



Trade Delivers

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US Challenges Chinese Famous Brand Programs at WTO

"We are determined to use all resources available to fight industrial policies that aim to unfairly promote Chinese branded products at the expense of American workers, farmers, ranchers, manufacturers and intellectual property owners."

- Ambassador Susan C. Schwab, United States Trade Representative

What Chinese Policies are at Issue?

- As part of its industrial policy aimed at promoting worldwide recognition of Chinese brand names and branded products, China appears to be providing numerous WTO-illegal subsidies at multiple levels of government. These include providing exporters:
 - Cash grant rewards for exporting
 - Preferential loans
 - Research and development funding
 - Cash grants to lower the cost of export credit insurance
- The subsidies at issue offer significant benefits, particularly through cash grants that can reach over \$400,000 to a single producer from a single level of government. In addition, the same Chinese brand name export can concurrently qualify for multiple cash grants from brand programs at several levels of government (e.g., central, provincial and city).
- These measures have been found in several provinces in China, including all of the top five exporting provinces. In fact, provinces offering these subsidies accounted for over 80 percent (\$1 trillion) of China's \$1.2 trillion in exports to the world in 2007.

What WTO Obligations Apply?

- Applicable World Trade Organization (WTO) rules generally prohibit government subsidies tied to export performance.
 - Export subsidies are so trade distorting that they are generally prohibited outright.
 - Export subsidies are financial incentives to firms that are tied to actual or anticipated exportation or export earnings. They often result in greater export volumes or lower prices than would be expected under normal market conditions.
 - China explicitly committed to eliminate all export subsidies at the time it joined the WTO in December 2001.

How Do These Subsidies Hurt the United States?

Export subsidies tilt the playing field against U.S. manufacturers, workers, farmers, ranchers and brand owners in a variety of sectors.

- **Push Exports from China** – The subsidies being challenged seem to go to Chinese firms that meet certain export performance requirements. These kinds of subsidies lead to artificially higher volumes of exports, artificially lower export prices or both.
- **Encourage Exports of Chinese Brand Names and Technology** – The subsidies being challenged appear to push exports with higher domestic value-added content and unfairly promote the worldwide recognition of the subsidized brand names. These actions particularly threaten directly competitive U.S. brands.
- **Impact on U.S. and Other Exporters** – Export subsidies make it harder for U.S. products to compete with the subsidized products not only in the U.S. market, but in any market in the world. Such subsidies also affect China's other competitors, including those from developing and least-developed countries.

What U.S. Industries are Affected by These Subsidies?

- Most of the Chinese subsidies at issue are not limited to particular sectors – they appear to be available to any enterprise that meets the eligibility criteria, which include export performance and, typically, a successful home grown domestic brand. That means these subsidies are available across a huge swath of the Chinese economy. They would unfairly alter the competitive landscape for *any* U.S. industry competing with Chinese products that have received them.
- Some of the subsidies at issue, however, are available only to a defined set of sectors (or to a single sector) in the Chinese economy. The sectors eligible for these subsidies include the high-tech, electromechanical, textiles, and agricultural sectors.

How is this dispute different from the prohibited tax subsidies dispute from last year?

- Last year's dispute focused on China's use of its tax laws to provide subsidies.
- The dispute being launched today arose out of intensive research into different Chinese policy areas, with the main focus on recent Chinese industrial policies that seemed to be directed at preferentially promoting worldwide recognition of home grown Chinese brands and branded products at the expense of U.S. products.
- In addition, there were general indications that particular export intensive sectors in China (like textiles) might be receiving preferential treatment.
- Follow up research over many months revealed that China seems to be applying prohibited subsidies in a distinct legal context from its tax laws, primarily to encourage the export of famous Chinese brand products in both processed agriculture and manufacturing sectors.
- In addition, unlike the prohibited tax subsidies dispute last year, the subsidies challenged here extend beyond the central government level deep into lower levels of government, including provinces, cities, and districts across different regions in China.

Why Pursue WTO Dispute Settlement?

- The United States is committed to maintain a level playing field for American firms and workers. This includes ensuring that China abides by the same fair trade rules that are applicable to other WTO Members.
- The United States sought to engage China in discussions to arrive at a resolution. Those efforts unfortunately failed to resolve the matter. As a result, the United States today took the first step to formally commence a dispute before the WTO.
- Under WTO dispute settlement procedures, the United States and China would normally consult within 30 days. The United States hopes that these consultations will produce a satisfactory result. If they do not, then any time after 60 days from the request for consultations, the United States has the right to request that the WTO establish a dispute settlement panel to examine the matter.
- WTO dispute settlement rules have facilitated and are assisting us in the resolution of other trade disputes with China:
 - March 2004 – After the United States filed a WTO dispute against China challenging value-added tax rebates that discriminated against imported semiconductors, the United States and China resolved the matter during the consultation phase, ensuring fair access to a market worth over \$2 billion to U.S. manufacturers and workers in the semiconductor industry.
 - January 2006 – The United States and China resolved a dispute involving China's imposition of antidumping duties on kraft linerboard shortly after the United States informed China that it would soon be filing a request for WTO consultations. China eliminated the antidumping order on kraft linerboard, terminating the unfair barrier to U.S. paper products and benefiting U.S. kraft linerboard mills in 14 states.
 - March 2006 – The United States, the European Communities and Canada brought panel proceedings at the WTO challenging Chinese regulations that impose *de facto* local content requirements in the auto sector through discriminatory charges on imported auto parts. The WTO panel agreed with the United States, the European Communities, and Canada that these regulations are inconsistent with China's WTO obligations. China has appealed that ruling. The report of the WTO Appellate Body is expected before the end of the year.
 - February 2007 – The United States initiated a WTO dispute against China challenging several tax measures that appeared to be export subsidies and import substitution subsidies prohibited under WTO rules. Following establishment of a WTO panel to hear the case, China agreed to eliminate all of the prohibited subsidies raised in that dispute by January 1, 2008 and to make a related technical change by January 1, 2009. The United States has been carefully monitoring China's implementation of these commitments and has detected no problems to date.
 - April 2007 – The United States requested WTO dispute settlement consultations with China regarding certain measures pertaining to the protection and enforcement of intellectual property rights. The WTO panel established to hear the dispute issued a confidential interim report in October 2008, and the final report is expected to be circulated publicly in early 2009.
 - April 2007 – The United States filed a WTO dispute against China concerning market access restrictions in China on products of copyright-intensive industries, including publications and audio and video products. A WTO panel was established in late November 2007, and panel proceedings are ongoing, with a public version of the panel decision expected in 2009.

- March 2008 – The United States requested WTO dispute settlement consultations with China regarding China's treatment of U.S. suppliers of financial information services. The European Communities and Canada also requested consultations with China on the same matter. The United States, as well as the EC and Canada, concluded memoranda of understanding with China on November 13 of this year, in which China committed to take all the steps necessary to bring its treatment of foreign suppliers of financial information services into line with China's obligations under the General Agreement on Trade in Services (GATS) and China's Accession Protocol.

Background on China's Famous Brands Programs

In recent years, the U.S. has become increasingly concerned about Chinese industrial policies aimed at promoting certain advanced industries and products at the expense of their foreign competitors. These concerns have focused in part on what appear to be protectionist or discriminatory policies aimed at fostering advanced Chinese industries and technologies, and related policies aimed at promoting sales by Chinese companies. The "famous brands" programs appear to be a Chinese government effort to move up the value chain by promoting worldwide recognition of Chinese brand names and branded products.

In April 2006, China submitted its first subsidies notification to the WTO, more than four years after its accession to the organization. In that notification, China did not identify any of the subsidy measures at issue in the present dispute and did not provide any information regarding subsidy programs provided by sub-central levels of government. All of the subsidies at issue were uncovered through investigatory work by the U.S. Government, working with U.S. industry and other stakeholders.

The U.S. consultation request addresses two central government subsidy programs, numerous sub-central government measures implementing these programs, and several independent subsidy programs that appear to have been enacted solely by sub-central governments. All of the challenged subsidy programs appear to be export subsidies, granted on the condition that the recipients meet certain export performance criteria. Export subsidies are generally prohibited under the WTO Agreement on Subsidies and Countervailing Measures. With respect to agricultural products, the WTO Agreement on Agriculture specifically prohibits export subsidies beyond those set out in a WTO Member's agricultural schedule. In its accession protocol, China committed not to maintain or introduce any agricultural export subsidies.

After extensive research spanning several months and devotion of substantial resources, the United States now has identified over 70 legal measures from various levels of government in China that appear to provide these subsidies.