



Trading with the NME: The Legacy of Judge Restani's GPX Decisions

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In GPX International Tire Corp. v. United States, Judge Restani noted that the decision of the U.S. Department of Commerce (“Commerce”) to apply the countervailing duty (“CVD”) statute to China — a nonmarket economy (“NME”) country — was a “sea change.” Judge Restani recognized Commerce’s broad discretion under the CVD statute, but she held that Commerce’s failure to address the potential for double counting of domestic

* Copyright © 2025 Jennifer M. Smith-Veluz. Partner, The Bristol Group PLLC. I originally prepared this as a paper for *Have Gavel, Will Travel: The Scope of Judge Jane A. Restani’s 40 Years of Service*, a symposium and special session of the U.S. Court of International Trade on October 25, 2023. I clerked for then-Chief Judge Jane A. Restani of the United States Court of International Trade from 2008–2010. Although Judge Restani issued the first *GPX International Tire Corp. v. United States* decisions during my clerkship, I did not do substantial work on that case. In the years following my clerkship, I became counsel for Titan Tire Corporation (“Titan”) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, which were two of the defendant-intervenors in the *GPX* cases and petitioners in the underlying countervailing duty investigation on Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China, in subsequent administrative reviews and in other trade remedy proceedings. I now serve as Titan’s lead trade remedies counsel. I would like to thank my partner Adam H. Gordon and current Judge Restani clerk Jesse Trujillo for their helpful comments. The opinions expressed in this paper are solely my own.

subsidies in its simultaneous application of CVDs with antidumping duties under the NME methodology was unreasonable. After the U.S. Court of Appeals for the Federal Circuit affirmed on other grounds, Congress quickly enacted a legislative fix, which was framed based on the concerns expressed in Judge Restani's decisions. Since then, CVDs have become a critical tool to counter unfair trade practices in China and other NME countries. Judge Restani's decisions remind us that Commerce has flexibility in applying the CVD statute to address new challenges, although Commerce's discretion is not unbounded — and sometimes Congress must step in to craft new solutions.

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INTRODUCTION

“State capitalism,”¹ “twenty-first-century mercantilism,”² “China, Inc.”³ — these are some of the many names that have been thrown around to describe the unique economic system of the People’s Republic of China (“China” or “the PRC”). U.S. trade law uses yet another name: “nonmarket economy” or “NME.”⁴ Regardless of what it is called, China’s economic system poses perhaps the greatest challenge that the modern international trading regime has ever faced.⁵

China’s economy has significant private enterprise activity but is controlled and directed by the Chinese government and the Chinese Communist Party through various mechanisms,⁶ including industrial

¹ E.g., U.S.-CHINA ECON. & SEC. REV. COMM’N, 117TH CONG., 2022 REP. TO CONG. 8 (Comm. Print 2022), https://www.uscc.gov/sites/default/files/2022-11/2022_Annual_Report_to_Congress.pdf [<https://perma.cc/L3DM-TQBK>]; Chen Gang, *China’s Solar PV Manufacturing and Subsidies from the Perspective of State Capitalism*, 33 COPENHAGEN J. ASIAN STUD. 90, 92 (2015).

² ROBERT LIGHTHIZER, NO TRADE IS FREE 124 (2023).

³ Mark Wu, *The “China, Inc.” Challenge to Global Trade Governance*, 57 HARV. INT’L L.J. 261, 264 (2016).

⁴ See Memorandum on China’s Status as a Non-Market Economy from Leah Wils-Owens, Off. of Pol’y, Enf’t & Compliance, U.S. Dep’t of Com., to Gary Taverman, Deputy Assistant Sec’y for Antidumping & Countervailing Duty Operations, U.S. Dep’t of Com. 4 (Oct. 26, 2017), <https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf> [<https://perma.cc/9SNY-E5FY>] (citing section 771(18)(A) of the Tariff Act of 1930 (codified at 19 U.S.C. § 1677(18)(A))).

⁵ See Wu, *supra* note 3, at 261; Jörn Quitzau, *China: A Challenge for the Western Economic and Political System*, AM.-GERMAN INST. (May 20, 2019), <https://americangerman.institute/2019/05/china-a-challenge-for-the-western-economic-and-political-system/> [<https://perma.cc/8MSK-727X>]. In a recent book, Robert Lighthizer, the U.S. Trade Representative (“USTR”) during the first Trump Administration, asserted that China is “the largest geopolitical threat the United States has faced,” and “is an adversary not only for America but also to the liberal democratic system of governance and economics as a whole.” LIGHTHIZER, *supra* note 2, at 313. His successor, USTR Katherine Tai, acknowledged that America faces “very large challenges” in its economic relationship with China. David Lawder & Andrea Shalal, *U.S. Trade Chief Tai Says U.S. Faces “Very Large Challenges” on China*, REUTERS (May 27, 2021, 12:31 PM), <https://www.reuters.com/world/us/us-trade-chief-tai-says-us-faces-very-large-challenges-china-2021-05-27/>.

⁶ See U.S. TRADE REPRESENTATIVE, 2022 REPORT TO CONGRESS ON CHINA’S WTO COMPLIANCE 14 (2023), <https://ustr.gov/sites/default/files/2023-02/2022%20USTR%20Report%20to%20Congress%20on%20China's%20WTO%20Compliance%20-%20Final.pdf> [hereinafter U.S. TRADE REPRESENTATIVE, CHINA’S WTO COMPLIANCE]; Wu, *supra* note 3, at 264-65, 270.

policy plans and massive subsidies.⁷ Since China joined the World Trade Organization (“WTO”) in 2001, subsidies have annually financed over 20% of China’s manufacturing capacity expansion.⁸

In *GPX International Tire Corp. v. United States*, then-Chief Judge Jane A. Restani of the U.S. Court of International Trade (“CIT”) grappled with issues of how the U.S. Government can respond to the challenge posed by Chinese government subsidies.⁹ Specifically, Judge Restani addressed the interplay of two fundamental tools for combatting unfair trade: the antidumping duty (“AD”) and countervailing duty (“CVD”) statutes.¹⁰

The U.S. Department of Commerce (“Commerce”) imposes ADs on imports that are “sold in the United States at less than [their] fair value.”¹¹ The determination of less than fair value requires a comparison of the normal value of the product with price for which it is sold in the United States.¹² For countries whose economies operate on market principles, normal value is typically the home market price for the product, although it can alternatively be based on the price in a third

⁷ See, e.g., LIGHTHIZER, *supra* note 2, at 119-21; Liza Tobin, *China’s Brute Force Economics: Waking Up from the Dream of a Level Playing Field*, 6 TEX. NAT’L SEC. REV., 81, 84 (Winter 2022–2023); Usha Haley & George Haley, *The Hidden Advantage (and Disadvantage) of Chinese Subsidies*, GLOBALIST (Mar. 6, 2014), <https://www.theglobalist.com/hidden-advantage-disadvantage-chinese-subsidies/> [<https://perma.cc/LFD9-6H28>].

⁸ *Subsidies: USA, China & India*, DEZERV (May 29, 2022), <https://www.dezerv.in/newsletter/subsidies-usa-china-india-29-may-2022/>.

⁹ See *GPX Int’l Tire Corp. v. United States (GPX I)*, 645 F. Supp. 2d 1231, 1236-43 (Ct. Int’l Trade 2009); *GPX Int’l Tire Corp. v. United States (GPX II)*, 715 F. Supp. 2d 1337, 1344-47 (Ct. Int’l Trade 2010). This Article focuses on Judge Restani’s decisions in *GPX I* and *GPX II* regarding the applicability of the countervailing duty (“CVD”) law to non-market economy (“NME”) countries and the dual imposition of antidumping duties (“ADs”) and CVDs in NME countries, as well as the decision of the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) on appeal, *GPX Int’l Tire Corp. v. United States (GPX III)*, 666 F.3d 732 (Fed. Cir. 2011). There were many other issues in *GPX I*, *GPX II*, and a long line of subsequent *GPX* cases that are not discussed in this Article.

¹⁰ See *GPX I*, 645 F. Supp. 2d at 1236-43; *GPX II*, 715 F. Supp. 2d at 1344-47.

¹¹ 19 U.S.C. § 1673(1). The U.S. International Trade Commission (“ITC”) must also determine that an industry in the United States is “materially injured” or “threatened with material injury,” or “the establishment of an industry in the United States is materially retarded,” by reason of such imports before an AD can be imposed. *Id.* § 1673(2).

¹² See *id.* §§ 1673, 1677(35)(A), 1677b(a), 1677f-1(d).

country or constructed from the cost of production plus packing costs; selling, general, and administrative expenses; and profits.¹³

In the Trade Act of 1974, Congress amended the AD statute to add a special methodology for determining normal value for NME countries.¹⁴ The AD statute defines an NME country as “any foreign country that [Commerce] determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.”¹⁵ Under the NME AD methodology, Commerce usually disregards the prices and costs in NME countries and instead calculates normal value using costs from a surrogate market economy country.¹⁶

Commerce imposes CVDs to offset countervailable subsidies provided by a foreign government to imported goods.¹⁷ Under the current CVD statute, a subsidy is “countervailable” where a government or “public entity” provides a “financial contribution,” which is contingent upon export performance or the use of domestic goods or de jure or de facto specific, and “a benefit is thereby conferred.”¹⁸ The basic economics of the effects of subsidies and CVDs on international trade are reviewed in Part I, *infra*.

The historical application of the CVD statute is reviewed in Part II. As detailed below, in 1980s cases involving Soviet-bloc countries, Commerce determined that CVDs could not be imposed on goods from

¹³ See *id.* § 1677b(a)–(b), (e).

¹⁴ See Trade Act of 1974, Pub. L. No. 93-618, § 321(d), 88 Stat. 1978, 2047 (1975).

¹⁵ 19 U.S.C. § 1677(18)(A).

¹⁶ See *id.* § 1677b(c); *GPXI*, 645 F. Supp. 2d 1231, 1238 n.5 (Ct. Int’l Trade 2009).

¹⁷ 19 U.S.C. § 1671(a)(1). For imports from countries that are subject to the World Trade Organization (“WTO”) Agreement on Subsidies and Countervailing Measures, the ITC must also determine that an industry in the United States is “materially injured” or “threatened with material injury,” or “the establishment of an industry in the United States is materially retarded,” by reason of such imports before a CVD can be imposed. *Id.* § 1671(a)–(b).

¹⁸ *Id.* § 1677(5)(A)–(B), 1677(5A).

NMEs.¹⁹ Although the CIT disagreed,²⁰ the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) upheld Commerce’s determination.²¹

Starting in 2007, however, Commerce decided to apply the CVD statute to China, even though China is an NME.²² Commerce’s decision is summarized in Part III.

The *GPX* cases, discussed in Part IV, involved the first judicial challenge to Commerce’s decision to apply the CVD statute to China. In *GPX I*, Judge Restani noted that Commerce’s decision was “a sea change.”²³ Judge Restani held that the statute did not preclude Commerce from imposing CVDs on goods from NME countries, recognizing Commerce’s broad discretion under the CVD law.²⁴ Yet she also held that Commerce’s failure to address the potential for double-counting of subsidies in its simultaneous application of CVDs with ADs under the NME methodology was unreasonable.²⁵ Judge Restani cautioned that Commerce might need “improved methodologies or new statutory tools” to address this problem.²⁶

The Federal Circuit affirmed *GPX*, “but on a different ground.”²⁷ The Federal Circuit more rigidly concluded that Congress ratified the earlier administrative and judicial interpretations that the CVD law did not apply to NME countries.²⁸

¹⁹ See *Potassium Chloride from the Soviet Union; Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition*, 49 Fed. Reg. 23,428 (June 6, 1984); *Potassium Chloride from the German Democratic Republic; Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition*, 49 Fed. Reg. 23,428 (June 6, 1984); *Carbon Steel Wire Rod from Czechoslovakia; Final Negative Countervailing Duty Determination*, 49 Fed. Reg. 19,370 (May 7, 1984); *Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination*, 49 Fed. Reg. 19,374 (May 7, 1984) (final neg. CVD determination).

²⁰ See *Cont’l Steel Corp. v. United States*, 614 F. Supp. 548 (Ct. Int’l Trade 1985), *rev’d sub nom. Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1309 (Fed. Cir. 1986).

²¹ See *Georgetown Steel*, 801 F.2d at 1318.

²² See *GPX I*, 645 F. Supp. 2d 1231, 1237 (Ct. Int’l Trade 2009).

²³ *Id.*

²⁴ See *id.* at 1239.

²⁵ See *id.* at 1239-43.

²⁶ *Id.* at 1243.

²⁷ *GPX III*, 666 F.3d 732, 734 (Fed. Cir. 2011).

²⁸ See *id.*

Judge Restani's decision has had the more enduring legacy; indeed, it has helped shape modern AD/CVD practice. After the Federal Circuit's decision, Congress quickly enacted a legislative fix, which addressed the double-counting concerns expressed in Judge Restani's decisions.²⁹ The congressional floor statements, summarized in Part V, confirm that the Federal Circuit's interpretation was wrong.³⁰ Judge Restani's recognition of Commerce's broad authority under the CVD law was correct.³¹

Since then, CVDs have become a critical tool to counter unfair trade practices in China (and other NME countries).³² Part VI explores the magnitude of subsidies in China today. The need to counter them is as important as ever. Other options for countering Chinese subsidies, and their limitations, are evaluated in Part VII. Part VIII details potential new methodologies and statutory tools that may be incorporated into the CVD law to address the challenges posed by subsidies in China.

I. ECONOMIC BACKGROUND

The global trading system is fundamentally premised on economist David Ricardo's theory of comparative advantage,³³ which explains that

²⁹ See Act of Mar. 13, 2012, Pub. L. No. 112-99, 126 Stat. 265 (codified at 19 U.S.C. §§ 1671(f), 1677f-1(f)); *Actions: H.R. 4105*, CONGRESS, <https://www.congress.gov/bill/112th-congress/house-bill/4105/actions> (last visited Feb. 6, 2025).

³⁰ See 158 CONG. REC. H1166–68, H1170, H1173 (daily ed. Mar. 6, 2012) (statements of Reps. Camp, Levin, Rohrabacher, Critz, Slaughter, and Dingell).

³¹ See *id.* at H1167–73 (statements of Reps. Camp, Levin, Neal, Blumenauer, Boustany, Pascrell, Ellmers, Michaud, Critz, Slaughter, Jackson Lee, Dingell, Gene Green, and Turner).

³² See U.S.-CHINA ECON. & SEC. REV. COMM'N, 117TH CONG., 2022 REP. TO CONG. 8 (Comm. Print 2022), https://www.uscc.gov/sites/default/files/2022-11/2022_Annual_Report_to_Congress.pdf [<https://perma.cc/L3DM-TQBK>]; LIGHTHIZER, *supra* note 2, at 313. This Article focuses on China because of the legal history of the issue and China's significance in international trade. Eleven other countries are currently designated by Commerce as NME countries: Armenia, Azerbaijan, Belarus, Georgia, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam. *Countries Currently Designated by Commerce as Non-Market Economy Countries*, DEP'T OF COM., <https://www.trade.gov/nme-countries-list> (last visited Feb. 7, 2025) [<https://perma.cc/F2XN-FBBG>].

³³ See ROBERT D. ATKINSON, INFO. TECH. & INNOVATION FOUND., ENOUGH IS ENOUGH: CONFRONTING CHINESE INNOVATION MERCANTILISM 16-17 (2012), <https://www2.itif.org/2012-enough-enough-chinese-mercantilism.pdf> [<https://perma.cc/T9XF-VHF8>]; Alan O. Sykes,

countries will tend to specialize in the production of goods that they can produce relatively more efficiently (at a lower opportunity cost) compared to other countries and then trade them in exchange for goods in which they lack comparative advantage.³⁴ In such circumstances, “trade produces overall welfare gains in the form of increased total output and product variety.”³⁵ Notably, this holds true even when one country has an *absolute* advantage — meaning that the costs of production for all products are lower in that country than another country.³⁶

Government subsidies contravene the concept of comparative advantage. Even an ardent supporter of free trade must admit that “[i]f a foreign government subsidises firms within its jurisdiction, the conditions on which the classic case for free trade is grounded — namely, the specialization of producers according to comparative advantage — do not apply.”³⁷ Subsidies also distort the market and reduce global welfare if they cause inefficient producers to displace more efficient producers or lower the prices of goods below their marginal cost of production.³⁸

CVDs offset the pernicious effects of subsidization.³⁹ Economists acknowledge that CVDs may benefit global welfare by discouraging subsidization.⁴⁰ Yet they usually hasten to add that subsidies are beneficial to the extent that they result in lower import prices for consumers, subsidizing countries experience efficiency losses, and CVDs cause efficiency losses in the country imposing them.⁴¹

Comparative Advantage and the Normative Economics of International Trade Policy, 1 J. INT'L ECON. L. 49, 49-53 (1998).

³⁴ See Sykes, *supra* note 33, at 49-53; Tobin, *supra* note 7, at 88.

³⁵ Tobin, *supra* note 7, at 88.

³⁶ See Sykes, *supra* note 33, at 50-53 (providing a detailed illustration of the classic two-country, two-good model that economists use to explain comparative advantage).

³⁷ Donald J. Boudreaux, *Do Subsidies Justify Retaliatory Protectionism?*, 31 ECON. AFFS. 4, 4 (2011).

³⁸ See Sykes, *supra* note 33, at 80-81.

³⁹ See S. COMM. ON FIN., TRADE AGREEMENTS ACT OF 1979, S. REP. NO. 96-249, at 37 (1979).

⁴⁰ See SCOTT LINCICOME, COUNTERVAILING CALAMITY: HOW TO STOP THE GLOBAL SUBSIDIES RACE 4-5 (2012), <https://www.realclearmarkets.com/docs/2012/10/PA710.pdf> [<https://perma.cc/7A2P-R958>]; Boudreaux, *supra* note 37, at 5; Sykes, *supra* note 33, at 80-81.

⁴¹ See Boudreaux, *supra* note 37, at 4-5; Sykes, *supra* note 33, at 80-81.

II. HISTORY OF THE CVD LAW

A. Early History

U.S. CVD law dates back to 1890, when Congress authorized CVDs on sugar imports.⁴² In 1897, Congress enacted the first generally applicable CVD law.⁴³

Early applications of the CVD law included circumstances in which governments exercised significant economic control.⁴⁴ In 1903, the U.S. Supreme Court upheld the imposition of CVDs on sugar from Russia, where the Russian government heavily regulated the domestic price, production, and sale of sugar.⁴⁵ In the 1930s, CVDs were imposed on numerous products from Germany, where the Nazi government “controlled th[e] economy to a very large extent.”⁴⁶

B. Commerce’s Initial Determinations that CVDs Cannot Apply to NMEs

Nevertheless, Commerce did not directly confront the issue of whether to impose CVDs on goods from NME countries until November 23, 1983⁴⁷ — exactly one week after Judge Restani was appointed.⁴⁸ On that date, domestic producers of carbon steel wire rod petitioned Commerce to investigate and impose CVDs on such wire rod imported from Czechoslovakia and Poland.⁴⁹

⁴² See Carbon Steel Wire Rod from Czechoslovakia; Final Negative Countervailing Duty Determination, 49 Fed. Reg. 19,370, 19,373 (May 7, 1984).

⁴³ *Id.*

⁴⁴ See *Cont’l Steel Corp. v. United States*, 614 F. Supp. 548, 555 (Ct. Int’l Trade 1985), *rev’d sub nom. Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986).

⁴⁵ See *Downs v. United States*, 187 U.S. 496 (1903).

⁴⁶ *Cont’l Steel*, 614 F. Supp. at 555.

⁴⁷ See *GPX III*, 666 F.3d 732, 735 (Fed. Cir. 2011).

⁴⁸ See *Senior Judge Jane A. Restani*, CT. OF INT’L TRADE, <https://www.cit.uscourts.gov/content/senior-judge-jane-restani> (last visited Feb. 7, 2025) [<https://perma.cc/S67C-TEQ7>].

⁴⁹ See *Georgetown Steel*, 801 F.2d at 1310; Carbon Steel Wire Rod from Czechoslovakia; Final Negative Countervailing Duty Determination, 49 Fed. Reg. 19,370, 19,370 (May 7, 1984); Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 Fed. Reg. 19,374, 19,375 (May 7, 1984).

In those investigations, Commerce initially determined that NME countries were not exempt from the applicable CVD statute, which provided that a CVD shall be assessed:

[W]henever *any* country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any *bounty or grant* upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government.⁵⁰

Commerce, however, found no bounties or grants were bestowed because Czechoslovakia and Poland were NMEs.⁵¹ Commerce determined that bounties or grants “cannot be found in nonmarket economies” under the CVD statute.⁵² Commerce cited the lack of private ownership, price and cost controls, and overall central control as “essential characteristics” of NMEs.⁵³ Commerce reasoned that:

In a market economy, scarce resources are channeled to their most profitable and efficient uses by the market forces of supply and demand. We believe a subsidy (or bounty or grant) is definitionally any action that distorts or subverts the market process and results in a misallocation of resources, encouraging inefficient production and lessening world wealth.

In NME’s, resources are not allocated by a market. With varying degrees of control, allocation is achieved by central planning. Without a market, it is obviously meaningless to look for a misallocation of resources caused by subsidies. There is no market process to distort to subvert. . . .

⁵⁰ Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19,371 (quoting section 303 of the Tariff Act of 1930 (codified as amended at 19 U.S.C. § 1303)); *accord* Carbon Steel Wire Rod from Poland, 49 Fed. Reg. at 19,375.

⁵¹ Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19,370-74; Carbon Steel Wire Rod from Poland, 49 Fed. Reg. at 19,374-78.

⁵² Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19,370; Carbon Steel Wire Rod from Poland, 49 Fed. Reg. at 19,374.

⁵³ Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19,371-73; Carbon Steel Wire Rod from Poland, 49 Fed. Reg. at 19,374-77.

It is this fundamental distinction — that in an NME system the government does not interfere in the market process, but supplants it — that has led us to conclude that subsidies have no meaning outside the context of a market economy.⁵⁴

Commerce concluded that under such circumstances, it “could not disaggregate government actions in such a way as to identify the exceptional action that is a subsidy.”⁵⁵

Shortly thereafter, Commerce dismissed CVD investigations on potassium chloride (potash) from two other NMEs — the Soviet Union and the German Democratic Republic (East Germany) — based on Commerce’s determination in the wire rod investigations that “as a matter of law, bounties or grants . . . cannot be found in” NMEs.⁵⁶

C. *The CIT Appeal: Continental Steel*

The domestic producers in both sets of investigations appealed to the CIT, which consolidated the cases as *Continental Steel Corp. v. United States*.⁵⁷ CIT Judge Watson rejected Commerce’s position as illogical and inconsistent with the plain meaning and purpose, judicial interpretations, and past administration of the CVD law.⁵⁸ He held that the “countervailing duty law makes no distinctions based on the form of any country’s economy” because it was “written with great care to apply to all countries, using words of the broadest possible significance to describe the conduct whose effect it seeks to neutralize.”⁵⁹ He stated

⁵⁴ Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19,371; Carbon Steel Wire Rod from Poland, 49 Fed. Reg. at 19,375.

⁵⁵ Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19,372; Carbon Steel Wire Rod from Poland, 49 Fed. Reg. at 19,376.

⁵⁶ Potassium Chloride from the Soviet Union; Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition, 49 Fed. Reg. 23,428, 23,428 (June 6, 1984); Potassium Chloride from the German Democratic Republic; Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition, 49 Fed. Reg. 23,428, 23,428-29 (June 6, 1984).

⁵⁷ See *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1310 (Fed. Cir. 1986).

⁵⁸ See *Cont’l Steel Corp. v. United States*, 614 F. Supp. 548, 550-56 (Ct. Int’l Trade 1985).

⁵⁹ *Id.* at 550, 552.

that Commerce's determination improperly attempted to amend CVD law by adding "a major exception" for NME countries.⁶⁰

Judge Watson rejected the government's argument that Congress's amendment of the AD statute to include the NME methodology meant that "Congress wanted the antidumping law, and *not* the countervailing duty law, to be the instrument for dealing with merchandise from nonmarket economies."⁶¹ In Judge Watson's view, the amendment simply fixed a problem in determining "fair" value under AD law.⁶² Judge Watson opined that "[t]he language of the countervailing duty law, on the other hand, presented no such problem of application and the simplest implication of leaving it alone is that it needed no clarification to allow it to apply to all forms of economies."⁶³

D. *The Federal Circuit Appeal: Georgetown Steel*

On appeal, in *Georgetown Steel Corp. v. United States*, the Federal Circuit reversed Judge Watson's decision.⁶⁴

As an initial matter, the Federal Circuit instructed the CIT to dismiss the wire rod cases for lack of jurisdiction because the complaint was untimely filed.⁶⁵ The Federal Circuit only analyzed the potash cases on the merits.⁶⁶

Unlike Judge Watson, the Federal Circuit found that the language of the CVD statute did not clearly answer the question of its application to NME countries.⁶⁷ The Federal Circuit noted that the statute was "substantially unchanged" from the original 1897 statute, when "there were no nonmarket economies; Congress therefore had no occasion to address the issue."⁶⁸

The Federal Circuit discerned that the purpose of the CVD law was to protect against "unfair" competition, resulting from subsidies to foreign

⁶⁰ *Id.* at 552.

⁶¹ *Id.* at 555.

⁶² *See id.*

⁶³ *Id.*

⁶⁴ *See Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1309 (Fed. Cir. 1986).

⁶⁵ *See id.* at 1313, 1318.

⁶⁶ *See id.* at 1313.

⁶⁷ *Id.* at 1314.

⁶⁸ *Id.*

producers that gave them a competitive advantage they otherwise would not have.”⁶⁹ The Federal Circuit agreed with Commerce that such unfair competitive advantages “cannot exist” in NMEs, stating: “Even if one were to label these incentives as a ‘subsidy,’ in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves.”⁷⁰

The Federal Circuit also accepted the government’s argument that Congress’s amendment of the AD statute to include the NME methodology and failure to address NME countries in the CVD statute meant that Congress “has decided that the proper method for protecting the American market against selling by nonmarket economies at unreasonably low prices is through the antidumping law.”⁷¹ The court added: “If that remedy is inadequate to protect American industry from such foreign competition — a question we could not possibly answer — it is up to Congress to provide any additional remedies it deems appropriate.”⁷²

The Federal Circuit’s ultimate holding in *Georgetown Steel* is somewhat confusing. In one instance, the Federal Circuit stated:

Based upon the purpose of the countervailing duty law, the nature of nonmarket economies and the actions Congress has taken in other statutes that specifically address the question of exports from those economies, we conclude that the economic incentives and benefits that the Soviet Union and the German Democratic Republic have provided for the export of potash from those countries to the United States do not constitute bounties or grants under section 303 of the Tariff Act of 1930, as amended.⁷³

In another, the Federal Circuit stated that “[t]hose governments are not providing the exporters of potash to the United States with the kind of ‘bounty’ or ‘grant’ for which Congress in section 303 prescribed the

⁶⁹ *Id.* at 1315.

⁷⁰ *Id.*

⁷¹ *Id.* at 1316-18.

⁷² *Id.* at 1318.

⁷³ *Id.* at 1314.

imposition of countervailing duties.”⁷⁴ At the end of the decision, however, the Federal Circuit cited *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,⁷⁵ in concluding that Commerce’s determination that benefits provided by the governments of the Soviet Union and the German Democratic Republic were not bounties or grants was not unreasonable, contrary to law, or an abuse of discretion.⁷⁶

In *GPX I*, Judge Restani aptly noted that *Georgetown Steel* “is ambiguous” because “it is ‘not clear whether the Court of Appeals in interpreting the trade laws at issue in *Georgetown Steel* was deferring to a determination of Commerce based on ambiguity in the statute or whether the Court held that there was only one legally valid interpretation of the statute.’”⁷⁷

III. COMMERCE’S “SEA CHANGE”: THE *GEORGETOWN STEEL* MEMORANDUM

For more than two decades after the wire rod and potash investigations and *Georgetown Steel*, Commerce did not apply the CVD law to any NME countries.⁷⁸ In 2007, however, Commerce changed course and started applying the CVD law to China, even though Commerce continued to designate China as an NME country.⁷⁹

In *GPX I*, Judge Restani recognized that this was “a sea change.”⁸⁰ She succinctly summarized Commerce’s determination:

Commerce reasoned that the PRC had enacted significant and sustained economic reforms, which allowed the PRC’s economy to sufficiently advance beyond the Soviet-style command economy so that Commerce could now determine the transfer of a specific financial contribution and benefit from the government to a producer in China. Specifically, Commerce

⁷⁴ *Id.* at 1316.

⁷⁵ 467 U.S. 837, 842-45 (1984).

⁷⁶ *Georgetown Steel*, 801 F.2d at 1318.

⁷⁷ *GPX I*, 645 F. Supp. 2d 1231, 1237 (Ct. Int’l Trade 2009) (quoting *GPX Int’l Tire Corp. v. United States*, 587 F. Supp. 2d 1278, 1289-90 (Ct. Int’l Trade 2008) (denying plaintiffs’ motion for temporary restraining order and preliminary injunction)).

⁷⁸ *See GPX I*, 645 F. Supp. 2d at 1236.

⁷⁹ *See id.* at 1237.

⁸⁰ *Id.*

determined that wages between employers and employees largely appeared to be renegotiated; foreign investment, though directed, was largely permitted; many state-owned enterprises had been privatized; and China's command economy had receded and the majority of prices liberalized. Commerce noted that the PRC's present-day economy "features both a certain degree of private initiative as well as significant government intervention, combining market processes with continued state guidance." Despite these findings, Commerce continues to treat the PRC as an NME country due to remaining government constraints, such as the slow process of liberalizing the renminbi to allow development of a normal foreign exchange market, the continuing restrictions on foreign investment, the slow pace of reforms in the banking sector, and the limitations on private ownership.⁸¹

Commerce first announced the change in the CVD investigation of coated free sheet paper from China, in a memorandum regarding "Whether the Analytical Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy."⁸² Commerce's determination in that investigation was not appealed.

IV. GPX

The issue of Commerce's application of the CVD law to China first reached the courts in 2008, when importer GPX International Tire Corporation and its wholly owned Chinese manufacturer Hebei Starbright Tire Co., Ltd. appealed Commerce's AD and CVD orders on certain new pneumatic off-the-road tires from China.⁸³

⁸¹ *Id.* (internal citations omitted).

⁸² Memorandum on Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China — Whether the Analytical Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy from Shauna Lee-Alaia & Lawrence Norton, Off. of Pol'y, Imp. Admin., to David M. Spooner, Assistant Sec'y for Imp. Admin. 2 (Mar. 29, 2007), <https://enforcement.trade.gov/download/prc-cfsp/CFS%20China.Georgetown%20applicability.pdf> [<https://perma.cc/A9Y4-TTUT>].

⁸³ *See GPX I*, 645 F. Supp. 2d at 1234-36.

A. Judge Restani's Decisions

In *GPX I*, Judge Restani analyzed the issue under the framework of *National Cable & Telecommunications Ass'n v. Brand X Internet Services*.⁸⁴ Under *Brand X*, “[b]efore a judicial construction of a statute, whether contained in a precedent or not, may trump an agency’s, the court must hold that the statute unambiguously requires the court’s construction.”⁸⁵ Judge Restani noted that “*Georgetown Steel* did not hold unambiguously that the CVD law may not be applied to the imports from an NME.”⁸⁶

Next, Judge Restani analyzed the relevant statutes because Commerce’s new interpretation was entitled to *Chevron* deference if the statutes were ambiguous and Commerce’s new interpretation was reasonable, despite its former contrary interpretation.⁸⁷ The CVD statute references countervailable subsidies provided by “the government of a country or any public entity within the territory of a country,” and broadly defines the term “country.”⁸⁸ Judge Restani observed that “[n]either of these provisions limits the type of country to which Commerce is permitted to apply the CVD law, nor does either provision specifically reference NME countries.”⁸⁹ She further observed that the NME AD statute “makes no reference to the imposition of CVDs on the goods of an NME country.”⁹⁰ Based on these provisions, Judge Restani “[could]not say from the statutory language alone that Commerce does not have the authority to impose CVDs on products from an NME-designated country.”⁹¹

Judge Restani also found that the legislative history of the NME AD and CVD statutes since *Georgetown Steel*, including the Omnibus Trade and Competitiveness Act of 1988⁹² and 1994 Uruguay Round Agreements

⁸⁴ *Id.* at 1238 (citing *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005)).

⁸⁵ *Nat’l Cable & Telecomms. Ass’n*, 545 U.S. at 985.

⁸⁶ *GPX I*, 645 F. Supp. 2d at 1238.

⁸⁷ *See id.*

⁸⁸ *Id.* (citing 19 U.S.C. §§ 1671(a)(1), 1677(3)).

⁸⁹ *Id.* at 1238.

⁹⁰ *Id.* (citing 19 U.S.C. § 1677b).

⁹¹ *Id.* at 1239.

⁹² Pub. L. No. 100-418, 102 Stat. 1107 (1988).

Act,⁹³ “indicates that the AD and CVD statutes do not account for Commerce’s new hybrid treatment.”⁹⁴ She interpreted Congress’s silence regarding the application of the CVD law to NME countries as “just that — silence,”⁹⁵ which could simply “indicate that Congress never anticipated that the CVD law would be applied while a country remained designated as an NME country” based on Commerce’s past practice.⁹⁶

Acknowledging that Commerce “has been granted broad discretion in determining the existence of a subsidy under the CVD law,”⁹⁷ Judge Restani recognized that “Commerce may have the authority to apply the CVD law to products of an NME-designated country.”⁹⁸

Yet her analysis did not end there. Instead, Judge Restani found that “the CVD and NME AD statutes are unclear as to how Commerce is to account for the overlap between the statutes when imposing both CVD and AD duties on goods from an NME country.”⁹⁹ She reiterated that under *Georgetown Steel*, Commerce reasonably could “do all of its remedying through the NME AD statute” and choose not to impose CVDs on NME countries.¹⁰⁰ She also recognized that dual imposition of ADs and CVDs in NME countries had a high potential for “double counting” or “double remedies” because under the NME AD methodology, the AD margin is calculated by comparing the original subsidized export price with a presumptively subsidy-free normal value based on surrogate country data, rather than the actual price of the good in China.¹⁰¹ The potential double-counting problem pertains to *domestic* subsidies; the statute requires an offset for *export* subsidies, which are

⁹³ Pub. L. No. 103-465, 108 Stat. 4809 (1994).

⁹⁴ *GPXI*, 645 F. Supp. 2d at 1238.

⁹⁵ *Id.* at 1239 (quoting *Groff v. United States*, 493 F.3d 1343, 1354 (Fed. Cir. 2007)).

⁹⁶ *GPXI*, 645 F. Supp. 2d at 1239.

⁹⁷ *Id.* (citing *Magnolia Metallurgy, Inc. v. United States*, 508 F.3d 1349, 1355 (Fed. Cir. 2007), and *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1318 (Fed. Cir. 1986)).

⁹⁸ *GPXI*, 645 F. Supp. 2d at 1240.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 1239-43.

¹⁰¹ *Id.* at 1241-42.

assumed to result in lower export prices because they create an incentive for export sales over domestic sales.¹⁰²

In Judge Restani's view, the NME AD margin "in theory also captures the competitive advantage that subsidies may provide" because the subsidy-free normal value based on surrogate data is presumably higher than a subsidized normal value, "while the U.S. price presumably reflects in some way the price-lowering benefits of the subsidies."¹⁰³ The NME AD margin is therefore "greater than it would be if subsidies were reflected on both sides of the comparison."¹⁰⁴

Judge Restani concluded that Commerce's interpretation and resulting methodologies were unreasonable because Commerce did not account for the high potential for double-counting.¹⁰⁵ She found that Commerce's decision to place the burden on the respondent to prove such double-counting was improper, as "the exact effect of subsidies on price is difficult to measure" and is not reflected in CVD calculations.¹⁰⁶ Judge Restani instructed that if "it is too difficult for Commerce to determine whether, and to what degree double counting is occurring, Commerce should refrain from imposing CVDs on NME goods until it is prepared to address this problem through improved methodologies or new statutory tools."¹⁰⁷

On remand, Commerce decided to continue to impose both ADs and CVDs but merely deducted the CVD as an offset from the NME AD margin.¹⁰⁸ As a result, the combined CVD rate and NME AD cash deposit rate equaled the unaltered NME AD margin.¹⁰⁹ In *GPX II*, Judge Restani rejected Commerce's decision as unreasonable.¹¹⁰ She reasoned that Commerce's approach would force foreign parties to participate in "essentially useless" CVD investigations, and it did not comply with the

¹⁰² See *id.* at 1240-43, 1242 n.9.

¹⁰³ *GPX II*, 715 F. Supp. 2d 1337, 1343-44 (Ct. Int'l Trade 2010).

¹⁰⁴ *Id.* at 1345.

¹⁰⁵ See *GPX I*, 645 F. Supp. 2d at 1240-43.

¹⁰⁶ *Id.* at 1243.

¹⁰⁷ *Id.*

¹⁰⁸ See *GPX II*, 715 F. Supp. 2d at 1343-45.

¹⁰⁹ See *id.* at 1345.

¹¹⁰ See *id.*

statute because the offset was not one of the specifically enumerated permissible adjustments.¹¹¹

Commerce believed that its only options other than this offset were either to not apply CVD law or to apply the market economy AD methodology.¹¹² Judge Restani construed Commerce's belief "as a tacit admission that, at this time, it is too difficult for Commerce to determine, using improved methodologies, and in the absence of new statutory tools, whether and to what degree double counting is occurring."¹¹³ As a result, she concluded that the only remaining option was for Commerce not to apply the CVD law to the goods in that case.¹¹⁴

B. *The Federal Circuit's Decision*

On appeal, in December 2011, the Federal Circuit affirmed, "but on a different ground."¹¹⁵ The Federal Circuit found that "when amending and reenacting countervailing duty law in 1988 and 1994, Congress legislatively ratified earlier consistent administrative and judicial interpretations that government payments cannot be characterized as 'subsidies' in a non-market economy context, and thus that countervailing duty law does not apply to NME countries."¹¹⁶ The Federal Circuit thus more rigidly interpreted the statute as broadly "barring countervailing duties in the NME context."¹¹⁷ Echoing its conclusion in *Georgetown Steel*, the Federal Circuit stated that "if Commerce believes that the law should be changed, the appropriate approach is to seek legislative change."¹¹⁸

¹¹¹ *Id.* (citing 19 U.S.C. § 1677a(c)-(d)).

¹¹² *See GPX II*, 715 F. Supp. 2d at 1344.

¹¹³ *Id.* at 1346.

¹¹⁴ *See id.* at 1341-42, 1346. On a second remand, Commerce did not impose CVDs under protest. *See GPX III*, 666 F.3d 732, 737 (Fed. Cir. 2011). Judge Restani sustained Commerce's second remand results. *See id.* (citing *GPX Int'l Tire Corp. v. United States*, 34 Ct. Int'l Trade 1307, 1308 (2010)).

¹¹⁵ *GPX III*, 666 F.3d at 734.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 739.

¹¹⁸ *Id.* at 745 (citing *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1318 (Fed. Cir. 1986)).

V. CONGRESS'S QUICK FIX

Congress swiftly enacted such legislative change. On February 29, 2012, a bill was introduced in the U.S. House of Representatives.¹¹⁹ Just one week later, on March 6, 2012, the House overwhelmingly passed the bill, by a vote of 370–39.¹²⁰ The next day, the Senate unanimously passed the bill.¹²¹ President Obama signed the bill into law on March 13, 2012.¹²²

The law amended the CVD statute to specify that CVDs “shall be imposed” on merchandise imported from an NME country, unless Commerce “is unable to identify and measure subsidies provided by the government of the nonmarket economy country or a public entity within the territory of the nonmarket economy country because the economy of that country is essentially comprised of a single entity.”¹²³ The law also amended the AD statute by requiring that if: (1) Commerce determines an AD under the NME normal value methodology, (2) a countervailable subsidy (other than an export subsidy) “has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period,” and (3) Commerce “can reasonably estimate the extent to which the countervailable subsidy . . . , in combination with the use of” the NME normal value methodology, “has increased the weighted average dumping margin,” then Commerce must reduce the AD by the amount of the estimated increase in the weighted average dumping margin — up to the portion of the CVD rate attributable to the subsidy.¹²⁴

Every Member of Congress who spoke on the floor expressed support for the bill.¹²⁵ Several sharply criticized the Federal Circuit’s decision as

¹¹⁹ *Actions: H.R. 4105*, supra note 29.

¹²⁰ *See id.*

¹²¹ *See id.*

¹²² *See id.*

¹²³ Act of Mar. 13, 2012, Pub. L. No. 112-99, § 1(a), 126 Stat. 265, 265. This amended provision applied to all CVD proceedings initiated since November 20, 2006, and any related court proceedings — including the *GPX* litigation. *See id.* § 1(b). Judge Restani and the Federal Circuit upheld the retroactive application of the new law. *See GPX Int’l Tire Corp. v. United States*, 893 F. Supp. 2d 1296, 1309-18 (Ct. Int’l Trade 2013), *aff’d*, 780 F.3d 1136 (Fed. Cir. 2015).

¹²⁴ Act of Mar. 13, 2012 § 2(a).

¹²⁵ *See* 158 CONG. REC. H1166, H1167–73 (daily ed. Mar. 6, 2012).

“erroneous,”¹²⁶ “flawed,”¹²⁷ “wrong,”¹²⁸ and “faulty.”¹²⁹ Most reaffirmed that Commerce already had the authority to apply CVDs to China under the existing law.¹³⁰

Representative Jackson Lee contrasted the CIT and Federal Circuit decisions in *GPX*, stating:

¹²⁶ *Id.* at H1167 (statement of Rep. Camp).

¹²⁷ *Id.* at H1167 (statement of Rep. Levin); *id.* at H1170 (statement of Rep. Critz); *id.* at H1173 (statement of Rep. Dingell).

¹²⁸ *Id.* at H1167 (statement of Rep. Levin); *accord id.* at H1170 (statement of Rep. Slaughter).

¹²⁹ *Id.* at H1168 (statement of Rep. Rohrabacher).

¹³⁰ *Id.* at H1167 (statement of Rep. Camp) (“This legislation reaffirms that our antitrust laws, or countervailing duty laws, apply to subsidies from China and other nonmarket countries”); *id.* (statement of Rep. Levin) (“This bill restores a key instrument for our Nation to hold China and other nations accountable. . . . Commerce has always had the authority to apply countervailing duties to nonmarket economies such as China”); *id.* at H1168 (statement of Rep. Neal) (stating that the legislation “confirms that the Commerce Department can continue to apply countervailing duties on subsidized imports from countries with nonmarket economies such as China and Vietnam”); *id.* (statement of Rep. Blumenauer) (advocating passage of the bill “so that we can have this tool back in our tool kit”); *id.* (statement of Rep. Boustany) (“This bill restores Commerce’s ability to protect American jobs and companies from unfair, WTO-inconsistent . . . trade practices perpetrated by nonmarket economies, mainly China and Vietnam.”); *id.* at H1169 (statement of Rep. Pascrell) (“This legislation will once again allow the application of our countervailing duty laws and the enforcement of existing orders to nonmarket economies like China.”); *id.* (statement of Rep. Ellmers) (“H.R. 4105 will ensure that the Department of Commerce can continue to apply countervailing duty and anti-subsidy laws to nonmarket economies that are violating current law.”); *id.* at H1170 (statement of Rep. Michaud) (“H.R. 4105 will ensure that countervailing duties can continue to be applied to illegally subsidized goods from all countries, including China.”); *id.* (statement of Rep. Critz) (“We must take action today . . . to overturn a flawed court ruling and to ensure that the Department of Commerce can continue to fight unfair subsidies that hurt American manufacturers and American workers.”); *id.* (statement of Rep. Slaughter) (“[T]he Federal Court of Appeals wrongly determined that the Commerce Department does not have the authority to respond to illegal Chinese subsidies with countervailing duties.”); *id.* at H1171 (statement of Rep. Jackson Lee) (stating that the bill “preserves the validity of the countervailing duty proceedings against imports from China and Vietnam” and “would ensure that the Department of Commerce can continue to apply [CVDs] to non-market economies . . . such as China and Vietnam”); *id.* at H1173 (statement of Rep. Dingell) (“A flawed decision by the Court of Appeals for the Federal Circuit weakened our country’s ability to protect itself from unfair trade practices”); *id.* (statement of Rep. Gene Green) (“H.R. 4105 would . . . make clear the intent of Congress to allow CVDs to be applied to non-market economies.”); *id.* at H1173 (statement of Rep. Turner) (stating that the legislation “confirms the Department of Commerce may continue to apply CVDs against unfairly subsidized imports from nonmarket economies like China”).

The CAFC did not adopt the CIT's reasoning of double-counting of remedies. The CIT's reasoning left open the possibility that Commerce may come up with a methodology that somehow eliminates double-counting, while imposing both ADs and CVDs on imports from a NME. The CAFC's decision in GPX closed that possibility by explicitly stating that one cannot apply CVD law to a NME country. In short, had the CAFC adopted the CIT's reasoning in GPX, it is possible that some of Commerce's authority to proceed with CVD investigations — albeit on a much more restricted scale — would have survived.¹³¹

Representative Jackson Lee made clear that the bill addressed the double-counting concerns raised in the CIT's decision.¹³²

Representatives Camp, Levin, Brady, Rohrabacher, Reed, and Jackson Lee also decried the harmful market distortions caused by government subsidies.¹³³ Congressman Brady explained that the legislation “restores

¹³¹ *Id.* at H1172 (statement of Rep. Jackson Lee).

¹³² *See id.* The bill also addressed the WTO Appellate Body Report in *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, ¶ 611(d), WTO Doc. WT/DS379/AB/R (adopted Mar. 11, 2011), which echoed Judge Restani's double-counting concerns. *See* 158 CONG. REC. H1166, H1167 (daily ed. Mar. 6, 2012) (statement of Rep. Camp); *id.* at H1168 (statement of Rep. Brady); *id.* at H1171 (statement of Rep. Jackson Lee).

¹³³ 158 CONG. REC. H1166, H1167 (daily ed. Mar. 6, 2012) (statement of Rep. Camp) (“[O]ur companies and our workers should not be expected to compete against the deep pockets of the Chinese Government.”); *id.* (statement of Rep. Levin) (“A central element of Chinese industrial policy has been to provide massive subsidies to its producers to help them knock out competitors and to dominate the market. These include loans at below-market interest rates, cheap or sometimes free land, extensive tax breaks, and other subsidies designed to advantage domestic industry.”); *id.* at H1167-68 (statement of Rep. Brady) (noting that CVDs are “assessed against those who try to distort the free market through unfair government subsidies”); H1168 (statement of Rep. Rohrabacher) (stating that “nonmarket economies, where the government directs business through trade subsidies, national planning and state ownership of firms” are “where the greatest abuses occur that distort the market”); *id.* at H1170 (statement of Rep. Reed) (stating that CVDs “make sure that we have free marketplace principles in place that protect our American workers and protect our American job creators”); *id.* (statement of Rep. Camp) (“There are massive subsidies that distort the free market and cost us jobs here in the United States.”); *id.* at H1171 (statement of Rep. Jackson Lee) (“Goods supplied to the United States from nonmarket economies have a significant market advantage. Those goods receive multiple subsidies from their governments that allow them to be sold at a steeply discounted price in the United States and thereby gain a competitive advantage against products that are unsubsidized and manufactured in the United States.”).

free market principles by allowing us to address China's unfair subsidies."¹³⁴ The Members of Congress variously hailed CVDs as an "important tool,"¹³⁵ "key instrument,"¹³⁶ and "one of the most important weapons we have in combating subsidized Chinese exports."¹³⁷

Congressman Levin stated that "countervailing duties have been the singular form of relief available to American workers and companies devastated by [China's] mercantilist policies."¹³⁸ He noted that the twenty-three CVD orders against China in effect at the time covered more than \$4 billion in subsidized imports and protected an estimated 80,000 American jobs.¹³⁹

VI. THE CONTINUED IMPORTANCE OF CVDs IN COUNTERING CHINA'S SUBSIDIES

Now, more than a decade later, CVDs are still one of the most important tools to combat harmful subsidies and other unfair trade practices in China.¹⁴⁰

The U.S. Trade Representative ("USTR") has reported that, despite joining the WTO in 2001, "China's embrace of a state-led, non-market approach to the economy and trade has increased rather than decreased over time."¹⁴¹ In 2017, Commerce reexamined and reaffirmed China's

¹³⁴ *Id.* at H1168 (statement of Rep. Brady).

¹³⁵ *Id.* at H1167, H1170 (statement of Rep. Camp); *accord id.* at H1173 (statement of Rep. Dingell) ("While the term, 'countervailing duty order,' is not on the tip of every American's tongue, it is an extraordinarily important enforcement tool.").

¹³⁶ *Id.* at H1167 (statement of Rep. Levin).

¹³⁷ *Id.* at H1170 (statement of Rep. Slaughter).

¹³⁸ *Id.* at H1166, H1167 (statement of Rep. Levin).

¹³⁹ *Id.* at H1167 (statement of Rep. Levin); *accord id.* at H1168 (statement of Rep. Neal); *id.* at H1170 (statement of Rep. Slaughter).

¹⁴⁰ See LIGHTHIZER, *supra* note 2, at 313; U.S.-CHINA ECON. & SEC. REV. COMM'N, 117TH CONG., 2022 REP. TO CONG. 8 (Comm. Print 2022), https://www.uscc.gov/sites/default/files/2022-11/2022_Annual_Report_to_Congress.pdf [<https://perma.cc/L3DM-TQBK>].

¹⁴¹ U.S. TRADE REPRESENTATIVE, CHINA'S WTO COMPLIANCE, *supra* note 6, at 2.

status as an NME.¹⁴² Massive subsidies are now a core component of China's economic system.¹⁴³

The Government of China fundamentally rejects the basic precept of comparative advantage — instead, its goal to achieve an absolute advantage by dominating “virtually all industries, especially advanced technology products and services.”¹⁴⁴ To realize this goal, the Chinese government implements industrial policy plans backed by sizable subsidies to support specific industries.¹⁴⁵

A 2022 study conservatively estimated that China's industrial policy spending totaled *more than \$248 billion* at nominal exchange rates and *\$407 billion* at purchasing power parity exchange rates — more than China's defense spending — in 2019.¹⁴⁶ These estimates were based on limited available data and do not include data for numerous other companies or types of subsidies in China.¹⁴⁷

¹⁴² See Memorandum on China's Status as a Non-Market Economy from Leah Wils-Owens, Off. of Pol'y, Enf't & Compliance, U.S. Dep't of Com., to Gary Taverman, Deputy Assistant Sec'y for Antidumping & Countervailing Duty Operations, U.S. Dep't of Com. 4 (Oct. 26, 2017), <https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf> [<https://perma.cc/9SNY-E5FY>].

¹⁴³ See, e.g., ATKINSON, *supra* note 33, at 5 (noting that “massive subsidies to keep production artificially cheap” contribute to “China's goal of absolute advantage through innovation mercantilism”); Haley & Haley, *supra* note 7 (noting that the tenfold growth in China's solar industry from 2008 to 2014 “occurred on the back of massive subsidies — such as loans that never had to be repaid, discounted energy, raw materials and land”).

¹⁴⁴ ATKINSON, *supra* note 33, at 5; accord Tobin, *supra* note 7, at 89 (“Beijing is operating on different principles, pursuing absolute advantage for China rather than comparative advantage and greater total welfare for the world.”).

¹⁴⁵ See, e.g., LIGHTHIZER, *supra* note 2, at 120 (noting that “the Chinese government . . . implements specific industrial policy plans that provide . . . benefits (subsidies, preferential financing, government procurement, etc.) to certain strategic and high-tech sectors of the economy”); Haley & Haley, *supra* note 7 (noting that China's industrial policies and subsidies have fueled its export growth, and as Karel De Gucht, the European Union's trade commissioner, “pointed out, to discover what the next wave of subsidized industries will be, ‘you read the last five-year plan’”).

¹⁴⁶ GERARD DIPIPO, ILARIA MAZZOCCO & SCOTT KENNEDY, CTR. FOR STRATEGIC & INT'L STUD., RED INK: ESTIMATING CHINESE INDUSTRIAL POLICY SPENDING IN COMPARATIVE PERSPECTIVE 2, 58 (Scott Kennedy & Matthew P. Goodman eds., 2022), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/220523_DiPippo_Red_Ink.pdf?VersionId=LH8ILLKWz4o.bjrwNS7csuX_C04FyEre [<https://perma.cc/X6MD-ZE43>].

¹⁴⁷ See *id.* at 2, 11, 13, 58. Notably, more than 1,800 government guidance funds have “raised over \$900 billion of mostly state money, with a target of \$1.8 trillion.” U.S.-CHINA ECON. & SEC. REV. COMM'N, 117TH CONG., 2022 REP. TO CONG. 180 (Comm. Print 2022),

China's government subsidies (unfortunately) have been very effective. In recent years, subsidies have fueled China's growth in several capital-intensive and tech-intensive manufacturing industries in which China had no comparative advantage — including solar, steel, aluminum, glass, paper, auto parts, telecommunication products, and shipbuilding.¹⁴⁸ In the solar panel, steel, aluminum, glass, auto parts, and shipbuilding industries, subsidies allowed China to rise from a net importer to one of the largest producers and exporters in the world over the course of five years.¹⁴⁹ One study found that “subsidies from central and provincial governments in these industries appeared to exceed 30% of industrial output and growing.”¹⁵⁰

Chinese production in such industries is “highly inefficient.”¹⁵¹ Researchers have found that “[w]ithout subsidies, many of these Chinese firms would be bankrupt.”¹⁵² At the same time, they note that: “The Chinese state has willingly paid the price of economic inefficiency. It does so to accomplish political, social, economic and diplomatic goals that assume greater importance for Chinese policymakers. This means that, far beyond usual economic considerations, subsidies have immediacy that transcends the purely theoretical.”¹⁵³

Unsurprisingly, researchers have also found that Chinese subsidies to such industries have had statistically significant negative effects on the United States and other countries.¹⁵⁴ According to one study, “when China targeted and subsidized a sector in its five-year plans, it was correlated with fewer new firms and lower output, employment, and

https://www.uscc.gov/sites/default/files/2022-11/2022_Annual_Report_to_Congress.pdf
[<https://perma.cc/L3DM-TQBK>].

¹⁴⁸ See Dessie Tarko Ambaw & Shandre Mugan Thangavelu, *Industrial Subsidies and Impact on Exports of Trading Partners: Case of China*, 26 REV. DEV. ECON. 1310, 1314 (2022); Gang, *supra* note 1, at 91-92; Haley & Haley, *supra* note 7.

¹⁴⁹ See Ambaw & Thangavelu, *supra* note 148, at 1314.

¹⁵⁰ Haley & Haley, *supra* note 7.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See Ambaw & Thangavelu, *supra* note 148, at 1310, 1312, 1316; Tobin, *supra* note 7, at 88; XIAO CEN, VYACHESLAV FOS & WEI JIANG, STANFORD CTR. ON CHINA'S ECON. & INSTS., A RACE TO LEAD: HOW CHINA'S GOVERNMENT INTERVENTIONS SHAPE U.S.-CHINA INDUSTRIAL COMPETITION I (2022), https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/race_to_lead_8.1.22_0.pdf [<https://perma.cc/BF4Q-P7QB>].

earnings in corresponding sectors in the United States.”¹⁵⁵ Another study found that “a one-unit increase in Chinese subsidies decreases competitors’ exports by an average of 16.6%” for base metal products, and “the magnitude of Chinese subsidies is larger and statistically significant for developed countries’ exports and metal-intensive downstream sectors.”¹⁵⁶ Specifically, the study found that “harmful Chinese subsidies have larger adverse effects on more open economies,” including the United States.¹⁵⁷

Beyond its typical industrial policy plans, the Chinese government is currently implementing two unique policies that will have wide-ranging effects: Made in China 2025 and the Belt and Road Initiative.

Made in China 2025, which China’s State Council released in May 2015, is one of China’s most far-reaching and harmful industrial plans.¹⁵⁸ It reflects a long-term strategy to build up Chinese companies in ten targeted, strategic sectors: advanced information technology, automated machines and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, new energy vehicles, power equipment, farm machinery, new materials, and biopharmaceuticals and advanced medical device products.¹⁵⁹ The plan sets ambitious targets of 70% to 80% Chinese content in these sectors to replace foreign technologies, products, and services.¹⁶⁰ The ultimate goal is for Chinese companies to capture significant worldwide market share in these sectors.¹⁶¹

The Chinese government initially made available more than \$500 billion of financial support to the ten sectors and then allocated an additional \$1.4 trillion after the onset of the COVID-19 pandemic.¹⁶²

¹⁵⁵ Tobin, *supra* note 7, at 88 (citing CEN, FOS & JIANG, *supra* note 154, at 1-2).

¹⁵⁶ Ambaw & Thangavelu, *supra* note 148, at 1312.

¹⁵⁷ *Id.* at 1316.

¹⁵⁸ See LIGHTHIZER, *supra* note 2, at 120; U.S. TRADE REPRESENTATIVE, 2024 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 51 (2024), https://ustr.gov/sites/default/files/2024%20NTE%20Report_1.pdf [<https://perma.cc/A4BG-F7HJ>] [hereinafter U.S. TRADE REPRESENTATIVE, 2024 NTE].

¹⁵⁹ See U.S. TRADE REPRESENTATIVE, 2024 NTE, *supra* note 158.

¹⁶⁰ See LIGHTHIZER, *supra* note 2, at 120; U.S. TRADE REPRESENTATIVE, 2024 NTE, *supra* note 158, at 52.

¹⁶¹ See U.S. TRADE REPRESENTATIVE, 2024 NTE, *supra* note 158, at 52.

¹⁶² See LIGHTHIZER, *supra* note 2, at 120; U.S. TRADE REPRESENTATIVE, 2024 NTE, *supra* note 158, at 52.

Such support includes, among other things, government-financed and directed research and development, reduced taxes, and direct grants.¹⁶³

Although Chinese officials stopped publicly referencing Made in China 2025 in June 2018 (apparently after an order from the central government), they remain committed to the goals of the plan.¹⁶⁴ The Chinese government continues to support the sectors, also called “strategic emerging industries,” with various types of support and funding.¹⁶⁵

China’s Belt and Road Initiative is a colossal infrastructure project designed to link China to 147 countries in Europe, Africa, Oceania, and Latin America.¹⁶⁶ The Belt and Road Initiative raises a novel challenge of transnational or cross-border subsidies as China subsidizes its companies and their subsidiaries and funds special economic zones in the other countries.¹⁶⁷

Given the enormous magnitude of all of the subsidy programs in China and their core role in China’s economy, CVDs are as important as ever now. As of April 14, 2025, there are currently eighty-eight China CVD orders in effect.¹⁶⁸ These orders provide targeted relief to U.S. industries that are harmed by subsidized Chinese imports.¹⁶⁹

¹⁶³ See LIGHTHIZER, *supra* note 2, at 120.

¹⁶⁴ See *id.* at 121; U.S. TRADE REPRESENTATIVE, 2024 NTE, *supra* note 158, at 53.

¹⁶⁵ See U.S. TRADE REPRESENTATIVE, 2024 NTE, *supra* note 158, at 53.

¹⁶⁶ See James McBride, Noah Berman & Andrew Chatzky, *China’s Massive Belt and Road Initiative*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/background/chinas-massive-belt-and-road-initiative> (last updated Feb. 2, 2023) [<https://perma.cc/B7HX-FNR5>].

¹⁶⁷ See, e.g., *id.* (noting that “[i]n addition to physical infrastructure, China has funded hundreds of special economic zones, or industrial areas designed to create jobs”); William Alan Reinsch & Sparsha Janardhan, *Crossing the Line: Transnational Subsidy*, CTR. FOR STRATEGIC & INT’L STUD. (Jan. 14, 2022), <https://www.csis.org/analysis/crossing-line-transnational-subsidy> [<https://perma.cc/CS3A-ESBU>] (noting that “China’s policy of ‘going global’ as part of its Belt and Road Initiative (BRI)” has brought “the relatively new issue of cross-border or transnational subsidies” to the fore, as “China has developed special economic zones in some of the countries along the BRI and has plans to build more. In particular, the Chinese government has provided various types of financial assistance to enable Chinese companies to establish themselves in these industrial zones in third countries.”).

¹⁶⁸ See *infra* Appendix.

¹⁶⁹ See U.S.-CHINA ECON. & SEC. REV. COMM’N, 117TH CONG., 2022 REP. TO CONG. 8 (Comm. Print 2022), https://www.uscc.gov/sites/default/files/2022-11/2022_Annual_Report_to_Congress.pdf [<https://perma.cc/L3DM-TQBK>]; CHRISTOPHER A. CASEY,

VII. THE LIMITATIONS OF OTHER TOOLS

CVDs are not the only available tool to combat these problems. Other prominent tools include American industrial policy, more wide-ranging tariffs, and trade negotiations.¹⁷⁰ Another option is to do nothing and simply let “market forces,” such as they may be, catch up with China.¹⁷¹ Although America can pursue any combination of those options, it is important to recognize that there are inherent limitations with each of them as well.

A. *Industrial Policy*

America can — and must — implement a more robust industrial policy of its own to support American businesses and workers, especially for critical technologies, supply chain components, and strategic industries.¹⁷² The bipartisan Creating Helpful Incentives to Produce Semiconductors (“CHIPS”) and Science Act, which provided \$52 billion to boost semiconductor production, is a good first step in this direction.¹⁷³

But America can never outdo China on industrial policy.¹⁷⁴ Fundamentally, it is much more difficult to formulate and implement a coherent and successful industrial policy in a pluralist, democratic society than in an authoritarian or statist one because “[d]emocracy and

CONG. RSCH. SERV., IF10018, TRADE REMEDIES: ANTIDUMPING AND COUNTERVAILING DUTIES (2024), [https://crsreports.congress.gov/product/pdf/IF/IF10018#:~:text=Antidumping%20\(AD\)%20and%20Countervailing%20Duties,by%20a%20foreign%20government%20or;KIM%20KAMPEL,INT'L%20CTR.FOR%20TRADE%20&%20SUSTAINABLE%20DEV.,OPTIONS%20FOR%20DISCIPLINING%20THE%20USE%20OF%20TRADE%20REMEDIES%20IN%20CLEAN%20ENERGY%20TECHNOLOGIES%2011%20\(2017\),https://chongbanphagia.vn/download/f2606/2019071717020197optionsfordisciplinetrade%20remediesincets.pdf](https://crsreports.congress.gov/product/pdf/IF/IF10018#:~:text=Antidumping%20(AD)%20and%20Countervailing%20Duties,by%20a%20foreign%20government%20or;KIM%20KAMPEL,INT'L%20CTR.FOR%20TRADE%20&%20SUSTAINABLE%20DEV.,OPTIONS%20FOR%20DISCIPLINING%20THE%20USE%20OF%20TRADE%20REMEDIES%20IN%20CLEAN%20ENERGY%20TECHNOLOGIES%2011%20(2017),https://chongbanphagia.vn/download/f2606/2019071717020197optionsfordisciplinetrade%20remediesincets.pdf) [https://perma.cc/Z8EP-D94U]; C. Peter McColough *Series on International Economics with Katherine Tai*, COUNCIL ON FOREIGN RELS. (Dec. 19, 2022), <https://www.cfr.org/event/c-peter-mccolough-series-international-economics-katherine-tai> [https://perma.cc/KG3K-NMZW].

¹⁷⁰ See LIGHTHIZER, *supra* note 2, at 315-18.

¹⁷¹ See ATKINSON, *supra* note 33, at 10; LINCICOME, *supra* note 40, at 4; Tobin, *supra* note 7, at 89.

¹⁷² See LIGHTHIZER, *supra* note 2, at 316-17; Tobin, *supra* note 7, at 92.

¹⁷³ See LIGHTHIZER, *supra* note 2, at 317; Tobin, *supra* note 7, at 92.

¹⁷⁴ See Scott Kennedy, *China Is the Wrong Industrial Policy Model for the United States*, CTR. FOR STRATEGIC & INT'L STUD. (Aug. 9, 2022), <https://www.csis.org/analysis/china-wrong-industrial-policy-model-united-states> [https://perma.cc/Q5H3-BFFP].

pluralism mean that governments must respond to a wide range of often competing requirements.”¹⁷⁵ There is a broad consensus that America cannot “out-China” China — and should not try.¹⁷⁶

B. Blanket Tariffs

The first Trump Administration imposed wide-ranging tariffs on China pursuant to Section 301 of the Trade Act of 1974, as amended. Under that statute, the President and the USTR can impose tariffs and take other actions to counter “an act, policy, or practice of a foreign country” that violates, is inconsistent with, or otherwise denies benefits to the United States under any trade agreement, or “is unjustifiable and burdens or restricts United States commerce.”¹⁷⁷ In 2018, the USTR determined that the Government of China’s acts, policies, and practices related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce

¹⁷⁵ Michael Hart, *The Chimera of Industrial Policy: Yesterday, Today and Tomorrow*, 19 CAN.-U.S. L.J. 19, 42-44 (1993); accord David B. Yoffie & Joseph L. Badaracco, “Industrial Policy”: *It Can’t Happen Here*, HARV. BUS. REV., Nov. 1983, <https://hbr.org/1983/11/industrial-policy-it-cant-happen-here> [<https://perma.cc/6M97-3H2L>].

¹⁷⁶ *Hearing on China’s Belt & Road Initiative: Five Years Later Before the U.S.-China Econ. & Sec. Rev. Comm’n*, 115th Cong. 57 (2018) (statement of Jonathan Hillman, Fellow & Dir., Reconnecting Asia Project, Ctr. for Strategic & Int’l Stud.); James Crabtree, Opinion, *Trump Cannot Push Back China with \$113m*, NIKKEI (July 31, 2018, 7:09 PM), <https://asia.nikkei.com/Opinion/Trump-cannot-push-back-China-with-113m> [<https://perma.cc/4Z33-XN6N>]; James Dobbins & Ali Wyne, *Engagement vs. Competition: The China Policy Debate*, RAND BLOG (Dec. 31, 2018), <https://epic.org/wp-content/uploads/foia/epic-v-ai-commission/EPIC-19-09-11-NSCAI-FOIA-20200331-3rd-Production-pt6.pdf> [<https://perma.cc/7UVM-SB7B>]; David L. Fogel, *I Helped Defend Against China’s Economic Hybrid War. Here’s How the US Can Respond.*, NEW ATLANTICIST (Apr. 25, 2022), <https://www.atlanticcouncil.org/blogs/new-atlanticist/i-helped-defend-against-chinas-economic-hybrid-war-heres-how-the-us-can-respond/> [<https://perma.cc/F4HK-8L6C>]; Mike Gallagher, *The Sources of CCP Conduct*, AM. INT. (May 9, 2019), <https://www.the-american-interest.com/2019/05/09/the-sources-of-ccp-conduct/> [<https://perma.cc/4P9M-S9NY>]; Kennedy, *supra* note 174; Eric Liu, *Our Real Blind Spot About China*, TIME (May 29, 2012), <https://ideas.time.com/2012/05/29/our-real-blind-spot-about-china/> [<https://perma.cc/CDJ6-HBVQ>]; Gregg Sangillo, *Condoleezza Rice and Philip Zelikow on Building a Better World*, AM. UNIV. (Sept. 16, 2019) (statement of Condoleezza Rice), <https://www.american.edu/ucm/news/20190916-rice-zelikow.cfm> [<https://perma.cc/2KHN-FT3S>]; Tobin, *supra* note 7, at 92.

¹⁷⁷ 19 U.S.C. § 2411(a).

under Section 301.¹⁷⁸ As a result of this determination (as well as subsequent retaliation by China), the USTR, at the direction of the President, imposed 25% tariffs on approximately \$250 billion in goods from China,¹⁷⁹ and 7.5% tariffs on another \$120 billion in Chinese goods.¹⁸⁰

The Biden Administration maintained those tariffs and reportedly considered launching a broad investigation into Chinese subsidies under Section 301,¹⁸¹ but never did so. The USTR is currently conducting Section 301 investigations on China's targeting of the maritime,

¹⁷⁸ See Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 28,710, 28,711 (June 20, 2018).

¹⁷⁹ See Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 20,459, 20,459 (May 9, 2019) (increasing tariff to 25% on Chinese goods in List 3); Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 47,974, 47,974-75 (Sept. 21, 2018) (imposing 10% tariff on Chinese goods designated in List 3 with an approximate annual trade value of \$200 billion); Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 40,823, 40,823-24 (Aug. 16, 2018) (imposing 25% tariff on Chinese goods designated in List 2 with an approximate annual trade value of \$34 billion); Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. at 28,710-11 (imposing 25% tariff on Chinese goods designated in List 1 with an approximate annual trade value of \$34 billion).

¹⁸⁰ See LIGHTHIZER, *supra* note 2, at 183; see also Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 85 Fed. Reg. 3741, 3741 (Jan. 22, 2020) (reducing List 4A tariffs to 7.5%); Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 45,821, 45,821 (Aug. 30, 2019) (increasing tariffs to 15% on Chinese goods in List 4A); Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 43,304, 43,305 (Aug. 20, 2019) (imposing 10% tariff on Chinese goods designated in List 4A).

¹⁸¹ See Bob Davis & Lingling Wei, *Biden Administration Takes Aim at China's Industrial Subsidies*, WALL ST. J., <https://www.wsj.com/articles/biden-administration-takes-aim-at-chinas-industrial-subsidies-11631295257> (last updated Sept. 11, 2021, 9:58 AM).

logistics, and shipbuilding sectors and the semiconductor industry for dominance.¹⁸²

The second Trump Administration has quickly imposed even more sweeping tariffs on China. Under an executive order aimed at addressing an influx of synthetic opioids from China, the President imposed a blanket tariff on all goods from China of 10% effective February 4, 2025,¹⁸³ which he increased to 20% on March 3, 2025.¹⁸⁴ In April 2025, the President imposed “reciprocal” tariffs on most goods from China starting at 10%, which increased to 84% and then 125% as of April 10, 2025, to counter large and persistent goods trade imbalances and retaliatory measures by China.¹⁸⁵ These tariffs are cumulative of each other, the Section 301 duties, and other applicable duties.¹⁸⁶ As a result, many goods from China are currently subject to tariffs of 170% or more.

¹⁸² See Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China’s Acts, Policies, and Practices Related to Targeting of the Semiconductor Industry for Dominance, 89 Fed. Reg. 106,725, 106,725 (Dec. 30, 2024) (indicating that USTR self-initiated the investigation); Initiation of Section 301 Investigation: China’s Acts, Policies, and Practices Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 89 Fed. Reg. 29,424, 29,424 (Apr. 22, 2024) (noting that the investigation was initiated following a petition from five labor unions).

¹⁸³ See Exec. Order No. 14,195, 90 Fed. Reg. 9121, 9121-22 (Feb. 7, 2025).

¹⁸⁴ See Exec. Order No. 14,228, 90 Fed. Reg. 11,463, 11,463 (Mar. 3, 2025).

¹⁸⁵ See Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,041-46 (Apr. 7, 2025), as amended by Exec. Order No. 14,259, 90 Fed. Reg. 15,509, 15,509 (Apr. 8, 2025), and Exec. Order No. 14,266, 90 Fed. Reg. 15,625, 15,625-28 (Apr. 15, 2025).

¹⁸⁶ See GUIDANCE – Reciprocal Tariffs, April 5 and April 9, 2025, Effective Dates, U.S. CUSTOMS & BORDER PROT. (Apr. 8, 2025) https://content.govdelivery.com/bulletins/gd/USDHSCBP-3daf1b6?wgt_ref=USDHSCBP_WIDGET_2 [<https://perma.cc/Q6ZQ-QZQY>]; Haye Kesteloo, *Trump’s Tariff Exemptions Spare Some Chinese Tech—But Not Drones: What U.S. Consumers Face in 2025*, DRONEXL (Apr. 12, 2025), <https://dronexl.co/2025/04/12/trumps-tariff-exemptions-spare-chinese-tech-not-drones/> [<https://perma.cc/SC7Q-HV4B>].

These blanket tariffs on China are a powerful tool, but they are also “a blunt instrument.”¹⁸⁷ CVDs are scalpels;¹⁸⁸ blanket tariffs are a sledgehammer.¹⁸⁹

C. Negotiations

Although the Section 301 duties brought China to the negotiating table,¹⁹⁰ negotiations have not effected significant changes to China’s economic system.¹⁹¹ The USTR acknowledged that although China implemented some provisions of the Phase One Agreement reached in January 2020, China “has not yet implemented some of the more important commitments,” including certain agriculture commitments and “commitments to purchase certain amounts of specific U.S. goods

¹⁸⁷ See, e.g., Kristen Hopewell, *Beyond U.S.-China Rivalry: Rule Breaking, Economic Coercion, and the Weaponization of Trade*, 116 AM. J. INT’L L. UNBOUND 58, 59 (2022); Mike Anderson, *Utah Economist Hints at Results of China Trade War, Says Effects of 2018 Trade War Linger*, KSL (Feb. 10, 2025), <https://www.ksl.com/article/51249270/utah-economist-hints-at-results-of-china-trade-war-says-effects-of-2018-trade-war-linger> [<https://perma.cc/3NS2-HQNS>]; Stephen Farrell, Heather Timmons, Vanessa Balintec, Zoe Law, Noel Randewich, Amanda Cooper, Christina Anagnostopoulos & Farouq Suleiman, *US Duties on Some China Imports Start*, REUTERS, <https://www.reuters.com/world/us/donald-trump/china-rejects-us-blackmail-markets-steadier-2025-04-08/> (last updated Apr. 8, 2025, 6:01 PM PDT); Imran Khalid, *Trump’s Tariff Gambit: A Blunt Instrument in a Sharpening Global Trade War*, FOREIGN POL’Y IN FOCUS (Apr. 11, 2025), <https://fpif.org/trumps-tariff-gambit-a-blunt-instrument-in-a-sharpening-global-trade-war/> [<https://perma.cc/7P5S-AQWS>].

¹⁸⁸ See C. Peter McColough *Series on International Economics with Katherine Tai*, *supra* note 169; Stephen Lacey, *A Guide to the Latest Solar Trade Dispute: How Suniva’s Petition Could Impact the US Solar Industry*, GREENTECH MEDIA (Apr. 26, 2017), <https://www.greentechmedia.com/articles/read/a-guide-to-the-latest-solar-trade-case> [<https://perma.cc/WW7Y-7CFE>].

¹⁸⁹ See, e.g., *China Tries to Calm U.S. Trade Spat While Ready to Retaliate*, BLOOMBERG NEWS (Aug. 4, 2017), <https://www.bloomberg.com/politics/articles/2017-08-03/china-tries-to-calm-u-s-trade-spat-while-readying-retaliation?leadSource=verify%20wall>; Lori Ann LaRocco, *Why President Trump Is Pursuing a ‘Sledgehammer’ Approach with Tariffs and Global Trade Deals*, NBC10 PHILA. (Feb. 19, 2025), <https://www.nbcphiladelphia.com/news/business/money-report/why-president-trump-is-pursuing-a-sledgehammer-approach-with-tariffs-and-global-trade-deals/4113669/?os=htpbng.1eye.us&ref=app> [<https://perma.cc/H473-TZA2>]; Paul Wiseman & Anne D’Innocenzio, *Trump’s China Tariffs Swing a Sledgehammer at Importers and Cheap Goods*, ABC NEWS (Apr. 12, 2025), <https://abcnews.go.com/US/wireStory/trumps-china-tariffs-swing-sledgehammer-importers-cheap-goods-120741433> [<https://perma.cc/FU5B-MVHZ>].

¹⁹⁰ See Tobin, *supra* note 7, at 83.

¹⁹¹ See U.S. TRADE REPRESENTATIVE, 2024 NTE, *supra* note 158, at 51.

and services in 2020 and 2021.”¹⁹² The USTR concluded that “it is clear that” the agreement “has not led to fundamental changes to China’s state-led, non-market trade regime or its harmful impact on the U.S. economy and U.S. farmers, ranchers, workers, and businesses.”¹⁹³ Indeed, experts believe that “it is highly unlikely Beijing would negotiate seriously on subsidies, which it sees as essential to its economic success.”¹⁹⁴

D. “Market Forces”

China’s astonishing growth has long defied economic predictions.¹⁹⁵ The Chinese economy’s annual growth averaged more than 10% in the 2000s and about 7% in the 2010s,¹⁹⁶ and accounted for about one-third of global growth over the last decade.¹⁹⁷

Recently, however, there have been signs that some market forces are starting to catch up with China. China’s real annual Gross Domestic Product (“GDP”) growth has slowed to the more modest 3% to 5.2% range since 2022 and is predicted to be in the 3.3% to 4.5% range for the rest of the decade.¹⁹⁸ China’s economy is currently facing a number of challenges resulting from its historical over-reliance on real estate, local debt, inefficient state-owned enterprises, lower-end manufacturing, and domestic consumer internet platforms, as well as challenges including

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Davis & Wei, *supra* note 181.

¹⁹⁵ See ATKINSON, *supra* note 33, at 10; Ronald M. Razmi, *Will China Continue to Defy Gravity?*, ZOI CAPITAL (Feb. 3, 2022), https://zoicap.com/economics_blog/will-china-continue-to-defy-gravity/ [<https://perma.cc/U4H6-KPUT>]; Andy Rothman, *The Coming Collapse of China?*, MATTHEWS ASIA: SINOLOGY (July 27, 2023), <https://www.matthewsasiasia.com/insights/sinology/2023/the-coming-collapse-of-china/> [<https://perma.cc/RDK2-NQTQ>].

¹⁹⁶ See Liangping Gao, Ellen Zhang & Kevin Yao, *Will China Ever Get Rich? A New Era of Much Slower Growth Dawns*, REUTERS (July 17, 2023, 7:20 PM), <https://www.reuters.com/world/china/will-china-ever-get-rich-new-era-much-slower-growth-dawns-2023-07-18/>.

¹⁹⁷ See Rothman, *supra* note 195.

¹⁹⁸ See *Real GDP Growth*, INT’L MONETARY FUND, https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/CHN?zoom=CHN&highlight=CHN (last visited Jan. 5, 2025) [<https://perma.cc/AQF4-PQ2R>] (follow “Selected Country Data” Excel File hyperlink).

high youth unemployment, regulatory over-reach, ongoing geopolitical tensions, and lower investment.¹⁹⁹

Yet the resilience of Chinese consumers and businesses and the pragmatism of Chinese policymakers in making course corrections should not be underestimated.²⁰⁰ And even if China's real, annual GDP growth were to average only 2% for the next 10 years, its economy "would expand by the equivalent of two Germanies."²⁰¹

VIII. IMPROVING METHODOLOGIES AND POTENTIAL NEW STATUTORY TOOLS

The limitations of the approaches evaluated above confirm that CVDs are still a crucial tool to counter Chinese subsidies. Of course, CVDs are not a perfect tool, either. Biden Administration USTR Katherine Tai noted that CVDs "haven't been able to prevent the hollowing out of entire industries" in America because of the significant challenges posed by China and its significant ability to impact the global market.²⁰²

Commerce has flexibility in applying the CVD statute to address the challenges posed by Chinese subsidies. In doing so, Commerce should look to the guiding principles in Judge Restani's *GPX I* decision. As Judge Restani recognized, Commerce has "broad discretion in determining the existence of a subsidy under the CVD law."²⁰³ Commerce and Congress should take heed of Judge Restani's warning that they may need to address new challenges under the CVD law through "improved methodologies or new statutory tools."²⁰⁴

¹⁹⁹ See Mohamed El-Erian, Opinion, *It's No Longer a Given that China Will Become the World's Largest Economy*, FIN. TIMES (Sept. 7, 2023), <https://www.ft.com/content/20a14331-d282-4039-97d2-71d777359733> [<https://perma.cc/4L4K-PTVD>]; Gao, Zhang & Yao, *supra* note 196; Rothman, *supra* note 195.

²⁰⁰ See Rothman, *supra* note 195.

²⁰¹ *Id.*

²⁰² See C. Peter McColough Series on International Economics with Katherine Tai, *supra* note 169.

²⁰³ *GPX I*, 645 F. Supp. 2d 1231, 1239 (Ct. Int'l Trade 2009) (citing *Magnolia Metallurgy, Inc. v. United States*, 508 F.3d 1349, 1355 (Fed. Cir. 2007), and *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1318 (Fed. Cir. 1986)).

²⁰⁴ *GPX I*, 645 F. Supp. 2d at 1243.

In fact, we are already starting to see some improved methodologies and potential new statutory tools to address the challenges of Chinese subsidies.

In 2020, Commerce promulgated a final rule that set forth a new methodology for treating currency undervaluation as a countervailable subsidy.²⁰⁵ A bipartisan group of sixteen Senators and thirty-one Representatives have introduced a bill (the “Leveling the Playing Field 2.0 Act”) that would codify Commerce’s currency undervaluation methodology in the CVD statute.²⁰⁶

In March 2024, Commerce promulgated another final rule, *inter alia*, to:

- (1) incorporate Commerce’s existing practice of treating government inaction (i.e., foregoing, not collecting, or deferring a fee, fine, or penalty that is otherwise due) as a countervailable subsidy;
- (2) exclude data derived from countries with weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections, which impact prices and costs, from surrogate values under the NME AD methodology and certain CVD rate calculations; and
- (3) repeal a prior regulation that prohibited Commerce from countervailing of certain transnational subsidies provided

²⁰⁵ See Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings, 85 Fed. Reg. 6031, 6031 (Feb. 4, 2020) (codified at 19 C.F.R. §§ 351.502, 351.528).

²⁰⁶ See Leveling the Playing Field 2.0 Act, S. ____, 119th Cong. §§ 401–02 (2025), <https://www.young.senate.gov/wp-content/uploads/LTPF2.02025.pdf> [https://perma.cc/8J64-LFLH]; Leveling the Playing Field 2.0 Act, H.R. ____, 119th Cong. §§ 401–02 (2025), https://vandyne.house.gov/_cache/files/7/a/7ae75954-66d4-4757-a133-1776a2b2b21f/88F5B0E791D5BF767BAADA1D023C2162.ltpf-2.0-119th.pdf [https://perma.cc/WG7Y-ASJ5]; Press Release, Rep. Terri Sewell, Reps. Sewell and Van Duyne Introduce Bipartisan Legislation to Level the Playing Field for American Workers (Feb. 26, 2025), <https://sewell.house.gov/press-releases?id=C65A0401-5CAC-4CA0-B8CD-8125CA0AA111> [https://perma.cc/X8R7-NKZD]; Press Release, Sen. Todd Young, Young, Smith Introduce Legislation to Strengthen Trade Laws, Protect American Workers (Feb. 24, 2025), <https://www.young.senate.gov/newsroom/press-releases/young-smith-introduce-legislation-to-strengthen-trade-laws-protect-american-workers/> [https://perma.cc/B2FL-AALH].

by a government of a country other than the country in which the recipient firm is located.²⁰⁷

The last of those changes allows Commerce to respond to the cross-border subsidies provided under China's Belt and Road Initiative. The "Leveling the Playing Field 2.0 Act" would also require Commerce to treat cross-border subsidies as countervailable in certain circumstances.²⁰⁸

In addition, the U.S.-China Economic and Security Review Commission has recommended that Congress direct Commerce to develop a proactive process to identify subsidies and self-initiate countervailing duty investigations covering products from China where "[t]he Chinese government openly publicizes areas of intended subsidization in its five-year planning documents."²⁰⁹ The Commission noted that China's five-year plans "make[] it feasible to predict and prepare for distortions in advance."²¹⁰

It will be interesting to see whether and how such new methodologies and statutory tools may be implemented in the future.

CONCLUSION

Judge Restani's GPX decisions are an important chapter in the history of the application of the CVD law. They are a bridge between the past — in which CVDs were not applied to NMEs because they were considered to be synonymous with command economies — and the present — in which CVDs are a critical tool to address the massive subsidies that are a core component of China's more complex economic system. Judge Restani's decisions helped shape the present law, as Members of

²⁰⁷ See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws, 89 Fed. Reg. 20,766, 20,766-68, 20,783-89, 20,826-30, 20,837, 20,841 (Mar. 25, 2024) (codified at 19 C.F.R. §§ 351.408(d)(2), 351.511(a)(2)(v), 351.527 (removed), 351.529).

²⁰⁸ See Leveling the Playing Field 2.0 Act, S. ___, § 201; Leveling the Playing Field 2.0 Act, H.R. ___, § 201.

²⁰⁹ U.S.-CHINA ECON. & SEC. REV. COMM'N, 117TH CONG., 2022 REP. TO CONG. 177, 184, 191-92, 728. (Comm. Print 2022), https://www.uscc.gov/sites/default/files/2022-11/2022_Annual_Report_to_Congress.pdf [<https://perma.cc/L3DM-TQBK>].

²¹⁰ *Id.* at 184.

Congress specifically addressed her concerns when they amended the statute.

Judge Restani's *GPX* decisions also provide guiding principles for the future. Judge Restani's recognition of Commerce's broad discretion under the CVD statute and its potential to adopt "improved methodologies" reminds us that Commerce has flexibility in applying the CVD statute to address new challenges. Her rejection of Commerce's unreasonable methodologies reminds us that Commerce's discretion is not unbounded. Her warning that "new statutory tools" may be necessary reminds us that sometimes Congress must step in to craft new solutions.

GPX addressed the previously unforeseen challenge of China's status as an NME that features a combination of some private initiative and market processes with significant government intervention and state guidance. Since then, China's economy has posed more previously unforeseen challenges: (1) China's NME approach has intensified rather than liberalized over time; (2) the Government of China has rejected the fundamental concept of comparative advantage in favor of pursuing dominance of virtually all industries through industrial plans that are backed by hundreds of billions of dollars in subsidies each year (according to conservative estimates); and (3) the Chinese government has started exporting subsidies to other countries via the Belt and Road Initiative. Studies have confirmed that China's subsidies harm America and other countries by depressing their exports, output, employment, earnings, and number of new firms. The need to apply and adapt the CVD law — consistent with the principles in Judge Restani's *GPX* decisions — to address the challenges posed by China's subsidies has never been greater.

APPENDIX

As of April 14, 2025, CVD orders are currently in effect on the following products from China:

- (1) 1-Hydroxyethylidene-1, 1-Diphosphonic Acid
- (2) Aluminum Extrusions
- (3) Aluminum Foil
- (4) Aluminum Lithographic Printing Plates
- (5) Aluminum Wire and Cable
- (6) Ammonium Sulfate
- (7) Amorphous Silica Fabric
- (8) Biaxial Integral Geogrid Products
- (9) Boltless Steel Shelving Units Prepackaged For Sale
- (10) Calcium Hypochlorite
- (11) Carbon and Alloy Steel Cut-To-Length Plate
- (12) Carbon and Alloy Steel Threaded Rod
- (13) Carbon and Certain Alloy Steel Wire Rod
- (14) Cast Iron Soil Pipe
- (15) Cast Iron Soil Pipe Fittings
- (16) Ceramic Tile
- (17) Chassis and Subassemblies Thereof
- (18) Chlorinated Isocyanurates
- (19) Circular Welded Austenitic Stainless Pressure Pipe
- (20) Circular Welded Carbon Quality Steel Line Pipe
- (21) Circular Welded Carbon Quality Steel Pipe
- (22) Citric Acid and Citrate Salt
- (23) Coated Paper Suitable For High-Quality Print Graphic Using Sheet-Fed Presses
- (24) Cold-Drawn Mechanical Tubing
- (25) Cold-Rolled Steel Flat Products
- (26) Collated Steel Staples
- (27) Common Alloy Aluminum Sheet
- (28) Corrosion Inhibitors
- (29) Corrosion-Resistant Steel Products
- (30) Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules
- (31) Crystalline Silicon Photovoltaic Products

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- (32) Drawn Stainless Steel Sinks
 - (33) Fine Denier Polyester Staple Fiber
 - (34) Forged Steel Fittings
 - (35) Forged Steel Fluid End Blocks
 - (36) Freight Rail Couplers and Parts Thereof
 - (37) Gas Powered Pressure Washers
 - (38) Glycine
 - (39) Hardwood Plywood Products
 - (40) Kitchen Appliance Shelving and Racks
 - (41) Laminated Woven Sacks
 - (42) Large Diameter Welded Pipe
 - (43) Light-Walled Rectangular Pipe and Tube
 - (44) Lightweight Thermal Paper
 - (45) Magnesia Carbon Bricks
 - (46) Mattresses
 - (47) Melamine
 - (48) Metal Lockers and Parts Thereof
 - (49) Mobile Access Equipment and Subassemblies Thereof
 - (50) Multilayered Wood Flooring
 - (51) Narrow Woven Ribbons With Woven Selvedge
 - (52) Non-Oriented Electrical Steel
 - (53) Non-refillable Steel Cylinders
 - (54) Oil Country Tubular Goods
 - (55) Paper Plates
 - (56) Paper Shopping Bags
 - (57) Passenger Vehicle and Light Truck Tires
 - (58) Pea Protein
 - (59) Pentafluoroethane (R-125)
 - (60) Plastic Decorative Ribbon
 - (61) Polyester Textured Yarn
 - (62) Polyethylene Terephthalate Resin
 - (63) Prestressed Concrete Steel Wire Strand
 - (64) Quartz Surface Products
 - (65) Raw Flexible Magnets
 - (66) Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe
 - (67) Sodium and Potassium Phosphate Salts

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- (68) Sodium Gluconate, Gluconic, Acid, and Derivative Products
 - (69) Sodium Nitrite
 - (70) Stainless Steel Flanges
 - (71) Stainless Steel Sheet and Strip
 - (72) Steel Grating
 - (73) Steel Propane Cylinders
 - (74) Steel Racks
 - (75) Steel Wheels
 - (76) Steel Wheels 12 to 16.5 Inches in Diameter
 - (77) Tool Chests and Cabinets
 - (78) Truck and Bus Tires
 - (79) Twist Ties
 - (80) Uncoated Paper
 - (81) Utility Scale Wind Towers
 - (82) Vertical Metal File Cabinets
 - (83) Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof
 - (84) Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof
 - (85) Walk-Behind Lawn Mowers and Parts Thereof
 - (86) Walk-Behind Snow Throwers and Parts Thereof
 - (87) Wood Mouldings and Millwork Products
 - (88) Wooden Cabinets and Vanities and Components Thereof²¹¹

²¹¹ See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 90 Fed. Reg. 14,363, 14,364 (Apr. 1, 2025); Certain Paper Plates from the People's Republic of China and the Socialist Republic of Vietnam: Countervailing Duty Orders, 90 Fed. Reg. 13,135, 13,135-36 (Mar. 20, 2025); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 90 Fed. Reg. 11,155, 11,156 (Mar. 4, 2025); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 90 Fed. Reg. 8,785, 8,787 (Feb. 3, 2025); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 90 Fed. Reg. 71, 72 (Jan. 2, 2025); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 95,737, 95,738-39 (Dec. 3, 2024); Aluminum Lithographic Printing Plates from Japan and the People's Republic of China: Antidumping Order; Aluminum Lithographic Printing Plates from the People's Republic of China: Countervailing Duty Order, 89 Fed. Reg. 92,624, 92,625 (Nov. 22, 2024); Antidumping or Countervailing Duty Order, Finding, or Suspended

Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 87,338, 87,340 (Nov. 1, 2024); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 79,894, 79,895 (Oct. 1, 2024); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 71,254, 71,255 (Sept. 3, 2024); Certain Pea Protein from the People’s Republic of China: Antidumping and Countervailing Duty Orders, 89 Fed. Reg. 68,390, 68,393 (Aug. 26, 2024); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 62,714, 62,715-16 (Aug. 1, 2024); Certain Paper Shopping Bags from the People’s Republic of China and India: Countervailing Duty Orders, 89 Fed. Reg. 58,331, 58,332 (July 18, 2024); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 54,437, 54,439 (July 1, 2024); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 47,518, 47,520 (June 3, 2024); Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 89 Fed. Reg. 35,778, 35,780 (May 2, 2024). CVD orders on Refillable Stainless-Steel Kegs and Rubber Bands from China were revoked in 2024. *See* Refillable Stainless-Steel Kegs from Mexico and the People’s Republic of China: Final Results of Sunset Reviews and Revocation of Orders, 89 Fed. Reg. 92,095, 92,095 (Nov. 21, 2024); Rubber Bands from the People’s Republic of China and Thailand: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders, 89 Fed. Reg. 20,164, 20,164 (Mar. 21, 2024).