SUBSIDIES ENFORCEMENT ANNUAL REPORT TO THE CONGRESS

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

The use of trade-distorting subsidies by foreign governments can seriously threaten the interests of American workers and industries. The United States Government, therefore, is committed to eliminating or neutralizing the unfair trade practices which harm U.S. interests. Toward that end, the Office of the U.S. Trade Representative (USTR) and the U.S. Department of Commerce (Commerce) continued their close cooperation during 2003 to monitor and challenge unfair foreign government subsidy practices by pursuing our rights under the agreements of the World Trade Organization (WTO) and by ensuring that our trading partners adhere to their obligations under those agreements. Among the joint responsibilities assigned to USTR and Commerce is the submission of an annual report to the Congress describing the Administration's monitoring and enforcement activities throughout the previous year. This report constitutes the ninth annual report to be transmitted to the Congress.

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

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

Doha Development Agenda

In March of 2003, the United States submitted its second subsidies paper to the Rules Negotiating Group. This paper establishes the fundamental subsidy position of the United States in the Rule Negotiating Group. It calls for subsidy discipline enhancement and identifies a broad array of issues with respect to the existing rules as well as the need to develop new disciplines where none currently exist. Addressed within the ambit of our negotiating position on subsidies were issues relating to the negotiating objectives set forth in the Trade Act of 2002, including addressing the existing rules on the treatment of indirect taxes. Consistent with our core negotiating principles, the identification of enhanced disciplines on trade distorting practices, including subsidies – broadly defined – is particularly important because it is these practices that are often one of the root causes of trade friction. In particular, the U.S. subsidy paper argues for the expansion of the

prohibited (“red light”) category of subsidies – beyond the two types currently prohibited, export and import substitution subsidies – and tougher rules on indirect subsidies, government investment in private sector companies, and government pricing of natural resources. More generally, the U.S. subsidy paper advocates the continued progressive deepening of subsidy disciplines, which has been an integral component of the historic development of rules governing the world trading system. In 2004, the Administration will continue to take strong, proactive steps to address the impact of distortive subsidies on American firms and their workers in both the United States and foreign markets.

With regard to fisheries subsidies, much of the discussion of fisheries subsidies prior to 2003 focused on whether fisheries subsidies have, in fact, led to environmentally harmful over-fishing, and whether fisheries subsidies pose particularly unique problems which justify a stronger and/or separate set of rules. While some countries have questioned the link between subsidies and over-fishing, in 2003 the negotiations progressed beyond this threshold issue, with the United States and others submitting proposals for possible approaches to improving disciplines on fisheries subsidies. In its March 2003 submission, the United States proposed a framework that includes an expanded prohibited category and a presumptively harmful (“dark amber”) category for fisheries subsidies. Mindful of U.S. industry and environmental issues, the United States intends to continue playing a leading role as these negotiations evolve into the next phase of shaping the structure and content of new fisheries subsidy disciplines.

Steel

The Administration continues to dedicate significant resources towards fulfillment of the President's 2001 Initiative on Steel, which seeks to address the structural problems of the global steel industry that have contributed to a decades-long, cyclical proliferation of unfair trade competition and trade remedy responses. U.S. government officials have helped to spearhead ongoing international efforts in the OECD to bring about market-driven rationalization of the world's excess, inefficient steelmaking capacity, while also formulating better disciplines over practices that can distort markets and artificially sustain such capacity. The leading example of such efforts was the continued work by a group chaired by the United States to develop the elements of an agreement that would substantially reduce or eliminate trade-distorting government subsidies to the steel sector, a process which was initiated shortly before publication of last year's report. In the intervening year, the nearly 40 participating governments representing the world's major steel-producing countries have made good progress in outlining an agreement and defining its core elements. The U.S. objective is to complete negotiations by the year's end.

China

China's second year of membership in the WTO concluded in 2003, and with it the second examination of China's accession under the Transitional Review Mechanism (TRM). In accordance with the terms of China's protocol of accession, the TRM is a special multilateral procedure used to assess the extent and quality of China's compliance with its WTO obligations on an annual basis during the first eight years of China's membership, culminating in a final review by the tenth year. Reviews are conducted in a number of councils and committees, including the Subsidies Committee. The second annual review in the Subsidies Committee took place this past October, during which the United States again sought to clarify further the extent of China's compliance with WTO subsidy-related rules and disciplines. Although the TRM procedures allow us to focus on issues and commitments specific to China, which in turn produce important information about China's WTO implementation activities, a fully meaningful review of China's WTO compliance record has continued to be stymied by China's failure to notify required information about its subsidies and pricing policies. As a result of these shortcomings and the increased public concern about the potential impact of China's subsidy practices, we have stepped up our unilateral surveillance of China's government practices in order to better identify and, as appropriate, respond to possible subsidy problems. This is an area where considerable time and resources will continue to be devoted throughout the coming year.

Conclusion

During 2004, the U.S. Government will further energize its efforts to level the playing field for American workers and companies harmed by distortive subsidy practices in both domestic and foreign markets. This commitment will be strengthened by the establishment of a new Unfair Trade Practices Task Force in the Department of Commerce. This team will broaden and more effectively focus existing U.S. Government resources to identify and challenge a wide range of unfair foreign government practices that adversely affect the interests of the United States. Commerce and USTR will also further strengthen the subsidies enforcement program's monitoring, counseling and advocacy activities. The fundamental aim of these activities is to seek ways of addressing the interests of those U.S. parties facing particular problems from subsidized competition without imposing additional costs and obstacles to international commerce and investment. By identifying and rooting out distortive subsidies at their source, whether through advocacy, negotiation or legal action, the Administration seeks to free U.S. firms and workers from the unfair burden of having to compete with subsidized competition. In doing so, we will also help ensure that U.S.
consumers enjoy the full range of choice, quality and affordable prices that can only be obtained through engagement in a dynamic and competitive global economy.

INTRODUCTION

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

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

On the basis of these categories of discipline, the Subsidies Agreement provides remedies for subsidies affecting competition in one's domestic market, in the market of the subsidizing government and in third country markets. These disciplines serve as an important complement to the U.S. CVD law, which is limited to addressing the effects of foreign subsidized competition in the United States. Although the procedures and

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[1] Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would also be treated as a non-actionable subsidy so long as such assistance conformed to the applicable terms and conditions for green light subsidies set forth in Article 8. In addition, Article 6.1 of the Agreement provided that certain other subsidies, referred to as dark amber subsidies, could be presumed to cause serious prejudice. These were: (i) subsidies to cover an industry's operating losses; (ii) repeated subsidies to cover a firm's operating losses; (iii) the direct forgiveness of debt (including grants for debt repayment); and (iv) when the *ad valorem* subsidization of a product exceeds five percent. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had *not* resulted from the subsidy. However, as explained in our 2000 report, a mandatory review was conducted in 1999 under Article 31 of the Agreement to determine whether to extend the application of the green light and dark amber provisions beyond December 31 of that year. Because a consensus could not be reached among WTO Members on whether, or the terms by which, these provisions might be extended beyond their five-year period of provisional application, they expired on January 1, 2000.

remedies are different, the Subsidies Agreement provides an alternative tool to address distortive foreign subsidies that affect U.S. businesses and workers in an increasingly global marketplace. Within Commerce, these activities are carried out by Import Administration (IA) through the Subsidies Enforcement Office (SEO).

U.S. trade policy responses to the problems associated with foreign subsidized competition provide USTR and Commerce with both unique and complementary roles. In general, it is USTR's role to coordinate the development and implementation of overall U.S. trade policy with respect to subsidy matters, represent the United States in the World Trade Organization (WTO), including its Subsidies Committee, and chair the interagency process on matters of policy. The role of Commerce, through IA, is to enforce the CVD law, 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.[2] USTR and Commerce also work closely with, and receive valuable input and advice from, other federal agencies represented in the Trade Policy Staff Committee – such as the Departments of State, Treasury and Agriculture, and Council of Economic Advisors – concerning the full range of issues pertaining to the obligations of our trading partners under the Subsidies Agreement.

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

MULTILATERAL NEGOTIATIONS

A. WTO NEGOTIATIONS

1. Doha Development Agenda Negotiations

In November 2001, a new round of global trade negotiations – known as the Doha Development Agenda (DDA) – was launched at the Fourth Ministerial Conference. In the Ministerial declaration, the United States secured a two-stage mandate to improve the disciplines under the Subsidies and Antidumping (AD) Agreements and address the

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

trade-distorting practices that give rise to CVD and AD duties. Critically, the mandate recognizes that the negotiations must preserve the basic concepts, principles and effectiveness of the two Agreements and that unfair trade laws are legitimate tools for addressing unfair trade practices that cause injury. Under this mandate, the United States has pursued an aggressive, affirmative agenda, aimed at strengthening the rules and addressing the underlying causes of unfair trade practices.

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

The negotiating mandate has also permitted the United States to include in its affirmative agenda proposals that will defend the legitimate interests of U.S. exporters, who are often subject to unfair trade cases abroad. As discussed below, in 2003, the United States submitted several papers to the Rules Negotiating Group identifying issues in this area and laying the groundwork for clarifying and strengthening the rules on trade remedy procedures to ensure that the practices of other countries are as transparent and fair as those in the United States. This will enable U.S. exporters to compete abroad with the assurance that they will not be denied fundamental procedural due process protections.

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

2. Progress to Date

c. General

The Rules Group held five formal meetings in 2003 (in February, March, May, June, and July) under the Chairmanship of Ambassador Tim Groser from New Zealand. The Group based its work primarily on the written submissions from Members, organizing its

work in the following categories: (1) antidumping; (2) subsidies, including fisheries subsidies; and (3) regional trade agreements.

Given the Doha mandate that the basic concepts and principles underlying the Antidumping and Subsidies Agreements must be preserved, the United States outlined in a 2002 submission the basic concepts and principles of the trade remedy rules, and identified four core principles that would guide U.S. proposals for the Rules Negotiating Group:

- First, the negotiations must maintain the strength and effectiveness of the trade remedy laws and complement a fully effective dispute settlement system which enjoys the confidence of all Members;

- Second, trade remedy laws must operate in an open and transparent manner, which is fundamental to the rules-based system as a whole;

- Third, disciplines must be enhanced to address more effectively underlying trade-distorting practices; and

- Fourth, it is essential that dispute settlement panels and the Appellate Body, in interpreting obligations related to trade remedy laws, follow the appropriate standard of review and not impose on Members' authorities obligations that are not contained in the Agreements.

In accordance with these principles, the United States was very active in the Rules Group in 2003, both in identifying specific issues for consideration, and in raising questions with respect to the issues raised by other Members.

Pursuant to the first principle, the United States has repeatedly emphasized that the Doha mandate to preserve the effectiveness of the trade remedy rules must be strictly adhered to in evaluating any proposals for changes to the Antidumping or Subsidies Agreements, and has raised a number of questions to evaluate whether issues raised by other Members are consistent with that mandate. We have also identified particular issues relevant to ensuring that these trade remedies remain effective, such as addressing the problem of circumvention of antidumping and countervailing duty orders, and the need for the unique characteristics of perishable and seasonal agricultural products to be reflected in the trade remedy rules.

As to the second principle, we have identified a number of respects in which investigatory procedures in antidumping and countervailing duty investigations could be improved, highlighting areas in which interested parties and the public could benefit from greater openness and transparency, as well as some areas where improved procedures could reduce costs. Since U.S. exporters are a major target of foreign trade remedy

proceedings, it is essential to improve transparency and due process in these proceedings so that U.S. companies are treated fairly.

Regarding the third principle, we have stressed the need to address trade-distorting practices that are often the root causes of unfair trade, and have made a number of submissions to the Rules Group with respect to the strengthening of subsidies disciplines generally as well as the work ongoing in the OECD addressing trade-distorting practices in the steel sector.

With respect to the fourth principle, we have emphasized the importance of ensuring that the special standard of review in the Antidumping Agreement is adhered to by WTO panels and the Appellate Body, and the need to address several issues raised by certain past findings of the WTO Appellate Body in trade remedy cases. In the subsidies area particularly, we raised the issue of whether a provision establishing a special standard of review (analogous to Article 17.6 of the Antidumping Agreement) is appropriate for the Subsidies Agreement.

In summary, the United States has thus far in its submissions to the Rules Group identified numerous issues for discussion related to antidumping and countervailing duty trade remedies and subsidies disciplines, in accordance with the principles listed above. The United States has also been actively engaged in addressing the submissions from other Members, posing written questions with respect to many of them, and seeking to ensure that the Doha mandate for the Rules Group is fulfilled. It is expected that the process of issue-identification in the Rules Negotiating Group will continue in 2004, along with consideration of specific proposals as they are submitted on particular issues. The United States will continue to pursue an aggressive affirmative agenda, based on its core principles noted above, and building upon the U.S. papers submitted in 2003 with respect to strengthening the existing subsidies rules, and improving WTO disciplines on harmful fisheries subsidies.

b. Subsidies

In the subsidies area specifically, as noted in last years's report, the United States submitted a paper on special and differential treatment at the November 2002 meeting.[3] The purpose of the paper was to: (1) review the generally accepted view on the trade-distorting nature of subsidies; (2) outline the perspective of the United States on the issue of special and differential treatment; and (3) highlight the substantial and existing special and differential provisions of the Subsidies Agreement, as well as the significant practical implementation problems addressed in the lead-up to and at the Fourth Ministerial Conference at Doha. The U.S. paper discussed the longstanding and widespread

[3] See, TN/RL/W/33.

agreement that subsidies distort market signals thereby undermining the efficient allocation and utilization of resources.

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

In March 2003, the United States submitted its second subsidies paper establishing its fundamental position on the need for improved subsidy disciplines.[4] We identified a broad array of subsidy issues with respect to the existing rules, and suggested areas for new disciplines where none currently exist. The framework of our negotiating position on subsidies is firmly grounded in the negotiating objectives of the Trade Act of 2002, including addressing the existing rules on the treatment of indirect taxes. Consistent with our core principles, as noted above, identification of enhanced disciplines on trade-distorting practices, including subsidies – broadly defined – is particularly important because it is these practices that are often the root cause of trade friction. As a general matter, our paper advocated the continued progressive deepening of subsidy disciplines, which has been an integral component of the historic development of the rules governing the world trading system.

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

As to prohibited subsidies, the paper suggested that the obvious next step in the progressive deepening of subsidy disciplines is the expansion of the existing category of prohibited subsidies. This expansion would include those instances of government intervention that have a similarly distortive impact on competitiveness or trade as do export

[4] See, TN/RL/W/78.

and import substitution subsidies, the two currently prohibited categories of subsidies. Potential candidates for inclusion in an expanded prohibited category include some of the practices in the now-lapsed "dark amber" provisions of Article 6.1, such as the direct forgiveness of debt. Recipients of these types of subsidies have benefitted from extraordinary government intervention typically designed to save them from bankruptcy and maintain production and sales in contravention to the dictates of the market.

As advocated in the U.S. paper, the existing provisions of the Agreement regarding serious prejudice and indirect subsidies are in need of clarification and improvement. Although elaborated upon for the first time in the course of the Uruguay Round, the serious prejudice remedy – intended primarily to address subsidized competition in third country markets – has rarely been used. Potential areas of clarification and improvement include the causation provisions, and the impractical remedy of removing the adverse effects of the subsidy practice.

Indirect subsidies involve situations in which governments act through government-owned or directed entities. These types of subsidies have become more prevalent in the economies of some of our most important trading partners, often occurring in bankruptcy or near bankruptcy situations and involving strategic industries or targeted companies. Consequently, the U.S. subsidy paper raised the issues of revisiting the Agreement definition of "public body" and the "entrusts or directs" provision of Article I.

Government measures and practices affecting natural resources and energy touch on issues of state sovereignty and normally involve difficult questions of fair market value prices, and thus, have been sensitive and controversial topics. While the principle that trade flows should be determined by comparative advantage is broadly accepted, the U.S., subsidy paper forcefully argues that it must also be accepted that preferential natural resource pricing has been and, if not addressed, will continue to be a source of considerable trade distortion and friction. While progress was made in addressing these issues during the Uruguay Round, further clarification and improvement of the rules and remedies in this area are warranted.

Historically, under U.S. and international countervailing duty rules, government investment in private sector companies is permitted if consistent with the usual investment practice of private investors. However, the U.S. subsidy paper questions whether government equity investment is appropriate in countries with well-developed capital markets. Even if a case can be made that such investment is commercially reasonable, government ownership often confers – at a minimum – an unfair, implicit competitive advantage on the government-owned company. Stricter rules and notification obligations were raised as possible ways to address this problem and to avoid more generally the attendant issues of government ownership.

As noted in the Trade Act of 2002, Subsidies Agreement disciplines treat direct and indirect taxes differently. While we recognize that this distinction has historically existed in the GATT/WTO subsidy rules, we argued in our subsidy paper that an essential part of the work of the Rules Group should be to work toward greater equalization in the treatment of various tax systems that, at least with regard to their subsidy-like effects, have only superficial differences.

Royalty-based financing schemes can provide a significant degree of subsidization and are relatively common in a manufacturing sector of particular importance to the United States – large civil aircraft. However, the Subsidies Agreement does not provide specific, detailed rules for the analysis of such schemes. Obviously, if royalty-based financing is provided by a government to a company and repayment is based on assumptions and sales projections that would be rejected by the market, a benefit has been bestowed. As discussed in the U.S. subsidy paper, this issue needs to be confronted.

The Uruguay Round was successful in defining broad methodological concepts in the Subsidies Agreement regarding the benefit measurement of various types of subsidies. However, the lack of clarity and detail in certain areas has led to questions concerning the precise nature of Members' obligations under the Subsidies Agreement. As noted by the U.S. paper, greater clarity is needed on a host of measurement-related concepts, such as when and how to allocate subsidy benefits over time, the determination of market-based interest rate benchmarks, and the attribution of subsidy benefits to specific categories of a company's sales.

The last two issues raised by the U.S. subsidy paper relate to various procedural issues and subsidy notifications. A common procedural issue that occurs in both anti-dumping and countervailing duty investigations is how to deal reasonably with large, fragmented industries (*e.g.,* producers of some agricultural products). These problems were anticipated to some degree by provisions in both the Subsidies and Antidumping Agreements allowing for statistically valid sampling techniques. However, clarification is needed as to the precise manner by which a statistically valid sample can be developed. With regard to subsidy notifications, there is a need to improve compliance with the subsidy notification obligations of the Subsidies Agreement. The Subsidies Committee, as discussed later in this report, has done some work in this area which should be formally reflected in the Subsidies Agreement. Increased efforts of the Subsidies Committee to provide technical assistance to lesser developed countries also needs to be considered.

In 2003, other submissions on subsidy issues have been made by Australia, Canada, India and, jointly by Cuba and Venezuela[5]. Among the issues raised in these papers are: the definition for *de facto* export subsidies; the appropriate remedy following a

[5] Please see the following submissions: TN/RL/W/85, TN/RL/W/112, TN/RL/W/120, TN/RL/W/131, and TN/RL/W/139.

dispute settlement finding that a subsidy is prohibited; clarification of the serious prejudice provisions of the Subsidies Agreement; rules regarding the "pass-through" of subsidies between unrelated entities; "specificity" (*i.e.,* the legal or *de facto* limitation of a subsidy to certain companies or industries); reinstatement of the "dark amber" category of subsidies; royalty-based financing; harmonization of countervailing duty and antidumping procedural rules; reinstatement of the greenlight category of subsidies and expansion to include certain subsidies provided by developing countries; duty drawback and indirect tax rebate rules; the threshold for "export competitiveness" and a revision of the related export subsidy phase-out rules; and, the calculation of benefits under export credit programs.

In 2004, the United States will continue to take a leadership role on subsidy issues in the Rules Negotiating Group to ensure that the work mandated by Ministers remains focused on strengthening the existing disciplines set forth in the Agreement.

c. Fisheries Subsidies

With regard to fisheries subsidies, members have committed to negotiations that "aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries." These negotiations on fisheries subsidies have enjoyed broad support, not only from the United States and other developed country members such as New Zealand, Iceland and, more recently, the European Union, but also from a large number of developing countries (reflecting the critical role fisheries play in the food supply and livelihood of their people).

Much of the discussion of fisheries subsidies prior to 2003 focused on whether fisheries subsidies have, in fact, led to environmentally harmful over-fishing, and whether fisheries subsidies pose particularly unique problems that justify a stronger and/or separate set of rules. Japan and Korea, in particular, have generally opposed the negotiations moving forward by questioning the link between subsidies and over-fishing.

In 2003, however, most Members were prepared to move beyond this threshold issue, with the United States, the European Union and Chile submitting proposals for possible approaches to improving disciplines on fisheries subsidies.[6] In its March 2003, submission, the United States proposed a framework that includes an expanded prohibited ("red light") category and a presumptively harmful ("dark amber") category for fisheries subsidies. The U.S. submission also called for improving the quality of fisheries subsidy notifications and for more effective utilization of the analysis and expertise of other international organizations on fisheries resources. Mindful of U.S. industry and environmental issues, the United States intends to continue playing a leading role as these

[6] Please see the following submissions: TN/RL/W/77, TN/RL/W/82, and TN/RL/W/115.

negotiations evolve into the next phase of shaping the structure and content of new fisheries subsidy disciplines.

d. Agriculture

At the Fourth WTO Ministerial Conference in Doha, WTO Members agreed to an ambitious mandate for agriculture, including "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." In 2003, the United States continued to take the lead in calling for substantial reform of agricultural trade policies for all Members and all products. The United States has proposed comprehensive reform by reducing high levels of allowed protection and trade-distorting support through formulae that reduce tariff and subsidy disparities across countries, as well as strengthening WTO rules on a range of trade-related measures. In addition, the United States has proposed that WTO Members agree to eliminate all trade-distorting subsidies and all tariffs by a date certain.

Negotiations on agriculture began in the year 2000 and in the first two years some 45 proposals were submitted on behalf of 121 Members. In 2002, Members focused attention on specific proposals for establishing reform modalities, consistent with the Doha mandate. The United States submitted the first comprehensive set of proposed modalities for reform, helping set the discussions on an ambitious reform track. A number of other Members, including the Cairns Group and other developing countries, also submitted specific modality proposals oriented toward substantial reform. The European Union, Japan, and other Members with high tariff and subsidy levels did not come forward with specific or forthcoming modality proposals, instead making general proposals for marginal reform.

According to the ambitious negotiating timeline set in Doha, Members were to agree on specific reform modalities by March 31, 2003. Little progress was made toward that goal because many countries refused to move off of their original positions. The chairman of the WTO Agriculture Committee, Stuart Harbinson, attempted to meet the March 2003 deadline by drafting modalities covering all three pillars of reform and addressing issues of special and differential treatment for developing countries. Many Members disagreed with a number of the elements of the draft Harbinson text, and it did not serve to facilitate consensus on a way forward in the negotiations.

In the wake of disagreement over the Harbinson text, many WTO Members requested that the United States and the EU work together to bridge their differences. In August 2003, the United States and the EU presented a joint framework paper, which addressed the key outstanding issues between the EU and the United States, and which reaffirmed the objectives identified in the Doha Declaration. The paper identified a number of formulae for implementing reduction commitments for tariffs and subsidies, leaving the coefficients in the formulae to be the subject of future negotiations.

Going into the Fifth Ministerial in Cancun, Mexico (September 2003), there were multiple conflicting texts. In preparation for Cancun, General Council Chairman Perez del Castillo incorporated substantial parts of the U.S.-EU framework into a draft modalities framework. The "G20" – a new developing country coalition – tabled its own draft modalities framework. Four West African cotton-producing countries tabled a proposal that targeted the U.S. cotton support program and called for compensation for their producers.

At Cancun, Chairman Derbez developed a draft modalities text that sought to find common ground among the divergent positions. However, after five days of negotiations, Ministers were unable to agree on how to proceed in meeting the objectives mandated in the Doha Development Agenda.

After a period of reflection and consultations between Chairman Perez del Castillo and Members, on December 15, 2003, a General Council meeting was held to take stock and find a way forward. Members expressed a willingness to reinvigorate the trade talks in 2004, although at this time the precise nature of the engagement is not well-defined. The General Council will meet on February 11, 2004, to review chairs of the negotiating groups and an appropriate schedule.

e. Dispute Settlement

The current system of dispute settlement at the WTO is an outgrowth of Members' experiences with the dispute settlement mechanism that existed under the General Agreement on Tariffs and Trade (GATT), where parties could delay the dispute settlement process and easily block the adoption of GATT panel reports. Because of U.S. frustration with the GATT dispute settlement system, Congress identified as a principal negotiating objective during the Uruguay Round the creation of a dispute settlement system that provided for more effective and expeditious dispute resolution. Such a system was achieved during the Uruguay Round and the resulting Dispute Settlement Understanding (DSU) that was adopted by the WTO Members now governs the conduct of disputes in the WTO.

During the Uruguay Round, Members mandated that there be a review of the DSU within five years to consider Members' experiences under the new dispute settlement system and whether there was a need for further refinements and improvements to the agreement. Although such a review began within the five years mandated by the Members, the work was not completed at the time of the Fourth Ministerial Conference. Consequently, the Ministers at Doha mandated negotiations on improvements and clarifications of the DSU, based on the work that had been done thus far, as well as any additional proposals by Members, with the aim of completing the negotiations by May 2003. Although a great deal of work was completed by May 2003, Members were unable

to reach consensus on clarifications and improvements to the DSU. Therefore, the target date for completing the review was extended to May 2004.

The United States continues to take an active role in the DSU negotiations, guided by its experiences as both a complainant and a respondent in WTO disputes. Overall, the United States has generally fared well in WTO dispute settlement, particularly as a complainant. The United States has used WTO dispute settlement to open markets for U.S. businesses, farmers and workers to eliminate trade-distorting practices from the global marketplace, and to defend U.S. laws and policies.

Nevertheless, the United States is concerned with the approach that WTO panels and the Appellate Body have sometimes taken in disputes and the potential systemic implications it may have. In particular, the Administration views with concern the manner in which WTO panels and the Appellate Body have applied the applicable standard of review in disputes involving U.S. trade remedies and safeguards, including CVD measures, and instances in which they have found obligations and restrictions on WTO Members concerning trade remedies and safeguards that are not supported by the texts of the WTO agreements.

Congress, sharing such concerns, provided in section 2105 of the Trade Act of 2002 that the Secretary of Commerce transmit to Congress a report setting forth the executive branch's negotiating strategy for addressing these concerns. On December 30, 2002, the Secretary of Commerce transmitted that report to Congress, outlining the executive branch's strategy and the proposals the United States has tabled thus far to achieve its negotiating goals. These proposals would provide greater flexibility and Member control in the dispute settlement process, including the ability to address more effectively errant panel reasoning, that should help avoid erroneous and unnecessary findings in future dispute settlement procedures. They would also increase the transparency of the dispute settlement process, based on the belief that a dispute settlement system that is more open to, and better understood by, the public will have greater public support. The report also notes that in the context of the Rules negotiations, the United States will promote the proper application of the standard of review and the recognition that dispute settlement panels and the Appellate Body are not to impose obligations or restrictions on Members that are not in the text of the Rules agreements. Through this strategy, the United States seeks to improve several aspects of the DSU while maintaining the strength and effectiveness of trade remedies.

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

The Administration continues to work hard to achieve the goals set out in the President's Initiative on Steel, which was implemented in 2001 in order to seek more lasting solutions to the structural problems of the global steel industry. These problems

have contributed to a decades-long, cyclical proliferation of unfair trade competition and trade remedy responses. As a result, the United States and other major steel-producing countries launched talks in the OECD – via the creation of a "High-Level Group" – to address the inter-related problems of global uneconomic steel capacity and the market distorting practices which help to sustain such capacity. As noted in last year's report, U.S. government officials have helped to spearhead these OECD efforts to bring about market-driven rationalization of the world's excess, inefficient steelmaking capacity, while also formulating better disciplines over practices which can distort markets and trade – beginning with and focusing on government subsidies.

1. Update on the Work of the High Level Group (HLG)

During the summer of 2003, the HLG met at the OECD to take stock of the progress being made to advance this agenda, and to provide further guidance to technical experts for the work being done since its previous meeting in December of 2002. Much of this work has occurred in the technical subsidiary bodies – the Disciplines Study Group and the Capacity Working Group – set up in 2002 to explore the relevant issues in a more probing way.

In the Capacity Working Group, the participating governments have agreed upon a number of improvements in the notification and review of information concerning global steel capacity developments so that such developments are subject to a more transparent and rigorous reporting standard. Global steel capacity trends are now examined in accordance with an organized "peer review" procedure put in place with the active involvement of the United States. In this process, governments are expected to supply detailed information about capacity trends in their steel industries and are called upon to answer to other governments regarding the accuracy of capacity estimates or the appropriateness of government policies which may help to sustain uneconomic capacity. Based on the most recent information submitted, the latest estimates of closure of excess, inefficient steelmaking capacity worldwide indicate that there was a closure of 105 million metric tons of capacity from 1998 - 2002, with another 29 - 35 million tons projected to be closed between 2003 - 2005. Reported new installations bring the net closure numbers to a lower, but still significant, amount: 72 - 78 million tons in the 1998 - 2005 period. However, closures appear to be leveling off and there is much new capacity going on line in response to a surge in demand, particularly in China. We will continue to press other countries to pursue only market driven restructuring and investment through the work of the Capacity Working Group.

2. Improving Disciplines on Steel Subsidies

With respect to market distortions, consistent with the mandate of the HLG noted in last year's report, the nearly 40 participating governments have also been working intensively to develop an agreement which would reduce or eliminate trade-distorting

government subsidies to the steel sector, going well beyond current international disciplines. The outlines of an agreement are set, and good progress has been made in either fleshing out its core elements (*e.g.*, the nature and extent of the subsidy prohibition) or identifying options for resolving controversial or complex issues (*e.g.*, possible exceptions from the prohibition for certain kinds of subsidies and "special and differential treatment" for developing countries). However, major points of contention remain, such as: (1) whether subsidies beyond limited plant closure aid should be exempted from the envisaged blanket prohibition of all subsidies, (2) the kind and level of special or differential treatment that should be accorded to developing countries, and (3) whether and to what extent the agreement should address trade remedies.

The United States has worked well with the other participants to promote progress in these talks, but significant differences of view remain on some of these key issues. The shared goal of the participants remains to produce an "advanced negotiating text" for political level review by April/May and to conclude negotiations by the end of 2004. Much of the progress we have made to date can be attributable to close consultation with steel industry representatives from around the world, and to close coordination among like-minded participants, such as our NAFTA partners, who are equally committed to obtaining an ambitious result.

C. FREE TRADE AGREEMENT NEGOTIATIONS

Throughout 2003, the United States was engaged in a number of negotiations aimed at establishing free trade agreements. These agreements benefit U.S. workers, consumers, and businesses by increasing market access for U.S. goods and services and by providing protections for U.S. investors. The United States completed negotiations with Chile and Singapore in 2002, and the free trade agreements came into effect in 2004. Following nine rounds of discussions in 2003, the United States also concluded negotiations with four Central American Free Trade Agreement (CAFTA) countries in December of last year: El Salvador, Guatemala, Honduras, and Nicaragua. Discussions with Costa Rica concluded in January 2004. Negotiations are underway with the Dominican Republic and Bahrain. Negotiations with Australia and Morocco are nearing completion. The United States and the five member countries of the Southern African Customs Union (SACU) – Botswana, Lesotho, Namibia, South Africa and Swaziland – launched negotiations toward a free trade agreement in June 2003. Those discussions are expected to conclude in 2004. Finally, Free Trade Area of the Americas (FTAA) negotiations continued with 34 countries. The successful completion of the Eighth Ministerial Meeting in November provided the impetus to continue discussions with the aim of successfully completing negotiations by January 2005.

SEO staff participated in each of these negotiations as part of an interagency team and provided support in areas such as trade remedies, dispute settlement, competition and subsidy issues involving various sectors. In 2004, SEO staff and USTR, working with

an interagency team, will continue their close cooperation to ensure that subsidy issues are addressed and that trade remedy provisions are strengthened and maintained as negotiations begin with new FTA applicants, including Bahrain, Thailand, and Panama, Colombia, and Peru.

MONITORING AND ENFORCEMENT

In 2003, the monitoring and enforcement activities of USTR and Commerce fell into the following categories: (1) pursuing and defending U.S. interests in the ongoing work of the Subsidies Committee; (2) actively participating in China's Transitional Review Mechanism; (3) examining subsidy-related issues in the WTO accession process and Trade Policy Review of several countries; and (4) monitoring subsidy practices worldwide.

C. WTO SUBSIDIES COMMITTEE

The Subsidies Committee's active agenda in 2003 included its routine activities concerned with reviewing and clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements. Also included was the second annual transitional review with respect to China's implementation of the Agreement (see discussion in the following section regarding China's Transitional Review Mechanism). Other issues addressed in the course of the year included: the examination of the export subsidy program extension requests of certain developing countries, the methodology for the calculation of the per capita GNP threshold in Annex VII of the Agreement, the ramifications of European Union enlargement on existing trade remedy measures, and the election of two persons to the Permanent Group of Experts.

1. Subsidy Notifications

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

Under Article 25.2 of the Agreement, Members are required to report certain information on all measures, practices and activities that, as set forth in Articles 1 and 2 of the Agreement, meet the definition of a subsidy and are specific within the territory of a Member. Under the Agreement, "new and full" notifications are submitted every third year, whereas updating notifications (usually containing information solely on changes made to previously notified subsidies) are submitted in the intervening years. Article 26 of the Agreement charges the Committee with reviewing the full notifications at special sessions held every third year, whereas updates are reviewed at regular, semi-annual Committee meetings.

Thirty-four Members provided new and full notifications for 2003. Twenty-two of these notifications were reviewed in the fall of 2003. The remainder will be reviewed next year. In 2003, the Committee also continued its examination of new and full notifications submitted for 1998 and 2001, as well as updating notifications submitted for 1999 and 2000. Attachment 1 of this report shows the total number of notifications that were reviewed by the Subsidies Committee last year, indicating the annual reporting period to which the reviewed notifications relate.

Importantly, the United States submitted its subsidy notification in 2003, thereby continuing to be in compliance with its subsidy notification obligations under the Agreement. Researching and assembling the necessary detailed information regarding U.S. assistance programs and consulting throughout with numerous federal and state agencies was an immense undertaking requiring a commitment of staff and other resources of both USTR and Commerce. The U.S. subsidy notification submitted in 2003 included over 40 federal programs and a substantial increase in the number of state programs notified – 330 in total. This reflected an intensified research effort and heightened cooperation between federal and state government personnel. While certain subsidy information was not yet available – mostly regarding U.S. domestic agricultural supports – the notification filed by the United States in 2003 reflected the further institutionalization of the U.S. WTO subsidy notification process.

Although WTO Membership was 146 as of December 2003, as noted above, only 34 Members provided new and full notifications for 2003 (counting the EU as one). Only 59 Members submitted new and full subsidy notifications for 2001, while 47 and 43 Members, respectively, submitted updating notifications for the 1999 and 2000 periods. Thirty-four Members have never made a subsidy notification to the WTO; however, many of these countries are lesser-developed countries lacking the necessary resources to compile a such a notification.

In 2003, the Committee continued to accord special attention to the general matter of subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. The United States' primary goal regarding the notification work of the Subsidies Committee continued to be the full and timely adherence

by WTO Members with their subsidy obligations while being open to alternative approaches to lessen the burden of meeting certain notification obligations without diminishing their substance.

In view of the ongoing difficulties experienced by Members in meeting the Agreement's subsidy notification obligations, a three-prong strategy has been devised and implemented. The first prong was to examine alternative practical approaches to the frequency and nature of subsidy notifications, as well as their review. In 2001, Members decided to devote maximum effort to submitting new and full notifications every two years, and to de-emphasize the review of the annual updating notifications. Examination of the format for a subsidy notification constituted the second prong of the strategy. Efforts in this regard began in 2002 and culminated in the adoption in 2003 of a revised, simplified format. The third prong was the organization of a subsidy notification seminar, geared to participation by capital-based officials responsible for notification which was held in 2002.

Additionally, in 2003, pursuant to an informal U.S. initiative, the United States and several other developed country Members have offered technical assistance to neighboring developing country Members experiencing difficulty in assembling and submitting subsidy notifications. Implementation of this initiative will hopefully provide further impetus for those developing countries requiring technical assistance to meet their obligations under the Subsidies Agreement and thereby address, at least in part, the relatively poor record of WTO Members in submitting notifications of their subsidy programs.

2. Review of Countervailing Duty Legislation, Regulations and Measures

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

To date, 97 Members of the WTO (counting the European Union as one) have notified that they currently have CVD legislation in place, while 35 Members have not yet notified that they maintain such legislation. Among the notifications of CVD laws and regulations reviewed in 2003 were those of: Antigua and Barbuda; Argentina; Brazil; China; Costa Rica; Czech Republic; Dominican Republic; the European Communities; Grenada; Japan; Lithuania; Mexico; New Zealand; Nicaragua; Pakistan; Turkey; and,

Zimbabwe.[7] The notifications of Armenia and Peru were scheduled to be reviewed at the fall 2003 regular meeting but were postponed until next year.

As for CVD measures, six WTO Members notified CVD actions taken during the latter half of 2002, and eleven Members notified actions taken in the first half of 2003. Specifically, the Committee reviewed actions taken by Argentina, Australia, Brazil, Canada, Costa Rica, the European Union, Latvia, Mexico, New Zealand, Peru, South Africa, the United States and Venezuela.

3. Extension of the Transition Period for the Phase Out of Export Subsidies

Under the Agreement, most developing countries were obligated to eliminate their export subsidies by December 31, 2001. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Subsidies Committee by December 31, 2002. The Committee has the authority to decide whether an extension is justified. In making this determination, the Committee must consider the "economic, financial and development needs" of the developing country Member. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.[8] If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

In an attempt to address the concerns of small exporter developing countries, a special procedure within the context of Article 27.4 of the Agreement was adopted at the Fourth Ministerial Conference. Under this special procedure, countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than $20 billion could be granted a limited extension for particular types of export subsidy programs subject to rigorous transparency and standstill provisions. Members meeting all the qualifications for the agreed upon special procedures are eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.[9]

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

[8] Although Committee action may prevent the export subsidies from being prohibited, it does not affect a Member's ability to impose countervailing measures under its national laws.

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

In 2002, Colombia, El Salvador, Panama and Thailand made requests under the normal extension process provided for in the Agreement. Antigua and Barbuda, Barbados, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Jordan, Kenya, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Sri Lanka, and Suriname made requests under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.[10] Uruguay requested an extension for one program under both the normal and special procedures. Additionally, Colombia sought an extension for two of its export subsidies programs under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries.

In 2003, no requests were made for extensions under the normal Article 27.4 procedures.[11] Requests were made however, by all the countries which had received extensions under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries. Colombia also requested an extension for two of its export subsidies programs for which extensions were granted under the other procedure agreed to at the Fourth Ministerial Conference. All these requests required a detailed examination of whether the applicable standstill and transparency requirements had been met. Many requests required clarification via a written question and answer process, in addition to discussions in formal and informal meetings. For several programs, extensive consultations were required to reach a consensus.

In total, the Committee conducted a detailed review of 46 export subsidy programs. (A chart showing how each of the requests was addressed is found in Attachment 2.) At the end of the process, all of the requests under the special procedures were granted. Throughout the review and approval process, the United States took a leadership role in balancing the need to ensure close adherence to the agreed upon transparency and standstill preconditions, and to faithfully implement the decisions taken at the Fourth Ministerial Conference.

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[10] Bolivia, Guatemala, Honduras, Kenya and Sri Lanka are all listed in Annex VII of the Subsidies Agreement, and, thus, may continue to provide export subsidies until their "graduation". Therefore, these countries have only reserved their rights under the special procedures in the event they graduate during the five-year extension period contemplated by the special procedures. Because these countries only reserved their rights in 2002, the Committee did not need to make any decisions as to whether their respective subsidy programs qualify under the special procedures. None of the countries in question graduated in 2003.

[11] As a result, the export subsidy programs of Colombia, El Salvador, Panama and Thailand – which had been granted normal Article 27.4 extensions in 2002 (see Attachment 2) – must be phased out within two years (*i.e.,* by the end of 2005).

4. *The Methodology for the Calculation of the Per Capita GNP Threshold in Annex VII of the Agreement*

Annex VII of the Agreement identifies certain lesser developed countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited. In addition, a higher *de minimis* threshold is provided for in CVD investigations of imports from these countries, although this standard expired at the end of 2002.[12] The countries identified in Annex VII include those WTO Members designated by the United Nations as "least-developed countries" (Annex VII(a)), as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under $1,000 per annum and that are specifically listed in Annex VII(b).[13] A country automatically "graduates" from Annex VII(b) status when its per capita GNP reaches the $1,000 threshold. When a country crosses this threshold, it becomes subject to the subsidy disciplines generally applicable to other developing countries.

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

In 2001, the Chairman of the Committee, in conjunction with the WTO Secretariat, developed an approach based on certain World Bank data that were used by the Uruguay Round negotiators in 1990 in developing Annex VII(b). While many Members expressed the view that they could accept this proposed methodology, other Members indicated that it was more appropriate to rely on more recently available data. Thus, it was not possible to reach a consensus on the question of methodology.

At the Fourth Ministerial Conference, it was agreed:

> . . . that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches US $1,000 in constant 1990 dollars for three consecutive years. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for calculating constant 1990 dollars. If, however, the Committee

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[12] The *de minimis* for Annex VII countries was 3 percent, compared with 2 percent for other developing countries.

[13] Annex VII(b) countries are Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of a technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras' status as an Annex VII(b) country was formally clarified on January 20, 2001.

> on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied. A Member shall not leave Annex VII(b) so long as its GNP per capita in current dollars has not reached US $1000 based upon the most recent data from the World Bank.[14]

No alternative methodology was proposed in 2002. Therefore, the Chairman's methodology proposed in 2001 for adjusting the nominal $1000 Annex VII(b) threshold has been in effect since January 1, 2003. The WTO Subsidies Committee Secretariat updated the calculations performed under this methodology later in the year.[15]

5. Permanent Group of Experts

Article 24 of the Agreement directs the Committee to establish a Permanent Group of Experts (PGE), "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The Agreement articulates three possible roles for the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy, within the meaning of Article 3 of the Agreement; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a WTO Member, a "confidential" advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties. Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

At of the beginning of 2002, the members of the Permanent Group of Experts were: Professor Okan Aktan (Turkey); Mr. Jorge Castro Bernieri (Venezuela); Dr. Marco Bronckers (Netherlands); Professor R.G. Flores Jr.(Brazil); and Mr. Hyung-Jin Kim (Korea). Professor Flores' term as a member of the PGE expired in the spring of 2003. In addition, Mr. Castro-Bernieri, who was elected to the PGE for the term 2001-2006, resigned upon his appointment to the WTO Secretariat. After a significant period during which a consensus could not be reached, Mr. Terence P. Stewart – a recognized international trade law practitioner from the United States – and Mr. Yuji Iwasawa (Japan) were elected to replace Mr. Castro-Bernieri and Professor Flores to the PGE, assuming terms until spring 2006, and spring 2008, respectively.

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[14] The addition of the phrase "for three consecutive years" was added at the request of Honduras which was concerned that their possible graduation from Annex VII in the near future might place them in a worse condition than those Members which avail themselves of the special procedures under Article 27.4 for small developing-country exporters.

[15] See G/SCM/110.

6. European Union Expansion

At the fall meeting, the Committee discussed issues pertaining to the status of outstanding countervailing duty measures of the EU in light of the anticipated expansion of the EU from 15 members to 25 members in 2004. The United States filed written questions to the EU on this issue, raising concerns about whether the EU's announced intention to extend automatically, upon expansion, its countervailing duty measures now covering imports into the territory of the 15 current member-states of the EU to cover imports into the territory of the 25 member-states after expansion would be consistent with the Agreement, particularly in the absence of an additional determination of injury covering the territory of the 25 member-states. The EU responded orally to the U.S. questions, and several other Members raised additional questions and concerns on this issue. We expect discussion of this issue will continue in 2004.

7. Areas of Focus in 2004

In 2004, the United States will continue to work with others to try to identify ways to rationalize the burdens of subsidy notification for all WTO Members without diminishing transparency or taking away from the other substantive benefits of the notification obligation and to provide technical assistance when available and where appropriate. Second, the United States will participate actively in the review of other WTO Members' CVD legislation and actions, as well as China's Transitional Review (for further information, see below), and will bring to Members' and the Committee's attention any concerns which may arise about such laws or actions, whether in general or in the context of specific proceedings. Third, the United States will continue to ensure the close adherence to the provisions of the agreed upon export subsidy extension procedures for small exporter developing countries. Finally, the United States is prepared to take a leadership role in addressing any technical questions that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

B. CHINA

1. Transitional Review Mechanism

a. Subsidy and Pricing Commitments

Paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization provides that all subsidiary bodies, including the Subsidies Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession . . . review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol." Paragraph 18 states further that such reviews

shall be conducted on an annual basis for eight years, with a final review occurring by the tenth year after accession. In October 2003, the United States took part in the second review of China under this "transitional review mechanism" (TRM) at the WTO. Prior to the meeting, the United States posed written questions to the Chinese authorities to clarify China's notified countervailing duty regulations and rules and to gain more information about possible Chinese subsidy programs. During the course of the meeting, the U.S. representatives also posed questions to the Chinese delegation about China's compliance with its WTO subsidy and pricing commitments.

In 2003, China again did not submit any information about its subsidy programs to the Subsidies Committee as required by Article 25 of the Subsidies Agreement. This is the second year that China has not made the required annual subsidy notification. The obligation to notify subsidies is a key obligation of the Subsidies Agreement, because it provides other WTO Members with the ability to evaluate another Member's subsidy programs and assess its compliance with its Subsidies Agreement obligations. Although China submitted a notification of some subsidy programs during its accession process, that information is dated and only covers a limited number of programs. The United States has repeatedly urged China to submit a full and updated subsidy notification, most recently during the October 2003 meeting of the Subsidies Committee and concurrent TRM.

As noted in the U.S. Trade Representative's report to Congress on China's WTO compliance, U.S. subsidies experts are currently seeking more information about several Chinese programs and policies that may confer prohibited export subsidies or import substitution subsidies.[16] The programs in question benefit various high technology products in the electronics, bio-medicine, and new materials sectors, among others, as well as the integrated circuit industry. The experts also continue to evaluate benefits provided by China in special economic areas to determine whether any of them may be contingent upon export performance or the use of domestic over imported goods. In addition, the United States has begun examining China's subsidization practices in the textiles industry, as well as the steel, petrochemical, machinery and copper and other non-ferrous metals industries. The United States will continue to examine these subsidy practices in 2004, and will raise concerns regarding specific sectors directly with China as appropriate.

Also, in its Protocol of Accession, China agreed that it would not use price controls to restrict the level of imports of goods or services. In 2003, China submitted to the

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[16] *2003 Report to Congress on China's WTO Compliance*, United States Trade Representative, December 11, 2003, pp. 33-34

Subsidies Committee an updated list of its price controls, which suggests that China has reduced the scope of products and services covered by government price controls. During the October 2003 TRM, the United States requested further information about and clarification of certain aspects of that notification, in particular regarding potentially lower prices charged to state-owned enterprises (SOEs) for energy, transport, water and telecommunications. In addition, the United States requested further information regarding the products covered by Chinese price controls. The United States will continue to monitor China's progress towards eliminating price controls in 2004.

b. Countervailing Duty Legislation

China has made significant progress on its notification of countervailing duty laws and regulations to the WTO. However, although China has yet to conduct a countervailing duty investigation, there are several rules and regulations that would pertain to the conduct of such investigations that China has yet to notify to the Subsidies Committee. While China has issued ministerial rules on industry injury investigations, as well as judicial interpretations on hearing countervailing duty appeals, gaps remain in its legal structure, including in the areas of interim and expiration reviews, rules and procedures on access to non-confidential information, and price undertakings. The United States has expressed its concern about this situation, along with its expectation that China would soon notify to the Subsidies Committee all rules and regulations that have a bearing on countervailing duty investigations and reviews.

During the course of the October 2003 TRM, China informed the Subsidies Committee that the roles played by the former Ministry of Foreign Trade and Economic Cooperation and State Economic and Trade Commission were now subsumed within the newly created Ministry of Commerce. The role of the State Council Tariff Commission in CVD law administration was still not completely clear, however, in part because China has apparently not yet issued regulations governing the actions of the Tariff Commission with respect to countervailing duty investigations or reviews. The United States urged China to clarify the oversight role of the State Council Tariff Commission, including the circumstances under which it may exercise influence in the course of an investigation.

2. New Initiative – *Structural Working Group Under the Joint Commission on Commerce and Trade*

The U.S.-China Joint Commission on Commerce and Trade (JCCT) was established in 1983 to provide a high-level forum for the U.S. and Chinese governments to discuss trade-related issues and concerns and a vehicle for promoting commercial relations. The JCCT, which is chaired on the U.S. side by the Secretary of Commerce and on the Chinese side by the Minister of Commerce, includes a number of working groups

that focus on particular issues, such as commercial law.[17] In November, the United States and China agreed to form a new Structural Working Group (SWG) under the auspices of the JCCT whose mandate will cover issues and practices related to trade agreements, especially those concerning unfair trade matters, and the conduct of trade remedy (*e.g.*, antidumping) actions. Prior to the formation of the SWG, concerns regarding trade agreements and trade remedy actions had to be addressed in one or more other working groups. Given the growing level of trade between China and the United States, and with China's entry into the WTO, and increasing use of trade remedies, the former ad hoc approach for dealing with such issues lost its effectiveness.

The initial meeting of the SWG will likely be held in the run up to the next JCCT meeting in Spring 2004. While much of the first meeting likely will be dedicated to developing the long-term agenda and schedule for the group, the United States has proposed including in the substantive agenda issues such as improving China's record in meeting various subsidy-related WTO commitments. The SWG will be chaired on the U.S. side by the Assistant Secretary of Commerce for Import Administration. China has not yet named its chair for the SWG.

C. WTO ACCESSIONS: U.S. MONITORING OF SUBSIDY-RELATED COMMITMENTS

WTO accession candidates must provide detailed information concerning their economic and trade policies that have a bearing on WTO agreements. This information is reviewed by a Working Party of existing WTO Members established to facilitate the accession and ensure that the candidate has adequately fulfilled the requirements of WTO membership. Parallel negotiations are held between existing Members and the accession candidate to address bilateral trading interests. All interested WTO Members must be in agreement that their individual concerns have been met and that outstanding issues have been resolved in the course of their bilateral and multilateral negotiations before a new Member may accede. The economic and trade information reviewed by the Working Party includes the accession candidate's subsidies regime. In the evaluation process, information on the candidate's use of subsidies is examined, in particular, the possible existence of subsidies that are prohibited under the Subsidies Agreement. Additionally, if an accession candidate has a trade remedy law in place, the compatibility of such a law with a Member's WTO obligations is analyzed.

[17] For 2004, China requested that the JCCT be elevated in status. Therefore, the JCCT meetings this year will be co-chaired on the U.S. side by both the Secretary of Commerce and the U.S. Trade Representative, while on the Chinese side the chair will be elevated to a Chinese Vice Premier.

In 2003, Commerce and USTR, along with an interagency team, reviewed the compatibility of eighteen acceding countries' subsidy regimes with WTO subsidy rules.[18] This subsidy-related information is found in a country's Memorandum on the Foreign Trade Regime, introduced at the beginning of the accession process. The interagency team usually supplements and corroborates this information with outside research to ensure a complete and accurate depiction of the candidate's subsidies regime. In general, the United States seeks firm commitments from accession candidates that they eliminate all prohibited subsidies upon joining the WTO, and that they will not introduce any such subsidies in the future. In addition, we may seek additional commitments regarding other subsidies that are of particular concern to U.S. industries.

1. Russia

The Working Party on the accession of the Russian Federation was established in 1993. Throughout the negotiations, the issue of subsidies has been a major topic of discussion in the Working Party, and it has been particularly challenging to obtain accurate and timely information concerning subsidies in the Russian Federation at both federal and sub-federal levels. To that end, the United States and other Working Party Members continue to seek a full notification by the Russian Government of all such subsidies. We are also seeking commitments from Russia with regard to a number of subsidies, including some potentially prohibited subsidies.

Russia's current natural gas pricing policies have been a contentious issue throughout the negotiations and continue to be a major factor in Russia's bilateral discussions with the EU. The United States also has raised concerns. In particular, the potentially distortive effect that low-priced gas has on Russian industrial production and internationally-traded energy-intensive products has been a key issue because of the possible resulting adverse impact on U.S. industries.

2. Others (including the accessions completed in 2003)

Work on other accessions over the past year culminated with the approval of Cambodia's and Nepal's accession applications by WTO trade ministers at the Fifth Ministerial Conference held in Cancun, Mexico, in September. This action put Cambodia and Nepal in line to become the WTO's 147th and 148th members, respectively. The outcome of the negotiation process in both cases demonstrated the United States' continuing commitment to assist developing and least-developed countries accede to the WTO on terms faithful to the trade-liberalizing and market-based rules of the multilateral

[18] The eighteen countries reviewed by Commerce and USTR in 2003 include: Algeria, Belarus, Bosnia, Bhutan, Cambodia, Cape Verde, Ethiopia, Kazakhstan, Lebanon, Nepal, the Russian Federation, Samoa, Saudi Arabia, Sudan, Tajikistan, Tonga, Ukraine and Vietnam.

system. Cambodia became the first least-developed country to join the WTO through the full working party negotiation process.

Although the accession terms allow both countries to benefit from special and differential treatment under Article 27 of the Subsidies Agreement, the United States and other WTO Members also obtained specific commitments from Cambodia and Nepal to restructure certain subsidy programs so as to make them less distortive. In the case of Cambodia, specific commitments were made in the areas of import fee and duty drawback programs. In particular, Cambodia recognized that the waiver of import duty fees on export oriented projects could be deemed as a prohibited subsidy under the Subsidies Agreement. As such, Cambodia confirmed that it would either eliminate the import duty waiver on export oriented projects or establish a functioning duty drawback system consistent with WTO provisions. Nepal also took steps to amend an income tax rebate provision which was previously viewed as being inconsistent with the WTO subsidy rules. Specifically, Nepal agreed to eliminate an income tax rebate provision that was contingent upon the use of domestic raw materials.

D. WTO TRADE POLICY REVIEWS

The WTO's Trade Policy Review Mechanism provides USTR and Commerce with another opportunity to review the subsidy practices of WTO Members. These reviews were agreed to as part of the Uruguay Round Agreements with the aim to (1) increase transparency and promote the understanding of other countries' trade policies and practices; (2) improve the quality of public and intergovernmental debate on important issues; and (3) enable a multilateral assessment of the effects of trade policy on the world trading system. These "peer reviews" encourage WTO Members to follow WTO rules and disciplines more closely and to fulfill their multilateral commitments. In general, Trade Policy Reviews (TPRs) focus on the trade policies and practices of a particular country while also taking into account overall economic and developmental needs, policies and objectives, as well as the external economic environment that they face. The four largest traders in the WTO (the European Union, the United States, Japan and China) are examined once every two years. The next 16 largest countries, based on their share of world trade, are reviewed every four years. In 1994, flexibility of up to six months was introduced into the review cycles. The remaining countries are reviewed every six years, with the possibility of a longer interim period for the least-developed countries. For each review, two documents are prepared: a policy statement by the government under review, and a detailed report written independently by the WTO Secretariat. In 2003, USTR and Commerce reviewed sixteen Members' trade policy reports, including those of Canada, New Zealand, Thailand, Morocco and the Southern African Customs Union.[19]

[19] The sixteen Members that were reviewed in 2003 include: Maldives, El Salvador, Canada, Burundi, Southern African Customs Union, New Zealand, Morocco, Indonesia, Senegal/Niger, Honduras, Bulgaria, Guyana, Haiti, Thailand, Chile and Turkey. The following countries will be reviewed in 2004: the United

With regard to subsidies, these reviews play an important role in ensuring that WTO Members meet transparency requirements concerning their subsidy practices. TPRs also provide a broader context than Subsidies Committee notification reviews in which to assess a Member's subsidy policies and their role in that Member's economy. In reviewing the trade policy reports, USTR and Commerce focus on the information concerning the subsidy practices detailed in the report, but also conduct extensive research on potential omissions regarding known subsidy practices that have not been reported.

E. MONITORING SUBSIDY PRACTICES WORLDWIDE

In 2003, Commerce and USTR continued their close cooperation monitoring worldwide subsidy practices of foreign governments that may have an adverse impact on American companies and workers. Monitoring and cataloging these practices is part of the daily activities performed by teams in Commerce's SEO and the Trade Remedy Compliance Staff (TRCS).[20] These teams conduct daily searches of a wide range of public news sources, including on-line newspapers and journals, as well as websites of industry associations, international organizations, and foreign governments. A number of analysts, fluent in various languages, conduct more in-depth research with resources that are not as widely read. Analysts request information directly from our Embassies and also rely on cable reports from U.S. government posts overseas. Such reporting is vital to providing insight into actions that may have a direct bearing on U.S. producers. Analysts also depend on contacts made with American industries, both in the United States and overseas.

The SEO website continues to be an important means to organize subsidy-related information, and convey it to the public. USTR and SEO staffs also rely on the website as a cross-check for review of foreign governments' subsidy notifications to the WTO. This SEO website maintains information about every subsidy program investigated by Commerce in a CVD investigation since 1980. It also provides access to derestricted WTO subsidies notifications, and easily accessible links to other useful U.S. and foreign government sites, such as USTR, the U.S. Export-Import Bank, the International Monetary Fund, the WTO (which maintains databases of Members' CVD actions, as well as their subsidy notifications to the WTO), the Canadian and Mexican government trade agencies, and the NAFTA secretariat. [21]

States, Gambia, Sri Lanka, Rwanda, Singapore, Benin/Burkina Faso/Mali, Belize/Suriname, the European Union, the Republic of Korea, Norway, Jamaica, Brazil and Switzerland/Liechtenstein.

[20] The TRCS is part of the Department of Commerce. For further information, see "Integration of Government Resources" below.

[21] For additional information on the activities of the Subsidies Enforcement Office, see the SEO website at http://www.ia.ita.doc.gov/esel/. (See also Attachment 3).

COUNSELING AND OUTREACH

A. ENFORCEMENT COUNSELING

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

Enforcement counseling frequently starts with an inquiry by a U.S. exporter regarding a potential subsidy problem. As in prior years, the U.S. government received a number of these inquiries in 2003, and, as a result, we are currently counseling and advocating on behalf of a number of U.S. exporters. The nature of the inquiries and information provided by U.S. companies to the agencies through these contacts varies greatly. In some cases, U.S. companies have simple questions concerning the Subsidies Agreement and U.S. rights under that Agreement. Other cases involve detailed complaints concerning specific subsidy practices and allegations that these practices have adversely affected U.S. companies' interests in either their U.S. or foreign markets. In these cases, our staff first discusses the subsidy problem with the exporter, and then gathers information about the practice and how the company's ability to sell in the United States or foreign markets may be affected.

The firm or industry in question is usually the best source of information concerning the harm resulting from the subsidization. This information is critical to support a claim of adverse trade effects in a WTO subsidy enforcement proceeding.[22] In most instances, we also conduct significant additional research to determine the legal framework under which the foreign government is offering the assistance and whether other U.S. exporters have been facing similar problems.

In order to develop as much information as possible about the subsidy practice, USTR and Commerce draws on a wide range of internal and external sources (detailed in the "Integration of Government Resources" section below). We start with general sources

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

such as the SEO's Electronic Subsidies Library, the Internet and news organizations (see Attachment 3). Discussions with other Commerce offices that routinely collect information on specific country and industry practices and with Commerce's Advocacy Center[23] are also useful to learn whether any U.S. exporters have reported facing similar problems. If appropriate, we contact the U.S. Embassy in the relevant foreign country to discuss our findings and determine whether there is additional information that our posts abroad can provide. Sometimes it has also been useful to contact our counterparts in foreign governments to learn whether similar complaints about the same third-country subsidy practice have been identified by their exporters. Where appropriate, we may also seek public comment and/or consult with representatives of U.S. state and local governments.

Working with an interagency team, USTR and Commerce then evaluate the information and determine the most effective way to proceed. As noted above, we have found that it is often advantageous to pursue resolution of these problems through a combination of informal and formal contacts. For example, raising the matter with the foreign government authorities through informal contacts, formal bilateral meetings and/or through discussions in the WTO Subsidies Committee may produce more expeditious and practical solutions to the problem than immediately resorting to WTO dispute settlement. These contacts may lead to additional information about the practice which can affect the decision concerning the appropriate measures to take, including the possibility of pursuing the problem on grounds other than those provided for under WTO subsidy rules. However, if these efforts fail to resolve the issue, bringing a formal dispute settlement action in the WTO remains a viable option for some cases.

B. INTEGRATION OF GOVERNMENT RESOURCES

During 2003, the SEO and TRCS expanded their efforts to ensure that government personnel who have daily contact with the U.S. exporting community, both in the United States and abroad, are aware of the resources and services available regarding subsidy enforcement efforts. Toward that end, the SEO and TRCS staffs fully coordinate their work to identify, track and, where appropriate, address various unfair foreign government and business practices that potentially harm American industries and workers.

1. Trade Remedy Compliance Staff

The Trade Remedy Compliance Staff (TRCS) was established as part of a government-wide trade compliance and market access initiative begun in 2001. This report marks the second full year that the TRCS has been in operation. The focus of the TRCS fulfills that aspect of the trade compliance initiative which is focused on enforcement of multilateral subsidy rules and addressing unfair trading practices. TRCS personnel

[23] The Advocacy Center helps U.S. exporters seek contracts abroad on an equal footing with foreign government-backed competitors.

have been vital in supporting and complementing the work of the SEO, contributing extensive research and analysis of Chinese programs, and building contacts with U.S. industry groups, (*e.g.*, ISACs), concerned about foreign unfair trade practices. Attachment 4 contains a full description of the TRCS and its duties.

In conjunction with the establishment of the TRCS's, senior Import Administration officers also have been stationed in Beijing, China and Seoul, Korea, as mandated by Congress, for over a year. Working closely with their colleagues in U.S. Embassies and with TRCS personnel in Washington, these officers have proved invaluable in undertaking 'on the ground' research of potential unfair trade problems in their host countries and in advocating on behalf of U.S. exporters experiencing problems with trade remedy actions taken by the host governments. Overseas personnel have also been an important part of the outreach of the U.S. government, as they have participated in numerous trade-related seminars and technical assistance activities in their host countries, which, among other aspects, covered those countries' subsidy-related obligations under the WTO. Additionally, and in accordance with, Congressional mandate, a senior Import Administration officer stationed in Geneva, Switzerland has been a key part of negotiation and dispute settlement activities at the WTO.

Two major technical assistance initiatives were organized and conducted by TRCS over the past year. One initiative included two, week-long training programs for groups of trade scholars from the WTO Affairs Consultation Center of Shanghai, China. The Chinese scholars were provided a series of presentations on U.S. AD and CVD law and practice, demonstrating the importance of transparency and due process embedded in our system and the WTO agreements. The other major outreach initiative involved a comprehensive technical exchange in December 2003 between the U.S. government and the Chinese government regarding the implementation of trade remedy measures and subsidy obligations. Experts from Commerce and the International Trade Commission met with their counterparts in the Chinese Ministry of Commerce for an intensive week-long seminar during which participants from both countries were able to discuss a wide range of issues and ask questions. The U.S. officials then made presentations in four Chinese cities to local governments and companies, regional trade officials, industry associations, attorneys and academics.

The intent of these programs is improved transparency and fairness on the part of foreign governments and improved understanding of the administration and rationale of U.S. investigations and administrative reviews. They are also designed to reinforce the foreign governments' and parties' understanding of and respect for WTO obligations, especially in the field of subsidies and other unfair trade practices.

2. Subsidies Enforcement Office Outreach

The SEO conducts frequent outreach programs to ensure that government personnel who have daily contact with the U.S. exporting community, both in the United States and abroad, are aware of the resources and services available regarding subsidy enforcement efforts. Within Commerce, the U.S. Commercial Service (USCS) is charged with counseling U.S. companies through its network of domestic and foreign posts. SEO staff hold formal briefings with USCS officers on rotation in Washington to explain the types of services and information offered by the SEO. Commerce and USTR also provide USCS officers with handouts detailing SEO activities and contact information. These are used by the officers at their overseas posts to inform other USCS officers and visitors from the U.S. business community about our resources (*See,* Attachment 5.) SEO staff also benefit from information provided by USCS officers during these briefings about the types of subsidy problems U.S. companies are facing in the host countries. In addition, SEO personnel have participated in special conferences for senior commercial officers and training sessions held for foreign service national employees[24] in Washington. These meetings allow SEO staff to inform a large number of government officials who have daily interaction with U.S. companies about the resources the SEO can offer.

The SEO also works closely with the U.S. Department of State and U.S. Department of Agriculture to involve foreign service economic and agriculture officers in subsidies enforcement activities. This fulfills our statutory mandate to secure the cooperation of other federal agencies in these activities, as provided for in section 281(g) of the URAA. To this end, USTR and SEO personnel train foreign service officers on how to identify and evaluate foreign subsidy practices that may be inconsistent with the Subsidies Agreement and that may involve unfair trade actions against U.S. companies. Cooperation of this type occurs not only in specific cases initiated by the SEO or USTR, but on an ongoing basis whereby foreign service officers develop and share information with Commerce, USTR and the interagency team concerning foreign government subsidy practices and the administration of foreign governments' unfair trade laws.[25] This type of collaboration between Departments is critically important to help effectively exercise U.S. rights under the Subsidies Agreement.

Embassy-based personnel offer a unique perspective to our subsidy enforcement efforts. USCS officers have daily contact with the U.S. exporting community and, therefore,

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[24] Foreign service nationals are professional employees of U.S. embassies and consulates who are natives of the country in which the embassies are located. These employees assist foreign service and USCS officers with their assigned duties.

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

are directly aware of the problems facing the companies. Foreign service officers often have key insights about the types of subsidy programs being administered, implemented or contemplated by the host governments. The type of information provided by U.S. embassy staff has proven to be very useful in determining the most appropriate areas in which to focus our efforts to assist U.S. exporters. These efforts have obviously been enhanced by the addition of TRCS officers to certain posts, where they have been welcomed by their foreign service and USCS colleagues and can contribute their technical expertise about AD/CVD and subsidies issues to the embassy's overall analysis of, and recommendations concerning, a particular issue. We look forward to expanding these synergies further in the years ahead.

3. Other Coordination Efforts

SEO staff also maintain close contacts with other units within Commerce's International Trade Administration (ITA); in particular the country and industry desk officers, the Advocacy and Trade Compliance Centers (TCC), and the Compliance Coordinators Group (CCG). The CCG is comprised of representatives from all of ITA's units (Market Access and Compliance, Trade Development, IA, and USCS) and the Patent and Trademark Office, and serves as the central coordinating point for ITA's market access and agreement compliance activities. The group meets regularly to share information on trade compliance and market access issues that may be common across regions or industrial sectors, and works to resolve these issues by drawing upon the full range of expertise available within ITA. Such contacts allow us to ensure that these offices are informed of the SEO's subsidy enforcement activities and that they provide SEO staff with information that they routinely collect.

An example of the collaborative effort within ITA on subsidies enforcement is the SEO's work with the TCC and the Advocacy Center. The TCC monitors compliance with active international agreements covering manufactured goods and services to which the United States is a signatory. Complaints received by the TCC that may involve foreign subsidies are immediately referred to the SEO for analysis and action. The Advocacy Center assists U.S. exporters seeking government contracts abroad by providing U.S. government advocacy on behalf of the U.S. company when foreign competitors bidding on the same contract enjoy support from their governments. At times, this foreign government support may be in the form of subsidies. When the Advocacy Center receives a call from a U.S. company concerning possible foreign government subsidization, the Center contacts the SEO and provides all of the relevant information. In addition, the Advocacy Center has connected the SEO to its computer database. This allows us to review information gathered by the Center to determine whether U.S. exporters' access to foreign contracts is being impeded by government practices which may be actionable under subsidy rules.

ADVOCACY AND ENFORCEMENT

A. ADDRESSING FOREIGN SUBSIDIES AFFECTING US INTERESTS

The United States pursues enforcement of U.S. rights under the Subsidies Agreement through WTO dispute settlement proceedings, bilateral contacts and other actions. Although any decision to initiate a dispute settlement proceeding must carefully take account of the balance of U.S. interests, our general and overarching policy objectives remain aimed at discouraging distortive subsidization and preventing or remedying harm caused to U.S. producers, farmers and workers by such subsidies. These objectives are expressed clearly in the URAA, and they provide the context in which potential subsidy enforcement complaints have been, and will continue to be, considered. USTR and Commerce work closely with one another and with the full range of federal agencies – such as the Departments of State, Treasury and Agriculture – in fulfilling this mission. This interagency cooperation is also crucial to the success of our efforts to protect and defend U.S. interests in other circumstances involving subsidy rules, such as in the explanation and defense of U.S. measures targeted by others in WTO dispute settlement and in the assistance we provide to U.S. exporters and respondent agencies subject to foreign CVD actions. In the following section, we summarize some of the principal subsidy-related disputes and activities in which the United States has been involved over the past year.

1. Subsidies Provided to the Fertilizer Industry in India

Throughout 2003, USTR and the SEO continued to monitor developments related to India's diammonium phosphate (DAP) policies. DAP, a fertilizer product, is subsidized through a program that provides benefits to Indian producers of DAP that the U.S. industry believes adversely affects its ability to export to the Indian market. In 1992, India introduced a Maximum Retail Price ("MRP") and an ad-hoc concession subsidy scheme for DAP. The MRP is designed to promote DAP consumption by farmers by establishing a price ceiling for end users. To ensure that DAP producers and importers have an incentive to continue selling DAP at the MRP, the Indian government makes direct concession payments to producers and importers at regulated levels. The concession levels are adjusted periodically. However, the Indian subsidy program, effectively, provides a higher level of subsidy payment to domestic producers than to importers of DAP.

The U.S. industry has also raised concerns related to India's failure to publish timely information about the subsidy amounts, which are subject to change on a quarterly basis. The U.S. industry's ability to export effectively is further undermined by the non-transparent and retrospective nature of the program's administration. U.S. DAP exports to India fell from a high of $414 million in 1999 to $32 million in 2002. In the first half of 2003, the United States exported only $17 million of DAP to India. Over the past decade, the United States had been the primary exporter of DAP to India. High quality and reliable U.S. product now accounts for only four percent of Indian consumption.

Since late 2001, SEO and USTR personnel have worked closely with other Commerce offices to ensure that the DAP subsidy issue was discussed at every appropriate meeting with responsible Indian government officials. In 2002, the United States submitted formal questions regarding India's DAP subsidy scheme to the Government of India via the WTO Subsidies Committee. India responded in part to these questions in November, 2002. In 2003, this issue received high-level attention from officials at both USTR and DOC. USTR Ambassador Zoellick raised U.S. concerns about the program during the June 2003 visit of Indian Commerce Minister Jaitley to Washington. In an August visit to India, Assistant USTR for South Asia Wills again expressed U.S. concerns. Commerce Secretary Evans also noted the strong U.S. government interest in this issue in a June letter to Minister Jaitley.[26]

Our aim has been to obtain a practical resolution that will permit reasonable access to the Indian market along lines that the U.S. industry enjoyed over the past 25 years. We will continue to work with the U.S. industry to examine closely the DAP subsidy program and any possible reforms, as well as all effective avenues available to address this problem.

2. Textiles Initiative

a. General Efforts

In 2003, SEO staff continued to address issues of concern to the U.S. textile industry. Our efforts included work within the interagency textile working group (TWG), which was established in 2002 and is chaired by the Under Secretary of Commerce for International Trade. The TWG includes seven subgroups addressing various matters of relevance to the health of the U.S. textile industry. SEO staff participate in the subgroup dedicated to strong enforcement of U.S. trade remedy laws. Our activities in 2003 focused on both multilateral efforts at the WTO (including the ongoing rules negotiations of the Doha Development Agenda) and bilateral issues specifically affecting U.S. textile and apparel manufacturers and exporters.

Throughout the year, SEO staff have also worked with both textile industry representatives and a variety of U.S. government agencies and overseas posts to identify and confront specific unfair trade practices affecting textile trade. Where appropriate, our efforts focused on researching subsidy programs and working with U.S. textile industry representatives to explain antidumping and countervailing duty procedures and analyze options available to the industry under U.S. trade remedy laws. In other instances, we raised concerns directly with foreign governments. For example, the United States

[26] We also note that nine U.S. Senators sent a co-signed letter to Indian Ambassador Mansingh in July 2003, expressing U.S. interest in Indian reforms to DAP policy that would permit U.S. exporters to compete fairly in India's markets.

expressed its strong concern to the Egyptian government about an Egyptian cotton support program and the potential damaging effects on the U.S. yarn manufacturing industry. Following several rounds of discussions and a letter from Secretary Evans to the Egyptian Minister of Foreign Trade, the measure was withdrawn in October 2003.

b. India Export Competitiveness

SEO and USTR staff also continued to explore ways in which the Subsidies Agreement can be fully utilized to address some of the U.S. textile industry's concerns. In January 2003, the United States submitted a request to the WTO Secretariat regarding India's textile manufacturing exports asking that a computation be done to determine whether India had become "export competitive," as defined by the Subsidies Agreement, in certain textile products.

As noted earlier, the Subsidies Agreement provides for special and differential treatment of developing countries specifically listed in Annex VII of the Agreement, which allows these countries to maintain export subsidies until their GNP per capita reaches a specified amount. However, under Article 27.6 of the Agreement, once a product of an Annex VII country, such as India, achieves export competitiveness, any export subsidies given on that product must be phased out over an eight-year period. Article 27.6 defines export competitiveness as the point when an exported product reaches a share of 3.25 percent of world trade for two consecutive calendar years.

SEO staff identified several export subsidy programs which we believe are benefitting India's textile and apparel manufacturers. The WTO Secretariat, in its most recent Trade Policy Review of India,[27] identified Government of India assistance programs available to textile exporters. Several of these programs have been investigated by Commerce in CVD investigations involving non-textile-related Indian exports, and have been found to constitute export subsidies.

In March 2003, the WTO Secretariat reported its findings, which, although not conclusive, provide strong evidence that India may be export competitive in several textile and apparel categories.[28] In May, the U.S. Government raised the issue at the regular semi-annual meeting of the Subsidies Committee. We are continuing to explore possible WTO strategies to address the problem of Indian textile subsidies.

c. China Textiles Safeguard

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

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

On November 17, 2003, the Committee for the Implementation of Textile Agreements (CITA) voted to invoke safeguard relief on three textile products (knit fabric, dressing gowns and robes, and bras) imported into the United States from China following petitions filed by the U.S. textile industry. CITA is chaired by the U.S. Department of Commerce and includes, State, Treasury, Labor and USTR. The petitions were filed by the industry in accordance with a special provision of China's WTO accession agreement that allows other WTO Members to impose temporary restraints on textile imports from China in the event those imports are found to cause "market disruption." In December 2003, the United States requested consultations with China with a view towards reaching a mutually satisfactory solution, thereby automatically triggering a safeguard imposing an annual import growth limit of 7.5 percent for the affected products from China. During the pendency of the consultations, the United States will continue to monitor China's support for its unprofitable state-owned enterprises, preferential loan policies, and the incentives it provides to attract foreign direct investment, which are widely perceived as having contributed to the problem of China's unfair trade in textiles and other manufactured products.

3. Update - Government Aid Programs Potentially Benefitting Cattle and Beef Producers

a. Introduction

In 2003, the SEO continued its efforts to identify and monitor potential subsidy practices in several major cattle and beef producing countries. Such practices may unfairly enhance exports from those countries to the U.S. market or work to impede market access abroad for U.S. cattle and beef exports. The importance of gathering and disseminating this information is highlighted by the essential role of cattle and beef in the agricultural sector, as well as the importance of agriculture issues in ongoing trade negotiations. SEO staff conducted the initial study of possible subsidy programs available to foreign cattle and beef producers following a request made by 19 Senators in 2000. This year's report includes descriptions of new programs instituted in 2003 and updated information on those programs that underwent significant administrative or budgetary changes in 2003. In 2003, SEO staff also met with representatives of the U.S. live cattle industry to discuss their concerns and brief them on our continuing work in this area.[29]

b. World Trade for Cattle and Beef

Total beef exports for major exporting countries are forecast at 6.6 million tons in 2003, an increase of 4 percent over the 2002 estimate. Forecasts for beef exports in

[29] It should be noted that mention of a government aid program in this section in no way prejudges the status of that measure under U.S. law.

2004 were at record high levels for many major exporters, including the United States, due to increased global demand and reduced concern about animal health issues.[30] The expected increase was also due to a shift in consumption patterns as a result of higher per capita incomes and dietary changes in non-OECD countries.[31] U.S. beef exports had been expected to increase to a record 1.2 million tons in 2004, while U.S. beef imports were expected to remain flat around the level of 1.481 million tons.[32]

The export outlook for 2004 will likely change, however, with the announcement on December 23, 2003 that a single cow slaughtered in Washington State had tested positive for bovine spongiform encephalopathy (BSE).[33] DNA testing confirmed that the infected cow was born in Canada and was shipped from an Alberta farm in 2001. In reaction, more than 30 countries, including Japan and Mexico, immediately halted beef imports from the United States.[34] On December 30, Agricultural Secretary Ann Veneman announced several new rules to further improve the safety of America's beef products.[35] USTR and the SEO will continue to monitor further developments.

c. Policy Changes in Selected Countries

i. Brazil

Brazil's beef exports could reach record levels in 2003, while beef production is expected to increase by 4 percent in 2004. The expected increases are mainly due to continued expansion of exports as safety concerns subside.[36] The new Agriculture and Livestock Plan for the 2003/2004 crop year, announced in June 2003 by the federal government, allocates approximately R$32.5 billion (US$11.2 billion) for rural credit

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[30] "Livestock and Poultry: World Markets and Trade," *Foreign Agricultural Service, U.S. Department of Agriculture*, October 2003.

[31] "OECD Agricultural Outlook, 2003-2008," Organization *for Economic Co-Operation*, July 2003. Website available at: http://www.oecd.org/topic/0,2686,en_2649_33781_1_1_1_1_37401,00.html

[32] "World Beef Trade Overview," *Foreign Agricultural Service, U.S. Department of Agriculture*, October 24, 2003. Website available at: www.fas.usda.gov/dlp/circular/2003/03-03LP/beefoverview.html.

[33] "US: Mad Cow Disease Comes to the US," *Oxford Economic Forecasting US Weekly Brief*, January 5, 2004, pg. 1.

[34] "Minister Says Japan Confidence in Beef Must Not be Hurt Ahead of US Visit," *Agence France Presse*, January 6, 2004.

[35] "Agriculture Secretary Announces New Rules for Safety of Beef," *New York Times*, December 30, 2003.

[36] "World Beef Trade Overview," *Foreign Agricultural Service, U.S. Department of Agriculture*, October 24, 2003. Website available at: www.fas.usda.gov/dlp/circular/2003/03-03LP/beefoverview.html.

schemes, of which R$5.75 billion (US$900 million) is for investment credit in the agricultural sector. This is up 24 percent from 2002/2003. Beef cattle producers may continue to benefit from investment credit programs that aim to increase cattle productivity and beef production.[37]

The *MODERAGRO (formerly PROPASTO)* program continues to provide funds for pasture improvement and now also provides funds for soil erosion abatement and conservation. The total amount of financial resources allocated to MODERAGRO during the 2003/04 crop year increased to R$600 million (US$200 million). The *SILO/WAREHOUSE (MODERINFRA)* was also modified to include irrigation as well as farm construction. Funds allocated to this program during 2003/04 increased to R$500 million (US$166 million). The *MODERFROTA* program, which is aimed at the modernization of farmers' agricultural machinery, had its funding increased to R$2 billion (US$666 million).[38]

BNDES (National Bank for Economic and Social Development) offers funding through several programs. Total funds allocated by BNDES for the livestock sector are estimated to have increased to US$250 million in 2003.[39] Through BNDES, the FINAME program continues to provide Brazil's cattle industry long-term subsidized loans for breeding programs. BNDES also provides processors subsidized long-term loans to build or modernize their meat packing houses. Finally, BNDES continues to offer export financing to meat packers through the ACE and ACC programs, as well as through the BNDES-Exim program.[40]

ii. Canada

Prior to the discovery of BSE in Alberta on May 20, 2003, Canada exported almost 63 percent of total output of beef and beef products.[41] Immediately following the discovery, the United States, along with many of Canada's primary export markets, closed their borders to Canadian beef shipments, thereby profoundly impacting Canada's cattle and

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[37] "Brazil Livestock and Products Annual," Global Agricultural Information Network Report #BR3609, *Foreign Agricultural Service, U.S. Department of Agriculture*, August 28, 2003.

[38] *Ibid, at 6.*

[39] "USMEF Strategic Market Profile, South & Central America," U.S. Meat Export Federation. Website available at: http://www.usmef.org/TradeLibrary/CentralSouthAmerica_ProfileBeef.asp

[40] "Brazil Livestock and Products Annual," Global Agricultural Information Network Report #BR3609, *Foreign Agricultural Service, U.S. Department of Agriculture*, August 28, 2003.

[41] "Canada Livestock and Products Annual," Global Agricultural Information Network Report #CA3055, *Foreign Agricultural Service, U.S. Department of Agriculture*, September 3, 2003.

beef processing industries. In addition, several countries, including Japan and South Korea, requested that all beef and beef products exported from the United States be certified to ensure that they are of U.S. origin. In September, the United States resumed imports of certain low risk ruminant products from Canada such as boneless beef from animals less than 30 months old. A proposed rule by the USDA to reopen U.S. borders to live cattle imports from minimal risk countries, including Canada, was published on November 4, 2003. A final decision on this proposed rule was postponed in January 2004 pending the results of the investigation into the single case of BSE found in Washington State, noted above.[42]

Canada's federal and provincial governments responded to the BSE crisis with special compensation programs to ease the financial strain of the cattle market price collapse. The first program announced by Canadian authorities included a cost-sharing assistance package that was to be funded by the federal government and participating provinces on a 60/40 basis. This funding was originally estimated at C$276 million for the federal government and C$184 million for provincial and territorial governments. The federal government added C$36 million to the program in August 2003.[43] The program includes two key elements:

- Financial assistance when the price of slaughter cattle falls below a reference price that is based on market value in the United States. Payments are figured on a sliding scale in which government support increases as the average price of cattle declines.

- Canadian packers were offered $50 million in incentives to sell or otherwise move traditionally exported cuts that were produced after May 20, 2003 out of inventory. This is intended to free up storage space, allowing processors to operate at increased capacity to serve the domestic market.[44]

All major cattle producing provinces are also operating provincial BSE recovery programs in conjunction with the federal government, with some additional assistance programs directed at feeder cattle.[45]

iii. China

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[42] "Border Indecision Stalls Cattle Market: U.S. Awaits Investigation Results," *Calgary Herald*, January 6, 2004, pg. A1.

[43] *Ibid, at A1.*

[44] "Canada Livestock and Products Annual," Global Agricultural Information Network Report #CA3055, *Foreign Agricultural Service, U.S. Department of Agriculture*, September 3, 2003.

[45] "CN packers asked to empty their freezers," *Toronto Star*, June 19, 2003.

Strong demand for beef in 2003 was temporarily disrupted in the spring by the outbreak of severe acute respiratory syndrome (SARS) in China. During the third quarter of 2003, beef demand was expected to recover and remain stable through the rest of the year. While the pace of growth in beef consumption during 2003 is forecast to be below pre-SARS forecast levels, the total quantity is still forecast to be above that of the previous year. [46] China's beef imports during 2004 will likely rise to 30,000 metric tons, with the United States as one of the largest suppliers. A lower tariff in 2004 will benefit imports as domestic production lags behind demand, particularly in high-end muscle meat and beef cuts.

The SEO continued to monitor government programs which may encourage additional live cattle production and the creation of new processing capacity. In 2003, China's Ministry of Agriculture (MOA) initiated a national strategic "Beef Advantageous Development Area Program" for 2003-2007. Under this program, China's Central Plain and the Northeast, the traditional center of China's livestock industry, will shift their marketing focus to higher quality beef production. [47]

iv. European Union

Increased consumption along with competitive beef prices could lead, for the first time, to EU imports exceeding exports of beef in 2003. The increase in consumption is mainly due to a resurgence of confidence in the safety of beef products.[48]

On June 26, 2003, the European Union (EU) adopted a fundamental reform of the Common Agricultural Policy (CAP). The reforms are expected to significantly change the way the EU supports its farm sector, with the goal of breaking the link between subsidies and production. New "single farm payments" will be linked to environmental, food safety and animal welfare standards. Under the reform package, more funding will be available to farmers for environmental, product quality or animal welfare programs by reducing direct payments available to bigger farms.

In order to respect the tight budgetary restraints associated with an enlarged European Union, ministers also agreed to introduce a financial discipline mechanism, which will trigger action to reduce subsidies if expenditures threaten to exceed agreed ceilings. The various elements of the reform are expected to enter into force in 2004 and

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[46] "People's Republic of China Livestock and Products Annual," Global Agricultural Information Network Report #CH3112, *Foreign Agricultural Service, U.S. Department of Agriculture*, September 3, 2003.

[47] *I bid, at 4.*

[48] "European Union Livestock and Products Annual," Global Agricultural Information Network Report #E23169, *Foreign Agricultural Service, U.S. Department of Agriculture*, September 10, 2003.

2005. While the single farm payments scheme will begin in 2005, a two-year transitional period is available to Members facing specific agricultural conditions.[49] SEO staff will monitor the changes that impact the EU's traditional cattle and beef subsidy programs as they are implemented.

v. Japan

Japan is forecasted to account for about 40 percent of the total world increase in beef imports as it continues to recover from BSE. On August 1, Japan invoked a beef safeguard for chilled beef, raising the tariff from 11.5 to 50 percent, despite opposition from the domestic restaurant industry and protests from beef exporting countries.[50] The increase was triggered automatically under Japanese law, which calls for a tariff increase if there is a 17 percent year-on-year increase in imports. In this case, the increase in beef imports was primarily a result of the rebound in demand following Japan's BSE outbreak in 2001. The chilled beef safeguard will remain in effect through the end of Japan's fiscal year on March 31, 2004. The United States, along with Australia, protested the imposition of this measure. Currently, Japan is the largest export market for U.S. beef. [51]

vi. Republic of Korea

Korea was expected to have imported record volumes of beef in 2003 due to increasing consumption. Government policy for the livestock industry in 2003 was, in part, aimed at supporting the domestic production of high quality beef in order to differentiate it from imported products.[52] Korea implemented several initiatives to support production of domestic Hanwoo beef in 2003. For example, eligibility was expanded in 2003 for the *Establishment of Calf Production Base* program, the budget for which increased from 5.7 billion won ($4.8 million) to 6.6 billion won ($5.6 million) in 2004. The 2003 budget for the *Subsidy for Multi-production of Hanwoo Beef Cattle* program decreased slightly to 20.3 billion won ($17.2 million). This program was expected to be terminated at the end of 2003.

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[49] For additional information on the EU's Common Agricultural Policy and efforts aimed at reform, see the European Union website at http://europa.eu.int/comm/agriculture/capreform/index_en.htm

[50] "Japan to slap emergency tariffs on beef, pork from Friday," *Japan Economic Newswire*, July 29, 2003.

[51] Statement by Agriculture Secretary Ann M. Veneman Regarding Japan's Announcement Implementing a Beef Import Tax, Release No. 0266.03, July 29, 2003, see U.S. Department of Agriculture website at http://www.usda.gov/news/releases/2003/07/0266.htm

[52] "Republic of Korea Livestock and Products Annual," Global Agricultural Information Network Report #KS3048, *Foreign Agricultural Service, U.S. Department of Agriculture*, September 4, 2003.

The *Hanwoo Integrated Measures Program* continued to provide aid in an effort to improve the quality of Hanwoo beef. While the 2003 program budget was reduced to 9.4 billion won ($8.0 million), and the program was terminated June 30, 2003, in July 2004, support for Hanwoo beef will be available to steers that receive #1 grades. Despite a drop in the 2004 budget to 8.3 billion won ($7.0 million), the support for eligible cattle will be increased to 300,000 won ($255) per head.

4. Government Support to Paper Production in Korea

Commerce and USTR staff intensified their efforts this year to address the concerns raised by the U.S. paper industry regarding subsidies provided by the Government of Korea in support of its paper industry, specifically producers of coated free sheet printing paper (CFS). U.S. producers claim that these subsidies have provided an unfair advantage to Korean exports that have injured the U.S. industry. The Korean Government's policy of bailing out bankrupt and inefficient paper producers is one of the practices about which the U.S. industry has complained most vociferously. Additional support, through low-cost facility investment loans and loan guarantees, tax benefits for facility expansion, and government sale of debt obligations, also appears to help maintain inefficient capacity in the Korean paper sector and disrupt trade in the global paper market.

During 2003, Commerce and USTR had several exchanges with Korean government officials in which we raised questions about inappropriate Korean government support and intervention in the CFS market. In February 2003, TRCS personnel in Seoul met with officials from Korea's Export-Import Bank after having seen an article on the Korean Export-Import Bank website detailing funds that were loaned to paper producers. In May, during the regular quarterly bilateral talks between the U.S. and Korea, USTR raised our concerns yet again with Korean government officials. In September, U.S. officials submitted additional written questions to the Korean officials. Additional bilateral meetings with Korean government officials are planned for 2004.

We worked closely with the U.S. industry throughout 2003 in an effort to screen and confirm relevant information about possible Korean subsidy practices, and we will continue to do so in the coming year. This information includes allegations of subsidy practices that have been investigated by Commerce in other industry sectors. In addition, we will intensify our dialogue with the industry with regard to potential next steps on how the industry's concerns should best be addressed, whether through bilateral discussions, multilateral action, or other remedies available under U.S. law. We will also raise this issue at the U.S.-Korea quarterly bilateral meetings in February, 2004.

5. Restructuring of Poland's Steel Industry

Poland has continued with a major restructuring and consolidation of its steel

industry, which has been struggling to compete on the European and international markets and which amassed large amounts of debts after continued weak profitability. The Polish Government's plan ultimately envisions some reduction in overall steel capacity, production specialization by mill, modernization of certain facilities, and cuts in employment. The plan is being carried out under the review and approval of the European Commission in the context of the broader process of Poland's accession to the European Union. In 2003, a major stage in the restructuring was completed when the Polish government selected LNM Holdings, an Ango-Dutch steel company, to purchase Poland's largest publicly-owned steel company, Polski Huty Stali.

On March 21, 2003, Commerce received a request under 19 U.S.C.§ 3571(c) from Nucor Corp., TXI Chaparral Steel, and Nucor-Yamato Steel Company, that Commerce investigate whether the Polish government is bestowing any subsidies on its steel sector that are actionable under the Subsidies Agreement, and that are causing adverse effects to U.S. commercial interests. In cooperation with the U.S. steel industry, Commerce has been analyzing the information provided in this request, and is gathering new information regarding any relevant government support. Commerce and USTR have monitored this restructuring process and raised questions about the plan in discussions with Poland's government and the European Commission. We have continued to stress to both that Poland and the European Union should ensure that Poland's steel restructuring activities are consistent with its international obligations, including those under the Subsidies Agreement.

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

In response to concerns raised by U.S. aerospace manufacturers, the SEO worked closely with ITA's Office of Aerospace to examine subsidies provided by Technology Partnerships Canada (TPC), a Canadian Government program that supports the research and development activities of selected industries. According to U.S. aerospace manufacturers, TPC funding provides their Canadian competitors with an unfair competitive advantage.

Established in 1996, TPC provides funding for pre-competitive research and development activities for companies incorporated in Canada that operate in three strategic areas, including aerospace and defense. Funding covers approximately 25 to 30 percent of a project's total costs, but may be significantly higher. Applicants must demonstrate that they have the capabilities to perform the R&D and that the project proposal has economic and commercial merit. To date, the program has made well over CN$2.0 billion in funding commitments for over 500 projects, of which about two-thirds have been disbursed. Publically available information indicates that the aerospace and defense industries receive the largest amount of funds under the TPC.

The principal concerns raised by U.S. companies with regard to this program relate to the terms under which the funding is provided. TPC support is in the form of royalty-based financing, the terms of which are negotiated individually for each project. Upon completion of a project, the TPC recipient is required to start repaying the funds under these negotiated terms. Royalties are collected over a period of five to 15 years, depending on the project. The specific amount of repayment to be made is fixed as a percentage of the TPC recipient's revenues and that percentage varies depending on the size of the company and the level of its revenues. While there appears to be a connection between the overall rate of return and the risk of the project being funded, it is unclear whether and to what extent the government's return fully reflects the actual commercial risk of that project.

U.S. aerospace manufacturers are particularly concerned that this type of royalty-based financing is not commercially available and, therefore, provides their Canadian competitors with an unfair competitive advantage. Royalty-based financing is a subsidy issue that the United States has examined in the context of government support for the European civil aircraft manufacturer, Airbus, and has raised in the ongoing WTO rules negotiations.

During 2003, we held informal bilateral consultations with Canadian government officials to discuss the concerns that U.S. firms have raised, and to seek additional information about the program. The SEO and ITA's Office of Aerospace also discussed the operation of the program directly with TPC administrators. While these dialogues helped to advance our understanding and knowledge of the TPC program, significant questions remain about the particular program terms established for specific TPC recipients. During 2004, we will continue to seek additional, clarifying information from the Government of Canada about the operation of TPC, in particular with regard to royalty-based financing, and the extent to which this financing is consistent with commercial consideration. We will also continue to work with U.S. industry, and explore how best to address its concerns.

B. DEFENDING US INTERESTS IN WTO DISPUTES

1. EU Challenge of U.S. Foreign Sales Corporation Rules

On January 29, 2002, the WTO Dispute Settlement Body (DSB) adopted panel and Appellate Body reports which found that the FSC Repeal and Extraterritorial Exclusion Act of 2000 ("ETI Act") was inconsistent with U.S. obligations under the WTO in the following respects: (1) the panel found that the ETI Act's tax exclusion constitutes an export subsidy that is prohibited by the Subsidies Agreement and that is inconsistent with U.S. export subsidy commitments under the Agriculture Agreement; (2) the ETI Act's 50 percent foreign value rule is inconsistent with Article III:4 of GATT 1994; and (3) the ETI Act's

transition rules are inconsistent with the DSB's recommendation to withdraw the FSC subsidy with effect from November 1, 2000.

On May 7, 2003, the DSB authorized the European Communities ("EC") to impose countermeasures up to a level of $4.043 billion in the form of an additional 100 percent *ad valorem* duty on various products imported from the United States. On December 8, 2003, the Council of the European Union adopted Council Regulation (EC) No. 2193/2003, which provides for the graduated imposition of countermeasures beginning on March 1, 2004. The U.S. Congress is currently reviewing a number of proposals to comply with the Appellate Body's findings.

2. "Privatization" or "Change-in-Ownership" Countervailing Duty Methodology Disputes

With respect to disputes involving Commerce's approach to situations involving the privatization of subsidized, government-owned companies, on January 8, 2003, the DSB adopted the panel and Appellate Body reports in the dispute brought by the EU. The panel had found in favor of the EU with respect to all of its claims. According to the panel, the sale of a firm at arm's length and for fair market value creates an irrebuttable presumption that prior subsidies are extinguished. The panel found that each of the 12 Commerce CVD determinations at issue reached results that were inconsistent with this presumption. The panel also found section 771(5)(F) of the Tariff Act of 1930, as amended, to be WTO-inconsistent because, according to the panel, it precluded Commerce from applying the panel's irrebuttable presumption.

The Appellate Body rejected the panel's irrebuttable presumption, and found instead that an arm's length, fair market value sale of a firm merely creates a *rebuttable* presumption that prior subsidies are extinguished. Therefore, the Appellate Body reversed the panel's finding concerning section 771(5)(F), because that finding was based on the panel's erroneous notion of an irrebuttable presumption.

However, the Appellate Body upheld the panel's findings regarding Commerce's methodology, although its reasoning again differed somewhat from that of the panel. With respect to the "same person methodology" used by Commerce, the Appellate Body rejected the panel's position that there is never any distinction between a firm and its owners. It also rejected Commerce's position that a firm and its owners are always completely separate. According to the Appellate Body, to adequately determine whether a privatized firm continued to benefit from pre-privatization subsidies, Commerce had to do more than merely ask whether a new legal person was created. Thus, the Appellate Body found that the same person methodology, as such and as applied, was inconsistent with the Subsidies Agreement.

On January 27, 2003, the United States informed the DSB of its intention to implement the DSB's recommendations and rulings in a manner that respects U.S. WTO obligations.

U.S. implementation proceeded in two stages. First, Commerce modified its methodology for analyzing a privatization in the context of the CVD law. Commerce published a notice announcing its new, WTO-consistent methodology on June 23, 2003.[53] Second, Commerce applied its new methodology to the twelve determinations that had been found to be WTO-inconsistent. On October 24, 2003, Commerce issued revised determinations under section 129(g) of the Uruguay Round Agreements Act.[54] On November 7, 2003, the United States informed the DSB of its implementation of the DSB's recommendations and rulings.

3. United States—Continued Dumping and Subsidy Offset Act of 2000 (CDSOA)

On December 21, 2000, Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 USC 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that supported the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel.

The panel issued its report on September 2, 2002, finding against the United States on three of the five principal claims brought by the complaining parties. Specifically, the panel found that the CDSOA constitutes a specific action against dumping and subsidies and therefore is inconsistent with the WTO Antidumping and Subsidies Agreements as well as GATT Article VI. The panel also found that the CDSOA distorts the standing determination conducted by the Commerce Department and therefore is inconsistent with the standing provisions in the Antidumping and Subsidies Agreements. The United States prevailed against the complainants' claims under the Antidumping and

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[53] *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 Fed. Reg. 37,125.

[54] *See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products from the European Communities*, 68 Fed. Reg. 64,858 (Nov. 17, 2003).

Subsidies Agreements that the CDSOA distorts the Commerce Department's consideration of price undertakings (agreements to settle AD/CVD investigations). The panel also rejected Mexico's actionable subsidy claim brought under the Subsidies Agreement. Finally, the panel rejected the complainants' claims under Article X:3 of the GATT, Article 15 of the Antidumping Agreement, and Articles 4.10 and 7.9 of the Subsidies Agreement. The United States appealed the panel's adverse findings on October 1, 2002.

The Appellate Body issued its report on January 16, 2003, upholding the panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the panel's finding on standing. The DSB adopted the panel and Appellate Body reports on January 27, 2003. At the meeting, the United States stated its intention to implement the DSB recommendations and rulings. On March 14, 2003, the complaining parties requested arbitration to determine a reasonable period of time for U.S. implementation. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On January 26, 2004, the DSB referred to arbitration the requests for suspension of concessions. The United States Administration proposed repeal of the CDSOA in its fiscal year 2004 budget, and has been working with the U.S. Congress on appropriate legislation. In addition, a bill was introduced in the U.S. Senate to amend the CDSOA in a WTO-consistent manner.

4. Canada's Challenge of the CVD Investigation of Canadian Lumber

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

In its report, circulated on August 29, 2003, the panel found that the United States acted consistently with the Subsidies Agreement and GATT 1994 in determining that the programs at issue provided a financial contribution and that those programs were "specific" within the meaning of the Subsidies Agreement. It also found, however, that the United States had acted inconsistently with the Subsidies Agreement when it rejected private timber prices in Canada as the benchmark to determine whether – and to what extent – Canada was subsidizing lumber companies by providing low-cost timber. The Commerce Department had used U.S. prices as the basis for the benchmark, rejecting Canadian private prices because they were distorted by the government's dominance in the timber market. The panel also found that the United States had improperly failed to

conduct a "pass-through" analysis to determine whether subsidies granted to one producer were passed through to other producers. The United States appealed these issues to the WTO Appellate Body on October 21, 2003, and Canada appealed the "financial contribution" issue on November 5.

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

5. Brazil's Challenge of Upland Cotton Programs

On September 27, 2002, Brazil requested WTO consultations concerning U.S. support measures for upland cotton. The Brazilian consultation request claimed that these measures are inconsistent with U.S. commitments and obligations under the Subsidies Agreement, the Agreement on Agriculture, and the General Agreement on Tariffs and Trade 1994. Consultations were held on December 3, 4 and 19 of 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertains to "prohibited and actionable subsidies provided to US producers, users and/or exporters of upland cotton, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit guarantees), grants, and any other assistance to the US producers, users and exporters of upland cotton" [footnote omitted]. Among other claims, Brazil alleges that U.S. cotton support measures have caused "serious prejudice" to Brazilian cotton interests within the meaning of the Subsidies Agreement by depressing or suppressing cotton prices in various markets and expanding or maintaining U.S. world market share. Brazil alleges that certain measures – specifically export credit guarantees and "Step 2" user marketing certificates – are prohibited export subsidies under the Subsidies Agreement and in excess of U.S. export subsidy reduction commitments under the Agreement on Agriculture. Brazil also alleges that the "Step 2" payments made to U.S. mills are prohibited import substitution subsidies and inconsistent with national treatment obligations.

The DSB established the panel on March 18, 2003. The Director General appointed the panelists on May 19, 2003. The panel on May 25, 2003, asked the parties

to make submissions (prior to the parties' first written submissions) on the legal question whether the "Peace Clause" (*i.e.,* Article 13 of the Agreement on Agriculture) precludes the panel from considering Brazil's substantive claims prior to a finding that the challenged measures do not satisfy relevant Peace Clause criteria. The parties simultaneously filed submissions on this issue on June 5 and June 13. On June 20, the panel decided to bifurcate the proceeding and consider the applicability of the Peace Clause issue first. On September 5, after several rounds of written submissions, the panel declined to make findings on the Peace Clause issue.

Additional submissions were made from September through November. The parties met with the panel for a second panel meeting on December 2-3, 2003. On December 22, both parties filed answers to panel questions following the second substantive meeting. In addition, on December 22, the United States filed comments on Brazil's economic model. On January 20, 2004, both parties filed answers to certain additional questions from the panel, and Brazil will file comments on the U.S. comments on its economic evidence as well as on certain U.S. data. On January 28, both parties will file comments on each other's December 22 and January 20 answers, and the United States will file comments on Brazil's January 20 comments.

6. DRAMS from Korea

Following final affirmative determinations by both Commerce and the ITC, on August 11, 2003, Commerce published a CVD order on dynamic random access memory semiconductors ("DRAMS") from Korea. The order imposed cash deposits of 44.29 percent on imports of DRAMS produced by the troubled company, Hynix. This deposit rate was based largely on Commerce's finding that the Korean Government had provided, or had entrusted or directed private bodies to provide, massive subsidies to Hynix in order to save it from going out of business. Commerce excluded the other major Korean producer, Samsung, from the order, because Commerce found that the subsidies Samsung received were *de minimis*.

On June 30, 2003, Korea requested dispute settlement consultations regarding DRAMS, even though the investigation was still ongoing. Consultations were held in Geneva, Switzerland, on August 20. In the meantime, on August 18, Korea filed a new request for consultations. In response to this request, consultations were held via videoconference on October 1.

On November 19, Korea requested the establishment of a panel. On January 23, 2004, the DSB established a panel.

7. U.S. Challenge of Mexican Trade Remedy Provisions

At the October 2, 2003 meeting of the WTO Dispute Settlement Body, the United States requested establishment of a panel in *Mexico - Definitive Anti-Dumping Measures on Rice*.[55] In addition to the named anti-dumping measures, the United States also is challenging certain provisions of Mexico's Foreign Trade Act, and its Federal Code of Civil Procedure. The United States has identified several provisions of Mexico's recently-revised laws that appear to be inconsistent with its WTO obligations under various provisions of the AD Agreement and the Subsidies Agreement. These include requiring that interested parties present arguments, information and evidence to the investigating authority within 28 days of the publication of the initiation notice; codifying Mexico's approach for applying "facts available" to every producer of subject merchandise that does not participate in the investigation; failing to exclude from future review respondents found not to be dumping; and requiring that "new shippers" requesting expedited reviews demonstrate that the volume of subject merchandise sold to Mexico during the period of review was "representative". At the time of this writing, the process for selecting a panel to hear this challenge was underway at the WTO.

C. NON-U.S. WTO DISPUTES WITH SYSTEMIC IMPORTANCE

1. Korea-EU Shipbuilding

In July 2003, a WTO panel was established to hear the EU's claim that Korean subsidies to the shipbuilding industry are inconsistent with Korea's obligations under the Subsidies Agreement. The information-gathering process under Annex V of the Subsidies Agreement has been completed and the EU filed its first submission on December 22, 2003. Because this case raises important systemic issues, the United States is closely following the shipbuilding case and will participate as a third party. Korea has requested consultations as the first step in a possible challenge to EU shipbuilding subsidies, and we are following that case as well.

2. Korea-EU DRAMS

In August 2003, the EU imposed definitive countervailing duties on imports of DRAMS from Korea. Korea subsequently requested consultations and, ultimately, the formation of a WTO dispute settlement panel challenging various aspects of the EU determination. Many of Korea's claims in the EU case are similar to the claims made in Korea's challenge to the U.S. Department of Commerce and U.S. International Trade Commission's countervailing duty determinations also involving DRAMS from Korea. Given the overlapping issues, the United States is following the EU case closely and will participate as a third party.

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[55] *See*, WTO Document WT/DS295/2

CONCLUSION

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

In the Doha Development Agenda negotiations, the Administration has established its fundamental position on the need for subsidy discipline improvement and identified a broad array of subsidy issues with respect to the existing rules as well as the need to develop new disciplines where none currently exist. Consistent with our core negotiating principles, identification of enhanced disciplines on trade distorting practices, including subsidies – broadly defined – is particularly important because it is these practices that are often one of the root causes of trade friction. Overall, the U.S. is seeking the continued progressive deepening of subsidy disciplines which has been an integral component of the historic development of the rules governing the world trading system.

In 2003, the Administration continued to dedicate significant resources towards fulfillment of the President's 2001 Initiative on Steel, which seeks to address the structural problems of the global steel industry that have contributed to a decades-long, cyclical proliferation of unfair trade competition and trade remedy responses. U.S. government officials have spearheaded ongoing international efforts in the OECD to bring about market-driven rationalization of the world's excess, inefficient steelmaking capacity, while also formulating better disciplines over practices which can distort markets and artificially sustain such capacity. We currently aim to achieve an advanced negotiating text for a steel subsidies agreement by the spring and to complete negotiations by the year's end.

As we move forward throughout the upcoming year, we will continue to work with the Congress as we pursue a proactive agenda to safeguard the interests of U.S. industries and workers facing unfairly subsidized foreign competition.

ATTACHMENT 1

WTO SUBSIDY NOTIFICATIONS REVIEWED IN 2003

WTO MEMBER	1998 New & Full Notifications	1999 Updating Notifications	2000 Updating Notifications	2001 Updating and New and Full Notifications	2003 New & Full Notifications
ANTIGUA					X
AUSTRALIA					
BARBADOS					X
BELIZE					X
BOLIVIA				X	
BOTSWANA					
BRAZIL				X	
BULGARIA	X	X	X	X	
BURUNDI					
CANADA					
CHILE					
CHINESE TAIPEI					
COLOMBIA					X
COSTA RICA					X
CROATIA					
DOMINICA					X
DOMINICA REPUBLIC					X
EL SALVADOR					X
EU (incl. 15 member states)					
ESTONIA				X	
FIJI					X
GHANA					
GUINEA					X
GRENADA				X	X
GUATEMALA					X
HUNGARY					

WTO MEMBER	1998 New & Full Notifications	1999 Updating Notifications	2000 Updating Notifications	2001 Updating and New and Full Notifications	2003 New & Full Notifications
ICELAND	X	X	X	X	
INDIA					
JAMAICA					
JAPAN					
JORDAN					X
KOREA					
LATVIA					
MACO, CHINA					X
MALAWI				X	
MALI					
MAURITIUS					X
MYANMAR				X	
NAMIBIA					
NORWAY				X	
PANAMA					
PAPUA NEW GUINEA					X
PARAGUAY					
ST. KITTS					X
ST. LUCIA					X
ST. VINCENT					X
SINGAPORE					
SLOVENIA					
SURINAME					
SWITZERLAND					X
THAILAND				X	X
TURKEY					
UNITED STATES					
URUGUAY					X

WTO MEMBER	1998 New & Full Notifications	1999 Updating Notifications	2000 Updating Notifications	2001 Updating and New and Full Notifications	2003 New & Full Notifications
ZIMBABWE					

ATTACHMENT 2

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*	Second one-year extension granted.
	Free Trade/Processing Zones*	Second one-year extension granted.
BOLIVIA (Annex VII Country)	Free Zone	Reservation of rights. No action taken.
	Temporary Admission Regime for Inward Processing	Reservation of rights. No action taken.
BARBADOS	Fiscal Incentive Program*	Second one-year extension granted.
	Export Allowance*	Second one-year extension granted.
	Research & Development Allowance*	Second one-year extension granted.
	International Business Incentives*	Second one-year extension granted.
	Societies with Restricted Liability*	Second one-year extension granted.
	Export Re-discount Facility	**No extension requested.**
	Export Credit Insurance Scheme	**No extension requested.**
	Export Finance Guarantee Scheme	**No extension requested.**
	Export Grant & Incentive Scheme	**No extension requested.**
BELIZE	Fiscal Incentives Program*	Second one-year extension granted.
	Export Processing Zone Act*	Second one-year extension granted.
	Commercial Free Zone Act*	Second one-year extension granted.
	Conditional Duty Exemption Facility*	Second one-year extension granted
COSTA RICA	Duty Free Zone Regime*	Second one-year extension granted.
	Inward Processing Regime*	Second one-year extension granted.
COLUMBIA	Free Zone Regime	Second one-year extension granted.
	Special Import-Export System for Capital Goods & Spare Parts (SIEX)	Second one-year extension granted.
	Transport Compensation Mechanism	**No extension requested.**
DOMINICA	Fiscal Incentives Program*	Second one-year extension granted.
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones*	Second one-year extension granted.
EL SALVADOR	Export Processing Zones & Marketing Act*	Second one-year extension granted.
	Export Reactivation Law	Second one-year extension granted.
FIJI	Short-Terms Export Profit Deduction	Second one-year extension granted.

WTO MEMBER	NAME OF PROGRAM	SUBSIDIES COMMITTEE ACTION**
	Export Processing Factories/Zones Scheme	Second one-year extension granted.
	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)	Second one-year extension granted.
GRENADA	Fiscal Incentives Act No. 41 of 1974*	Second one-year extension granted.
	Qualified Enterprise Act No. 18 of 1978*	Second one-year extension granted.
	Statutory Rules and Orders No. 37 of 1999*	Second one-year extension granted.
GUATEMALA	Special Customs Regimes*	Second one-year extension granted.
	Free Zones*	Second one-year extension granted.
	Industrial and Free Trade Zones (ZOLIC)*	Second one-year extension granted.
HONDURAS (ANNEX VII COUNTRY)	Free Trade Zone of Puerto Cortes (ZOLI)	Reservation of rights. No action taken.
	Export Processing Zones (ZIP)	Reservation of rights. No action taken.
	Temporary Import Regime (RIT)	Reservation of rights. No action taken.
JAMAICA	Export Industry Encouragement Act*	Second one-year extension granted.
	Jamaica Export Free Zone Act*	Second one-year extension granted.
	Foreign Sales Corporation Act*	Second one-year extension granted.
	Industrial Incentives (Factory Construction) Act*	Second one-year extension granted.
JORDAN	Income Tax Law No. 57 of 1985, as amended*	Second one-year extension granted.
KENYA (ANNEX VII COUNTRY)	Export Processing Zones	Reservation of rights. No action taken.
	Export Promotion Program Customs & Excise Regulation	Reservation of rights. No action taken.
	Manufacture Under Bond	Reservation of rights. No action taken.
MAURITIUS	Export Enterprise Scheme*	Second one-year extension granted.
	Pioneer Status Enterprise Scheme*	Second one-year extension granted.
	Export Promotion*	Second one-year extension granted.
	Freeport Scheme*	Second one-year extension granted.
PANAMA	Export Processing Zones*	Second one-year extension granted.
	Official Industry Register*	Second one-year extension granted.
	Tax Credit Certificates (CAT)	**No extension requested.**
PAPUA NEW GUINEA	Section 45 of the Income Tax Act*	Second one-year extension granted.

WTO MEMBER	NAME OF PROGRAM	SUBSIDIES COMMITTEE ACTION**
SRI LANKA (ANNEX VII COUNTRY)	Income Tax Concessions	Reservation of rights. No action taken.
	Tax Holidays & Profits Generated	Reservation of rights. No action taken.
	Concessionary Tax on Dividends	Reservation of rights. No action taken.
	Indirect Tax Concessions - Internal Tax Exemptions	Reservation of rights. No action taken.
	Export Development Investment Support Scheme	Reservation of rights. No action taken.
	Import Duty Exemption	Reservation of rights. No action taken.
	Exemption from Exchange Control	Reservation of rights. No action taken.
ST. KITTS & NEVIS	Fiscal Incentives Act*	Second one-year extension granted.
ST. LUCIA	Fiscal Incentives Act*	Second one-year extension granted.
	Micro & Small Scale Business Enterprise Act*	Second one-year extension granted.
	Free Zone Act*	Second one-year extension granted.
ST. VINCENT AND THE GRENADINES	Fiscal Incentives Act*	Second one-year extension granted.
THAILAND	**Investment Promotion Incentives**	**No extension requested.**
	Industrial Estate Authority of Thailand	**No extension requested.**
	Export Market Diversification Program	**No extension requested.**
URUGUAY	Automotive Industry Export Promotion Regime*	Second one-year extension granted.

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

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

Programs in bold were granted an extension in 2002, however no extension was requested during the 2003 review. Therefore, those program are subject to the two-year phase-out period.

ATTACHMENT 3

THE SUBSIDIES ENFORCEMENT LIBRARY

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

First Screen

ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY

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

Reports to Congress

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

Description of Choices

WTO Agreement on Subsidies and Countervailing Measures

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

Overview of the Subsidies Enforcement Office

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

Subsidy Programs Investigated by DOC

This links the visitor to information regarding subsidy programs which were analyzed by Import Administration staff during countervailing duty (CVD) proceedings. This section is newly redesigned and will more easily provide visitors access to the information which they are seeking. After clicking on the above choice, visitors will be linked to a page which has an alphabetical drop-down list of countries which were investigated during CVD proceedings. As of December 2002, this list comprised 52 countries. After selecting a country to review, visitors have the option of selecting subsidy programs within that country that are not specific to a certain industrial sector ("general") or programs that are used only by certain sectors ("industry").

Argentina					
Subsidy Type	Program Codes				
General	1	2	3	4	5
Industry	1	2	3	4	5

For example, if a visitor were interested in finding more information about subsidies to the steel sector in Argentina, he or she would click on the "Industry" link in the above table and then examine the information provided. Once a subsidy program of interest is found in this section, visitors are provided a description of the program and are able to easily view the cases in which the program was analyzed. Further information about the 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.

The second sub-division of programs within this topic, as shown above, is based on the classification of the subsidy program by Commerce. There are five categorizations: (1) countervailable, (2) not countervailable, (3) terminated, (4) not used, and (5) found not to exist. These categories track the methodology used by Commerce and found in its decisions as published in the Federal Register. Descriptions for each of these terms are provided in the Subsidies Library. This level of detail allows a visitor to the library to easily find the exact type of information he or she is seeking.

Using the same example as described above, if a visitor were interested in discovering which subsidy programs Commerce had countervailed involving steel products exported from Argentina, he or she would select ***Argentina⇨Industry⇨Countervailable***

Programs and then review the information provided. If more detailed information about a particular subsidy program is required, a click of the mouse on the Federal Register cite next to the individual cases will take the visitor directly into the Federal Register notice where such information is readily available.

The following list shows the 52 U.S. trading partners which have had programs investigated in U.S. CVD proceedings. Information about each of these countries' investigated subsidy programs can be found in the Subsidies Enforcement database:

Argentina	**European Union**	**Korea**	**Singapore**
Australia	**France**	**Luxembourg**	**South Africa**
Austria	**Germany**	**Malaysia**	**Spain**
Bangladesh	**Greece**	**Mexico**	**Sri Lanka**
Belgium	**Hungary**	**Netherlands**	**Sweden**
Brazil	**India**	**New Zealand**	**Taiwan**
Canada	**Indonesia**	**Norway**	**Thailand**
Chile	**Iran**	**Pakistan**	**Trinidad and Tobago**
Colombia	**Ireland**	**Peru**	**Turkey**
Costa Rica	**Israel**	**Philippines**	**United Kingdom**
Denmark	**Italy**	**Poland**	**Uruguay**
Ecuador	**Japan**	**Portugal**	**Venezuela**
El Salvador	**Kenya**	**Saudi Arabia**	**Zimbabwe**

Descriptions of Choices (continued)

WTO Subsidies Notifications

This will link the visitor to all derestricted WTO subsidy notifications, by date and by country. Beside each country's name is a description of the document, the document number and symbol as well as the date the document was submitted to the WTO. This listing provides each type of notification, i.e., ***new and full***, ***update*** or a ***supplement to an earlier filing***. (See discussion above in this Report.) Clicking on the name of the country next to the document of interest will take the visitor directly to that country's subsidy notification. If subsidies have been notified, a listing of those subsidies is provided, in addition to specific information concerning the subsidy program, such as the type of incentive provided, the duration and purpose of the program, and the governing law or provision of the incentive. Several of the larger countries have provided information on hundreds of subsidy practices. Although the Subsidies Agreement stipulates that the notification of a subsidy practice does not prejudge its legal status under the Agreement, these notifications do provide detailed information concerning a number of countries' subsidy measures. In the event that less than full information about the program is provided, the Subsidies Enforcement Office, working with other Agencies, seeks more detailed information.

Reports to Congress

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

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

Reports to Congress

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

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

ATTACHMENT 4

TRADE REMEDY COMPLIANCE STAFF:

THE TRADE REMEDY COMPLIANCE STAFF

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

THE TRCS ROLE AND SERVICE

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

TRCS INITIATIVES UNDER WAY

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

TRCS Activities

Washington, D.C.

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

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

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

Overseas

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

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

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

Need further information?

Please contact: **Trade Remedy Compliance Staff**

ATTACHMENT 5

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

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

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

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

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

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

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

***Questions and information can be referred to*:**
Carole Showers tel.: (202) 482-3217
fax : (202) 501-7952
e-mail: Carole_Showers@ita.doc.gov

By working together to monitor foreign subsidies and enforce the WTO Subsidies Agreement, we can ensure that U.S. companies are competing in a fair international trading system.