

***UNITED STATES – COUNTERVAILING DUTY MEASURES
ON CERTAIN PRODUCTS FROM CHINA
Recourse to Article 21.3(c) of the DSU***

(DS437)

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

August 4, 2015

1. At its meeting on January 16, 2015, the Dispute Settlement Body (DSB) adopted its recommendations and rulings in *United States – Countervailing Duty Measures on Certain Products from China* (DS437). Pursuant to Article 21.3 of the DSU, the United States circulated a letter to the DSB on February 13, 2015, stating that it intends to comply with the DSB’s recommendations and rulings in a manner that respects its WTO obligations, and that it would need a reasonable period of time (RPT) to do so. The United States engaged in discussions with China in an effort to reach agreement on the RPT, but the parties were unable to reach agreement and China requested arbitration pursuant to Article 21.3(b) of the DSU.

2. The amount of time that a Member requires for implementation of DSB recommendations and rulings depends on the particular facts and circumstances of the dispute, including the scope of the recommendations and rulings and the types of procedures required under the Member’s domestic laws to make the necessary changes in the measures at issue. As a prior arbitrator found, “what constitutes a reasonable period...should be defined on a case-by-case basis, in the light of the specific circumstances of each investigation.” Specific circumstances 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.

3. In this arbitration, a specific circumstance of overarching import is that this dispute is one of the most extensive in the history of the World Trade Organization. As the complaining party, China decided how to structure this dispute, including how many countervailing duty (CVD) investigations to include in this single dispute and which claims to file. China sought findings on multiple claims with respect to each of 22 separate investigations. The panel and Appellate Body appropriately rejected many of China’s claims. Nonetheless, the findings in the panel and Appellate Body reports have resulted in an extensive, and arguably unprecedented, number of DSB recommendations and rulings.

4. As the Arbitrator considers the time required for the United States Department of Commerce (Commerce) to address these rulings, a key factor is that neither the Appellate Body nor the Panel found with respect to any of the CVD investigations at issue that the subject imports were not subsidized. Instead, a fact-intensive inquiry is necessary to determine whether and how the determinations in the 15 investigations need to be modified to implement the DSB recommendations and rulings with respect to each obligation at issue. In particular, implementation requires a reexamination of existing record evidence, the possible solicitation and review of new information, and re-examination of the disputed issues according to the guidance set out in the specific findings in the panel and Appellate Body reports.

5. The RPT determined by the arbitrator should be of sufficient length to allow the United States to implement all of the various DSB recommendations and rulings in a manner consistent with the DSB findings. This result would preserve the rights of the United States to have a reasonable time for compliance and to impose CVD duties where appropriate, while at the same time would preserve China’s rights, and enforce obligations on the United States, to ensure that CVD duties are imposed only in accordance with WTO rules. On the other hand, if the RPT is too short to allow for effective implementation, the likelihood of a “positive solution” to the dispute would be reduced.

6. Any single investigation in this dispute requires a multi-step process to ensure that it meets both WTO rules and U.S. domestic legal obligations. The United States has already completed many of the necessary steps to bring these 15 measures into compliance. However, although the United States has made meaningful progress on implementation, the bulk of the work required for implementation remains to be completed. Questionnaire responses need to be reviewed, and supplementary questionnaires will need to be issued. Verifications of the data, as needed, will need to be completed and Commerce will need to reconsider, where appropriate, redo its calculations from the original final determinations. While any single investigation requires considerable time and effort, coordinating the modification of 15 investigations, each with diverse fact patterns and parties will require a significant demand on the authority's time and resources.

7. Article 21.3(c) addresses situations such as this one where the implementation obligations require many steps and require an exceptional period of time for completion. Article 21.3(c) states that in general the reasonable period of time should not exceed 15 months, but “that time may be shorter or longer, depending on the particular circumstances” of the dispute.

8. The United States is taking the necessary administrative actions to bring these 15 investigations into compliance with the DSB's recommendations and rulings. The number of investigations in this dispute, the volume and complexity of the rulings and recommendations, and Commerce's current workload should all be considered in determining the appropriate RPT to secure a “positive solution” for this dispute. For the reasons outlined in this submission, an RPT of at least 19 months is a reasonable period of time for implementation in this dispute.