

SUBSIDIES ENFORCEMENT ANNUAL REPORT TO THE CONGRESS



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

February 2012



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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, is the submission of an annual report to the Congress describing the U.S. subsidies enforcement program. This report represents the seventeenth annual report to the Congress and, as such, describes the U.S. government's activities and key actions taken during 2011 to identify, monitor and address trade-distorting foreign government subsidies.

The Administration's strong commitment to enforcement is reflected in the National Export Initiative (NEI) that began in 2010. 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. companies in overseas markets 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 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. This was recognized in the President's State of the Union address of January 24, 2012, in which he announced the establishment of an Interagency Trade Enforcement Center to coordinate the Federal government's efforts to enforce vigorously U.S. trade laws and U.S. rights under international trade agreements. The Administration envisages that the work of this Center will encompass and supplement the type of monitoring and enforcement efforts the Administration has undertaken in the area of international subsidy disciplines. As a general matter, the aim of USTR's and Commerce's subsidies enforcement activities has been to deter, identify and confront foreign-government subsidization that harms U.S. manufacturing and agricultural industries. During 2011, 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 page iii.

The principal tool available to Members of the World Trade Organization (WTO) to 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 remedy harm caused to U.S. industries, workers and exporters from distortive foreign subsidies.

Looking forward, 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, agricultural interests, workers and exporters, we will address potential unfair trade practices that affect not only the U.S. domestic market, but U.S. exporters' access to important foreign markets. We will also 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 at the WTO regarding trade remedies and subsidies disciplines, including fisheries subsidies, consistent with the negotiating objectives established by Congress.

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.

Subsidies Enforcement Highlights for 2011

Notifying the WTO of Unreported Subsidies in China and India: In October 2011, the United States notified the WTO of over 200 unreported subsidy programs in China and fifty unreported subsidy programs in India and provided copies of the implementing laws and regulations for each program. China and India are now obligated to provide detailed information as to the operation of these programs.

Eliminating Foreign Subsidies Harming U.S. Green Technologies: In December 2010, in response to a petition filed by the United Steelworkers (USW) under Section 301 of the Trade Act of 1974, USTR initiated a WTO dispute settlement proceeding regarding subsidies in China to wind power equipment manufacturers that were contingent upon the use of parts made in China. Following consultations, China issued a notice invalidating the measure.

Enforcing and Preserving Effective Subsidies Disciplines and Remedies through Dispute Settlement: In May 2011, the WTO Appellate Body affirmed an earlier WTO dispute settlement panel's conclusions that European governments had provided billions of dollars of subsidies to Airbus that had caused serious prejudice to U.S. trade interests. Accordingly, the European governments must now withdraw the subsidies at issue or remove their adverse effects. This is an important win for the United States, and helps to ensure that the disciplines and remedies under the Subsidies Agreement remain strong and effective.

Pressing for Stronger Subsidies Disciplines in the Doha Development Agenda and Trans-Pacific Partnership: The WTO Rules Negotiating Group considered new subsidy disciplines on state-owned enterprises, as well as other proposals in the areas of horizontal and fisheries subsidies. In October 2011, the United States proposed specific rules for state-owned enterprises in the Trans-Pacific Partnership.

Defending U.S. Interests in Foreign CVD Cases: In 2011, USTR and Commerce defended U.S. interests in several foreign CVD investigations involving U.S. exports. These included CVD proceedings in Australia, the EU and China. In September 2011, the United States requested WTO dispute settlement consultations with China regarding the imposition of AD and CVD duties on chicken or "broiler parts" from the United States, alleging that several aspects of China's final determination and its conduct of the investigation appeared to be inconsistent with CVD rules under the Subsidies Agreement.

Countering China's Subsidies under the U.S. CVD Law: Through January 2012, Commerce issued final determinations in 25 CVD investigations involving a wide range of imports from China. During 2011, Commerce initiated four new CVD investigations of imports from China.

Promoting Improved Transparency in the WTO Committee on Subsidies and Countervailing Measures: 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 2011 to meet their subsidy notification obligations.

INTRODUCTION

The World Trade Organization's (WTO) Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) establishes multilateral disciplines on the use of subsidies and provides mechanisms for challenging government measures that contravene these disciplines.¹ 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 countervailing duty (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.² 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 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.

The Office of the U.S. Trade Representative (USTR) and the Department of Commerce (Commerce) have unique and complementary roles with respect to their responses to U.S. trade policy problems associated with foreign subsidized competition. 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 Committee on Subsidies and Countervailing Measures (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 and provide assistance to interested U.S. parties concerning remedies available to them. 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

¹ This report generally focuses on issues under the Subsidies Agreement and does not necessarily cover all subsidy-related issues under other WTO agreements, such as the Agreement on Agriculture.

² With the expiration in 2000 of certain provisions in the Subsidies Agreement regarding green light subsidies, the only non-actionable subsidies at present are those that are not specific, as defined below.

subsidies issues. Within IA, subsidy monitoring and enforcement activities are carried out by the Subsidies Enforcement Office (SEO). (See Attachment 1).

MULTILATERAL INITIATIVES

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 antidumping (AD) proceedings. Under this agreement of the Ministers – 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.

Background

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 important in this regard because it provides an avenue to address these other practices and to inform the discussion 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 depleted state of the world's fisheries is a major economic and environmental concern, and the United States believes that subsidies that contribute to overcapacity and overfishing, or that have other trade-distorting effects, are a significant part of the problem. 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 to address traditional trade concerns.

At the Hong Kong Ministerial Conference in December 2005, Ministers directed the Negotiating Group on Rules (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 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 the 2007 text 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.

Following an intensification period at the end of 2010 and beginning of 2011, in April 2011, the DDA negotiating chairmen circulated documents representing the status of work in their negotiating groups. In the Rules context, the Chairman of the Rules Group released a draft text for antidumping but only “reports” for horizontal subsidies and fisheries subsidies.⁵ As a general matter, the Rules materials were “bottom-up” in nature in that the Rules Chairman did not attempt to identify possible compromises within the report but rather reflected the extent to which negotiators had (or had not) been able to reach consensus on certain issues. Following the resignation of the former Rules Chairman, Ambassador Dennis Francis of Trinidad and Tobago, a consensus was reached at an informal General Council meeting on October 21, 2011 regarding the selection of Ambassador Wayne McCook (Jamaica) as the new Chairman of the Rules Group.

Major Issues and Developments in 2011

Prior to the issuance of the Rules text and reports in April 2011, several meetings took place to continue discussions on various issues in the Rules negotiations. The 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

³ TN/RL/W/213 (November 30, 2007).

⁴ TN/RL/W/236 (December 18, 2008).

⁵ TN/RL/W/254 (April 21, 2011).

hundreds of formal and informal papers and proposals to the Group.⁶ In addition to ongoing discussions regarding previously submitted proposals, several new or renewed proposals were made in the beginning of 2011. On horizontal subsidies, these included: export financing benchmarks for developing countries, CVD procedures, tax and duty rebate schemes, Annex VII graduation and presumption of serious prejudice. Due to time constraints, the Rules Group was unable to explore the degree to which convergence could be achieved regarding these proposals. As to the transposition of possible changes in the antidumping provisions to their counterpart CVD provisions, insufficient discussion occurred in 2011 to achieve convergence on specific language.

With regard to fisheries subsidies, the most significant text proposals in 2011 were the following. Japan submitted a proposal seeking to reverse the course of the negotiation by weakening the prohibition on subsidies and focusing the discipline solely on fisheries management. The Small Vulnerable Economies (SVEs) tabled a proposal advocating for additional carve-outs for developing countries with small shares of world trade and global marine wild capture production. Canada proposed the addition of a *de minimis* exception permitting a certain percentage of support to fishing activities within a Member's national jurisdiction and providing a larger *de minimis* percentage for developing countries. Argentina, Chile, Egypt

⁶ Both types of papers are publicly available on the WTO website (<http://wto.org>): formal papers may be found using the "TN/RL/W" document prefix, and elaborated informal proposals may be found using the "TN/RL/GEN" prefix.

and Uruguay suggested taking a reasonable approach to S&DT, only seeking exceptions on the basis of sustainability and the existence of under-exploited or unexploited fisheries within a country's exclusive economic zone.

In addition to the above, there were several proposals made to provide for special carve-outs from the prohibition, whether through S&DT or general exceptions. The United States continued to work 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") to ensure that such proposals do not undermine an ambitious outcome in these negotiations.

To complement the ongoing meetings of the Rules Group, the Chairman convened several groups to address key issues in the negotiations. The Chairman's intention was for these groups to explore possible solutions in a "bottom up" (as opposed to a chair-driven) process. First, he appointed several "Friends of the Chair," who worked in their personal capacities to develop draft text on various issues with the goal of capturing a group consensus among Members. With regard to horizontal subsidies, Friends of the Chair were appointed to discuss: (1) export competitiveness, (2) duty drawback systems, and (3) a proposed CVD facts available annex. Friends of the Chair were also appointed to address the fisheries subsidies issues of fisheries management and reciprocal/shared access agreements. In addition to the Friends of the Chair groups, the Chairman also created several "Contact Groups" to address the more contentious issues in the

negotiations. These Contact Groups were tasked with discussing and identifying the spectrum of Members' views, key considerations, possible options and, ideally, possible legal text to consider. These groups were purposely structured to operate without a leader *per se* because, in the Chairman's view, most of these issues were so contentious that it would be unrealistic to expect that any single person or delegation could identify points of convergence. On horizontal subsidies, Contact Groups were created to discuss: (1) certain financing by loss-making institutions, (2) regulated pricing, (3) export credits, and (4) new subsidy allegations and pre-initiation consultations in CVD proceedings. On fisheries subsidies, Contact Groups were formed to address: (1) subsidies to high seas fishing, (2) fuel subsidies, (3) income support, and (4) S&DT for artisanal/small scale fishing. Although Members constructively engaged, little progress was achieved on these issues.

Meetings in these various configurations continued until April 2011, when the various negotiating chairs were asked to report on the status of their respective negotiations. Pursuant to this request and as noted above, the Rules Chairman released a draft text for antidumping but only "reports" for horizontal subsidies and fisheries subsidies. This reflected the fact that, in his view, there had been no significant signs of convergence on bracketed issues as reflected in the 2008 Chair text on horizontal or fisheries subsidies. Further, unlike antidumping, the areas of unbracketed text for these areas were limited, and some of that language was still controversial.

On horizontal subsidies, the Chair noted that, while some traction had been gained on certain technical issues, there were very few useful changes to be proposed at this point. Concerning the transposition of possible changes in the Antidumping Agreement to their counterpart provisions in the Subsidies Agreement, the Rules Chairman concluded that insufficient discussion has occurred to allow the identification of legal language reflecting convergence. Finally, the Rules Chairman noted that a significant number of substantive proposals submitted in 2010 had not been fully discussed among Members.

On fisheries subsidies, the Chair's report followed the structure of the draft text that was released in 2007. He explained that there was too little convergence on even the technical issues, and indeed virtually none on the core substantive issues, for there to be anything to reflect in a bottom-up, convergence-driven legal text. The report noted several areas where gaps in the fishery subsidies negotiations remain wide. In the Chairman's view, in order for the negotiations to make significant progress, negotiators would have to focus more on these incontrovertible realities no matter how inconvenient, and less on protecting their short-term defensive interests.

Prospects for Rules in 2012

In 2012, much will depend on the scope and direction of developments in the DDA overall. However, to the extent that work in the Rules Group moves forward, the United States will continue to focus on, *inter alia*, preserving the effectiveness of trade remedy rules; improving transparency and

due process in trade remedy proceedings; and strengthening existing subsidies rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome, including by pursuing results to discipline fisheries subsidies in the WTO and in other fora such as the Trans Pacific Partnership negotiations, which will assist our efforts to reach eventual agreement on fisheries subsidies in the WTO.

TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS

In November 2009, President Obama announced the United States' intention to participate in the Trans-Pacific Partnership (TPP) negotiations to conclude an ambitious, next-generation, Asia-Pacific trade agreement. Through these negotiations, the United States, along with Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam are working to craft a high-standard agreement that addresses new and emerging trade issues and 21st-century challenges. After nine rounds of negotiations, on November 12, 2011, the Leaders of the nine TPP countries announced the achievement of the broad outlines of an ambitious, 21st-century agreement that will enhance trade and investment among the TPP partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs.

The Administration has identified the negotiation of new disciplines on state-owned enterprises (SOEs) as a priority for the TPP. After extensive consultations with a wide range of U.S. stakeholders and Congress, the United States put forward its proposal on SOEs at the ninth round of negotiations that took place in October 2011

in Lima, Peru. The U.S proposal aims to help level the playing field for U.S. firms by addressing distortions to trade and investment that result from the unfair advantages that governments provide to SOEs.

With respect to marine fisheries, the TPP countries include four of the top 15 global producers of marine fisheries products by volume⁷. Other TPP countries are significant traders in these products as well. Among the most significant problems that inhibit efforts to conserve marine resources and diminish distortions in international trade are government subsidies which have contributed to overcapacity and overfishing in global fisheries. The United States and other TPP countries therefore have proposed TPP disciplines on subsidies that contribute to overcapacity and overfishing.

STEEL: MULTILATERAL EFFORTS TO ADDRESS MARKET-DISTORTING PRACTICES

The United States continued its multilateral efforts during 2011 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

⁷ This includes Chile, Peru, the United States and Vietnam.

issues was covered by the Steel Committee in 2011, which included a strong focus on raw materials issues. Other items discussed included trade policy issues in the steel sector, energy policies and their impact on the steel industry, and environmental issues. The gradual recovery of the steel market in the wake of the global economic downturn, along with the lingering impacts of some of the 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 2011, 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 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.

During 2011, the United States, Canada, Mexico and the European Union (EU) collaborated on an unprecedented set of comments to the Government of China

regarding its Proposals on Formulation of the Twelfth Five-Year Plan. The joint comments were provided in the context of the critical impact of China's steel policies on the international steel market and international steel trade and highlighted concerns with respect to continued capacity expansion/maintenance of excess steel capacity, the allocation of resources in and out of the steel industry and the manipulation of border measures (*e.g.*, export taxes and restrictions) to encourage the export of high valued steel products. All four governments urged China to re-energize its efforts to promote the reduction of excess steel capacity and encourage efficiency.

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

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 National Export Initiative (NEI), launched in January 2010. The Export Promotion Cabinet, whose members include

Secretary of Commerce John Bryson and USTR Ambassador Ronald Kirk, has established a goal of doubling U.S. exports by 2015, and a key component of achieving that goal is a focus on trade compliance and enforcement of existing trade agreements, such as the Subsidies Agreement.⁸

Under the NEI, the U.S. government is focusing its monitoring and enforcement activities in key overseas markets by actively working to address harmful foreign government subsidies and ensuring the compliance of foreign governments with existing trade agreements. Further, the U.S. government is devoting increased resources to the defense of U.S. commercial interests affected by foreign trade remedy actions, particularly CVD investigations 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 proactively working to address a wide range of unfair trade practices, the U.S. government's subsidies enforcement program is helping to meet the important goal of expanding U.S. exports and preserving or creating U.S. jobs.

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. This involves daily searches of

⁸ See <http://trade.gov/nei/> and <http://www.ustr.gov/nei>.

worldwide business journals, periodicals and various online resources, including foreign government web sites; utilization of numerous legal databases; and cultivating relationships with U.S. industry contacts. IA and USTR officers stationed overseas (for example, in China) enhance these efforts by helping to gather, clarify, and confirm the accuracy of information concerning foreign subsidy practices.

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 the Chinese government 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.

COUNSELLING U.S. INDUSTRY

USTR and IA regularly engage with U.S. companies and workers confronted 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 2011, 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 (wind and solar power) and textile industries, among a wide range of others. The foreign subsidy practices examined included those maintained by the central and local governments of Brazil, Canada, China, the European Union, India, Indonesia, Japan, Malaysia, Mexico, Pakistan, South Africa, South Korea, Turkey and Vietnam.

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 in 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 2011. During the past year, IA organized and participated in many of these exchanges, including with officials from Australia, Brazil, Canada, China, the European Union 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.

CHINESE SUBSIDY PRACTICES

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; all subsidiary bodies, including the WTO 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.

In October 2011, the Subsidies Committee held its ninth and final review of the implementation of China's commitments relating to subsidies, CVD and pricing policies under the Transitional Review Mechanism (TRM). At that meeting, the United States and other WTO Members reflected on China's first ten years as a WTO Member and assessed China's compliance with its Subsidies Agreement and accession commitments.

Although China has taken many steps to reform its economy since joining the WTO ten years ago, the overall picture remains mixed, given a troubling trend in China toward increased state intervention in the economy in recent years. Frequently, trade frictions with China can be traced to China's pursuit of industrial policies that rely on excessive, trade-distorting government intervention – including the widespread use of subsidies – intended to promote or protect China's domestic industries and SOEs. This trend suggests that China's movement away from a centrally-planned economy toward a more market-oriented economy governed by transparency and rule of law has stalled.

This is also reflected in developments relating to China's commitment to assume the obligations of the Subsidies Agreement. As a result of this commitment, China became subject to the Subsidies Agreement's disciplines on the use of subsidies, and it also became obligated to adhere to detailed rules prescribing the manner and basis on which a Member may take action to offset the injurious subsidization of products imported from another Member.

China's record of compliance is poor when it comes to the obligations that China assumed regarding its use of subsidies. China maintains an opaque subsidies regime, and has employed numerous prohibited subsidies as an integral part of industrial policies designed to promote or protect its domestic industries and SOEs. These policies have resulted in several dispute settlement proceedings initiated by the United States and other WTO Members.

Transparency is a core principle of the WTO Agreements, and it is firmly enshrined as a key obligation under the Subsidies Agreement. Article 25 of the Subsidies Agreement obligates every Member to file regular notifications of all specific subsidies that it maintains. This information is required, among other reasons, so that it is possible to assess the nature and extent of a Member's subsidy programs.

Despite being one of the largest trading economies among the WTO membership, until late last year⁹ China had filed only one subsidy notification since it joined the WTO almost 10 years ago, which only covered the time period from 2001 to 2004. That notification, submitted in 2006, was incomplete as it failed to notify numerous central government subsidies as well as any subsidies provided by provincial and local government authorities. At the time that notification was submitted, as well as several times since, the United States and several other Members expressed serious concerns about the incompleteness of China's notification and have repeatedly

⁹ A second, albeit significantly incomplete, subsidies notification was submitted by China in October 2011.

requested that China submit its notifications for the periods subsequent to 2004.

Given China's lack of transparency, the United States has devoted significant time and resources to identifying, monitoring and analyzing China's subsidy practices, and these efforts have confirmed very significant omissions in China's subsidies notification. These efforts have also made clear that provincial and local governments play a key role in implementing many of China's industrial policies, including subsidies policy. Recent academic literature, for example, indicates that provincial and local governments are responsible for a large percentage of China's investment in industry, much of which is often misdirected into sectors with excess capacity. The significant scope of governmental support in pursuit of industrial policies at all levels of government can be seen in the massive funds allocated as part of China's recently issued Twelfth Five-Year Plan, which, by some accounts, amounts to over RMB 1.2 trillion.

China's large and growing role in world production and trade necessitates that its trading partners understand the nature of China's subsidy regime at both the central and sub-central government levels. China's lack of compliance with its subsidy notification obligation, however, prevents other WTO Members from obtaining the necessary knowledge and understanding of subsidy policy formulation in China.

China also has had a poor record of adherence to a separate but related transparency obligation to which China committed in its WTO Protocol of Accession. There, China agreed to notify all "annual economic development programs, China's

five-year programs and any industrial or sectoral programs or policies (including programs related to investment, export, import, production, pricing or other targets, if any) promulgated by central and sub-central government entities.” These industrial policy plans typically are a major source of government subsidization in China, particularly with respect to SOEs.

This is an important transparency obligation for China because industrial policy implementation in China favors SOEs and involves government, or non-market-based, allocations of resources. It also includes government restrictions on firms with respect to their choice of technologies, the scale of their operations, the selection of investment projects and products produced, and eligibility for subsidies and other government support. Given the size of China’s economy and volume of world trade, industrial policy implementation in China has a very real, adverse impact on the trade interests of other countries, whether or not China actually achieves its policy objectives.

Over the past 10 years, while China has provided some limited information with regard to its national five-year plans, it appears that China has not provided any information with respect to the national plans governing particular sectors or the plans adopted by sub-central governments.

The U.S. Counter Notification of Chinese Subsidy Programs

In the face of repeated unfulfilled promises from China that it would soon file a new subsidies notification, in October 2011, the United States exercised its rights under Article 25.10 of the Subsidies Agreement and

submitted a counter notification to the WTO Subsidies Committee. In the counter notification, the United States identified 200 unreported subsidy programs that China has maintained since 2004. This was the first counter notification ever filed by the United States. It is now incumbent upon China to promptly provide detailed information and data regarding the operation of the many subsidy programs identified in the U.S. counter notification or explain why the programs should not be notified.

The counter notification included copies of the underlying laws, regulations, five year plans, etc., for each subsidy program. These measures were identified in the course of: extensive research conducted by USTR and IA that eventually led to WTO dispute settlement proceedings; various CVD investigations conducted by Commerce; and, examination of a “Section 301” petition filed by the United Steelworkers union regarding China’s green energy support programs. The various implementing legal measures included in the counter notification were voluminous, numbering over several hundred pages. (Further detail of the counter notifications filed by the United States with respect to both China and India can be found in the *WTO Subsidies Committee* section below.)

Several points are noteworthy with respect to the counter notification. The first is the prevalence of provincial and local programs. Over half of the programs in the counter notification are sub-central in nature. This underscores the point that the United States had been making for many years before the Subsidies Committee: sub-central government programs are critically important in China, as actual implementation of central government industrial subsidy policies are

often, if not normally, the responsibility of the sub-central governments. A subsidy notification from China without notification of sub-central programs, therefore, is almost certainly not a full notification.

The second point is the importance of five year plans in China. While China has downplayed the role of five year plans in discussions before the Subsidies Committee, it is clear that China's industrial plans establish industrial support policies under which actual subsidy programs are implemented. For example, the Eleventh Five-Year Plan with respect to renewable energy policy states that one objective is to: "Implement preferential tax, investment, and mandatory market share policies . . .". Clearly, this language is outlining the overarching legal and policy basis for the establishment of particular subsidy programs often in provincial or local five year plans or other sub-central legal measures.

Third, it appears that certain subsidy programs in China are only in effect for a short period, such as two years, and then are replaced by other measures, which may be slightly or significantly different. This can be seen with respect to some of the central government "famous export brand" measures included in the U.S. counter notification. This underscores the importance of China notifying its subsidy programs on a regular and timely basis. In the absence of regular notifications, many programs will have been implemented and ended without any notification provided during the time that the program was in effect.

Fourth, insisting on a complete and timely notification of China's specific subsidy

programs is not simply an academic exercise. Among the 200 subsidies included in the U.S. counter notification are programs that appear to be prohibited export and import-substitution subsidies, as well as actionable subsidies that have been found to be a direct and significant cause of harm to the industries of other WTO Members. Maintaining such subsidies – particularly those that are prohibited – and not providing a complete and timely notification fundamentally upsets the balance of the rights and obligations of Members under the Subsidies Agreement.

Finally, given that the United States was able to compile and analyze all of the information in the counter notification – much, if not all of it, from publicly available Chinese government sources – casts doubts on China's repeated claims that it lacks the capacity and ability to collect and report the same information in a timely and regular manner, especially after ten years of WTO Membership.

After the United States filed the counter notification of Chinese programs, China submitted its second subsidies notification that it had been promising for years. Covering only the period from 2005 to 2008, this notification by China includes only a handful of programs in the United States' counter notification and again fails to notify a single subsidy administered by provincial or local governments. Unfortunately, the notified central government subsidies are largely the same partial listing of subsidies as those notified in China's 2006 submission. In summary, it appears that China's most recent notification falls considerably short of China's obligations under the transparency provisions of the Subsidies Agreement.

Commerce and USTR will continue to monitor and analyze China's subsidy practices and address our concerns with those practices in bilateral meetings with China and press China to withdraw any subsidies that are prohibited under WTO rules.

Subsidies to the Chinese Auto Parts Industry

The United States currently maintains a trade surplus with China in finished autos but a growing trade deficit with China in auto parts. Representatives of the U.S. auto parts industry have raised concerns that this imbalance stems, at least in part, from China's continued subsidization of its auto parts industry, which includes batteries, motors, electronic controls, and other key, new-energy components. Specifically, they have pointed to Chinese policies and measures targeting priority and export-oriented industries, including the auto parts industry, for support in the form of grants, reduced corporate income tax rates and low-cost lending from state-owned banks. The United States has previously raised many of these issues in the context of China's Trade Review Mechanism and during the WTO Subsidies Committee's review of China's first subsidy notification. The United States will continue its efforts to identify, closely monitor and address distortive Chinese measures, including those within the auto parts industry, that impact U.S. companies, workers and exporters.

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 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 Commerce 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. In 2011, the Department initiated four new investigations involving steel wheels, galvanized steel wire, high-pressure steel cylinders, and silicon photovoltaic cells. In early-2012, Commerce initiated an additional new CVD investigation involving imports of Chinese wind towers. Through December 2011, Commerce had reached final affirmative CVD determinations in 25 investigations of imports from China involving products in the steel, textiles, paper, chemical, wood and non-ferrous metal 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. 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>.

Electronic Subsidies Enforcement Library

The “Electronic Subsidies Enforcement Library” (ESEL) 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’ 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.)

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 2011, the JCCT was co-chaired for the United States by Secretary Bryson 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, 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 the Ministry of Commerce’s (MOFCOM) Bureau of Fair Trade (BOFT).

The SIWG provides a forum for the U.S. and Chinese governments to explore and discuss China’s economy and any 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.¹⁰ The working group has met a number of times since its launch in July 2004.

In September 2011, the SIWG held technical-level meetings in Washington. China’s delegation included several experts and Chinese government officials who offered insight into various aspects of China’s

¹⁰ 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, on the record proceeding before Commerce, open to all interested parties.

new property law, land use rights, and the role and effect of industrial policies in China's economy, with a particular focus on China's Twelfth Five-Year Plan for National Economic and Social Development.

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 September 2011, concurrent with the SIWG meetings, the United States and China held technical-level TRWG meetings in Washington. The United States requested information with regard to a number of aspects of MOFCOM's AD and CVD decisions, including the calculation methodologies and timetables for investigations. Both of these prompt concerns that result from the lack of disclosure and transparency that characterizes MOFCOM's administrative system. The United States also relayed to China its concerns about the growing evidence of attempts to circumvent U.S. AD and CVD orders. 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.

WTO SUBSIDIES COMMITTEE

The WTO Subsidies Committee held two formal meetings in 2011, in April and October. The Subsidies Committee continued

its regular work of reviewing WTO Members' periodic notifications of their subsidy programs as well as the consistency of Members' domestic laws, regulations, and actions with the requirements of the Subsidies Agreement. Other items addressed in the course of the year included: the U.S. counter notification of unreported subsidy programs in China and India; examination of ways to improve the timeliness and completeness of subsidy notifications; examination and approval of specific export subsidy program extension requests for certain small-economy developing-country Members; filling an opening on the five-member Permanent Group of Experts provided for under the Subsidies Agreement; 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.

Subsidy Notifications by Other WTO Members

Subsidy notification and surveillance is one means by which the Subsidies Committee and its Members seek to ensure adherence to the disciplines of the Subsidies Agreement. In keeping with the objectives and directives expressed in the Uruguay Round Agreements Act, WTO subsidy notifications also play an important role in 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. In 2011, the Subsidies Committee reviewed thirty-five subsidies notifications covering periods 2005, 2007, 2009, and 2011.¹¹ Numerous Members have never made a subsidy notification to the WTO, including many lesser developed countries.¹²

Review of CVD Legislation, Regulations and Measures

Throughout 2011, 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 its regular spring and fall 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 Subsidies Agreement. The United States continued to play an important role in the Subsidies Committee's examination of the operation of other Members' CVD laws and

¹¹ During the 2011 spring and fall meetings, the Subsidies Committee reviewed the 2009 and 2011 new and full subsidy notifications of Albania, Armenia, Brazil, Colombia, Croatia, Cuba, Ecuador, Gabon, Honduras, Hong Kong, India, Lesotho, Macedonia, Madagascar, Mexico, Qatar, and the United States. The Committee also continued the review of 2009, 2007 and 2005 new and full subsidy notifications of Albania, Brazil, Gabon, Korea, Kyrgyz Republic, Japan, Macedonia, the European Union, Namibia, Turkey and the United States.

¹² For further information, see the Report (2011) of the WTO Committee on Subsidies and Countervailing Measures; G/L/970 (October 27, 2011).

their consistency with the obligations of the Subsidies Agreement.

To date, 97 WTO Members¹³ have notified that they have CVD legislation in place, and 31 Members have notified that they have no CVD legislation in place; 29 Members have so far failed to make a legislative notification. In 2011, the Subsidies Committee reviewed notifications of new or amended CVD laws and regulations from Brazil, Ecuador, Gabon, Japan, Kuwait, Oman and Togo.¹⁴

As for CVD measures, six WTO Members notified CVD actions taken during the latter half of 2010, and six Members notified actions taken in the first half of 2011.¹⁵ In 2011, the Subsidies Committee reviewed actions taken by several Members, including Australia, Canada, China, the EU, Mexico, Peru and the United States.

Counter Notifications

Under Article 25.1 of the Subsidies Agreement, WTO Members are obligated to regularly provide a subsidy notification to the Subsidies Committee. As discussed above, prior to October 2011, China had only submitted a single subsidy notification, in 2006, that covered the years 2001-2004.

¹³ The European Union is counted as one Member. These notifications do not include those submitted by Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic and Slovenia before these Members acceded to the European Union.

¹⁴ In keeping with WTO practice, the review of legislative provisions which pertain or apply to both AD and CVD actions by a Member generally has taken place in the Antidumping Committee.

¹⁵ Data for the second half of 2011 were not yet available at the time this report was written.

India submitted a subsidies notification in 2010, the first in 10 years and that included only three programs. Over the past few years, the United States and other Members have repeatedly expressed deep concern about the notification record of China and India, among other Members. In light of China's and India's poor record of compliance with the transparency obligations under the Subsidies Agreement, the United States chose to exercise its rights under Article 25.10 of the Subsidies Agreement. More specifically, this article provides that when a Member fails to notify a subsidy program, any other Member first may bring the matter to the attention of the Member failing to notify. If the subsidizing Member does not then promptly notify the program, the complaining Member may bring the program to the attention of the Committee. Pursuant to Article 25.10, the United States took the first step in this process by submitting counter notifications with respect to unreported subsidy programs in India and China on October 10 and 11, respectively.

With regard to China, as noted above, the U.S. submission included information on approximately 200 subsidy programs maintained by China that had not been notified as well as a request that China immediately notify these programs to the WTO Membership. While China submitted its second subsidy notification (covering 2005 – 2008) shortly after the U.S. counter notification, it covered very few of the subsidy programs in the U.S. counter notification.

With regard to India, the U.S. counter notification included approximately 50 subsidy programs at both the central and sub-central levels that India had not notified. These

measures were identified in various CVD investigations conducted by the United States and also through other ongoing monitoring of Indian subsidies by Commerce's SEO.

If the subsidies in the counter notifications are not properly notified, as a next step the United States will consider bringing these programs to the attention of the Subsidies Committee under the provisions of Article 25.10.

U.S. Notification

The United States submitted its subsidy notification in October 2011, consistent with its subsidy notification obligations under the Subsidies Agreement. Assembling the necessary detailed information and consulting extensively – particularly at the sub-central level of government - was a major undertaking requiring a significant commitment of staff and other resources of both USTR and Commerce. The U.S. subsidy notification submitted in 2011 covered the reporting period 2009-2010 and included approximately 70 federal programs and over 500 state programs. This reflected an intensified effort by Commerce and USTR, heightened cooperation between federal and state government personnel and the further institutionalization of the U.S. WTO subsidy notification process.

Notification Improvements

In March 2009, the Chairman of the WTO's Trade Policy Review Body, acting through the Chairman of the General Council, requested that all committees discuss "ways to improve the timeliness and completeness of notifications and other information flows

on trade measures." The United States fully supported this initiative in 2009 and developed proposals that would encourage Members to be more transparent in their industrial subsidy policies.

During 2011 the United States continued to engage on this issue. In light of many Members' poor record of compliance with the transparency obligations under the Subsidies Agreement, 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, Malaysia, and Mexico) to submit timely and complete subsidy notifications. This failure by some of the WTO's largest exporters to comply with such an important transparency obligation under the Subsidies Agreement has become untenable. The United States has devoted significant time and resources to researching, monitoring, and analyzing these Members' subsidy practices. This helped identify the very significant omissions in the subsidy notifications submitted by these Members to date, particularly in the case of China and India (as noted above), and laid the groundwork for the further pursuit of these issues in the context of the Subsidies Committee's work.

In 2011, the United States also submitted a specific proposal under Article 25.8 of the Subsidies Agreement to strengthen and improve the notification procedures of the Subsidies Committee. Under Article 25.8, any Member may make a written request for information on the nature and extent of a subsidy granted or maintained by another Member, or for explanation why a specific measure is not

considered as subject to the requirement of notification. This specific mechanism thus allows Members to draw attention to and request information on specific subsidy measures which are of particular concern. Further, under Article 25.9, Members that receive such a request must answer "as quickly as possible and in a comprehensive manner."

Despite these provisions, many Members' questions under Article 25.8 remain unanswered or are only answered many years after they were first submitted. In order to clarify Members' obligation in this area, the United States submitted a proposal advocating that the Committee develop guidelines for answering Article 25.8 questions, including deadlines for the submission of written answers under Article 25.9 within a specific timeframe.¹⁶ The United States will continue to discuss the proposal at upcoming Subsidies Committee meetings.

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

¹⁶ G/SCM/W/555 (October 21, 2011).

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

¹⁷ WT/L/691 (July 31, 2007).

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 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).

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

¹⁸ *Id.*

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.

At the beginning of 2010, the Permanent Group of Experts had five members: Dr. Manzoor Ahmad (Pakistan); Mr. Asger Petersen (Denmark); Dr. Chang-fa Lo (Chinese Taipei); Mr. Zhang Yuqing (China); Mr. Jeffrey A. May (United States) and Mr. Akio Shimizu (Japan). Dr. Manzoor Ahmad's term ended in spring 2011. One candidate was proposed by Australia for this position. However, a consensus could not be reached on filling the opening. The Subsidies Committee Chairman is continuing informal consultations with a view towards finding a candidate to replace Dr. Manzoor Ahmad.

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

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

automatically "graduates" from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. At the WTO's Fourth Ministerial Conference, Ministers 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: the Dominican Republic, Guatemala, Morocco and the Philippines.²⁰

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 general 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

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.

²⁰ G/SCM/110/Add.8 (June 16, 2011).

²¹ G/SCM/132 (February 26, 2010).

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 2011, 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 of the Subsidies Agreement. As explained above, India's 2010 notification fails to provide a complete accounting of the extent of its subsidy regime.

In 2012, 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 engage in resolving this issue, the United States will consider appropriate alternative actions afforded under the Subsidies Agreement and other WTO Agreements.

Prospects for 2012

In 2012, the United States will closely examine China's and India's most recent subsidy notifications and will 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. If China and India do not notify the programs included in the U.S. counter notifications, the United States may bring the matter to the attention of the Subsidies Committee. Furthermore, the United States will seek to engage India bilaterally to commit to a phase out of its export subsidy programs to the extent that they benefit the textile and apparel sector. More generally, the Subsidies Committee will continue to work in 2012 to improve the timeliness and completeness of Members' subsidy notifications and, in particular, will examine the proposal made by the United States to improve and strengthen the Subsidies Committee's procedures under Article 25.8 of the Subsidies Agreement. Finally, the Subsidies Committee will likely examine the U.S. subsidy notification submitted in 2011, covering fiscal years 2009 and 2010.²³

²² G/SCM/132/Add.1 (March 23, 2010); G/SCM/132/Add.1/Rev.1 (April 21, 2010).

²³ G/SCM/N/220/USA (October 19, 2011).

WTO Dispute Settlement

European Union (EU) 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 the German and French governments developed infrastructure for Airbus were found to be actionable subsidies because the infrastructure was not generally available and was provided for less than adequate remuneration.
- 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 appealed the ruling to the WTO Appellate Body. The Appellate Body issued its findings on May 18, 2011. The Appellate Body modified the Panel’s findings on whether launch aid was a prohibited export subsidy, but left intact most of the Panel’s findings, including the recommendation that the EU take appropriate steps to remove the adverse effects or withdraw the subsidies. The Appellate Body report and the Panel report as modified by the Appellate Body report were adopted by the Dispute Settlement Body on June 1, 2011. The EU had until

December 1, 2011 to bring itself into compliance with the adopted reports.

On December 1, 2011, the EU sent the United States a “Compliance Report” asserting that it had taken steps to address the subsidies, and had thereby come into compliance with its WTO obligations. However, the United States believes the EU notification shows that the EU has not withdrawn the subsidies in question and has, in fact, granted new subsidies to Airbus’ development and production of large civil aircraft. On December 9, 2011, the United States requested consultations with the EU regarding the December 1, 2011 notification. The United States also requested authorization from the WTO Dispute Settlement Body in Geneva to impose countermeasures annually in response to the EU’s claim that it fully complied with the ruling in this case. The amount of the countermeasures would vary annually, but in a recent period are estimated as having been in the range of \$7-10 billion. This step preserves U.S. rights, but any actual imposition of countermeasures would not occur until after further WTO proceedings.

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, and on June 27, 2005, filed a second

request for consultations regarding large civil aircraft subsidies. This request addressed many of the measures covered in the initial consultations, as well as several additional measures that were not covered. The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. Several third parties also participated in the dispute, including Australia, Brazil, Canada, China, Japan, and Korea.

The panel issued its report on March 31, 2011. It agreed with the United States that many of the EU’s claims were without merit. Particularly, the Panel found that many of the U.S. practices challenged by the EU were not subsidies or did not cause adverse effects to the interests of the EU. However, the panel did find certain U.S. practices to be inconsistent with its WTO obligations. Specifically, certain NASA and Department of Defense research and development programs as well as certain state tax and investment incentives were found to be subsidies that caused adverse effects. As well, the U.S. foreign sales corporation and extraterritorial income (FSC/ETI) tax exemptions were found to be prohibited export subsidies pursuant to previous WTO rulings. However, because those previous rulings already addressed the FSC/ETI exemptions, the panel considered that no further action was necessary in this case.

The EU filed a notice of appeal on April 1, 2011. The United States cross-appealed on April 28, 2011. The Appellate Body held two hearings on the issues raised in the appeal: the first on August 16-19, 2011, addressing issues related to whether

certain U.S. practices were subsidies, and the second on October 11-14, 2011, focusing on the Panel's findings that the U.S. practices caused serious prejudice to EU interests. The Appellate Body is expected to issue its rulings in spring 2012.

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.²⁴

Ultimately, the DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on

²⁴ See the 2010 Subsidies Enforcement Annual Report to the Congress for a full description of the dispute.

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.

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 for activities such as pest control and promotion of the use of cotton. 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 four times under the framework in 2011.

U.S. Application of Countervailing Duties to Chinese Imports

A WTO dispute settlement panel, reviewing the consistency of four pairs of Commerce's AD and CVD determinations involving imports from China with U.S. obligations under the WTO agreements, circulated its report on October 22, 2010.²⁵

²⁵ *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/R. The 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*.

Before the panel, China challenged Commerce's determinations that certain 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 CVD and an AD duty calculated pursuant to Commerce's NME methodology results in a "double remedy" for domestic subsidies in China.

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 CVD 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. In March 2011, the Appellate Body issued a decision that partially reversed the panel. Specifically, the Appellate Body found that Commerce's determinations that Chinese SOEs were "public bodies" that provided financial contributions were inconsistent with the Subsidies Agreement. The Appellate Body also reversed the panel with respect to the issue of alleged double remedies from concurrent imposition of countervailing duties and AD duties calculated under the U.S. NME methodology. The Appellate Body agreed with China that an improper "double remedy" is likely in such situations and concluded that the United States had an affirmative obligation under the WTO Agreements to determine the extent of that double remedy.

At the same time, the Appellate Body affirmed Commerce's and the panel's findings in several respects. It ruled that: (1) Commerce properly found that Chinese SOCBs are public bodies that provide financial contributions under the Subsidies Agreement; (2) Commerce properly determined that certain lending by SOCBs was *de jure* specific; and (3) 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.

Following the partially adverse WTO findings, the United States stated at the April 21, 2011, meeting of the Dispute Settlement Body that it intends to comply with its WTO obligations within a reasonable period of time and will be considering carefully how to do so. In July the United States and China reached agreement on 11 months (i.e., until February 25, 2012) as a reasonable period of time for implementation. Subsequently, as a result of an agreement between the United States and China, the reasonable period of time for implementation was extended to April 25, 2012. Commerce has initiated administrative proceedings under Section 129 of the Uruguay Round Agreements Act to implement the WTO decision.

In U.S. domestic courts, interested parties are litigating under U.S. law a number of issues similar to those in this WTO dispute, including the issue of double remedy. Those cases are pending before the U.S. Court of International Trade and the Court of Appeals for the Federal Circuit (CAFC).²⁶

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

²⁶ While the CAFC rendered a decision in *GPX v. United States*, Court No. 2011-1107 on December 19, 2011 on the issue of double remedy that was adverse to the U.S. government's position in that case, as of the drafting of this report, that decision is not final as it may be subject to further appeal.

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 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 the exchange rate at the time of the award) 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. On July 1, 2011, Canada stopped collecting the 10 percent additional export charge after the United States and Canada agreed that CDN \$68.26 million had 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. On February 11, 2011, Canada publically announced that it would comply with the ruling. It increased export charges on softwood lumber products exported from Ontario and Quebec by 0.10% and 2.60%, respectively. These additional export charges are to remain in place until the expiration of the SLA.

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 (40% of the timber harvested) 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. During 2011, the parties filed written submissions to the tribunal. A hearing before the tribunal is scheduled to take place in Washington, DC, in February 2012.

China – Application of Antidumping and Countervailing Duties on Grain-Oriented Electrical Steel and Poultry Products from the United States

In September 2010, the United States initiated a WTO case challenging China’s imposition of AD and CVD duties on imports of grain-oriented electrical steel (GOES) from the United States. GOES is a soft magnetic material used by the power generating industry in transformers, rectifiers, reactors and large electric machines. In the course of its AD and CVD investigations, China acted inconsistently with various procedural and substantive WTO obligations under the AD and Subsidies Agreements. Specifically, the consultation request alleged the following:

- 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.

The Panel's interim report is expected in February 2012 and final report is expected the following May.

In a new WTO case, initiated in September 2011, the United States is challenging China's imposition of AD and CVD duties on U.S. poultry products or "broiler parts." Broiler parts are essentially chicken products, with a few exceptions such as live chickens and cooked and canned chicken. Many of China's WTO inconsistent practices in this case parallel those alleged in the ongoing GOES dispute. Consultations were held in October 2011. Following consultations, on December 8, 2011, the United States requested the formation of a dispute settlement panel to resolve the U.S. claims.

China – Subsidies to Wind Power Equipment

In December 2010, in response to a petition filed by the United Steelworkers under section 301 of the Trade Act of 1974, as amended, USTR announced the initiation of a WTO case with regard to what appeared to be prohibited import substitution subsidies being provided by the Chinese government to support the production of wind turbine systems in China. Specifically, 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 provided grants to Chinese wind power equipment manufacturers contingent on the use of parts and components made in China. Also included in the consultation request were transparency-related claims, which address China's 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. Consultations took place in February 2011. Following consultations, China issued a notice invalidating the measures that had created the challenged subsidy program.

FOREIGN CVD INVESTIGATIONS OF U.S. EXPORTS

In 2011, 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, and Australia.

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. On May 11, 2011, the Commission issued its final determination in this review in which it decided to extend its AD and CVD duties on biodiesel from the United States to blends containing 20 percent or less biodiesel by weight.

On November 25, 2011, the Commission initiated new AD and CVD investigations on imports of bioethanol from the United States. The initiation of these investigations was based on petitions filed on October 12 by the European Producer Union of Renewable Ethanol Association, which represents 11 European ethanol producers. The Commission initiated a CVD investigation of 15 federal and state subsidy programs, including grants, tax incentives and loans for the production of bio- or alternative fuels. These include seven federal programs, such as income and excise tax credits for bio-fuel production and eight state-level programs in Illinois, Iowa, Minnesota, Nebraska and South Dakota, mostly in the form of grants, tax incentives or loans for the production of bio- or alternative fuels. The Commission is expected to make a provisional CVD determination by August 2012, and should

complete the CVD investigation by December 2012.

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 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 2011 Report to Congress on China's WTO Compliance, MOFCOM announced its initiation of these investigations under troubling circumstances.

Final determinations have been issued in all three 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 four and 30.3 percent. On May 5, 2011, MOFCOM announced its final determination in the CVD investigation on autos. MOFCOM established duty rates between zero and 12.9 percent, based solely on alleged benefits provided under the Auto Industry Financing Program (AIFP) established under the Troubled Assets Relief Program (TARP). Initially, MOFCOM decided not to

impose final duties on imports of the subject merchandise. However, on December 14, 2011 China reversed its decision and announced that it would begin collecting AD and CVD duties on imports of automobiles from the United States at the rates calculated in the final determination. Duty collection began on December 15, 2011 and will continue for two years.

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 AD 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 AD Committees, but MOFCOM has not indicated a willingness to revise its processes or findings. As noted above, the United States requested dispute settlement consultations with China regarding MOFCOM's imposition of AD and CVD duties on imports of GOES as well as poultry products from the United States.

Lastly, on November 25, 2011, MOFCOM initiated an investigation of U.S. "supporting policies and subsidy measures applicable to the U.S. renewable energy industry" as possible trade barriers. This is the first Chinese "trade barriers" petition involving the United States, and only the second use of this provision of which the United States is aware. This is not a trade remedy proceeding (e.g., an AD or CVD investigation), but rather appears to be a similar provision in Chinese law to a Section

301 action under U.S. law. The petition was filed with BOFT on October 24, 2011, by a consortium of Chinese companies under the umbrella of two associations, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) and the China New Energy Chamber of Commerce, an affiliate of the All-China Federation of Industry and Commerce (ACFIC). The Chinese petitioners allege that six U.S. support programs for a variety of renewable energy products, equipment, and parts constitute a trade barrier and violate U.S. WTO obligations. Under Chinese trade rules, MOFCOM should complete its investigation by May 25, 2012, although that may be extended to August 25, 2012.

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, CBPS announced its preliminary determination in this case, finding the federal tax programs and one state program to be countervailable subsidies. CBPS announced its final determination in April 2011, in which it found that subsidized imports of biodiesel caused material injury and calculated a final subsidy rate of 55 percent.

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

WTO Accession Negotiations

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members. Typically, the applicant submits an application to the WTO General Council, which establishes a working party to review information regarding the applicant's trade regime and to oversee the negotiations over WTO Membership. 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.

The main highlight during 2011 was the successful conclusion of the Russian Federation's accession process. After 18 years of negotiations, on November 10, 2011, the Working Party for Russia adopted its Working Party Report laying out the terms of Russia's entry into the WTO. The Working Party report was sent to the Ministerial Conference in December 2011, where Ministers approved the package. Russia now has until June 2012 to ratify its accession package and will become a full Member 30 days after ratification is notified to the WTO.

As part of the accession agreement, Russia has undertaken a series of commitments to ensure that its trade regime is compliant with the WTO Agreements and has committed to fully apply all WTO provisions, with recourse in some cases to transitional periods. With regard to subsidies and related issues, Russia has committed to eliminate or bring into compliance all subsidy programs contingent upon exportation or upon the use of domestic over imported goods. Russia has also committed to provide a subsidy notification to the WTO within 180 days of accession. Further, Russia has agreed not to invoke any of the provisions of Articles 27 and 28 of the Subsidies Agreement, which are provisions relevant to developing countries and transitional economies.

Russia also agreed to bring its auto investment programs into compliance with the WTO Agreements within a specified period of time. Specifically, Russia has

committed to eliminate these programs by July 2018 and has agreed to sign no new agreements under these programs, which provide tariff exemptions to Russian auto producers based on the use of Russian inputs.

With regard to trade remedies, Russia has committed to ensure that the application of Russia's AD and CVD laws, as well as the AD and CVD laws relevant to the Customs Union between Russia, Kazakhstan and Belarus, will be compliant with the Antidumping and Subsidies Agreements. Existing U.S. AD duty orders and suspension agreements will not be affected by Russia's accession to the WTO.

On the issue of energy pricing, Russia agreed to language stipulating that producers and distributors of natural gas in the Russian Federation will operate on the basis of normal commercial considerations, based on recovery of costs and profit.

Other highlights in 2011 included the conclusions of the accession processes for Vanuatu, Samoa and Montenegro. The accession package for Vanuatu was adopted by its reconvened working party in May 2011, and approved by the WTO General Council in October, following which Vanuatu will have six months to ratify its accession. The accession packages for Samoa and Montenegro were adopted by their working parties in October and December, respectively, and both packages were approved at the December 2011 ministerial conference. Samoa and Montenegro will have until June and March of 2012, respectively, to ratify their accessions. These three countries will become full Members 30 days after the ratifications of their respective accessions are notified to the WTO.

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 (TPRs) 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 2011, USTR and Commerce reviewed 14 Members' TPRs, including those of Australia, Canada, Cambodia, the European Union, India, Japan and Thailand. Looking ahead, China's TPR is scheduled for June 2012.

CONCLUSION

In 2011, the subsidy discipline enforcement efforts of USTR and Commerce significantly contributed to the trade enforcement component of National Export Initiative. In 2012, the U.S. Government's subsidy enforcement efforts will focus on pursuing several highly significant WTO dispute settlement cases, advocating tougher

subsidy disciplines at the WTO, 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. USTR and Commerce look forward to working within the President's newly-established Interagency Trade Enforcement Center in 2012 to address unfair trade practices, including those in China. 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.

The SEO has vigorously defended the interests of dozens of U.S. exporters subject to foreign anti-subsidy proceedings, whose exports across a variety of industries amount to over \$6 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.

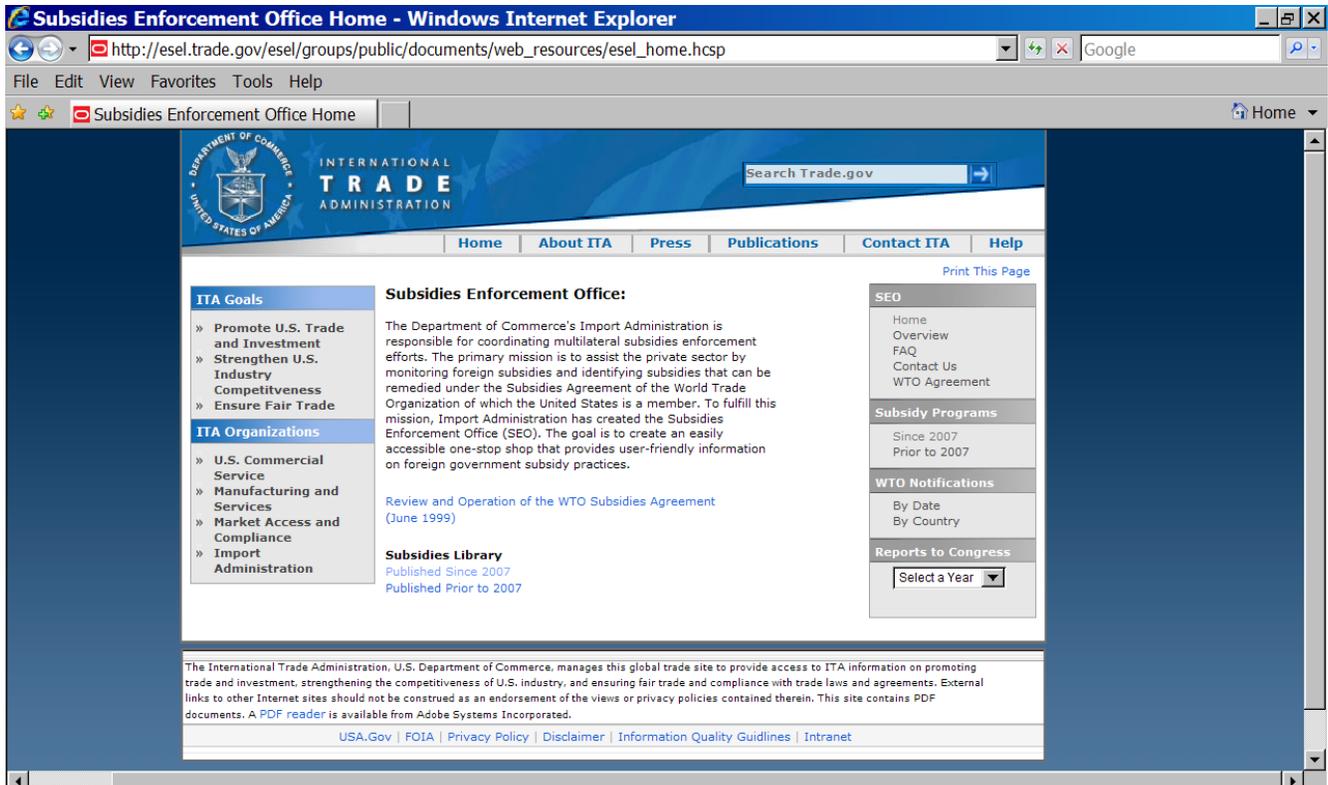
ATTACHMENT 2

THE SUBSIDIES ENFORCEMENT LIBRARY

[<http://esl.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.]



Main Features of the Webpage

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.

Subsidies Library

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

Published Since 2007 - This will link the visitor to subsidy programs analyzed in the most recent CVD decisions since 2007. By clicking on this link, the visitor can access a search feature to 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 2007 - This links the visitor to subsidy programs analyzed in earlier CVD proceedings through 2007. The information is provided by country and then subdivided into various categories, based on the Department of Commerce's finding in the proceeding. More detailed information about a program in a specific case can be easily found by clicking on the hyperlinked cite to the Federal Register notice, in which a complete description of the program and Commerce's analysis is provided.

Home

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

Overview

This links 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. SEO staff aims to respond to all relevant queries within a week.

WTO 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.

Subsidy Programs

This is an alternative link to the subsidy library with the same information as "Subsidies Library" 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
PANAMA	Export Processing Zones	Extension granted
	Official Industry Register	Extension granted
	Tax Credit Certificates (CAT)	No extension requested.
PAPUA NEW GUINEA	Section 45 of the Income Tax Act	Extension granted
	Income Tax Concessions	Reservation of rights. No action taken.

SRI LANKA (ANNEX VII COUNTRY)	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.