COLUMN:
DEVELOPMENTS REGARDING TRANSNATIONAL SUBSIDIES

As described in the Report, under the Agreement on Subsidies and Countervailing Measures (the "ASCM"), a subsidy is defined as: (i) a financial contribution (Article 1.1 (a)(1)); by (ii) "a government or any public body within the territory of a Member" (chapeau of Article 1.1 (a)(1)); (iii) that confers a "benefit" on the recipient company (Article 1.1 (b)). If a product benefiting from a specific subsidy is exported to another country and causes injury to the domestic industry of the importing country, the importing country may impose countervailing duties (the "CVDs") on the subsidized products after undertaking an investigation (Articles 10 through 23).

Subsidies, by definition, can take a variety of forms and methods (including grants, bailout loans, investments by sovereign wealth funds, preferential tax treatment, etc.), and there are many cases where information about grantors and benefits of subsidies is not fully disclosed. Therefore, the determination of such subsidies is often difficult, resulting in many disputes over CVDs. As the latest example, this column introduces the discussions of transnational subsidies and examples of measures dealing with transnational subsidies (relevant CVD measures taken by the European Union and the United States).

1. WHAT ARE TRANSNATIONAL SUBSIDIES?

Although there is no clear definition of transnational subsidies, it often refers to cases where the country that actually provides the subsidies and the country that exports the subsidized products are different. A typical case is where a country (Country A) provides capital export and/or financial support to a business operator located in another country (Country B), which increases the export competitiveness of the business operator located in Country B and causes injury to the industry of a third country (Country C). In this case, it is Country A that provides the funds, but it is the products of Country B, the host country of the funds, that cause injury to the industry of the importing Country C. From the viewpoint of the importing Country C, as in usual cases of the imposition of CVDs, it has incurred injury by the importation of foreign products that have gained a competitive advantage through public funding, and it may well perceive a practical need to remedy its injury through CVDs.

Such case is not necessarily limited to hypothetical example. In recent years, China's activities to expand capital exports and strategic assistance to developing countries under the so-called "Belt and Road Initiative" have led to rapid growth of export industries in the recipient countries, and there have been cases of causing injury to other countries. In response to such situations, the European Union and the United States have already started addressing them either by using different methods for determining CVDs or by changing regulations. Following the example above, the methods employed by the European Union and the United States can be explained as follows: the European Union considers the transfer of capital from Country A to the industries of Country B, under certain circumstances, as a "subsidy" attributable to the government of Country B, and imposes CVDs on goods from Country B, after recognizing the injury caused by the exports of the subject products of Country B that received the "subsidy." The United States, by contrast, amended the relevant regulations in April 2024 and established a procedure that allows it to directly investigate transnational subsidies, such as subsidies provided by Country A, as countervailable subsidies to imports from Country B. This enables the United States to impose CVDs on imports from Country B based on subsidies provided by Country A to Country B.

However, one must carefully consider before treating a particular cross-border capital flow as a "subsidy" to be subject to CVDs, since cross-border capital flows have long been widespread and many of them are normal economic activities. For example, various types of economic assistance from developed countries to developing countries (ODAs provided by the Japanese government fall into this category), as well as investment activities in various international projects such as infrastructure exports

(the Japanese government's investment in projects of Japanese trading companies and financial institutions). It is not reasonable to assume that these normal foreign investments and assistance are recognized as "subsidies", and that the industrial development and export promotion of the recipient countries as a result of these activities are subject to the CVDs by third countries. While the need to deal with certain types of transnational subsidies is undeniable, a major challenge is how one can establish reasonable subsidy rules that distinguish those subsidies from legitimate foreign investment and assistance.

In addition, the current text of the ASCM was agreed upon in the 1990s, and it seems to have been assumed at that time that the government of the exporting country would provide subsidies to companies located within the territory of the exporting country. Therefore, the provisions of the ASCM do not directly respond to the aforementioned recent issues surrounding transnational subsidies. If an importing country attempts to regard a transnational subsidy to be a "subsidy" of the government of the recipient country and subject to CVDs, as described above, or regard a subsidy from a government other than the exporting country's government as a countervailable subsidy, the countervailing country would face an interpretive issue as to whether such a subsidy can be considered as a subsidy "by a government or any public body within the territory of a Member" (chapeau of Article 1.1 (a)(1)), and whether the industries in the recipient country are "within the jurisdiction of the granting authority." (chapeau of Article 2.1).

With the abovementioned discussions in mind, this column introduces the following most recent cases.

2. SPECIFIC CASES

(1) CASES IN THE EU (CVDS IMPOSED ON IMPORTS FROM EGYPT, INDONESIA, AND MOROCCO)

(i) EU's CVDs on fiberglass products originating in Egypt

In May and June 2019, the European Commission initiated anti-subsidy investigations on glass fiber fabrics (GFFs) originating in China and Egypt and on filament glass fiber products (GFRs) originating in Egypt, respectively. Among these, the Egyptian companies under investigation were subsidiaries of Chinese companies, which produced GFFs and GFRs in the Suez Economic and Trade Cooperation Zone in Egypt and exported them to the EU. The European Commission recognized the provision of electricity and land at discounted prices and tax exemptions by the Egyptian government, as well as the preferential loans from Chinese state-owned banks to the subject companies, and the inter-company loans from the Chinese parent company to its subsidiaries, as "subsidies" by the Egyptian government. It then imposed CVDs on each product in June 2020.[1]

According to the European Commission, in interpreting the term "by the government" in the chapeau of Article 1.1 (a)(1) of the ASCM, "any relevant rules of international law applicable in the relations between the parties" (pursuant to Article 31 of the Vienna Convention on the Law of Treaties and other relevant provisions) should be taken into account.[2] These "relevant rules of international law" include the ILC Articles on the Responsibility of States for Internationally Wrongful Acts (the "ILC Articles"), which is customary international law, and Article 11 of the ILC Articles provides that "[c]onduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own." The European Commission also cites the commentary to this Article, which states that the term "acknowledges and adopts" makes it clear that what is required is that the State "identifies

[1] Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 and Commission Implementing Regulation (EU) 2020/870 of 24 June 2020.

[2] Paragraphs 686 to 689 of Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 and Paragraphs 74 to 77 of Commission Implementing Regulation (EU) 2020/870 of 24 June 2020.

the conduct in question and makes it its own."[3]

The European Commission then cited the following as evidence of "acknowledge[ment]" and "adopt[ion]" by the Egyptian government in this case, and in its conclusion identified the abovementioned loans by the Chinese state-owned banks and the parent company as subsidies granted by the Egyptian government[4]:

- Memorandum of Understanding signed between China and Egypt in 1997;
- 2016 Bilateral Cooperation Agreement (a commitment by the Chinese government to encourage financial institutions to provide financial facilities to companies investing in the Suez Economic and Trade Cooperation Zone);
- The facts that China's "Belt and Road Initiative" involves substantial financial support for companies expanding into partner countries was public knowledge and that the successive Egyptian presidents were aware that China's "Belt and Road Initiative" would involve substantial preferential financing;
- The fact that the joint establishment of the Suez Economic and Trade Cooperation Zone with China was a clear act of acknowledgement and adoption of financing by China at the highest political level; and
- The fact that the parent company, a Chinese company, had obtained the necessary funds for intercompany loans from Chinese financial institutions and used the profits for production in Egypt.

Article 1.1 (a)(iv) of the ASCM provides that a financial contribution, even if made by a private body, is considered to be a financial contribution by a government or public body if it is made under the entrustment or direction of a government or public body. The European Commission has also made preliminary reference to this provision, suggesting that the provision of agreed financial support by the Chinese government to exporters has a demonstrable link to the Egyptian government and also satisfies the requirements of "entrustment" or "direction" as discussed in the WTO precedents.[5]

In this case, the subject company challenged the CVDs as unjustified before the European General Court. However, on March 1, 2023 the General Court's ruling held that the EU's anti-subsidy rules should be interpreted in the light of the provisions of the corresponding ASCM, and without making reference to Article 11 of the ILC Articles, held that the ASCM does not preclude financial contributions from being attributed to the government of the exporting country, even if there is no direct financial contribution by the government of the exporting country.[6] Subsequently, the case was appealed, but the European Court of Justice, in its judgment dated November 24, 2024, also deemed the imposition of CVDs on transnational subsidies lawful based on a textual interpretation of the anti-subsidy rules. The court held that such an interpretation of the anti-subsidy rules does not contradict the textual interpretation of the ASCM and dismissed the appeal.[7] Thus, while the European Courts relied on reasons different from that of the European Commission, it ultimately upheld the legality of the European

[3] Paragraphs 684 to 685 of Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 and Paragraphs 72 to 73 of Commission Implementing Regulation (EU) 2020/870 of 24 June 2020.

[4] Paragraphs 690 to 690 of Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 and Paragraphs 78 to 87 of Commission Implementing Regulation (EU) 2020/870 of 24 June 2020.

[5] Paragraph 698 of Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 and Paragraph 86 of Commission Implementing Regulation (EU) 2020/870 of 24 June 2020.

[6] Paragraphs 78 to 84 and 95 to 103 of *Hengshi Egypt Fiberglass Fabrics and Jushi Egypt for Fiberglass Industry v Commission* (T-480/20, ECLI:EU:T:2023:90); and Paragraphs 45 to 51 and 62 to 70 of *Jushi Egypt for Fiberglass Industry v Commission* (T-540/20, ECLI:EU:T:2023:91).

[7] *Hengshi Egypt Fiberglass Fabrics and Jushi Egypt for Fiberglass Industry v Commission* (C-269/23 P and C-272/23 P).

Commission's decision to treat transnational subsidies as subsidies from the exporting country and impose CVDs accordingly.

(ii) EU's CVDs on Stainless Steel Cold-Rolled Flat Products from Indonesia (DS616)

In February 2021, the European Commission initiated anti-subsidy investigations on stainless steel cold-rolled flat products from India and Indonesia. The companies under investigation located in Indonesia were subsidiaries of a Chinese stainless steel company, which produced stainless steel cold-rolled flat products at the Morowali Industrial Park in Indonesia and exported to the EU. The European Commission identified the provision of nickel ore at a reduced price, the provision of land, and tax incentives, by the Indonesian government, as well as preferential loans provided by Chinese state-owned banks to the subject company, as "subsidies" by the Indonesian government. It then imposed CVDs in March 2022.[8] This is the third CVD measure against transnational subsidies following the two measures discussed in (1) above.

Just the same as in the cases against Egyptian goods, the European Commission referred to Article 11 of the ILC Articles as a basis for interpretation. Quoting the commentary to the ILC Articles, it maintained that "acknowledge[ment]" and "adopt[ion]" in Article 11 do not mean mere support or endorsement, and that mere acknowledgement of the fact of an action or verbal approval of an action is not enough to attribute the action to the State concerned.[9] In addition, the European Commission stated that in order to attribute the provision of preferential loans by the Chinese government to the Indonesian government, it is necessary to demonstrate that the Indonesian government indirectly provided subsidies through the Chinese government, namely, to establish a demonstrable/explicit link between the actions of the Indonesian government and the actions taken by the Chinese government to provide the preferential loans based on an agreement with the Indonesian government.[10] In conclusion, the European Commission found that the loans provided by Chinese state-owned banks were attributable to the Indonesian government, and the main basis for the European Commission's finding is as follows.[11]

- Citing the Joint Declaration to initiate cooperation in the mining and metallurgical sectors in 2005, and the action plans, cooperation agreements, joint statements, memoranda of understanding, etc. signed afterwards, the Indonesian government has actively induced the Chinese government to provide financial support for the development of the stainless steel industry through the Morowali Industrial Park since the start of bilateral cooperation in 2005;
- IMIP, a Chinese-Indonesian joint venture established in 2013 to operate the Morowali Industrial Park, was recognized by the Indonesian government as a national strategic project in 2016 and by China as an overseas investment zone project under the "Belt and Road Initiative." The Morowali Industrial Park and IMIP thus represent that the nickel ore processing operations are jointly operated by China and Indonesia for the benefit of companies producing in the zone;
- Indonesia had the objective of inducing China to introduce investment, know-how, and capital related to stainless steel to develop the entire value chain of the stainless steel industry and thereby maximize the added value of the country's large nickel ore reserves, while China has long relied on imports of Indonesian nickel ore, which is essential to its production process, and had no choice but to accede to Indonesia's request;
- In the cooperation agreements signed in 2011 and 2013 in connection with the Morowali Industrial Park, both governments agreed to encourage financial institutions and insurance companies to give priority in providing financial support for such projects, to encourage Chinese

[8] Commission Implementing Regulation (EU) 2022/433 of 15 March 2022.
[9] Paragraph 648 of Commission Implementing Regulation (EU) 2022/433 of 15 March 2022.
[10] Paragraph 650 of Commission Implementing Regulation (EU) 2022/433 of 15 March 2022.
[11] Paragraphs 654 to 680 of Commission Implementing Regulation (EU) 2022/433 of 15 March 2022.

companies to invest in Indonesian industrial parks, to promote the development of industrial parks, and to provide policy support;

- Preferential financing by China was also an integral part of China-Indonesia cooperation, given China's rules for implementing its "Belt and Road Initiative" and steel policy;
- There was approval and adoption of preferential loans at the highest levels of the government, as successive Indonesian presidents must have been aware that China's "Belt and Road Initiative" involves large-scale state financial assistance; and
- This case differs from the Egyptian case in that there was a mechanism for the Indonesian government to monitor China's implementation of the agreement; for example, the Indonesian government officials actively participated in the bilateral implementation mechanism in connection with the Morowali Industrial Park, and the Indonesian government had procedures and systems to monitor the flow of funds from overseas.

Just the same as in the case against Egyptian goods, the European Commission also mentions the possibility of direction or entrustment by the government to private body, and also states that there is an explicit link between the above-mentioned Chinese financial assistance and the activities of the Indonesian government.[12]

Regarding this matter, Indonesia made a request for consultations based on the WTO Agreements in January 2023, and a dispute settlement panel was established in May of the same year. In its request for consultations and request for the establishment of a panel, Indonesia argues that the European Commission's attribution of preferential loans by Chinese state-owned companies to the Indonesian government violates Article 1.1 of the ASCM. It further argues that recognizing the Indonesian government as the granting authority with respect to the financial contribution by the Chinese state-owned companies also violates the provision "within the jurisdiction of the granting authority" in Article 2.2, which prescribes the specificity requirement. In response, the EU argued in its submission that attributing the financial contributions made by the Chinese government to the Indonesian government is consistent with Articles 1.1(a)(1) and 2.2 of the ASCM.[13] Japan is participating in the panel proceeding as a third-party to discuss the rules regulating transnational subsidies.

(iii) EU's CVDs on aluminium road wheels originating in Morocco

In February 2024, the European Commission initiated an anti-subsidy investigation on aluminium road wheels originating in Morocco, following an application filed by domestic wheel manufacturers. The companies under investigation included certain group companies of a Chinese aluminium product manufacturer, which is affiliated with a Chinese state-owned investment company known for its track record of supporting the Belt and Road Initiative through funding and other means. The companies under investigation produced aluminium road wheels, primarily used for automobiles, in Morocco's Industrial Acceleration Zones (IAZ) and exported them to the EU.[14]

The European Commission imposed CVDs in March 2025,[15] after finding that the provision of grants, preferential loans, tax deductions, and land at a reduced price by the Moroccan government, as well as investments, preferential loans, and the provision of aluminum ingots—one of the raw materials—at a

[12] Paragraph 731 of Commission Implementing Regulation (EU) 2022/433 of 15 March 2022.
[13] Paragraph 29 et seq. of European Union, *EUROPEAN UNION – COUNTERVAILING AND ANTI-DUMPING DUTIES ON STAINLESS STEEL COLD-ROLLED FLAT PRODUCTS ("SSCRFP") FROM INDONESIA (DS616) First Written Submission by the European Union* (December 20, 2023).
[14] Paragraph 161 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025. See also Paragraph 363 for the fact that the relevant group companies of the Chinese aluminum product manufacturer were located in the IAZ.
[15] Paragraphs 221 to 444 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025.

reduced price by Chinese state-owned financial institutions and enterprises, which are the parent company and group companies of the companies under investigation, to the companies under investigation, as "subsidies" granted by the Moroccan government.

In the investigation, the European Commission sent a questionnaire to the Moroccan government, requesting information and documents regarding bilateral cooperation between the Moroccan government and the Chinese government. However, the Moroccan government argued that the Belt and Road Initiative had not been mentioned by the Chinese state-owned enterprise as a reason or condition for its investment in Morocco, and that documents related to cooperation with China were classified as confidential and therefore are outside the scope of the investigation and unnecessary information for the investigation. In response, the European Commission stated that the requested information was necessary to appropriately examine the framework under which the investment by the companies in question was carried out, and it determined that the Moroccan government had failed to provide the required necessary material and information. Consequently, the European Commission applied facts available (FA), which allows the investigating authority to make decisions based on the facts available to it in cases where the necessary information is unavailable or the recipient of the questionnaire fails to respond.[16]

Furthermore, as a result of the investigation, the European Commission found that the company under investigation was provided with aluminium ingots at low prices from its Hong Kong business partner and did not make any payments throughout the investigation period. In addition, the European Commission found that the Hong Kong company provided a loan to the group company of the company under investigation to cover the initial capital investment.[17] During the onsite investigation, it was found out that, while the company was established in Hong Kong, it was owned by a Chinese national shareholder, whose address was in the same city as that of the Chinese parent company of the company under investigation, and the Hong Kong company had the same registered legal address in Hong Kong as Chinese group companies of the company under investigation.[18] Following the investigation, the European Commission requested additional information to the Hong Kong business partner and the company under investigation, respectively. However, the business partner refused to cooperate and the company under investigation also refused to provide a response alleging that they had no capital ties with the business partner and the information on the business partner was not necessary. Therefore, the European Commission decided that the necessary information for analysis was unavailable and applied the FA as with the aforementioned issue.[19] The European Commission found that the Chinese state-owned company, acting as a public body, used the Hong Kong company affiliated with the Chinese company, as a vehicle to channel the support provided to the company under investigation. The European Commission accordingly deemed that the unpaid prices for the aluminium ingots to the Hong Kong company by the company under investigation as a *de facto* loan and also found that the provision of the aluminium ingots at low prices constituted subsidies.[20]

Regarding the determination of imposing CVDs, the European Commission referred to the CVD cases where CVDs are imposed on glass fiber products originating in Egypt and stainless steel cold-rolled flat products originating in Indonesia. It confirmed that under anti-subsidy regulations, not only direct support by the country of origin or export, but also financial contributions provided by third countries are subject to scrutiny and in order to substantiate such cases, it is necessary to establish a demonstrable link between the actions taken by the government of the country of origin or export and the conduct and the actions of the third country government.[21] In addition, the European Commission, in line with the

[16] Paragraphs 90 to 104 and 177 to 188 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[17] Paragraphs 105 to 106 and 272 to 274 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[18] Paragraphs 107 and 276 to 277 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[19] Paragraphs 105 to 119, 272 to 305 and 312 to 314 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[20] Paragraphs 272 to 305, 312 to 314 and 408 to 444 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[21] Paragraph 165 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025

ruling of the European Court of Justice in the case concerning glass fiber products originating in Egypt, stated that the notion of "financial contribution" includes situations where the financial contribution coming from, in whole or in part, the government of a third country other than the country of origin or export of a product at issue may be considered to have been granted by the government of that country of origin or export, having regard to its own conduct. However, the European Commission states that in order to attribute the financial contribution of a third country to the government of the country of origin or export, it must be demonstrated, in the light of the conduct of the government of the country of origin or export, that that government can be regarded as having granted that financial contribution; specifically, it must be demonstrated that the government of the country of origin or export has made the financial contribution either by (a) formally granting the subsidy or (b) allowing that the recipients in practice to benefit from the subsidy.[22] In particular, the European Commission pointed out that when the establishment of legislation, the adoption of a decision, the grant of an authorization, or the use of any other measure by a country is legally or factually necessary in order to enable that the recipients to obtain a financial contribution from other country, the measure is considered a financial contribution by the country.[23]

Based on the above considerations, as well as facts available, the European Commission examined whether the financial contributions provided by the Chinese government to the companies under investigation operating within Morocco should be attributed to the Moroccan government. As a conclusion, the Commission determined that the financial contributions made by China toward the activities of the companies under investigation in Morocco are attributable to the Moroccan government for the following reasons:[24]

- Through domestic industrial strategy and bilateral cooperation with China[25], the Moroccan government has, for many years, pursued various favourable domestic policies, legislatives, and preferential financing environments to position the automotive sector (including automotive parts and accessories such as aluminium road wheels) as a key sector;
- As part of these policies, the Moroccan government has set up a close cooperation framework with the Chinese government, and enabled companies established in Morocco to benefit from the preferential financing available under the Chinese Belt and Road Initiative;
- The Belt and Road Initiative Implementation Plan shows that the Moroccan government's objective was to entice Chinese investment into the country, refers specifically to the automobile industry, and aims to provide access to the Chinese financing framework under the Belt and Road Initiative. This framework includes the "*Guiding Principles on Financing the Development of Belt and Road Initiative,*" which shows that the Moroccan government endorsed the preferential financial support provided by the Chinese government to the Sino-Moroccan project under the Belt and Road Initiative framework. It was inferred that the Moroccan government and the Chinese government had set up an administrative apparatus to facilitate the successful implementation of the projects falling within the bilateral cooperation via the disbursements of subsidies and trade facilitation, including the investment by the company under investigation. Therefore, the Moroccan government and the Chinese government worked closely together to

[22] Paragraphs 166 to 167 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[23] Paragraph 167 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[24] Paragraphs 120 to 141, 143 to 156, and 170 to 188 of Commission Implementing Regulation (EU) 2025/500 of 13 March 2025
[25] The final decision report highlights the following: the bilateral agreement of 1995 and agreements and memoranda of understanding signed in the context of the China-Morocco Economic Forum held in Beijing in 2014; the Joint Statement on Establishing the Strategic Partnership between the Two Countries (signed during the visit of the King of Morocco to China in 2016), as well as the ensuing Declaration on establishing a strategic cooperation between the two countries, resulting in strengthening of the means of cooperation between the two governments; and the Memorandum of Understanding between the two governments signed by Chinese Foreign Minister Wang Yi and Morocco's Minister of Foreign Affairs and International Cooperation during the meeting held in Beijing in 2017.

establish special legal and economic features which enabled the government authorities of China to confer directly all the facilities inherent in China's Belt and Road Initiative to the activities of the company under investigation;

- The investment agreement between the Moroccan government and the Chinese state-owned company (acting on behalf of the Chinese government) provides for a detailed capitalization plan of the company under investigation, including conditions for payment, the Chinese state-owned company is bound by the article relating to the capitalization of the operating company and the conditions for increasing and reducing the operating company's share capital, and reductions of the share capital are possible only if the Moroccan government does not express an objection, given its power to monitor 'compliance' with the conditions set out in the investment agreement. Accordingly, the Moroccan government was thus fully involved in all steps of the capital investment and approved them; and
- The Moroccan government enticed the provision by the Chinese government of technical know-how and preferential financing under the Belt and Road Initiative and investment from China to Morocco in exchange for offering domestic subsidies. As a result, Morocco was successful in securing the specific project in the automotive sector for the production of aluminium road wheels, which shows a demonstrable link between the Moroccan government's need for developing the automotive sector as its domestic policy, with the provision of the financial contribution by the Chinese government.

(2) Cases in the United States (Preliminary CVD decision regarding solar cell from four Southeast Asian countries And Other Cases)

(i) Amendments to the Department of Commerce's regulations aimed at strengthening the enforcement of CVD measures in the United States

In the United States, there has been a regulation (Title 19, Section 351.527 of the Code of Federal Regulations (CFR)) stipulating that subsidies provided by countries other than the country where the recipient company is located would not be subject to CVD measures. However, in May 2023, a proposed amendment to regulations aimed at strengthening the enforcement of AD and CVD measures was announced. The proposal included repealing the aforementioned provision in order to enable investigations and the imposition of CVD measures on transnational subsidies. Following a public comment period, the final rule for this proposed amendment was announced in March 2024. This officially decided on the repeal of the provision, and was enforced on April 24, 2024. As a result, the United States is now able to conduct investigations and impose CVD measures on transnational subsidies under its domestic laws. In the final rule, the United States explained that, over the past 20 years, instances of government subsidies for production in foreign countries have increased. The Department of Commerce's self-imposed restriction, which allowed CVDs to be imposed only when subsidies were provided by the government of the exporting country, contradicted the purpose of the legal framework for CVDs in that it prevented the imposition of CVDs, even in cases where subsidies from foreign governments harmed domestic producers. The United States further clarified that the law does not inherently require such a restrictive interpretation.

In the following sections, we will introduce CVD investigations into transnational subsidies that were initiated after the regulatory amendments. In addition, the America First Trade Policy announced by the Trump administration on January 20, 2025, includes a provision to review the application of AD and CVD-related laws. Transnational subsidies were specifically mentioned as an example of areas subject to review, indicating that further developments in this area warrant continued attention.

(ii) Preliminary CVD decision regarding solar cell originating in four Southeast Asian countries

In May 2024, the U.S. Department of Commerce initiated a CVD investigation into crystalline silicon solar cells imported from four Southeast Asian countries: Cambodia, Malaysia, Thailand, and Vietnam.

The companies under investigation are Chinese companies with factories and facilities in the four Southeast Asian countries. The companies were exporting crystalline silicon solar cells produced in these countries to the United States. In October 2024, the U.S. Department of Commerce issued a preliminary decision, which stated that tax incentives and the provision of land and electricity at low prices by the governments of the four Southeast Asian countries as well as the policy financing under China's "Belt and Road Initiative" production capacity cooperation projects provided by Chinese banks and the provision of polysilicon by Chinese polysilicon manufacturers at below adequate remuneration (found to exist in three countries excluding Cambodia) were all countervailable transnational subsidies.

During the investigation, the U.S. Department of Commerce sent a questionnaire to the Chinese government regarding transnational subsidies provided to the companies under investigation. In response, the Chinese government stated that it was unaware of whether the companies under investigation were using the subsidies in question, and therefore the U.S. Department of Commerce's questions were not applicable. Accordingly, the U.S. Department of Commerce determined that it could not obtain the necessary information to analyze the transnational subsidies in question, and applied "facts available" provision, which allows investigative authorities to make determinations based on available facts when the required information is unobtainable or when the recipient of the questionnaire fails to respond. The U.S. Department of Commerce relied on the information provided in the application to conduct its analysis. The applicants for this investigation submitted and argued the following as evidence:

- China's "Belt and Road Initiative" aims to transfer domestic production capacity to third countries;
- As of 2023, China has signed agreements related to the "Belt and Road Initiative" with 151 countries, including production capacity cooperation agreements with 40 countries, which encompass the four Southeast Asian countries under investigation;
- Documents demonstrating the content of bilateral cooperation agreements between the Chinese government and the governments of three of the Southeast Asian countries under investigation (excluding Malaysia) have been submitted;
- In the cooperation agreement between the Chinese government and Cambodia, both countries agreed to promote the effective integration of China's Belt and Road Initiative and listed key projects for development, such as industrial parks;
- Solar cell manufacturers are major users of polysilicon, and China has increased its domestic production of polysilicon through subsidies and other measures. Furthermore, China's state-owned and state-controlled enterprises have enabled the sale of polysilicon to solar cell manufacturers in the four Southeast Asian countries at artificially low prices;
- In a previous other investigation, the U.S. Department of Commerce found that the Chinese polysilicon market was distorted and classified Chinese polysilicon producers as government entities; and
- Publicly available information indicating that certain Chinese polysilicon producers are controlled by the Chinese government or high-level Chinese Communist Party officials has been submitted.

Based on this evidence, the U.S. Department of Commerce issued a preliminary decision recognizing that some of the companies under investigation had received policy financing from Chinese banks under the cooperation agreements between the Chinese government and the governments of the four Southeast Asian countries under investigation. Furthermore, it determined that the policy financing from Chinese banks and the provision of Chinese-produced polysilicon at low prices constituted countervailable subsidies.

(iii) Implementation of a CVD investigation on paper file folders originating in Cambodia

In November 2024, the U.S. Department of Commerce initiated a CVD investigation on paper file folders originating in Cambodia. The applicants for this investigation have pointed out the existence of cross-border subsidies provided by China, citing instances such as loans from Chinese banks to Cambodian manufacturers at below-market interest rates under the backdrop of the "Belt and Road Initiative," as well as the provision of kraft paper from the Chinese market to Cambodian manufacturers at low prices. These claims are currently under investigation. In this investigation, the Chinese government has submitted counterarguments, stating that CVD investigations into transnational subsidies violate the ASCM and that, under U.S. domestic law, there is no authority to conduct CVD investigations on transnational subsidies.

(iv) The United State's third-party submission in DS616

To understand how the United States evaluates the WTO-consistency of transnational subsidies, it is helpful to note that the United States participated as a third-party in the WTO dispute case between the European Union and Indonesia (DS616) and made a submission. In its third-party submission, the United States supported the European Union's CVD measures against transnational subsidies. However, it presented a different legal basis interpretating the ASCM for its opinion, setting it apart from the European Union's position. Specifically, the United States argued that the ASCM interprets and applies Article VI of GATT, so the ASCM's interpretation should be based on Article VI of GATT. The United States cited Article VI: 3 of GATT, which defines "countervailing duty" as "a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise." Based on this definition, the United States contended that Article VI does not limit countervailable subsidies to financial contributions provided solely by the government of the exporting country.[26] Furthermore, the United States argued that such an interpretation of the ASCM reflects a practical understanding that any subsidy, regardless of its geographic origin, benefits the manufacture, production, or export of a product and, therefore, CVD measures should be considered capable of offsetting subsidies.[27]

3. CONCLUSION

As described above, awareness of the issues surrounding the impact of transnational subsidies is gradually spreading. However, opinions are divided on whether the imposition of CVDs on transnational subsidies is permissible under WTO Agreements. In the WTO Committee on Subsidies and Countervailing Measures, there are ongoing discussions regarding the WTO- consistency of such measures among Members subject to CVD investigations in connection with transnational subsidies and

[26] Paragraph 17 of Third-Party Submission of the United States (February 2, 2024) and Paragraphs 7 to 8 of Third-Party Integrated Executive Summary of the United States (May 21, 2024).
[27] Same as above.

those conducting the investigations.

The Government of Japan should closely monitor future developments, including those of other countries, in addressing the effects of subsidies that were not contemplated when the ASCM was adopted. In doing so, as described above, the Government of Japan should seek to ensure that the future interpretation and application of the ASCM does not impede sound foreign investment by Japanese companies and does not only pursue to address transnational subsidies. In addition, this issue is not only a matter of recent trade remedy practices, but also a broader issue of how to regulate international capital flows, such as development assistance to developing countries (which relates not only to the WTO Agreements, but also to various international agreements, such as investment agreements and OECD export credit arrangements).It is desirable to continue to communicate internationally, not just to reduce the negative impact on Japanese companies, but also to consider what kind of international discipline is desirable from a broader perspective.