

***UNITED STATES – CERTAIN METHODOLOGIES AND THEIR APPLICATION TO  
ANTI-DUMPING PROCEEDINGS INVOLVING CHINA***

***Recourse to Article 21.3(c) of the DSU***

**(DS471)**

**EXECUTIVE SUMMARY OF THE  
WRITTEN SUBMISSION  
OF THE UNITED STATES OF AMERICA**

**November 17, 2017**

## EXECUTIVE SUMMARY

1. The amount of time a Member requires for implementation of DSB recommendations depends on the particular facts and circumstances of the dispute, including the scope of the recommendations and the types of procedures required under the Member's laws to make the necessary changes in the measures at issue. Specific circumstances identified in previous awards as relevant to the Arbitrator's determination of the RPT include: (1) the legal form of implementation; (2) the technical complexity of the measure the Member must draft, adopt, and implement; and (3) the period of time in which the implementing Member can achieve that proposed legal form of implementation in accordance with its system of government.

2. The United States would draw the Arbitrator's attention to the reasonable period of time to which China agreed pursuant to Article 21.3(b) of the DSU in the *EC – Fasteners (China)* dispute. In that dispute, China reached agreement with the European Union on a reasonable period of time of 14 months and two weeks. While *EC – Fasteners (China)* involved an “as such” finding and “as applied” findings with respect to one antidumping determination, this dispute involves an “as such” finding on a very similar measure and “as applied” findings concerning 38 separate determinations. This dispute also involves “as applied findings” with respect to four of those 38 determinations concerning the use of the alternative, average-to-transaction comparison methodology and “zeroing.” The similarity of one of the major substantive issues in these two disputes, coupled with the significantly larger number of administrative determinations involved here, warrants a substantially longer compliance period in this dispute, as China logically should agree. When choosing to bring a dispute of this magnitude, the complaining Member must recognize that it will take more time for the responding Member to implement any and all adverse findings.

3. Addressing the numerous findings in this dispute requires a multi-phase process. The most practical way under U.S. law to implement the recommendations of the DSB would be to conduct proceedings under both section 123 and section 129 of the *Uruguay Round Agreements Act* (“URAA”). First, the United States contemplates conducting a proceeding pursuant to section 123 of the URAA to address the Panel's “as such” findings under the AD Agreement. Second, the United States contemplates conducting proceedings pursuant to section 129 of the URAA to address the Panel's “as applied” findings as they relate to 13 original investigations and 25 administrative reviews. The United States anticipates that it will not be possible to commence the 38 section 129 proceedings (Phase II) until the section 123 proceeding (Phase I) has been mostly completed. The United States expects that any approach to address the DSB recommendations concerning the Panel's “as such” findings under the AD Agreement will need to be developed through the section 123 proceeding before it could be applied or adapted in the 38 section 129 proceedings concerning the challenged determinations. Therefore, Phases I and II must be undertaken sequentially, although there could be a small degree of overlap in the two phases.

4. Both parties, as well as the WTO dispute settlement system as a whole, have a strong interest in setting the RPT at a length that allows for an implementation process that takes account of all available information and uses a well-considered approach to implementing the findings in the Appellate Body and Panel reports. In this dispute, the RPT determined by the Arbitrator should be of sufficient length to allow the United States to address all of the various

DSB recommendations in a manner consistent with relevant WTO obligations. Such a result would preserve the rights of the United States to have a reasonable time for compliance and to impose appropriate antidumping duties, while at the same time preserving China’s rights to ensure that antidumping duties are imposed in accordance with WTO rules. If the RPT is too short to permit the United States to address the DSB’s recommendations effectively, the likelihood of a “positive solution” to the dispute would be reduced.

5. The volume and complexity of the DSB’s recommendations – in particular the “as applied” findings related to the 38 separate determinations that China chose to challenge together in this one dispute – and U.S. legal requirements should be considered in determining the appropriate reasonable period of time to secure a “positive solution” for this dispute. For the reasons outlined in this submission, a period of no less than 24 months is a reasonable period of time for implementation.