

FOREWORD

In accordance with section 601 of the Trade Facilitation and Enforcement Act of 2015, the U.S. Trade Representative is required to report to the Committee on Finance of the Senate and the Committee on Ways and Means of the 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 601. 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 and ensuring a level playing field for American goods and services worldwide, including here at home. Consistent with the President's 2017 Trade Policy Agenda, enforcement actions undertaken by USTR will be designed to increase our economic growth, promote job creation in the United States, promote reciprocity with 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 the Administration to support the President's Trade Policy Agenda. Enforcement activities will include continued monitoring of bilateral, multilateral and plurilateral agreements, direct engagement with trading partners on key trade irritants and barriers, as well as multilateral communications in fora such as the committees of the WTO. We also will promote U.S. interests under free trade agreements through work programs and accelerated tariff reductions, for example; and provide technical assistance to trading partners, especially in developing countries, to ensure key agreements, such as the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) are fully implemented on schedule. 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 if necessary, and will vigorously defend U.S. actions when challenged by foreign governments. Where appropriate, USTR may take action under 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, section 338 of the Trade Act of 1930, or the International Emergency Economic Powers Act of 1977.

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 agency staff are currently working is contained in the National Trade Estimates report, and other enforcement-related priorities and objective 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.

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 has long supported 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 a foundation 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 provides the U.S. Department of Commerce (USDOC) with the authority 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 AD and/or CVD relief. USDOC also has the right 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 eight years, actions by the United States were challenged thirty-one times at the WTO. Nineteen 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.

Our primary objective now 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 steel and aluminum markets, for example, are currently 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. The protection of U.S. workers and industry against unfairly traded imports into the United States from China and other countries is an essential tool in combatting 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 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 Commission, and the United States will participate actively in that dispute.

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; but 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 U.S. failure to modify the U.S. statute regarding cross-cumulation. Consultations were held on July 13, 2017.

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

Turkey filed a request for consultations on March 8, 2017 challenging U.S. CVD orders on four categories of pipe and tube products from Turkey, including 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.

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)

In March 2016, Canada requested consultations with the United States to consider claims 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 proceedings are ongoing; no date has yet been set for public circulation of the panel report.

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

In 2012, China challenged the United States regarding numerous U.S. countervailing duty investigations.¹ China alleged that the investigations made WTO-inconsistent findings with respect to, *inter alia*, 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. In 2016, Commerce issued redeterminations and China challenged the revised findings with respect to “public bodies,” benchmarks, and input specificity. Panel proceedings are ongoing; no date has yet been set for public circulation of the compliance panel 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 include 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. Panel proceedings are ongoing; no date has yet been set for public circulation of the panel report.

¹ 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.

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

On April 18, 2014, the United States received from Korea a request for consultations pertaining to antidumping duties imposed on oil country tubular goods 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 panel proceedings are ongoing; no date has yet been set for public circulation of the panel report.

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, *inter alia*, 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 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. The reasonable period of time for the United States to come into compliance expires in December 2017.

Rigorous Enforcement of Intellectual Property Rights

USTR is committed to calling out foreign countries 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 Administration's aggressive efforts to defend Americans from harmful IP-related trade barriers. U.S. innovators face numerous challenges, including:

- 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, for example in 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 2017 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 pirated and counterfeit 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 mandatory adverse terms be applied to foreign IP licensors, and 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 identifies 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 identifies 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.

The Administration 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. This Administration will intensify engagement with U.S. trading partners and increase 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. USTR is currently monitoring developments in several trading partners, for example:

- Several Chinese measures appear to discriminate against foreign technologies in the name of protecting information security. Currently, three issues are of primary concern to U.S. industry: (1) a new Cybersecurity Law and related implementing regulations; (2) a draft Encryption Law; and (3) a suite of information security standards being developed by China's National Information Security Standardization Technical Committee. The United States and other WTO Members have expressed serious concerns with China's measures on a number of occasions.
- The current draft revision of China's Standardization Law lacks acknowledgement of international standards, and appears to develop a complex system of local, national, trade association, "social," and "enterprise," standards, all of which would be government-controlled. The draft does not make clear that foreign and private parties can participate in China's standardization system, or whether an "enterprise" standard will protect copyrighted material or the rights of patented technologies incorporated into a standard. When final, the standardization system would govern all standards and technical regulations in China, and potentially could impact all U.S. goods exported to China.

- The European Union promotes adoption of European regional standards by foreign governments in markets worldwide and often requires in its trade agreements or technical assistance packages the withdrawal of non-EU standards, such as those used by U.S. manufacturers. This EU practice forces U.S. producers to choose between the costly redesigning or reconfiguring of products to the European standard, supplying markets from EU manufacturing operations, or exiting the market.
- In an effort to address public health objectives, a growing number of countries are implementing regulations that restrict the marketing, advertising, and labeling of food, alcoholic beverages, infant formula and energy drinks. Some of these regulations are not supported by scientific evidence, do not utilize recognized international standards, are promulgated without seeking input from relevant private sector stakeholders, and may be more trade restrictive than necessary. In addition, we are concerned about the restrictive effect that certain of these regulations may have on the use of registered trademarks.

Robust Pursuit of Ongoing WTO Dispute Settlement Actions and Continued Enforcement Against Traditional Trade Barriers

When President Trump took office, USTR was actively engaged in numerous dispute settlement actions, including important offensive actions related to agricultural market access. USTR will continue to pursue these actions to ensure U.S. farmers, ranchers and exporters obtain the market access they deserve, and which trading partners like China and India agreed to provide.

These dispute settlement actions include the successful 2015 challenge to India's illegal ban on poultry and other products, ***India – Measures Concerning the Importation of Certain Agricultural Products (DS430)***. 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 (AI), 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 measures that India considers have brought it into compliance with WTO rules. In the U.S. view, these measures continue to impose unjustified import prohibitions, and USTR therefore will press forward with arbitration regarding the amount of countermeasures to be imposed.

USTR also will continue to pursue 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 (market-price) 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 in September 2016 and

were held in November. In December, the United States requested that the WTO establish a panel, and the panel was established at the January meeting of the DSB. 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. WTO consultations were requested in December 2016, and were held on February 9, 2017. The United States continues to press these issues with China and will move forward with panel proceedings.

In addition to the above-mentioned disputes priorities, 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 types of 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:

Indonesia – Importation of Horticultural Products, Animals and Animal Products (DS478)

The United States, together with New Zealand, is challenging Indonesia's import licensing regimes and restrictions on horticultural products, animal products (beef and pork), and animals. The panel report was circulated in December 2016, and the United States prevailed on all claims. Despite Indonesia's restrictions, U.S. farmers were able to export nearly \$115 million of agricultural products to Indonesia in 2015. The panel report was appealed by Indonesia in February 2017. No date has yet been set for circulation of the Appellate Body report.

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 tariff rate quota (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.

European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (Second Compliant) (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 4 member States had brought subsidies found to have caused serious prejudice to U.S. interests into compliance with WTO rules. In September 2016, the compliance panel found that the \$15 billion in launch aid subject to the original proceedings had not been withdrawn, and almost \$5 billion in additional launch aid that Airbus received from EU member states for the A350 XWB was also WTO-inconsistent. The panel found that these 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. In October 2016, the EU appealed the compliance panel report; no date has yet been set for public circulation of the appellate report.

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 is challenging 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; no date has yet been set for public circulation of the compliance panel report.

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.

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.