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### **United States Challenges China's Wind Energy Subsidies; USTR Seeking Public Comments**

On December 22, 2010, the United States filed a consultation request at the World Trade Organization (WTO) to challenge Chinese wind power subsidies. The Office of the U.S. Trade Representative (USTR) is seeking public comments by January 31, 2011, on the issues raised in the consultation request.

The United States is alleging that certain grants provided by China to Chinese producers of wind power equipment constitute prohibited subsidies under the WTO. Such subsidies are inconsistent with China's obligations under the WTO because they hamper international competition and are, in effect, blocking U.S. exports of wind power equipment and components to China.

This sector of the Chinese economy involving renewable energy is thought to have significant potential for Western companies. Indeed, wind energy is one of the focal points of the President's Renewable Energy and Energy Efficiency Export Initiative. In recent years, however, foreign companies' share of the Chinese wind energy market has dwindled from near 80% to less than 15%, and it is believed that a significant portion of this decline has been caused by the grants at issue, which require the use of Chinese components.

Specifically, the allegedly prohibited subsidies are paid pursuant to China's "Provisional Measures on Administration of Special Fund for Industrialization of Wind Power Equipment" which, according to the USTR, provides grants ranging between \$6.7 million and \$22.5 million to Chinese producers of wind power equipment. The USTR estimates that several hundred million dollars have been paid since 2008. These grants are contingent upon the producers using Chinese components.

In addition, the U.S. has alleged that China further violated their WTO obligations by failing to make a translation of the measure available in a WTO official language and failed to notify the WTO of this measure, thereby failing to meet its transparency obligations.

The request for dispute settlement proceedings arises out of a USTR investigation of the Chinese wind energy subsidies, which was prompted by a complaint filed by the United Steelworkers Union. The complaint alleged, among other things, that China was discriminating against U.S. companies by requiring wind power equipment to be supplied by Chinese companies. The petition contained claims with respect to the Chinese acts, policies, and practices, but the USTR has not yet been able to verify those claims and therefore did not include them in the consultation request.

Chinese officials have responded to the request by stating that they are “highly concerned” about the U.S. invoking dispute settlement procedures. China is defending its measures, citing a need to develop renewable energy to cope with climate change and protect the environment. China indicated that it will handle the request in accordance with WTO rules on dispute settlement while preserving its rights. On January 14, 2011, the EU asked the WTO to join in the dispute settlement against China, citing its “substantial trade interest.”

The United States and China have 60 days to resolve this dispute. If no settlement is reached, the United States will then be able to request a WTO dispute panel, which will be required to issue a report on its findings and recommendations within nine months.

With regard to its current solicitation of comments, USTR welcomes additional input from U.S. industries that may be affected by China’s actions with respect to wind energy. Such comments must be submitted on or before January 31, 2011. Should you have any questions regarding the above information or want additional information on the matter, you may contact any of the members of Thompson Coburn’s Transportation and International Commerce group listed below.

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