

# 2018 Trade Enforcement Priorities Report



Office of the United States Trade Representative

# **FOREWORD**

In accordance with section 601 of the Trade Facilitation and Enforcement Act of 2015 (section 310 of the Trade Act of 1974), the U.S. Trade Representative reports to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives on acts, policies, or practices of foreign governments identified as trade enforcement priorities based on the consultations with those committees and the criteria set forth in paragraph (2) of section 310(a). The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report and gratefully acknowledges the contributions of USTR staff to the writing and production of this report.

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# **USTR ENFORCEMENT PRIORITIES**

The Office of the United States Trade Representative is committed to strong enforcement of U.S. trading rights under the World Trade Organization (WTO) as well as bilateral and regional trade agreements. Enforcement plays a key role in holding our trading partners to their international obligations, thereby ensuring a level playing field for American goods and services at home and abroad. Consistent with the President's 2018 Trade Policy Agenda, enforcement actions undertaken by USTR will be designed to increase our economic growth, promote job creation in the United States, encourage reciprocity from our trading partners, strengthen our manufacturing base and our ability to defend ourselves, and expand our agricultural and services industry exports. USTR's enforcement commitment therefore includes an aggressive agenda with respect to both offensive issues, such as removing foreign trade barriers, and defensive issues, such as defending the U.S. right to protect American workers and businesses from injurious trade practices.

Trade enforcement encompasses a broad range of activities, and USTR will utilize all means available to support the President's Trade Policy Agenda. Enforcement activities include monitoring of trade agreements, direct engagement with trading partners on key trade irritants and barriers, and engagement in multilateral fora such as the committees of the WTO. USTR will promote U.S. interests under free trade agreements through, for example, work programs and accelerated tariff reductions. USTR will continue to provide technical assistance to trading partners, especially developing country partners, to ensure key agreements, such as the Telecommunications Annex to the General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights, are fully implemented on schedule. As necessary, USTR will pursue formal challenges against acts, policies, or practices of foreign governments that are inconsistent with WTO rules under the dispute settlement procedures of the WTO, and will vigorously defend U.S. actions when challenged by foreign governments. Where appropriate, USTR may take action under section 301 of the Trade Act of 1974 or recommend action under other statutory authorities granted to the President, such as sections 122 or 201 of the Trade Act of 1974.

The priorities identified in this report reflect key areas of enforcement focus by USTR. The report does not attempt to catalog all trade enforcement priorities on which USTR is actively working. An inventory of the trade barriers on which USTR and other agencies are currently working is contained in the National Trade Estimates report, and other enforcement-related priorities and objectives are discussed in the President's Trade Policy Agenda and USTR's Annual Report. These reports are available on the USTR website at [www.ustr.gov](http://www.ustr.gov).

## ***Aggressive Defense of U.S. Trade Remedies Laws***

For decades, Congress has maintained a series of laws designed to prevent the U.S. market from being distorted by unfair practices such as injuriously dumped or subsidized imports, or by harmful surges of imports. These laws have been a critical aspect of the bargain between the U.S. government and American workers, farmers, ranchers, and businesses (large and small) that underpins this country's free and fair trade system. These laws have also reflected the core principles and legal rights of the multilateral trading system since its founding in 1947 with the General Agreement on Tariffs and Trade (GATT). It is notable that Article VI of the GATT, in the strongest language possible, states that injurious dumping "is to be condemned." Trade remedies are fundamental to the implementation of the WTO agreements, and are necessary to avoid market distortions. It is critical that WTO members fully recognize their centrality to the international trading system. The Trump Administration believes that it is essential to both the United States and the world trading system that all U.S. trade laws be strictly and effectively enforced.

Consistent with the strong textual foundation in the GATT and WTO Agreement, Title VII of the Tariff Act of 1930 authorizes the U.S. Department of Commerce (USDOC) to impose antidumping and countervailing duties on imports that are either "dumped" (sold at less than their fair value) or subsidized – if such imports cause or threaten material injury to a domestic industry. The antidumping duty (AD) and countervailing duty (CVD) laws are fully consistent with our WTO obligations – and, indeed, the WTO agreements specifically provide for such laws. For decades, domestic producers have had the right to file cases seeking relief under our AD or CVD laws, or both. USDOC also has the authority to self-initiate such cases if circumstances warrant.

To protect these important laws, USTR will continue to vigorously enforce U.S. rights to impose antidumping and countervailing duties to counteract injurious dumping or subsidies and defend against actions brought by foreign governments at the WTO. Over the last ten years, actions by the United States were challenged fifty-three times at the WTO. Twenty-five of those challenges were against U.S. trade remedies actions. Increasingly, foreign governments are also challenging U.S. laws and practices in addition to specific trade remedies orders related to specific products and countries.

In this context, USTR's primary objective is defending the ability of USDOC to apply appropriate antidumping and countervailing duties to combat distortions caused by China's non-market economy system and government subsidies that are injuring U.S. workers and industries. The international solar, steel, and aluminum markets, for example, are still experiencing significant oversupply due in large part to production from excessive and uneconomic capacity in China. This oversupply has caused severe market distortions, including the suppression of U.S. and global prices, and the displacement of U.S. exports in foreign markets. Trade remedies assist U.S. workers and industry by counteracting the injury caused by unfairly traded imports

into the United States from China and other countries and are, therefore, essential tools in combatting market distortions such as overcapacity.

Therefore, USTR will continue to aggressively defend all WTO challenges to U.S. trade remedy actions, including in the context of numerous ongoing disputes, such as:

*United States – Measures Related to Price Comparison Methodologies (DS515)*

*European Union – Measures Related to Price Comparison Methodologies (DS516)*

China requested consultations in December 2016, and again in November 2017, on the U.S. application of a non-market economy methodology in U.S. anti-dumping proceedings involving products from China. China alleges that this methodology is inconsistent with the AD Agreement and GATT 1994 and not authorized by provisions of China's WTO Accession Protocol. China also challenges section 773(e) of the Tariff Act of 1930 – the constructed value provision that applies to market economies – to the extent that it permits the use of “surrogate values.” Consultations were held in February 2017. China has not moved forward with a request for panel establishment against the United States, but continues to pursue a parallel action against similar practices by the European Union. The United States is actively participating in China's dispute against the European Union. The United States and the European Union submitted a shared legal interpretation to the panel demonstrating that, reading the text of Article VI:1 of GATT 1994, Section 15 of China's Accession Protocol, the Second Note Ad Article VI:1, GATT accession documents, and other texts leads to the conclusion that GATT Contracting Parties and WTO Members have always recognized that non-market prices or costs are not suitable for antidumping comparisons because they are not appropriate to use “in determining price comparability”.

*United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (Recourse to Article 21.5 of the DSU by India) (DS436)*

In 2012, India challenged several aspects of the U.S. countervailing duty order on carbon steel flat products from India, as well as certain U.S. laws and practices. The United States successfully defended numerous claims regarding the application of facts available, specificity, and benchmarks; India prevailed on its challenges to public body, other benchmarks and specificity claims, several applications of facts available, and one subsection of the U.S. statute governing cross-cumulation. The reports were adopted in December 2014, and the U.S. announced compliance in April 2016. On June 5, 2017, India requested consultations under Article 21.5 of the DSU, including with respect to findings by USDOC in the Section 129 determination regarding public body, specificity, benchmarks and new subsidies. India also challenges the U.S. International Trade Commission's (ITC's) injury determination in the Section 129 proceeding, as well as the statute regarding cross-cumulation. Consultations were held on July 13, 2017. The panel was established on May 25, 2018.

*United States – Countervailing Measures on Certain Pipe and Tube Products (DS523)*

Turkey requested consultations on March 8, 2017, challenging U.S. CVD orders on four categories of pipe and tube products from Turkey: oil country tubular goods (OCTG), welded line pipe, heavy walled rectangular welded carbon steel pipes and tubes, and circular welded carbon steel pipes and tubes. Consultations were held in Geneva on April 28, 2017. On May 11, 2017, Turkey requested the establishment of a panel. The request includes claims on USDOC’s findings regarding public body, benchmarks, specificity and facts available; as well as challenges to the ITC’s “practice” of “cross-cumulation” and its application in the underlying proceedings. The panel was established on June 19, 2017. Panel proceeding are ongoing; no date has yet been set for public circulation of the panel report.

*United States – Countervailing Measures on Cold- and Hot-Rolled Steel Flat Products from Brazil (DS514)*

On November 11, 2016, Brazil requested consultations concerning countervailing duty measures pertaining to cold- and hot-rolled steel flat products from Brazil. The consultation request alleges claims regarding initiation, application of facts available, subsidy findings, specificity, benchmarks, and injury. Consultations took place in December 2016.

*United States – Countervailing Measures on Supercalendered Paper from Canada (DS505)*

On March 30, 2016, Canada requested consultations with the United States related to the U.S. countervailing duty order on supercalendered paper from Canada. Canada’s claims include challenges against USDOC’s initiation of the investigation, subsidy findings, specificity, and application of facts available. Canada also challenges USDOC’s “ongoing conduct” of resorting to facts available when undisclosed subsidies are discovered during verification. The panel found that certain aspects of the USDOC’s determination were inconsistent with U.S. WTO obligations. The panel also found that the USDOC has engaged in “ongoing conduct” with respect to subsidies discovered during verification, and that such conduct is inconsistent with U.S. WTO obligations.

*United States – Countervailing Duty Measures on Certain Products from China (Recourse to Article 21.5 by China) (DS437)*

In 2012, China challenged numerous U.S. countervailing duty investigations.<sup>1</sup> China alleged that the investigations made WTO-inconsistent findings with respect to, among other things, benefit, specificity, adverse facts available, and “public bodies”. At the panel stage, the United States largely prevailed with respect to USDOC’s calculation of benchmarks, initiation of investigations, and use of facts available; however, the Appellate Body reversed these findings.

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<sup>1</sup> China challenged preliminary and final determinations in 17 countervailing duty investigations from 2007-2012 for products including solar panels; wind towers; thermal paper; coated paper; tow behind lawn groomers; kitchen shelving; steel sinks; citric acid; magnesia carbon bricks; pressure pipe; line pipe; seamless pipe; steel cylinders; drill pipe; oil country tubular goods; wire strand; and aluminum extrusions.

In 2016, USDOC issued redeterminations, and China challenged the revised findings with respect to “public bodies,” benchmarks, and input specificity. The compliance panel found that USDOC’s revised “public bodies” findings are not inconsistent with U.S. WTO obligations, but found that certain aspects of the revised benchmarks and input specificity findings are inconsistent with U.S. WTO obligations. The United States and China appealed. No date has been set for the circulation of the appellate report.

*United States – Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia (DS491)*

On March 13, 2015, Indonesia requested consultations concerning antidumping and countervailing duty measures pertaining to certain coated paper suitable for high-quality print graphics using sheet-fed presses. Indonesia’s claims included challenges to USDOC’s subsidy determinations, specificity, application of facts available, and the ITC’s threat of injury determination, as well as a challenge to the U.S. statute regarding tie votes at the ITC that result in affirmative threat of injury determinations. A panel was established in September 2015. In 2017, the panel issued a report rejecting all of Indonesia’s claims. The WTO adopted the panel report on January 12, 2018.

*United States – Anti-Dumping Measures on Oil Country Tubular Goods from Korea (DS488)*

On April 18, 2014, Korea requested consultations related to antidumping duties imposed on OCTG from Korea, as well as certain U.S. laws applied in those proceedings. Korea’s claims include the Department of Commerce’s rejection of third-country sales, calculation of constructed value profit, selection of mandatory respondents, as well as several procedural issues. The United States successfully defended claims regarding the rejection of third-country sales to determine normal value, the selection of mandatory respondents, the calculation of constructed export price, and numerous procedural issues; Korea prevailed on certain aspects of its challenge to the calculation of constructed value profit. The WTO adopted the panel report on January 12, 2018.

*United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)*

In December 2013, China challenged antidumping measures imposed by USDOC regarding a number of Chinese products. China challenged USDOC’s application of, among other things, targeted dumping, zeroing, the “Single Rate Presumption norm,” and use of adverse facts available. Before the panel, China prevailed on the majority of its claims (for example, on zeroing in certain investigations and on the rebuttable single entity presumption). In November 2016, China appealed certain of the panel’s findings regarding Commerce’s “targeted dumping methodology” and the issue of adverse facts available. The Appellate Body’s report was circulated on May 11, 2017. The United States prevailed on nearly every claim appealed by China. The reports were adopted on May 22, 2017.

*United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464)*

Korea challenged USDOC's antidumping and countervailing duty determinations on large residential washers from Korea. In September 2016, the DSB adopted reports finding that the determinations, as well as certain methodologies, are inconsistent with the AD Agreement, SCM Agreement, and the GATT 1994. The Appellate Body found that the use of "zeroing" when applying a targeted dumping methodology is inconsistent with Article 2.4.2 of the AD Agreement and that the differential pricing methodology is inconsistent "as such" with that provision. Following expiry of the reasonable period of time for implementation of the DSB's recommendations, in January 2018, Korea requested authorization to suspend concessions or other obligations. The United States objected to Korea's request, referring the matter to arbitration under Article 22.6 of the DSU. No date has been set for the circulation of the arbitrator's decision.

*United States – Countervailing Measures on Softwood Lumber from Canada (DS533)*

On November 28, 2017, Canada requested consultations regarding USDOC's countervailing duty determination on softwood lumber products from Canada. Canada challenges the USDOC's benchmark and specificity determinations, the USDOC's calculation of the benefit of subsidies, and the USDOC's countervailing of log export restraints. The United States and Canada held consultations in January 2018. At Canada's request, the WTO established a panel in April 2018. No date has been set for the circulation of the panel report.

*United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada (DS534)*

On November 28, 2017, Canada requested consultations regarding USDOC's antidumping duty determination on softwood lumber products from Canada. Canada challenges the USDOC's use of a differential pricing analysis and zeroing in connection with the application of the alternative, weighted average-to-transaction comparison methodology provided in the second sentence of Article 2.4.2 of the AD Agreement. The United States and Canada held consultations in January 2018. At Canada's request, the WTO established a panel in April 2018. No date has been set for the circulation of the panel report.

*United States – Anti-Dumping Measures on Fish Fillets from Vietnam (DS536)*

On January 8, 2018, Vietnam requested consultations concerning antidumping duty measures pertaining to frozen fish fillets from Vietnam. The consultation request alleged claims regarding zeroing, revocation, application of adverse facts available and a government-wide entity rate, and Commerce's determination pursuant to section 129 of the Uruguay Round Agreements Act (URAA). Consultations took place on March 1, 2018. At Vietnam's request, the WTO established a panel in July 2018.



*United States – Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available (DS539)*

On February 14, 2018, Korea requested WTO dispute settlement consultations regarding the USDOC's use of facts available in certain anti-dumping and countervailing duty measures against Korea, and certain laws, regulations, and other measures maintained by the United States with respect to the use of facts available in anti-dumping and countervailing duty proceedings. The United States and Korea held consultations in March 2018. At Korea's request, the WTO established a panel in May 2018. No date has been set for the circulation of the panel report.

*United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products (DS545)*

On May 14, 2018, Korea requested consultations concerning a safeguard measure implemented on imports of crystalline silicon photovoltaic cells. The consultation request alleges claims under the GATT 1994 and the WTO Agreement on Safeguards relating to several procedural and substantive obligations. Consultations took place in June 2018.

*United States – Safeguard Measure on Imports of Large Residential Washers (DS546)*

On May 14, 2018, Korea requested consultations concerning the United States' application of a safeguard measure on large residential washers. In its consultations request, Korea alleged that the United States' safeguard action is inconsistent with the GATT 1994 and the WTO Agreement on Safeguards relating to several procedural and substantive obligations. Consultations took place in June 2018.

***Robust Pursuit of Ongoing WTO Dispute Settlement Actions, Continued Enforcement Against Traditional Trade Barriers, and Defending U.S. National Security Actions***

USTR has been actively engaged in numerous dispute settlement actions, including important offensive actions related to technology transfer policies and agricultural market access, and defensive actions related to the Trump Administration's actions under section 232 of the Trade Expansion Act of 1962 to address the threat to national security presented by imports of steel and aluminum. USTR will continue to pursue actions to ensure U.S. farmers, ranchers, innovators, and exporters obtain the market access they deserve, and which trading partners like China agreed to provide.

On March 23, 2018, USTR filed a request for consultations with China, ***China – Certain Measures Concerning the Protection of Intellectual Property Rights (DS542)***. The consultation request identifies discriminatory technology transfer policies that result in unfair treatment for U.S. companies and innovators trying to do business in China. For example, China appears to be breaking WTO rules by denying a foreign patent holder, including U.S. companies,

its basic patent right to stop a Chinese entity from using the technology after a licensing contract ends. China also appears to be breaking WTO rules by imposing mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology. On June 1, 2018, the EU also requested consultations concerning China's discriminatory regime for technology licensing (DS549). Consultations were held in July 2018.

USTR is pursuing two challenges to China's agricultural policies relating to grains. In *China – Domestic Support for Agricultural Producers (DS511)*, the United States is challenging China's provision of domestic support to wheat, rice, and corn producers in excess of its Aggregate Measure of Support (AMS) commitments under the Agreement on Agriculture. Consultations with China were requested on September 13, 2016. In December 2016, the United States requested that the WTO establish a panel, and the panel was established in January 2017. Panel proceedings are currently ongoing.

The United States is also challenging China's administration of its tariff-rate quotas (TRQ) for grains in *China – Tariff Rate Quotas for Certain Agricultural Products (DS517)*. The United States considers that China's administration of its TRQs is not transparent, predictable, or fair; inhibits the filling of the TRQs; and thus appears inconsistent with commitments in China's WTO Accession Protocol and the GATT 1994. Consultations with China were requested on December 15, 2016. In August 2017, the United States requested that the WTO establish a panel, and the panel was established in September. Panel proceedings are currently ongoing.

In the dispute *Indonesia – Importation of Horticultural Products, Animals and Animal Products (DS478)*, the United States, together with New Zealand, successfully challenged Indonesia's import licensing regimes and restrictions on horticultural products, animal products (such as beef and poultry), and animals. The panel report was circulated in December 2016, and the United States prevailed on all claims. Indonesia appealed the panel report. In November 2017, the WTO upheld the original panel findings in the dispute that all 18 Indonesian measures challenged by the United States are inconsistent with Indonesia's WTO obligations and are not justified as legitimate public policy measures. Indonesia agreed that the reasonable period of time for implementation of the WTO's recommendations would expire in July 2018.

Another offensive action, and an important victory, is the successful challenge to the EU's massive subsidies to Airbus, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint) (Recourse to Article 21.5 of the DSU) (DS316)*. In 2012, the United States requested establishment of a compliance panel to consider whether the EU and four member States had brought subsidies found to have caused serious prejudice to U.S. interests into compliance with WTO rules. The compliance panel in September 2016 found that the subsidies continue to cause significant lost sales of Boeing aircraft in every product market and displace or impede Boeing aircraft in every product market and in numerous geographic markets. The EU appealed the compliance panel report. In May 2018, the appellate report confirmed that the EU and four member States failed to comply with the earlier WTO determination finding launch aid inconsistent with their WTO obligations. The report further confirmed that almost \$5 billion in additional launch aid that Airbus received from

EU member states for the A350 XWB was also WTO-inconsistent. The appellate report also found that the WTO-inconsistent subsidies continue to cause significant lost sales of Boeing aircraft in the twin-aisle and very large aircraft markets and that these subsidies impede exports of Boeing 747 aircraft to numerous geographic markets. In July 2018, the United States reactivated the arbitration for WTO authorization to impose countermeasures commensurate with the market effects of the subsidies of tens of billions of dollars in lost revenue.

In addition to the above-mentioned disputes, USTR will continue to prioritize the elimination of traditional trade barriers imposed by foreign governments to the detriment of U.S. workers, businesses, farmers, and other exporters. Such barriers include import licensing restrictions, non-science-based sanitary and phytosanitary measures, and other import restrictions affecting U.S. products, including food and agricultural products. Foreign governments also continue to provide both domestic and export subsidies to unfairly benefit their products and disadvantage U.S. exports. Similarly, U.S. exporters are increasingly impacted by the misuse of antidumping and countervailing duties to protect home markets. USTR also will continue to monitor and enforce foreign export restrictions and discriminatory content requirements that reduce U.S. export opportunities. In addition to addressing these concerns through bilateral and multilateral engagement, USTR has brought numerous challenges at the WTO to combat such measures, and will continue to do so aggressively.

Examples of challenges to traditional trade barriers include:

*India – Measures Concerning the Importation of Certain Agricultural Products (DS430)*

The United States successfully challenged India's illegal ban on poultry and other products. In June 2015, the DSB adopted panel and Appellate Body reports finding that India's ban on poultry and other products, allegedly to protect against introduction of avian influenza, is inconsistent with WTO rules. For example, the WTO found that India's restrictions are not based on international standards or a risk assessment that takes into account available scientific evidence and are more trade restrictive than necessary. Because India had not brought its measure into compliance by the end of the reasonable period of time for implementation, in July 2016 the United States requested authorization from the DSB to impose countermeasures worth more than \$450 million; India objected to the request, referring the matter to arbitration. In April 2017, India requested a compliance panel to review whether new measures that India promulgated after the U.S. request for authorization to suspend concessions brought India into compliance. Both the countermeasures arbitration and the compliance proceeding remain pending while the United States seeks to ensure that India provides effective and timely market access for U.S. products.

*European Communities – Measures Concerning Meat and Meat Products (Hormones) (DS26)*

In 1999, following WTO findings that the EU ban on beef from cattle treated with growth-promoting hormones breached WTO rules, the DSB authorized the United States to suspend concessions on EU imports, and the United States imposed 100 percent *ad valorem* duties on a

list of EU products with an annual trade value of \$116.8 million. In May 2009, the United States and the EU signed an MOU under which the EU agreed to create a new duty-free TRQ for imports of specially-produced beef; the United States in turn agreed to lift the additional tariffs on EU products. In December 2016, the U.S. beef industry requested that USTR reinstate trade action against the EU pursuant to Section 306 of the Trade Act of 1974. USTR has published a Federal Register notice seeking public comments on the request, and the interagency Section 301 Committee, chaired by USTR, held a public hearing on the request in February 2017. Negotiations with the EU to address U.S. concerns are ongoing.

*China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States (Recourse to Article 21.5 by the United States) (DS427)*

The United States successfully challenged China’s continuing failure to bring its AD/CVD duties on U.S. exports of chicken “broiler products” into compliance with WTO rules. The United States prevailed in this dispute in 2013 when the DSB adopted reports finding China’s measures WTO-inconsistent. China issued AD/CVD redeterminations in July 2014, maintaining the duties. The WTO established a compliance panel at the U.S. request in June 2016. The panel report was circulated in January 2018, and the United States prevailed on nearly all of its claims against China. The report was adopted in February 2018. China did not appeal the panel report, and instead terminated the AD/CVD orders challenged by the United States in this dispute.

*Argentina – Measures Affecting the Importation of Goods (DS444)*

In 2012, the United States, the EU, and Japan challenged measures restricting the importation of goods into Argentina, such as the use of non-transparent and discretionary import licensing requirements as well as burdensome trade balancing commitments that Argentina requires as a condition for authorization to import goods. In January 2015, the DSB adopted reports finding in favor of U.S. claims. Argentina notified compliance to the WTO, and the co-complainants are examining the actions taken by Argentina.

*China – Export Duties on Certain Raw Materials (DS508)*

The United States challenged China’s WTO-inconsistent export restraints (duties and quotas) on 11 raw materials: antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum, and tin. The United States requested consultations in July 2016, and consultations were held in September. The WTO established a panel at the U.S. request in November and China then announced that it had terminated the duties and quotas. The United States has paused the panel composition process and is monitoring the situation.

*Canada – Measures Governing the Sale of Wine in Grocery Stores (Second Complaint) (DS531)*

In 2017, the United States challenged British Columbia (“BC”) regulations governing the sale of wine in grocery stores, alleging that they are inconsistent with Article III:4 of the GATT 1994 because they accord less favorable treatment to imported products than to like products of national origin. Specifically, the measures grant to BC wine exclusive access to the retail

channel of selling wine on grocery store shelves. By contrast, the measures deny imported wine the same access, relegating imported wine to a so-called “store within a store.” The United States and Canada held consultations in 2017 but those consultations did not resolve the dispute. At the U.S. request, in July 2018 the WTO established a panel.

*United States – Certain Measures Concerning Pangasius Seafood Products from Viet Nam (DS540)*

On February 22, 2018, Vietnam requested consultations concerning certain sanitary and phytosanitary measures implemented by the United States affecting the importation of pangasius seafood products. The consultation request alleges the United States failed to accept Vietnam’s sanitary and phytosanitary measures as “equivalent,” that the United States’ measures are not based on a risk assessment, and that the measures are not based on sufficient scientific evidence. Consultations took place in May 2018.

*India – Export Related Measures (DS541)*

On March 14, 2018, the United States requested consultations with India regarding various Indian export subsidy programs. The consultation request alleges that these programs provide prohibited export subsidies inconsistent with the Agreement on Subsidies and Countervailing Measures. Consultations took place in April 2018. The parties failed to reach a mutually satisfactory resolution to the dispute. At the U.S. request, in May 2018, the WTO established a panel.

*United States – Tariff Measures on Certain Goods from China (DS543)*

On April 4, 2018, China requested consultations with the United States concerning certain tariff measures on Chinese goods which would allegedly be implemented through section 301 of the Trade Act of 1974. The United States responded that it was willing to enter into consultations with China, without prejudice to its view that China's request did not satisfy the requirements of Article 4 of the Dispute Settlement Understanding. China filed an addendum to its consultations request on July 9, 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS544)*

On April 5, 2018, China requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from China. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS547)*

On May 18, 2018, India requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from India. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS548)*

On June 1, 2018, the EU requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from the EU. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS550)*

On June 1, 2018, Canada requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from Canada. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS551)*

On June 5, 2018, Mexico requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from Mexico. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were held in July 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS552)*

On June 12, 2018, Norway requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from Norway. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were being scheduled for summer 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS554)*

On June 29, 2018, the Russian Federation requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from the Russian Federation. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were being scheduled for summer 2018.

*United States – Certain Measures on Steel and Aluminum Products (DS556)*

On July 9, 2018, Switzerland requested consultations concerning certain duties that the United States imposed on imports of steel and aluminum products from Switzerland. The consultations request alleges that the measures appear to breach various provisions of the GATT 1994 and the Agreement on Safeguards. Without prejudice to the U.S. view that the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and that the consultations provision in the Agreement on Safeguards is not applicable, the United States indicated it was willing to enter into consultations. Consultations were being scheduled for summer 2018.

*Canada – Additional Duties on Certain Products from the United States (DS557)*

On July 16, 2018, USTR requested consultations concerning Canada's imposition of additional duties in retaliation to the action of the United States under Section 232 on national security grounds. The consultation request identifies tariff measures that appear inconsistent with Articles I and II of the GATT 1994 because Canada does not impose a similar duty increase on the products of other WTO Members and the applied duties are above Canada's bound rates. Consultations have not yet taken place.

*China – Additional Duties on Certain Products from the United States (DS558)*

On July 16, 2018, USTR requested consultations concerning China’s imposition of additional duties in retaliation to the action of the United States under Section 232 on national security grounds. The consultation request identifies tariff measures that appear inconsistent with Articles I and II of the GATT 1994 because China does not impose a similar duty increase on the products of other WTO Members and the applied duties are above China’s bound rates. Consultations have not yet taken place.

*European Union – Additional Duties on Certain Products from the United States (DS559)*

On July 16, 2018, USTR requested consultations concerning the EU’s imposition of additional duties in retaliation to the action of the United States under Section 232 on national security grounds. The consultation request identifies tariff measures that appear inconsistent with Articles I and II of the GATT 1994 because the EU does not impose a similar duty increase on the products of other WTO Members and the applied duties are above the EU’s bound rates. Consultations have not yet taken place.

*Mexico – Additional Duties on Certain Products from the United States (DS560)*

On July 16, 2018, USTR requested consultations concerning Mexico’s imposition of additional duties in retaliation to the action of the United States under Section 232 on national security grounds. The consultation request identifies a tariff measure that appears inconsistent with Article I of the GATT 1994 because Mexico does not impose a similar duty increase on the products of other WTO Members. Consultations have not yet taken place.

*Turkey – Additional Duties on Certain Products from the United States (DS561)*

On July 16, 2018, USTR requested consultations concerning Turkey’s imposition of additional duties in retaliation to the action of the United States under Section 232 on national security grounds. The consultation request identifies a tariff measure that appears inconsistent with Articles I and II of the GATT 1994 because Turkey does not impose a similar duty increase on the products of other WTO Members and the applied duties are above Turkey’s bound rates. Consultations have not yet taken place.

***Rigorous Enforcement of Intellectual Property Rights***

USTR is committed to holding foreign countries accountable and exposing the laws, practices, and other measures that fail to provide adequate and effective intellectual property (IP) protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers. The identification of IP-related market access barriers and steps necessary to address those barriers are a critical component of the Trump Administration’s aggressive efforts to defend Americans from harmful IP-related trade barriers. U.S. innovators face numerous challenges, including:



- Market access barriers to pharmaceutical products and medical devices, including measures that discriminate against U.S. companies, are not adequately transparent, or do not offer sufficient opportunity for meaningful stakeholder engagement, as well as unfair uses of compulsory licenses.
- Restrictive patentability criteria that undermine opportunities for export growth in countries such as Argentina, India, and Indonesia.
- A lack of adequate and effective protection for regulatory test or other data submitted by pharmaceutical and agricultural chemical producers in countries such as China, India, Indonesia, Thailand, Russia, and Saudi Arabia.
- Inadequate protection for trade secrets in a number of countries, notably China and India, that puts U.S. trade secrets at unnecessary risk.
- Inadequate and ineffective border enforcement against counterfeit and pirated goods that harms U.S. creators, brands, and manufacturers.

Consistent with USTR's 2018 Special 301 Report, USTR also will continue to prioritize enforcement efforts in key countries where IP protection and enforcement has deteriorated or remained at unacceptable levels and where market access for Americans who rely on IP protection has been unfairly compromised. For example:

- USTR continues to place China on the Priority Watch List because longstanding and new IP concerns strongly merit attention. China is home to widespread infringing activity, including trade secret theft, rampant online piracy and counterfeiting, and high levels of physical piracy and counterfeited exports to markets around the globe. China imposes requirements that U.S. firms develop their IP in China or transfer their IP to Chinese entities as a condition to accessing the Chinese market. China also requires that U.S. firms localize research and development activities. Structural impediments to civil and criminal IP enforcement are also problematic, as are impediments to pharmaceutical innovation.
- USTR identified India on the Priority Watch List for lack of sufficient measurable improvements to its IP framework on longstanding and new challenges that have negatively affected U.S. right holders over the past year. Longstanding IP challenges facing U.S. business in India include those which make it difficult for innovators to receive and maintain patents in India, particularly for pharmaceuticals; insufficient enforcement actions and policies; copyright policies that do not properly incentivize the creation and commercialization of content; and an outdated and insufficient trade secrets legal framework. New and growing concerns – including with respect to draft policies that negatively affect the commercialization of biotechnology, and the positions that India supports and voices in multilateral forum on IP issues – continue to generate skepticism

about whether India is serious about pursuing pro-innovation and creativity growth policies.

- USTR downgraded Canada from the Watch List to the Priority Watch List this year for failing to make progress on overcoming important IP enforcement challenges, including poor border enforcement, concerns about IP protections and procedures related to pharmaceuticals, deficient copyright protection, and inadequate transparency and due process regarding the protection of geographical indications.
- USTR identified Indonesia on the Priority Watch List due to the lack of adequate and effective IP protection and enforcement. For example, revisions to Indonesia's patent law have raised serious concerns, including with respect to the patentability criteria for incremental innovations and computer implemented inventions, and local manufacturing and use requirements.
- USTR is also monitoring trading partners such as Chile and Colombia, which have not delivered on IP commitments made to the United States; and the European Union and third-country markets, where U.S. exporters are experiencing negative market access effects related to the protection of geographical indications, including exporters with prior trademark rights or who rely on the use of common food names.

Furthermore, on August 18, 2017, USTR initiated an investigation to determine whether acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation are actionable under Section 301(b)(1) of the Trade Act of 1974. On March 22, 2018, USTR posted to its website a detailed explanation of its determination that the acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation covered in the investigation are unreasonable or discriminatory and burden or restrict U.S. commerce.

On March 23, 2018, at the direction of the President, USTR filed a request for consultations with China at the WTO to address China's discriminatory technology transfer policies considered under the Section 301 investigation, *China – Certain Measures Concerning the Protection of Intellectual Property Rights (DS542)*. China appears to be breaking WTO rules by denying a foreign patent holder, including U.S. companies, its basic patent right to stop a Chinese entity from using the technology after a licensing contract ends. China also appears to be breaking WTO rules by imposing mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology. Consultations were held in July 2018.

On June 15, 2018, USTR announced the imposition of an additional duty of 25 percent on approximately \$34 billion worth of Chinese imports containing industrially significant technologies, including those related to China's "Made In China 2025" industrial policy. (In the same announcement, USTR also proposed additional duties on \$16 billion worth of industrially significant products.)

USTR is committed to addressing these and other priority concerns to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their intellectual property.

### ***Ensuring that Product Standards Do Not Create Unnecessary Obstacles to Trade***

USTR will continue to prioritize identifying and confronting unjustified barriers stemming from technical regulations, standards, and conformity assessment procedures (standards-related measures) that affect U.S. exports, so U.S. manufacturers are able to access markets and compete on a level playing field. USTR has intensified engagement with U.S. trading partners and increased monitoring of their practices to address measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports, for example:

- In September 2017, USTR filed detailed comments with the National People's Congress on China's draft Standardization Law (Draft for Second Reading). With respect to IP-related standards, the comments urged China to strike all draft provisions that would undermine standards-related IPR.
- In October 2017, USTR filed detailed comments with several Chinese agencies regarding a series of sixteen standards related to information security technology and implementing China's Cybersecurity Law. During the WTO's Technical Barriers to Trade (TBT) Committee meetings in November 2017, March and June 2018, USTR raised numerous concerns about China's cybersecurity and encryption-related policies. USTR has also consulted with the European Union regarding collaborating on China's cybersecurity-related policies.
- USTR has raised numerous concerns with China regarding measures restricting or banning scrap and waste imports, including during the TBT Committee meetings in November 2017, March 2018, and June 2018.
- USTR continues to engage directly with the European Union, its member States, and EU trading partners to address EU standards and conformity assessment practices that limit market access for U.S. suppliers in the EU and third country markets, and to promote the acceptance of international standards developed in accordance with WTO-recognized principles.
- USTR has engaged numerous countries that are implementing regulations that restrict the marketing, advertising, and labeling of food, alcoholic beverages, infant formula, and energy drinks. USTR is concerned that such proposed or final measures may not be based on sufficient scientific evidence or international standards and may be developed without taking into account the views of private sector stakeholders.

On July 25, 2018, President Trump and President Juncker of the European Commission announced a joint agenda to strengthen our trade relations, including through work on standards. The United States and the European Union will work together on standards to facilitate trade, reduce bureaucratic obstacles, and reduce costs, thereby promoting increased trade and prosperity.