

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket No. WTO/DS387]

**WTO Dispute Settlement Proceeding
Regarding China—Grants, Loans and
Other Incentives**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on December 19, 2008, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (“WTO Agreement”), the United States requested consultations regarding certain measures offering grants, loans, and other incentives to enterprises in China. That request may be found at <http://www.wto.org> contained in a document designated as WT/DS387/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 16, 2009 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted electronically to <http://www.regulations.gov>, docket number USTR–2009–0003. If you are unable to provide submissions by <http://www.regulations.gov>, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below), the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Joseph A. Laroski Jr., Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–7310.

SUPPLEMENTARY INFORMATION: On December 19, 2008, the United States requested consultations regarding certain measures offering grants, loans, and other incentives to enterprises in China, apparently in part to implement an industrial policy of promoting the development of global Chinese brand names, and to increase sales of Chinese-branded and other Chinese merchandise around the world. The U.S. consultation request addresses two central government famous Chinese brand programs, and numerous sub-central government measures implementing

these programs. At the central government level, China established the “Famous Export Brand” program and the “China World Top Brand” program. These measures set out criteria for an enterprise to receive a designation by the Ministry of Commerce (MOFCOM) as a “Famous Export Brand” or a designation by the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) as a “China World Top Brand.” Enterprises with these designations are entitled to various government preferences, including, it appears, financial support tied to exports. The U.S. consultation request also addresses several independent sub-central government subsidy programs that appear to benefit Chinese exports.

A. These grants, loans, and other incentives are reflected in the following measures, as well as any amendments and any related or implementing measures:

The instruments below, which relate to the China World Top Brand Program:

1. Circular on Carrying Out Evaluation of Products to Be Recognized as China World Top Brand;

2. Circular on Application of China World Top Brands in 2006;

3. Circular on Application of China World Top Brands in 2008;

4. Measures for the Administration of Chinese Name-Brand Products;

5. Notice Concerning the Issuing of Opinions on Promoting the Brand-Driven Strategy & Its Incentive Measures;

6. Notices Concerning Printing and Distributing the Implementation Regulation on Economic Development Fund Supporting Industrial Technology Progress in Futian District Shenzhen;

7. Notices of Gansu Provincial People’s Government Concerning Printing and Distributing Incentive Methods for Enterprises Entitled with Famous Brand Products in Gansu Province;

8. Notice on Methods of Implementing Brand Praise and Incentive for Industrial Enterprises in Guangxi Zhuang Autonomous Region;

9. Several Related Policies on Implementation of Guiyang’s Science and Technology Development Planning During the “Eleventh Five-Year Plan” (2006–2010);

10. Opinions of the Party Committee and People’s Government of Jinhua City on Promoting the Building of “Jinhua Brand;”

11. Circular of Jiujiang Municipal People’s Government on Adjusting and Enriching the Incentive Policy for Creating a City of Brand;

12. Circular on Printing and Distributing the Method of Nanhai

District, Foshan City for Supporting and Awarding Independent Innovation, Brand Drive and Enterprise IPO;

13. Opinions of Nanping Municipal People’s Government on Supporting Development of Key Industrial Enterprise;

14. Opinions on Promoting Fast and Healthy Development of Characteristic Manufacturing Industry through Implementing Industrial Upgrading Projects;

15. Circular of Sichuan Provincial People’s Government on Printing and Distributing the “Opinions on Forcefully Pressing Ahead Industrial Brands Strategy in Sichuan;”

16. Circular on Forwarding the Detailed Reward Rules for the Strategy of Drive with Top Brands in Suzhou City;

17. Circular on Forwarding the Policy Measures for Pushing on the Strategy of Drive with Top Brands;

18. Notice Issued by the Office of Wenzhou Municipal Government for the Distribution of Quality & Branding Award Management Measures in Wenzhou;

19. Opinions of Wuyi County Party Committee and People’s Government on Further Encouraging and Promoting the Development of SMEs;

20. Notices Concerning Printing and Distributing the Implementing Regulations Issued by the Bureau of Finance and the Economic Development Administration of Xiamen to Support the Development of High Quality Well-Known Products in Xiamen;

21. Suggestions on Supporting Key Industrial Enterprises Issued by the People’s Government of Yandu District, Yancheng City;

22. Suggestions on Accelerating the Implementation of Brand Strategy;

23. Circular on Ensuring Proper Use and Management of Guangdong Brand Development Fund; and

24. Notice of Issuing the Directive on Supporting the Development of Name Brands for Export.

The instruments below, which relate to the Chinese Famous Export Brand Program:

1. Circular of the General Office of the State Bureau of Quality Supervision, Inspection and Quarantine for Issuing the “Measures for the Control of Evaluation of Chinese Famous-Brand Products (for Trial Implementation);”

2. Notice of General Office of Ministry of Commerce Concerning Recommending Candidates of “Chinese Export Famous Brands;”

3. Notice of Issuing the Directive on Supporting the Development of Name Brands for Export;

4. Circular of Changxing County People's Government on Further Promoting Foreign Trade Development;
5. Opinions of Deqing County People's Government on Strengthening the Building of Advanced Manufacturing Bases;
6. Circular on Printing and Distributing the Policy Opinions for Accelerating Innovative Development of Industrial Economy;
7. Notice Concerning the Issuing of Opinions on Promoting the Brand-Driven Strategy & Its Incentive Measures;
8. Circular on Printing and Distributing the "Provisional Regulation on the Use of Fujian Export Brand Development Fund;"
9. Circular of the Foreign Trade and Economic Cooperation Department of Fujian Province on Recommending Candidate Enterprise for the 2008-2009 "Famous Export Brands the Foreign Trade and Economic Cooperation Department of Fujian Province Mainly Cultivates and Develops [Foreign Trade and Economic Cooperation Department of Fujian Province];
10. Circular on Printing and Distributing the Opinions on Recognizing "Famous Export Brands the Foreign Trade and Economic Cooperation Department of Guangdong Province Mainly Cultivates and Develops;"
11. Suggestions on the "Export Brands Particularly Cultivated and Developed by the Department of Foreign Trade and Economic Cooperation Department of Guangdong Province" (Revised Edition);
12. Notices Concerning Alternative Name List Supplementary to the Export Brands Particularly Cultivated and Developed by the Department of Foreign Trade and Economic Cooperation of Guangdong Province;
13. Circular on Ensuring Proper Use and Management of Guangdong Brand Development Fund;
14. Notice Regarding Support Policies to Promote the Development of Our City's Foreign Trade and Economic Cooperation for 2005;
15. Notice of the Administrative Office of the Hangzhou Municipal People's Government on Revision of the Evaluation and Selection Requirements and Award Measures for the "Golden Dragon Awards" in Hangzhou's Foreign Trade Export;
16. Directives of the Administrative Office of the Hangzhou Municipal People's Government on Promoting the Development of Independent Export Brands;
17. Circular of the Provincial Department of Commerce, Development and Reform Commission, Economic Commission, Department of Finance, Department of Science and Technology, Bureau of State Tax, Administration for Industry and Commerce, Bureau of Quality and Technical Supervision, and Entry-Exit Inspection and Quarantine Bureau of Heilongjiang Province and Harbin Customs on Printing and Distributing the "Guiding Opinions on Supporting the Development of Famous Export Brands;
18. Circular on Printing and Distributing the Newly Revised "Method for Selection of Henan Famous Export Brands;"
19. Guiding Opinions on Supporting the Development of Henan (Famous) Export Brands in the "11th Five-Year Plan" Period;
20. Notice Regarding Selection of 2007-2008 "Jiangsu Province Export Brands for Focused Cultivation and Development;"
21. Opinion on Promoting Better and Quicker Development of Private Economy;
22. Opinion of the Party Committee and People's Government of Jinhua City on Promoting the Building of "Jinhua Brand"
23. Opinions of Jindong District Party Committee and People's Government of Jinhua City on Accelerating Industrial and Export-Oriented Economic Development;
24. Circular of Jiujiang Municipal People's Government on Adjusting and Enriching the Incentive Policy for Creating a City of Brand;
25. Circular on Printing and Distributing the Method of Nanhai District, Foshan City for Supporting and Awarding Independent Innovation, Brand Drive and Enterprise IPO;
26. Notice of the Department of Commerce and Department of Finance of Ningxia Hui Autonomous Region on Printing and Issuing the Administrative Measures of Ningxia Hui Autonomous Region for the Awarding and Promoting of Brand Export Commodities;
27. Notice of the People's Government of Quanzhou Fengze District on Issuing Regulations Concerning the Support to Key Enterprises;
28. Opinion on Promoting Fast and Healthy Development of Characteristic Manufacturing Industry through Implementing Industrial Upgrading Projects;
29. Notice on Printing and Distribution of 2006 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong;
30. Opinions of Shaoxing Municipal People's Government on Further Encouraging the Development of Open Economy in Urban Areas;
31. Circular of Sichuan Provincial People's Government on Printing and Distributing the "Opinions on Forcefully Pressing Ahead Industrial Brands Strategy in Sichuan;"
32. Circular on Forwarding the Detailed Reward Rules for the Strategy of Drive with Top Brands in Suzhou City;
33. Circular on Forwarding the Policy Measures for Pushing on the Strategy of Drive with Top Brands;
34. Circular on Forwarding the Opinions of Foreign Trade Office of Tianjin Municipal Government on Accelerating Development of Proprietary Export Brands of Tianjin City;
35. Circular of Wuxing District People's Government of Huzhou City on Further Encouraging Foreign Trade Development;
36. Opinion of Wuyi County Party Committee and People's Government on Further Encouraging and Promoting the Development of SMEs;
37. Measures for Managing Xiamen's Key Export Enterprise Assistance Fund;
38. Notice from the Xiamen Trade Development Bureau and the Xiamen Finance Bureau on the publishing of Measures for Managing Xiamen's Key Export Enterprise Assistance Fund Implementation Plan;
39. CPC Committee of Yinzhou District, Ningbo City People's Government of Yinzhou District, Ningbo City Opinions on Promoting Economic Development of Yinzhou District;
40. Notices on Publication of Interim Procedures on Management of Zhejiang Province Export Brands Fund;
41. Notice Concerning Relevant Policies on Promotion of Foreign Trade & Economic Development in 2005;
42. Suggestions on Accelerating the Implementation of Brand Strategy;
43. Notice Issued by the Office of Wenzhou Municipal Government for the Distribution of Quality & Branding Award Management Measures in Wenzhou;
44. Opinions on Accelerating Open Economy of Organizations Directly Under Municipal Government;
45. Opinion of Nanping Municipal People's Government on Supporting Development of Key Industrial Enterprises;
46. Circular on Printing and Distributing the Interim Measures of Yangzhou City for Administration of the Incentive Fund for Famous-brand Export Products;
47. Implementing Rules of Support Policies for Patented Brands of Service Outsourcing Companies by Zhabei District;

48. Notices for Evaluation and Rewards of 2008–2009 Export Brand Particularly Cultivated and Developed in Heilongjiang;

49. Measures for the Administration of Famous-brand (Industrial) Products of Guangdong Province;

50. Measures for the Administration of Famous-Brand (Agricultural) Products of Guangdong Province; and

51. Circular of Ministry of Commerce, China Export & Credit Insurance Corporation Concerning Utilizing Export Credit Insurance to Support the Development of Name Brand Export.

The instruments below, which appear to contain independent sub-central government subsidy programs:

1. Notice Regarding Support Policies to Promote the Development of Our City's Foreign Trade and Economic Cooperation for 2005;

2. Opinions of Jindong District Party Committee and People's Government of Jinhua City on Accelerating Industrial and Export-Oriented Economic Development;

3. Opinions of Shaoxing Municipal People's Government on Further Encouraging the Development of Open Economy in Urban Areas;

4. Notice Concerning Relevant Policies on Promotion of Foreign Trade & Economic Development in 2005;

5. Circular of the Provincial Department of Commerce, Development and Reform Commission, Economic Commission, Department of Finance, Department of Science and Technology, Bureau of State Tax, Administration for Industry and Commerce, Bureau of Quality and Technical Supervision, and Entry-Exit Inspection and Quarantine Bureau of Heilongjiang Province and Harbin Customs on Printing and Distributing the "Guiding Opinions of Heilongjiang Province on Supporting the Development of Famous Export Brands";

6. Opinions on Accelerating Open Economy of Organizations Directly Under Municipal Government;

7. Circular of Nanchang Municipal People's Government on Printing and Distributing the Interim Measures for Administration of Nanchang Foreign Trade Development Fund;

8. Trial Opinions of Jiangdong District, Ningbo City on Promoting Steady Foreign Trade Development;

9. Opinions of Jiangdong District, Ningbo City on Promoting Steady Foreign Trade Development;

10. 2005 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong;

11. Notice on Printing and Distribution of 2006 Policies for Encouraging the Development of

Foreign Trade & Economic Cooperation in Shandong;

12. Notice on Printing and Distribution of 2003 Policies for Encouraging and Expanding Foreign Trade Export to Shandong;

13. 2004 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong;

14. Circular of Wuxing District People's Government on Further Encouraging the Development of Open Economy in Urban Areas;

15. Measures for Managing Xiamen's Key Export Enterprise Assistance Fund;

16. Notice from the Xiamen Trade Development Bureau and the Xiamen Finance Bureau on the publishing of Measures for Managing Xiamen's Key Export Enterprise Assistance Fund Implementation Plan;

17. Opinions on Further Accelerating the Development of Open Economy;

18. CPC Committee of Yinzhou District, Ningbo City People's Government of Yinzhou District, Ningbo City Opinions on Promoting Economic Development of Yinzhou District;

19. Notices on Publication of Interim Procedures on Management of Zhejiang Province Export Brands Fund;

20. Circular on Changxing County People's Government on Further Promoting Foreign Trade Development;

21. Notices Concerning Printing and Distributing the Implementation Regulation on Economic Development Fund Supporting Industrial Technology Progress in Futian District Shenzhen;

22. Notice Issued by the Office of Wenzhou Municipal Government for the Distribution of Quality & Branding Award Management Measures in Wenzhou;

23. Notice of the Administrative Office of the Hangzhou Municipal People's Government on Revision of the Evaluation and Selection Requirements and Award Measures for the "Golden Dragon Awards" in Hangzhou's Foreign Trade Export;

24. Directives of the Administrative Office of the Hangzhou Municipal People's Government on Promoting the Development of Independent Export Brands;

25. Notice of the People's Government of Quanzhou Fengze District on Issuing Regulations Concerning the Support to Key Enterprises;

26. Notice on Recommending of Alternative Name List for 2005–2006 "Export Brand Merchandise in Shanghai;"

27. Implementing Rules of Support Policies for Patented Brands of Service Outsourcing Companies by Zhabei District;

28. Notice of Shanghai Municipal Commission of Foreign Trade and

Economic Cooperation for Carrying out Confirmation of 2007–2008 "Export Brands in Shanghai;"

29. Measures on Promoting the Development of the City Open Economy in 2006;

30. Notices for Evaluation and Rewards of 2008–2009 Export Brand Particularly Cultivated and Developed in Heilongjiang;

31. Notice Regarding Support Policies to Promote the Development of Our City's Foreign Trade and Economic Cooperation for 2005; and

32. Notice Regarding Selection of 2007–2008 "Jiangsu Province Export Brands for Focused Cultivation and Development."

B. The measures referred to in Section A above appear to constitute prohibited subsidies under WTO rules. Specifically, they provide grants, loans, and other incentives to enterprises in China on the condition that those enterprises meet certain export performance criteria.

USTR believes that these measures are inconsistent with China's obligations under Article 3 of the Agreement on Subsidies and Countervailing Measures, Articles 3, 9, and 10 of the *Agreement on Agriculture*, paragraph 12.1 of Part I of the Protocol on the Accession of the peoples' Republic of China ("Accession Protocol"), as well as paragraph 1.2 of Part I of its Accession Protocol (to the extent that it incorporates paragraph 234 of the Report of the Working Party on the Accession of China), which forms part of the terms of accession agreed between China and the WTO and is an integral part of the WTO Agreement. Finally, USTR believes that the grants, loans, and other incentives are inconsistent with Article III:4 of the GATT 1994 to the extent that the measures benefit Chinese-origin products but not imported products.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to <http://www.regulations.gov> docket number USTR–2009–0003. If you are unable to provide submissions by <http://www.regulations.gov>, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via <http://www.regulations.gov>, enter docket number USTR–2009–0003 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket.

Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." (For further information on using the <http://www.regulations.gov> Web site, please consult the resources provided on the website by clicking on "How to Use This Site" on the left side of the home page.)

The <http://www.regulations.gov> site provides the option of providing comments by filling in a "General Comments" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "General Comments" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to <http://www.regulations.gov>. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to <http://www.regulations.gov> or by fax. The non-confidential

summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the <http://www.regulations.gov> Web site.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS384 and WTO/DS386]

WTO Dispute Settlement Proceeding Regarding United States—Certain Country of Origin Labeling Requirements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that the United States received requests for consultations under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning certain mandatory country of origin labeling (COOL) requirements from Canada in a letter dated December 1, 2008 and from Mexico in a letter dated December 17, 2008. Those requests may be found at <http://www.wto.org> contained in documents designated as WT/DS384/1 for Canada and WT/DS386/1 for Mexico. USTR invites written comments from the public concerning the issues raised in these disputes.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 13, 2009 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted electronically to <http://www.regulations.gov>, docket number USTR-2009-0004. If you are unable to provide submissions by <http://www.regulations.gov>, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission. If (as explained below), the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Priti Seksaria Agrawal, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-9439.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by Canada

On December 1, 2008, Canada requested consultations regarding U.S. mandatory COOL. Canada challenges the COOL provisions in the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), and implemented in the U.S. Department of Agriculture Interim Final Rule published on August 1, 2008. These measures contain an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork. Canada notes that the eligibility of a covered commodity for designation as exclusively U.S. origin occurs only when the covered commodity is derived from an animal that is exclusively born, raised, and slaughtered in the United States. It further notes that such a designation of U.S. origin excludes covered commodities from livestock that is exported to the United States for feed or immediate slaughter.

Canada alleges that the U.S. measures appear to be inconsistent with the