transparency with respect to the government provision of support and closely monitoring the actions of others to ensure adherence to the obligations set out in the Subsidies Agreement. By actively working to address trade-distorting foreign government subsidies, the U.S. government's subsidies enforcement program is contributing to the NEI's goal of expanding U.S. exports, advancing economic growth and encouraging job creation. Ultimately, a trading environment that is free from the most trade-distorting government subsidies will be more open and competitive, bringing significant economic benefits to American manufacturers, workers and consumers alike.

ATTACHMENT 1



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

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

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

- *Export loans or loan guarantees at preferential rates*
- *Tax exemptions for exporters or favored companies or industries*
- *Assistance conditioned on the purchase of domestic goods*
- *R&D grants for the development and commercialization of new technologies*

What is the Subsidies Enforcement Office and What Can It Do for You?

ITA's Import Administration (IA) knows that U.S. exporters, manufacturers and workers can be highly successful in diverse industries and overseas markets when they can compete on a level playing field. However, it is clear that not all foreign companies or governments always play by internationally accepted rules. IA's Subsidies Enforcement Office (SEO) is committed to confronting foreign government subsidies and related trade barriers that impede U.S. companies' and workers' ability to expand into and compete fairly in these crucial markets. With a variety of resources and tools at its disposal, the SEO provides:

- A dedicated staff that continually monitors and analyzes foreign subsidies and intervenes, where possible and appropriate, to challenge harmful foreign subsidies.
- Resources to find information on a wide range of foreign government subsidy practices, including our online [Subsidies Library](#).
- Counseling services to American companies on the tools available to address unfairly subsidized imports.
- An experienced staff that provides advice to U.S. companies whose exports are subject to foreign countervailing duty (anti-subsidy) actions and that takes an active role in such cases to defend U.S. interests.

This year, the SEO vigorously defended the interests of over 40 U.S. exporters subject to foreign anti-subsidy investigations, whose overseas markets across a variety of industries have ranged from \$127 million to over \$2 billion.

What Other Remedies Are Available To Combat Unfair Foreign Subsidies?

In addition to the SEO services noted above, under the U.S. trade remedy laws and international trade rules if a foreign subsidy meets certain conditions, the U.S. government could take the following steps, where appropriate:

The SEO recently developed an effective advocacy strategy to help a medium-sized U.S. aerospace exporter to address foreign subsidies that impeded its ability to compete in overseas markets.

- Impose special duties (*i.e.*, countervailing duties) on subsidized imports that are injuring U.S. industries.
- Challenge foreign subsidization through the dispute settlement system of the World Trade Organization.

What is the Next Step?

Contact the SEO if you believe subsidized imports are harming your company or foreign subsidies are impeding your ability to export and compete abroad. SEO experts can evaluate the situation to determine what tools under U.S. law and international trade rules are available to effectively address the problem. Working together we can combat harmful foreign subsidies, to ensure that high quality, export-related jobs in the United States are created and preserved.

ATTACHMENT 2

THE SUBSIDIES ENFORCEMENT LIBRARY

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

First Screen

[Please note: the SEO is continuing to implement certain improvements to the website; as a result, its appearance may continue to change somewhat, but the basic contents will remain the same.]

SUBSIDIES ENFORCEMENT OFFICE
<ul style="list-style-type: none">• Review and Operation of the WTO Subsidies Agreement (June 1999)• DOC Countervailing Duty Proceedings<ul style="list-style-type: none">○ Published since Jan 1, 2009○ Published prior to Dec 31, 2008
SEO
<ul style="list-style-type: none">• Home• Overview• FAQ• Contact Us• WTO Agreement
Subsidy Programs
<ul style="list-style-type: none">• Since Jan 1, 2009• Prior to Dec 31, 2008
WTO Notifications
<ul style="list-style-type: none">• By Date• By Country
Reports to Congress
[Select a Year]

Description of Choices

Review and Operation of the WTO Subsidies Agreement (June 1999)

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

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.

DOC Countervailing Duty Proceedings

This is the gateway to the library. The visitor can click on the links under this heading to access information regarding subsidy programs that have been analyzed by Import Administration staff in the course of countervailing duty (CVD) proceedings since 1980.

Published Since Jan 1, 2009 - This will link the visitor to subsidy programs analyzed in the most recent CVD decisions since 2009. By clicking on this link, the visitor can access a search feature to search for programs by entering terms or dates, or selecting from a list of terms (such as country

name), in various boxes where indicated. Clicking on the “search” button will execute a search based on the terms and dates selected by the visitor, and open a “search results page” displaying the relevant CVD decisions arranged in reverse chronological order from top to bottom. The visitor can then click on the decision title to access a copy of the decision for review.

Published Prior to Dec 31, 2008 - This links the visitor to subsidy programs that analyzed in earlier CVD proceedings through 2008. The information is provided by country and then subdivided into various categories, based on the Department of Commerce's finding in the proceeding. More detailed information about a program in a specific case can be easily found by clicking on the hyperlinked cite to the Federal Register notice, in which a complete description of the program and Commerce's analysis is provided.

Home

This link will take the visitor back to the SEO homepage.

Overview

This links 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.

FAQ

This link contains “frequently asked questions” that the visitor can consult for additional information regarding the SEO and the subsidies library.

Contact Us

This link will automatically open up an email form with the SEO's email address, which the visitor can use to submit comments or questions.

Subsidy Programs

This is an alternative link to the subsidy library with the same information as “DOC Countervailing Duty Proceedings” above.

WTO 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 legal measure that established the program. Although the Subsidies Agreement stipulates that the notification of a measure does not prejudice its legal status under the Agreement, these notifications do provide detailed information concerning a number of countries' subsidy measures. In the event that less than full information about the program is provided, the Subsidies Enforcement Office, working with other U.S. agencies, seeks more detailed information.

Reports to Congress

This will link the visitor to the most recent SEO Annual Report to Congress, as well as past Annual Reports.

ATTACHMENT 3

**Further 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	Extension granted
	Free Trade/Processing Zones	Extension granted
BARBADOS	Fiscal Incentive Program	Extension granted
	Export Allowance	Extension granted
	Research & Development Allowance	Extension granted
	International Business Incentives	Extension granted
	Societies with Restricted Liability	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	Extension granted
	Export Processing Zone Act	Extension granted
	Commercial Free Zone Act	Extension granted
	Conditional Duty Exemption Facility	No extension requested.
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	Extension granted
	Inward Processing Regime	Extension granted
DOMINICA	Fiscal Incentives Program	Extension granted
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones"	Extension granted
EL SALVADOR	Export Processing Zones & Marketing Act	Extension granted
	Export Reactivation Law	No extension requested.
FIJI	Short-Terms Export Profit Deduction	Extension granted
	Export Processing Factories/Zones Scheme	Extension granted

	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)	No extension requested.
GRENADA	Fiscal Incentives Act No. 41 of 1974	Extension granted
	Qualified Enterprise Act No. 18 of 1978	Extension granted
	Statutory Rules and Orders No. 37 of 1999	Extension granted
GUATEMALA	Special Customs Regimes	Extension granted
	Free Zones	Extension granted
	Industrial and Free Trade Zones (ZOLIC)	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	Extension granted
	Jamaica Export Free Zone Act	Extension granted
	Foreign Sales Corporation Act	Extension granted
	Industrial Incentives (Factory Construction) Act	Extension granted
JORDAN	Income Tax Law No. 57 of 1985, as amended	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	No extension requested.
	Pioneer Status Enterprise Scheme	No extension requested.
	Export Promotion	No extension requested.
	Freeport Scheme	Extension granted
	Export Processing Zones	Extension granted

PANAMA	Official Industry Register	Extension granted
	Tax Credit Certificates (CAT)	No extension requested.
PAPUA NEW GUINEA	Section 45 of the Income Tax Act	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	Extension granted
ST. LUCIA	Fiscal Incentives Act	Extension granted
	Micro & Small Scale Business Enterprise Act	Extension granted
	Free Zone Act	Extension granted
ST. VINCENT AND THE GRENADINES	Fiscal Incentives Act	Extension granted
URUGUAY	Automotive Industry Export Promotion Regime	Extension granted

*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.