



# SUBSIDIOS EN CHINA

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KING & SPALDING

# AGENDA

- Subsidies Under The WTO Agreements
- Typical Chinese Subsidy Programs
- China's Primary Industrial Policy – The 12<sup>th</sup> Five Year Plan
- World Experience With Countervailing Duty Investigations Against China



# Subsidies Under The WTO Agreements

# DEFINITION OF A SUBSIDY

- Under The WTO Agreement On Subsidies And Countervailing Measures, A Subsidy Exists Where There Is
  - A “financial contribution” by a government or public body
  - That confers a “benefit” on the recipient (an advantage, to be determined in comparison to the market)
  - In addition, the subsidy must be “specific.” For example, most government infrastructure projects to build roads or bridges are not specific and cannot be successfully challenged.



# SPECIFIC SUBSIDIES

- Limited To Certain Industries, To Certain Enterprises, Or To A Group Of Enterprises Or Industries
- Limited To Certain Enterprises Located Within A Designated Geographical Region
- Prohibited Subsidies (Contingent On Export Performance Or Use Of Domestic Goods) Are Deemed Specific



# WTO SUBSIDY NOTIFICATIONS

- China Provided Long-Overdue Subsidy Notifications At The WTO In 2006 And 2011, Confirming Some Subsidy Programs
- These Notifications Failed To Provide Adequate Data On Subsidy Recipients And Amounts Or Any Information On Subsidies Provided By Provincial And Municipal Governments
- The United States Made A Counter-Notification With More Than 200 Programs Identified Through U.S. Countervailing Duty Investigations



# Typical Chinese Subsidy Programs



# CHINESE SUBSIDY RECIPIENTS

- Typical Subsidy Recipients:
  - Companies that operate in an encouraged industry identified in the Government's industrial planning documents
  - State-Owned Enterprises (“SOEs”) and Foreign Invested Enterprises (“FIEs”)
  - Companies in certain locations -- industrial zones and certain local authorities provide incentives to attract producers to their localities



# EXAMPLES OF CHINESE SUBSIDIES

- Government Policy Lending
- Income Tax Subsidies
- Other Tax Subsidies -- VAT, Tariff, And Municipal Fee Exemptions
- Grant Programs
- Government Provision Of Good Or Service (Including Inputs And Land) For Less Than Adequate Remuneration

# PREFERENTIAL LENDING (1)

- The Chinese Financial Sector Is Overwhelmingly State-Owned; The Government Has The Ability To Direct Lending
  - China has three dedicated “policy” banks and four nominally “commercial” banks
  - Article 34 of the Commercial Banking Law requires all banks to “conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State”

# PREFERENTIAL LENDING (2)

- Numerous Industrial Policies Encourage Chinese Banks To Lend To Encouraged Industries
- Typical Recipients Include SOEs, Companies Operating In Encouraged Industries Or Undertaking Encouraged Projects, And Entities Undertaking Infrastructure Or Social Programs



## PREFERENTIAL LENDING (3)

- The Benefit From Policy Loans Is Measured In Comparison With Commercial Alternatives
  - The United States compares interest rates from actual loans to average lending rates in comparable countries
  - Europe has compared Bloomberg BB bond rates to lending rates charged by the People's Bank of China
- Calculated CVD Rates In The United States Range Up To 9 Percent *Ad Valorem* Depending On A Company's Borrowing And Loan Terms



# PREFERENTIAL INCOME TAX RATES (1)

- Tax Reductions For “Productive” FIEs, FIEs In Certain Geographic Locations, Export-oriented FIEs, FIEs Conducting Research And Development, Companies Located In Special Economic Zones Or The Western Regions
  - Repealed in 2008 but generally effective until 2013 and still available in some areas
- Tax Reductions For FIEs And Foreign Enterprises Purchasing Chinese Equipment

# PREFERENTIAL INCOME TAX RATES (2)

- Reductions For High And New Technology Enterprises (“HNTEs”) Generally And HNTEs That Are Located In Development Zones
- The United States Has Calculated A Benefit From These Programs Of Up To 3 Percent *Ad Valorem* Depending On The Company



# OTHER TAX PROGRAMS

- The Government Supports Acquisition Of New, More Efficient Machinery Through Several Programs
  - Tariff exemptions on imported equipment for FIEs and domestic enterprises active in “encouraged” industries
  - VAT rebates on FIE purchases of domestically-produced equipment
- The United States Has Calculated A Benefit From These Programs Of Up To 1 Percent Depending On The Company And Its Purchases

# GRANT PROGRAMS (1)

- The Government Has A Number Of Grant Programs
  - Special funds for enterprises operating in certain designated industries
  - State Key Technology Renovation Project
  - State Science and Technology Support Scheme
  - Famous Brands Awards
  - Clean Production Technology Fund
  - Local export interest subsidy funds
  - Funds for “Outward Expansion” of industries



# GRANT PROGRAMS (2)

- Typical Users Include SOEs, Exporters, And Companies Holding Intellectual Property Rights Or Brand Names

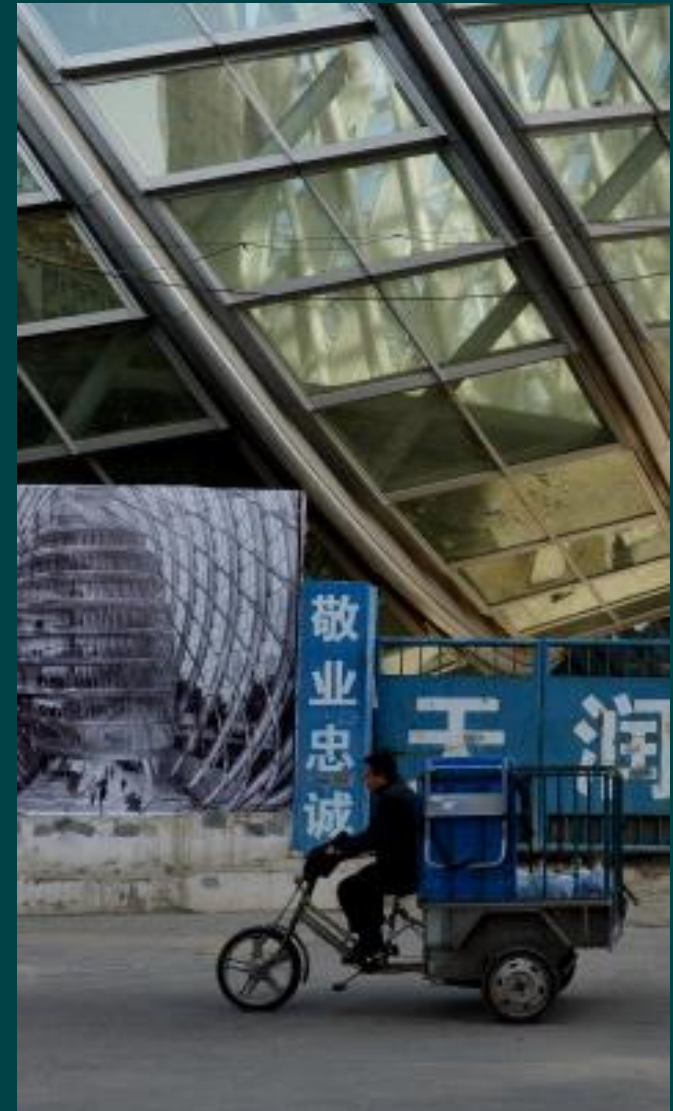


# GOVERNMENT PROVISION OF INPUTS

- Subsidies For An Upstream Input Or Raw Material Used In The Production Of The Subject Merchandise Do Not Necessarily Pass Directly Through To Producers Of Subject Merchandise Absent Vertical Integration
- A Subsidy Exists, However, If A SOE Or Other Government Body Sells Subsidized Inputs To Producers At Below-market Prices
- For Example, Baosteel Provides Hot-rolled Steel To Chinese Pipe Producers For Below-market Prices

# GOVERNMENT PROVISION OF LAND (1)

- In China, All Land Is Owned By The State, And Land Use Rights May Only Be Distributed In A Manner Consistent With Industrial Policies
- SOEs Are Eligible For Special “Allocated” Land Use Rights That Are Essentially Free
- The Government Supports Encouraged And Favored Industries Through Favorable Land Policies



# GOVERNMENT PROVISION OF LAND (2)

- The Government Has Established Numerous Industrial Zones With Special Land Prices And Other Benefits
- Many Zones Are Dedicated To The Production Of Specific Products
- Some Zones Rebate Payments For Land Use Rights





A photograph of Xi Jinping, President of China, standing in a large hall with tiered seating, likely the National People's Congress. He is wearing a dark suit and a blue tie, and has a red identification badge on his lapel. The background is filled with other people, some of whom are blurred, suggesting movement. The text "China's 12th Five Year Plan" is overlaid in the center of the image.

# China's 12<sup>th</sup> Five Year Plan

# Overview

- Prepared In Era Of Global Financial Crisis And Runaway Real Estate Prices
- Official Emphasis On Improving Living Standards Over “Growth”
- Encouragement For Domestic Consumption, Development Of Services, Energy Conservation, Environmental Protection
- Seeks Shift To Manufacturing Of Higher Value-Added Goods
- Provides Support For “Strategic” Industries
- Calls For Infrastructure Expenditures



# CONTENTS

• 62 Chapters, 127 Pages

— Policy Direction (Ch. 4)

— Improve & Promote Manufacturing (Ch. 9)

— Foster & Develop Strategic Sectors  
(Ch. 10)

— Optimize Foreign Trade Structure (Ch. 51)

— Coordinate “Bringing In” And “Going Out”  
(Ch. 52)

— Improve Implementation Of The Plan &  
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## 中华人民共和国国民经济和社会发展 第十二个五年规划纲要

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# CHAPTER 4 – POLICY DIRECTION

- Macroeconomic Control
  - “Strengthen the coordination of fiscal, monetary, investment, industrial and land policy ...”
- Control Investments
  - “Clearly define the scope of government investment, standardize the investment behavior of SOEs, encourage private investment, effectively contain blind expansion and redundant construction ...”



# CHAPTER 9 – IMPROVE & PROMOTE MANUFACTURING

- Promote Restructuring Of “Key” Industries
  - Equipment manufacturing, shipbuilding, automobiles, smelting and building materials, petrochemicals, light industry, textiles, packaging, and information technology
- Guide Industry Consolidation
  - Automobiles, iron and steel, cement, machinery, electrolytic aluminum, rare earths, electronic information, and pharmaceuticals

# CHAPTER 10 – FOSTER AND DEVELOP STRATEGIC EMERGING SECTORS

- The 7 SEIs:
  - Energy conservation & environmental protection
  - New generation information technology
  - Biological industry
  - High-end equipment manufacturing industry
  - New energy
  - New materials
  - New-energy automobiles
- Government Support:
  - Establish “special funds”
  - Provide startup investment
  - Guide “social capital”
  - Encourage financial institutions to strengthen credit support
  - Offer preferential tax policies
  - Establish industrial standards favoring new industries
  - Provide infrastructure

# CHAPTER 51 – OPTIMIZE FOREIGN TRADE

- Foster Competitive Advantages For Exports
  - Nurture advantages based on “technology, branding, quality, and service”
  - Improve quality and class of labor-intensive exports
- Expand Imports Of High-Tech Goods; Rare Resources; And Products For Environment
- Develop Trade In Services



# CHAPTER 52 – COORDINATE “BRINGING IN” AND “GOING OUT”

- Increase Usage Of Foreign Capital
  - Guide foreign investment to agriculture, high-technology, advanced manufacturing, energy conservation, new energy, a modern service industry, and the middle and west of the country
  - Bring in talent and technology, R&D centers
- Accelerate The Implementation Of The “Going Out” Strategy

# SUPPORTED INDUSTRIES

- “Key” Industries:
  - Equipment manufacturing, shipbuilding, automobiles, smelting and building materials, petrochemicals, light industry, textiles, packaging, and information technology





# SUPPORT PROVISIONS

- Support Not Quantified In National Plan
- Generalized Direction To Coordinate “Fiscal, Monetary, Investment, Industrial and Land” Policies
  - Establish “special funds”
  - Provide startup investment
  - Guide “social capital”
  - Encourage financial institutions to strengthen credit support
  - Offer preferential tax policies
  - Establish industrial standards favoring new industries
  - Provide infrastructure



# World Experience With Countervailing Duty Investigations Against China

# CVD INVESTIGATIONS (1)

- CVD Investigations And Procedures Are Similar To Antidumping (“AD”) Investigations
- Domestic Industry Must Show That It Is Materially Injured Or Threatened With Material Injury By Reason Of The Subsidized Imports
- Remedy Is The Imposition Of Duties To Offset The Subsidies Benefiting The Imported Goods

## CVD INVESTIGATIONS (2)

- Domestic Industry Files A Petition That Presents *Prima Facie* Evidence That The Government Of China Maintains Subsidy Programs
- Evidence May Include Relevant Laws And Regulations, Official Government Statements, News Articles, Financial Statements, And Other Information
- The Investigating Authority Sends Questionnaires To Both The Chinese Government And Major Exporters



# COMPLETED INVESTIGATIONS

- Other Investigating Authorities Have Determined That China Provides Countervailable Subsidies To Its Industries
  - United States: 26 CVD measures
  - Canada: 10 CVD measures
  - Australia: 3 CVD measures
  - European Union: 2 CVD measures





# U.S. CVD MEASURES (1)

	Product	Date of Publication	AD Duty (%)	CV Duty (%)
1.	Stainless Steel Sinks	March 2013	85.4	12.26
2.	Wind Towers	February 2013	70.6	28.3
3.	Silicone Photovoltaic Cells	December 2012	249.9	15.2
4.	High Pressure Steel Cylinders	June 2012	31.2	15.8
5.	Multilayered Wood Flooring	December 2011	58.9	1.5
6.	Aluminum Extrusions	May 2011	33.3	374.2
7.	Drill Pipe and Drill Collars	March 2011	429.9	18.2
8.	Potassium Phosphate Salts	July 2010	95.4	109.1
9.	Coated Paper Suitable for High-Quality Print Graphics	November 2010	135.8	19.5
10.	Seamless Carbon & Alloy Steel Standard, Line, & Pressure Pipe	November 2010	98.7	35.2
11.	Magnesia Carbon Bricks	September 2010	236.0	24.2
12.	Narrow Woven Ribbons	September 2010	247.6	1.6
13.	Steel Grating	July 2010	145.2	62.5

# U.S. CVD MEASURES (2)

	Product	Date of Publication	AD Duty (%)	CV Duty (%)
14.	Concrete Steel Wire Strand	June/July 2010	193.5	27.6
15.	Oil Country Tubular Goods	May 2010 (AD) January 2010 (CV)	99.1	13.4
16.	Kitchen Appliance Shelving	September 2009	95.9	13.3
17.	Tow Behind Lawn Groomer	August 2009	386.3	13.3
18.	Citric Acid & Certain Citrates	May 2009	156.9	8.1
19.	Circular Welded Carbon Quality Steel Line Pipe	May 2009 (AD) January 2009 (CV)	101.1	35.7
20.	Stainless Pressure Pipe	March 2009	55.2	1.5
21.	Sodium Nitrite	August 2008	190.7	169.0
22.	Raw Flexible Magnets	September 2008	185.3	109.9
23.	Lightweight Thermal Paper	November 2008	115.3	13.6
24.	Laminated Woven Sacks	August 2008	91.7	226.9
25.	Light-walled Rect. Pipe & Tube	August 2008	264.6	15.3
26.	Off-the-Road Tires	September 2008	210.5	5.6