

***UNITED STATES – COUNTERVAILING DUTY MEASURES
ON CERTAIN PRODUCTS FROM CHINA***

Recourse to Article 21.3(c) of the DSU

(DS437)

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

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<i>Brazil – Tyres (Article 21.3(c))</i>	Arbitrator Award, <i>Brazil – Measures Affecting Imports of Retreaded Tyres – Recourse to Arbitration under DSU Article 21.3(c)</i> , WT/DS332/16, circulated 29 August 2008
<i>Canada – Autos Article 21.3(c))</i>	Arbitrator Award, <i>Canada – Certain Measures Affecting the Automotive Industry – Recourse to Arbitration under DSU Article 21.3(c)</i> , WT/DS139/AB/R, WT/DS142/AB/R, circulated 4 October 2000.
<i>Canada – Pharmaceuticals (Article 21.3(c))</i>	Arbitrator Award, <i>Canada – Patent Protection of Pharmaceutical Products – Recourse to Arbitration under DSU Article 21.3(c)</i> , WT/DS114/13, circulated 18 August 2000.
<i>Chile – Alcohol (Article 21.3(c))</i>	Arbitrator Award, <i>Chile – Taxes on Alcoholic Beverages – Recourse to Arbitration under DSU Article 21.3(c)</i> , WT/DS87/15, WT/DS110/14, circulated 23 May 2000.
<i>US – Countervailing Measures (China)</i>	Panel Report, <i>United States – Countervailing Duty Measures on Certain Products from China</i> , WT/DS437/R and Add.1, adopted 16 January 2015, as modified by Appellate Body Report WT/DS437/AB/R.
<i>US – Countervailing Measures (China) (AB)</i>	Appellate Body Report, <i>United States – Countervailing Duty Measures on Certain Products from China</i> , WT/DS437/AB/R, adopted 16 January 2015.
<i>US – Hot Rolled Steel (Article 21.3(c))</i>	Arbitrator Award, <i>United States – Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan – Recourse to Arbitration under DSU Article 21.3(c)</i> , WT/DS184/AB/13, circulated 19 February 2002.
<i>US – Section 110(5) (Article 21.3(c))</i>	Arbitrator Award, <i>United States – Section 110(5) of the US Copyright Act – Recourse to Arbitration under DSU Article 21.3(c)</i> , WT/DS160/12, circulated 15 January 2001.
<i>US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c))</i>	Award of the Arbitrator, <i>United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS268/12, 7 June 2005

TABLE OF INVESTIGATIONS

Investigation (Official Name)	Short Form	Investigation No.
Lightweight Thermal Paper from the People's Republic of China	<i>Thermal Paper</i>	(C-570-921)
Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China	<i>Pressure Pipe</i>	(C-570-931)
Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China	<i>Line Pipe</i>	(C-570-936)
Citric Acid and Certain Citrate Salts from the People's Republic of China	<i>Citric Acid</i>	(C-570-938)
Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China	<i>Lawn Groomers</i>	(C-570-940)
Certain Kitchen Appliance Shelving and Racks from the People's Republic of China	<i>Kitchen Shelving</i>	(C-570-942)
Certain Oil Country Tubular Goods from the People's Republic of China	<i>OCTG</i>	(C-570-944)
Pre-stressed Concrete Steel Wire Strand from the People's Republic of China	<i>Wire Strand</i>	(C-570-946)
Certain Magnesita Carbon Bricks from the People's Republic of China	<i>Magnesita Bricks</i>	(C-570-955)
Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China	<i>Seamless Pipe</i>	(C-570-955)
Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China	<i>Coated Paper/Print Graphics</i>	(C-570-959)
Drill Pipe from the People's Republic of China	<i>Drill Pipe</i>	(C-570-966)
Aluminum Extrusions from the People's Republic of China	<i>Aluminum Extrusions</i>	(C-570-968)
High Pressure Steel Cylinders from the People's Republic of China	<i>Steel Cylinders</i>	(C-570-978)
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China	<i>Solar Panels</i>	(C-570-980)

TABLE OF EXHIBITS

Description	Exhibit No.
Response of the Ministry of Commerce to the People’s Republic of China to the Department’s Benchmark Questionnaire, July 6, 2015	USA-1
Uruguay Round Agreements Act, 19 U.S.C. § 3538	USA-2
Communication from USTR, USDOC, Interested Parties, April 16, 2015	USA-3
19 C.F.R. § 351.302(b) and (c)	USA-4
Tariff Act of 1930, 19 U.S.C. §1677m(i)	USA-5
<i>[Intentionally Omitted]</i>	USA-6
Commerce Letter Issuing Questionnaire on Land Provided for Less Than Adequate Remuneration, June 5, 2015	USA-7
<i>[Intentionally Omitted]</i>	USA-8
Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015	USA-9
Commerce Letter Issuing Supplemental Questionnaire Concerning Public Bodies, June 30, 2015	USA-10
Commerce Letter Issuing Questionnaire Concerning the Benchmark Used to Measure Whether Certain Inputs Were Sold For Less Than Adequate Remuneration, June 5, 2015	USA-11
Commerce Letter Issuing Supplemental Questionnaire Concerning Public Bodies, June 30, 2015	USA-12
<i>[Intentionally Omitted]</i>	USA-13
Commerce Letter Extending Deadline for the Response of the Government of the People’s Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015	USA-14
Response to Invitation to Submit New Information, May 11, 2015	USA-15
Response to Submit New Information Regarding Certain Seamless Carbon and Alloy Steel Standard, May 11, 2015	USA-16

Commerce Letter Issuing Supplemental Questionnaire Concerning the Provision of Land for Less Than Adequate Remuneration, July 10, 2015	USA-17
<i>Kitchen Shelving</i> Public Body Supplemental Questionnaire, June 30, 2015	USA-18
<i>OCTG</i> Public Body Supplemental Questionnaire, June 30, 2015	USA-19
Commerce Letter Issuing Supplemental Questionnaire on Land Provided for Less Than Adequate Remuneration, July 22, 2015	USA-20
Commerce Letter Issuing Supplemental Questionnaire on Land Provided for Less Than Adequate Remuneration, July 10, 2015	USA-21
Commerce Letter Issuing Second Supplemental Questionnaire Concerning the Provision of Land for Less Than Adequate Remuneration, July 22, 2015	USA-22
<i>Steel Cylinders</i> Supplemental Questionnaire on Public Bodies, June 30, 2015	USA-23
<i>United States – Countervailing Duty Measures on Certain Products from China</i> , Request for the Establishment of a Panel by China, August 21, 2012	USA-24
Exhibit GOC-D-25 (Econometrics Study by Dr. Janusz A. Ordover)	USA-25

I. INTRODUCTION

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 Understanding on Rules and Procedures Governing the Settlement of Disputes (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.

2. The United States engaged in discussions with China, pursuant to Article 21.3(b) of the DSU, in an effort to reach agreement on the length of the RPT. The parties were unable to reach agreement and, on June 26, 2015, China requested binding arbitration pursuant to Article 21.3(b) of the DSU.

3. 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.”¹ 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.²

4. 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 on each of 22 separate investigations.³ The panel and Appellate Body ultimately rejected many of China’s claims.⁴ Nonetheless, the findings in the panel and Appellate Body reports have resulted in an extensive, and arguably unprecedented number of DSB recommendations and rulings. The United States is implementing DSB recommendations and rulings with respect to the following 15 separate countervailing duty investigations:⁵

- *Lightweight Thermal Paper* (C-570-921),

¹ *US – Hot-Rolled Steel* (Article 21.3(c)), para. 25 (quoting Appellate Body report in *US – Hot-Rolled Steel*, paras. 84-85). In paragraph 26, the arbitrator continued by saying that although the Appellate Body was discussing “the *Anti-Dumping Agreement*, and not the DSU, the essence of ‘reasonableness’ so articulated is, in my view, equally pertinent for an arbitrator faced with the task of determining what constitutes ‘a reasonable period of time’ in the context of the DSU.”

² *Canada – Pharmaceutical Patents* (Article 21.3(c)), paras. 48-51.

³ *US – Countervailing Measures (China)*, Panel Request, Appendix 2.

⁴ *US – Countervailing Measures (China)*, para. 8.1; *US – Countervailing Measures (China) (AB)*, para. 5.1.

⁵ *Id.*

- *Circular Welded Austenitic Stainless Pressure Pipe (C-570-931),*
- *Circular Welded Carbon Quality Steel Line Pipe (C-570-936),*
- *Citric Acid and Certain Citrate Salts (C-570-938),*
- *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof (C-570-940),*
- *Certain Kitchen Shelving and Racks (C-570-942),*
- *Certain Oil Country Tubular Goods (C-570-944),*
- *Pre-Stressed Concrete Steel Wire Strand (C-570-946),*
- *Certain Magnesia Carbon Bricks (C-570-955),*
- *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (C-570-957),*
- *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses,*
- *Drill Pipe (C-570-966),*
- *Aluminum Extrusions (C-570-968),*
- *High Pressure Steel Cylinders (C-570-978), and*
- *Crystalline Silicon Photovoltaic Cells (C-570-980).*

5. Further, as described below, the recommendations and rulings involve multiple obligations under the SCM Agreement. 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 rulings and recommendations with respect to each obligation at issue. In particular, implementation requires a reexamination of existing record evidence, the 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.

6. These re-investigations must address all of the relevant findings in the Panel and Appellate Body reports, including those involving:

- determinations by Commerce that certain state-owned enterprises (SOEs) were “public bodies”, as that term is used in Article 1.1(a)(1) of the SCM Agreement;⁶
- the policy articulated in the *Kitchen Shelving* investigation to presume that a majority government-owned entity is a public body;⁷
- the extent of diversification of economic activities within the jurisdiction of the granting authority;⁸
- the length of time during which the subsidy program had been in operation;⁹
- regional specificity, that is, whether the subsidy was limited to certain enterprises

⁶ *US – Countervailing Measures (China)*, para. 7.75.

⁷ *Id.*, para. 7.128.

⁸ *Id.*, para. 7.249.

⁹ *Id.*, para. 7.249.

located within a designated geographical region within the jurisdiction of the granting authority;¹⁰

- the initiation of investigations on whether export restraints resulted in subsidization of certain products;¹¹ and
- the use of out-of-country pricing benchmarks to determine the level of benefit where government-affiliated entities had a predominant role in the relevant market.¹²

7. Both Parties, as well as the WTO dispute settlement system as 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 Panel and Appellate Body reports.

8. As for dispute settlement proceedings generally, this RPT arbitration should “serve to preserve the rights and obligations of Members under the covered agreements...”¹³ and should contribute to a “positive solution to a dispute.”¹⁴ 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.

9. As will be discussed in greater length below, any single investigation requires a multi-step process to ensure that it meets both WTO rules and U.S. domestic legal obligations. The United States appreciates the principle of the prompt settlement of disputes expressed in Article 3.3 of the DSU and, to this end, Commerce is working to comply with the DSB’s recommendations and rulings as quickly as possible. The United States has already completed many of the necessary steps to bring these 15 measures into compliance. For example, it has:

- held consultations with Congress;
- held multiple Executive Branch meetings to discuss how to bring the measures into compliance;
- initiated administrative proceedings for each of the 15 investigations;
- analyzed what types of new record evidence needs to be acquired in order to conduct the initial analyses indicated by the DSB recommendations and rulings;
- reached out to domestic industry for additional information;

¹⁰ *Id.*, para. 7.354.

¹¹ *Id.*, para. 7.406

¹² *US – Countervailing Measures (China) (AB)*, para. 4.80.

¹³ DSU, Article 3.2.

¹⁴ *Id.*, Article 3.7.

- reached out to the Government of China for additional information;
- issued 17 questionnaires in the 15 investigations; and in some cases issued supplemental questionnaires; and
- analyzed new and previously submitted record evidence.

10. While 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 sent to the Government of China. Verifications of the data, as needed, will need to be completed and Commerce will need to reconsider, and 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. Some of the key remaining steps include:

- issuing additional supplemental questionnaires, as needed, to gather additional factual evidence;
- analyzing new and previously submitted record evidence;
- conducting on-site verification in China of the record evidence as needed;
- potentially recalculating CVD rates issued in the underlying investigations;
- issuing preliminary determinations in each of the 15 investigations and possibly a separate preliminary determination with respect to the policy expressed in *Kitchen Shelving*;
- providing parties with an opportunity to provide written affirmative and rebuttal comments for each of the preliminary determinations;
- issue final determinations addressing all the written arguments submitted by interested parties;
- providing parties with an opportunity to review the CVD calculations and provide written comments regarding any ministerial errors;
- publishing revised final determinations correcting for any ministerial errors;
- consulting with Congress on the revised determinations; and
- issuing a formal letter from the United States Trade Representative to the Secretary of Commerce instructing Commerce to implement the new determinations in each of the 15 investigations.

11. 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. Here, with 15 investigations and many findings, a 15 month RPT would be insufficient to ensure that the findings may be fully implemented. As discussed in more detail below, it will take at least 19 months to complete these steps and bring the measures at issue in the 15 investigations into compliance with the DSB's recommendations and rulings.

II. A PERIOD OF NO LESS THAN 19 MONTHS IS A REASONABLE PERIOD OF TIME FOR THE UNITED STATES TO COMPLY WITH ITS WTO OBLIGATIONS

12. Given the number of modifications to the 15 challenged investigations would have to take, including the procedural requirements under U.S. law, the complexity of the issues involved, and the current resource demands and constraints on Commerce, the shortest period of time in which it will be possible to implement the DSB’s recommendations and rulings is 19 months. Section A discusses the legal considerations of the arbitrator in setting the RPT, and Section B explains why the complexity of this dispute requires an RPT of 19 months.

A. “Reasonable Period of Time” Under Article 21.3(c) Requires Consideration of All Particular Circumstances of the Case

13. Article 21.3(c) of the DSU provides for the arbitrator to determine the RPT a Member has to implement the recommendations and rulings of the DSB. In determining the RPT, DSU Article 21.3(c) states that “a guideline for the arbitrator should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report” but that this “time may be shorter or longer, depending on the particular circumstances.” As previous arbitrators have observed, 15 months is not a “fixed maximum or outer limit for a reasonable period of time,” nor is it “a floor or inner limit.”¹⁵ Moreover, the word “reasonable” in reasonable period of time, implies a degree of flexibility that involves consideration of all the circumstances of a particular case. What is ‘reasonable’ in one set of circumstances may prove to be less than ‘reasonable’ in different circumstances.”¹⁶ Thus, “what constitutes a reasonable period ... should be defined on a case-by-case basis, in the light of the specific circumstances of each investigation.”¹⁷

14. Specific circumstances that have been 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.¹⁸ In this context, it is also important to note that an implementing Member is not required to resort to extraordinary procedures in achieving implementation, but rather the normal level required by law should be expected.¹⁹

¹⁵ *US – Hot-Rolled Steel (Article 21.3(c))*, para. 25 (internal punctuation and emphasis omitted).

¹⁶ *Id.* (quoting Appellate Body report in *US – Hot-Rolled Steel*).

¹⁷ *Id.*, para. 25 (quoting Appellate Body report in *US – Hot-Rolled Steel*). In paragraph 26, the arbitrator continued by saying that although the Appellate Body was discussing “the *Anti-Dumping Agreement*, and not the DSU, the essence of ‘reasonableness’ so articulated is, in my view, equally pertinent for an arbitrator faced with the task of determining what constitutes ‘a reasonable period of time’ in the context of the DSU.”

¹⁸ *Canada – Pharmaceuticals (Article 21.3(c))*, paras. 48-51.

¹⁹ *US – Section 110(5) (Article 21.3(c))*, para. 45 (quoting *Korea – Alcohol (Article 21.3(c))*, stating in para. 42 that “Although the reasonable period of time should be the shortest period possible within the legal system of the

15. Previous arbitration awards have consistently recognized that the arbitrator’s role is not to prescribe a particular method of implementation; for instance, it is not the arbitrator’s role to determine whether implementation would be better achieved through legislative or regulatory action.²⁰ Instead, the implementing Member has a measure of discretion in choosing the means of implementation that it deems most appropriate, “as long as the means chosen are consistent with the recommendations and rulings of the DSB and with the covered agreements.”²¹ It is not the role of the arbitrator in a 21.3(c) proceeding to determine how to implement. Instead, it is the role of the responding party to ensure that the means of implementation chosen is in a form, nature, and content that effectuates compliance, and is consistent with the covered agreements.

16. Past arbitrators have consistently recognized that the preparatory phase is essential for successful compliance.²² For example, the arbitrator in *Canada—Autos* allowed approximately 90 days for “identification and assessment of the problem and publication of a Notice of Intent in the *Canada Gazette*,” as well as consultations among government departments and with domestic parties interested in the matter.²³ In *Canada—Pharmaceuticals*, the arbitrator accepted Canada’s position that it required three months and two weeks for identification and assessment, drafting, and other preparatory steps.²⁴ And the complexity of legal issues in this dispute far exceeds those in either of those disputes.

17. As will be laid out in more detail below, the application of the principles laid out above to this dispute, one of the largest and most complicated in WTO dispute history, demonstrates that an RPT of at least 19 months is both necessary and reasonable.

B. The Legal and Technical Complexity of Conducting 15 Separate 129 Proceedings Will Require An RPT of at Least 19 Months

18. The complexity of implementing these findings across 15 investigations in a uniform, consistent and thorough manner means that an RPT of 19 months is necessary in this case. In this section, the United States will provide (i) a brief overview of the findings, (ii) the process

member to implement the recommendations and rulings of the DSB, this does not require a Member, in my view, to utilize *extraordinary* legislative procedure, rather the *normal* level of legislative procedure, in every case.”)

²⁰ *Chile – Alcohol (Article 21.3(c))*, para. 35; *Canada—Pharmaceuticals (Article 21.3(c))*, para. 41.

²¹ *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48 (quoting Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 38).

²² See, e.g., *US – Hot-Rolled Steel (Article 21.3(c))*, para. 38 (the arbitrator found it “usefully noted” that such “‘pre-legislative’ consultations between the relevant executive and administrative officials and the pertinent congressional committees of the Congress of the United States are necessary in the effort to develop and organize the broad support necessary for the adoption by both Houses of Congress of a particular proposed WTO-compliance bill.”); *Chile – Alcohol (Article 21.3(c))*, para. 43 (the arbitrator found it “usefully noted” that ‘pre-legislative’ consultations in Chile are meant to generate the broad support required for a bill’s adoption by both Chambers of the National Congress).

²³ See *Canada – Autos (Article 21.3(c))*, paras. 18, 49-50, 56 (Although the arbitrator did not award Canada the full 150 days of pre-drafting time that it requested, the 8-month award exceeded the timeframe the arbitrator found necessary to complete the remaining steps under Canada’s regulatory process by between 60 and 120 days).

²⁴ See *Canada—Pharmaceuticals (21.3(c))*, paras. 1, 14, and 62. (The arbitrator accepted Canada’s estimated four months between adoption of the Panel report and publication of the proposed regulatory change in the *Canada Gazette*, a time period which included the preparatory steps, without reduction).

used to implement these findings, and (iii) an investigation-specific discussion of the implementation obligations.

1. Commerce Must Address Findings in this Implementation Proceeding Related to the Three Key CVD Analyses — Financial Contribution, Benefit and Specificity

19. First, the Panel concluded that for 12 of the CVD investigations, Commerce acted inconsistently with the United States' obligations under Article 1.1(a)(1) of the SCM Agreement when it concluded that certain state owned enterprises were public bodies.²⁵ In the context of implementing this decision, Commerce issued a questionnaire in each of those investigations requesting further information from the Government of China pertaining to corporate structure and governance for the several input suppliers identified in each investigation.²⁶ Where the Government of China responded to Commerce's questionnaires, Commerce analyzed those responses and issued supplemental questionnaires to gather additional information. In addition, for the investigations where China initially indicated it would not file a response, Commerce has stated that China could file submissions until August 7, 2015.²⁷

20. Second, the Panel concluded that for two CVD investigations, *Seamless Pipe* and *Magnesia Carbon Bricks*, Commerce's initiation with respect to certain export restraints was inconsistent with the requirements of Article 11.3 of the SCM Agreement because the application submitted by the domestic industry contained insufficient evidence of financial contributions.²⁸ Commerce invited domestic parties to provide additional record evidence and is currently analyzing whether the evidence now on the record supports initiation of an investigation into these two programs in the two investigations.

21. Third, the Appellate Body found that Commerce acted inconsistently with the obligations of the United States under Articles 14(d), 1.1(b), 10 and 32.1 of the SCM Agreement by rejecting in-country prices to serve as benchmarks for measuring the benefit of subsidy programs related to the provision of inputs for less than adequate remuneration. This finding pertained to four investigations – *OCTG*, *Solar Panels*, *Pressure Pipe* and *Line Pipe*.²⁹ The Appellate Body described inquiries Commerce, or any other investigating authority, could make to evaluate whether to reject in-country prices as a benchmark for measuring benefits. Before rejecting in-country benchmarks on the grounds that the government's involvement in the market distorts those prices, the Appellate Body indicated that an authority should closely examine the evidence in each case and could examine factors such as the structure of the market, the respective market share of entities operating in that market, any barriers to entry, and (possibly) the behavior of

²⁵ *US – Countervailing Measures (China)*, paras. 7.60-7.75, 8.1.

²⁶ For example, in the *OCTG* investigation, Commerce must analyze 51 input suppliers. *See OCTG* Public Body Supplemental Questionnaire, June 30, 2015 (USA-19).

²⁷ Commerce Letter Extending Deadline for the Response of the Government of the People's Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

²⁸ *US – Countervailing Measures (China)*, paras. 7.380 – 7.407, 8.1.

²⁹ *US – Countervailing Measures (AB)*, paras. 4.107, 4.211.

entities in the market in making this determination. Such analyses are novel and require the collection of significantly more information than what had been done in previous investigations.

22. This finding pertaining to the use of out-of-country benchmarks provides a clear example of how complex and time-consuming implementation in this dispute will be. In response to Commerce's request for information on the input markets in question, China recently responded with a submission containing more than 1400 pages, including a detailed and lengthy econometric study and more than 80 exhibits.³⁰ The U.S. domestic industry will likely file its own competing evidence. Commerce will then have to carefully consider all of this evidence to decide how to apply the Appellate Body's findings on this benchmark issue in the four CVD investigations.

23. Fourth, the Panel concluded that for 12 of the investigations at issue Commerce should have included in its determinations a discussion of the two factors set out in Article 2.1(c) of the SCM Agreement³¹ – (i) the extent of diversification of economic activity within the jurisdiction of the granting authority, and (ii) the length of time during which the subsidy programs were in operation – in determining that certain inputs were provided for less than adequate remuneration and that the subsidies were *de facto* specific. Commerce therefore must gather additional information and analyze record evidence to determine if the input subsidies at issue in those cases were *de facto* specific (input specificity).

24. Finally, the Panel concluded that in six of the CVD investigations, Commerce acted inconsistently with the United States' obligations under Article 2.2 of the SCM Agreement by making positive determinations of regional specificity with respect to the provision of land use rights without including in its determinations a discussion of whether certain enterprises located within a designated geographical region within the jurisdiction of the granting authority (land specificity).³² Commerce therefore issued questionnaires related to the provision of these land use rights and has issued supplemental questionnaires in several of the relevant investigations.

2. Commerce's Domestic Legal Requirements Support an RPT of at Least 19 Months

a. Legal Requirements in the Challenged Investigations

25. As discussed in more detail below, the United States is using an implementation process based on both the U.S. statute that provides a specific, multi-step mechanism for implementation of WTO findings, and Commerce's procedural requirements – applicable to all CVD proceedings – to ensure that all of the investigations are handled uniformly and interested parties

³⁰ See Response of the Ministry of Commerce to the People's Republic of China to the Department's Benchmark Questionnaire, July 6, 2015 (USA-1); Exhibit GOC-D-25 (Econometrics Study by Dr. Janusz A. Ordovery) (USA-24) (we have only provided 82 pages, which is small portion of the entire submission).

³¹ *US – Countervailing Measures (China)*, paras. 7.250 – 7.256, 8.1.

³² *Id.*, paras. 7.343-7.356, 8.1.

are provided with due process. These requirements of these laws and regulations have been used in past implementation proceedings and are summarized below.

26. In the compliance process in this dispute, the United States is following the procedures set out in Section 129(b)(1) of the Uruguay Rounds Agreements Act (“URAA”)³³ As a first step in the implementation process, USTR will consult with Commerce and the relevant Congressional committees on the matter.³⁴

27. As part of this initial process, USTR sent Commerce a letter stating that because this section 129 procedure “may involve time-consuming administrative proceedings, USTR agrees that it would be appropriate for Commerce to commence administrative actions that may be needed to comply with the DSB recommendations and rulings in this dispute (e.g., open one or more administrative proceedings, analyze record evidence, gather additional evidence through questionnaires, and verify information).”³⁵ Commerce then published its initiation of the 15 separate proceedings on April 27, 2015.

28. Next, Commerce considers whether it needs to gather additional record information to implement the recommendations and rulings. In the process of information gathering, interested parties, including the Government of China, have made several requests for extensions of time in which to file responses. In response, Commerce has granted many of these requested extensions already, and as the proceedings continue may grant further extensions if requested, in accordance with Commerce’s regulations.³⁶ The granting of extensions necessarily increases the total amount of time required for implementation.

29. Commerce may also determine that it is necessary to conduct on-site verifications in China of the record information.³⁷ Verification procedures require the preparation of verification outlines and questionnaires, travel throughout China, collection and analysis of data on-site, preparation and issuance of verification reports, and the allowance of time for parties to comment on the verification reports. With respect to these cases specifically, Commerce estimates that approximately 10 weeks would be required to complete this entire verification process in the 15 investigations.

30. In Section 129(d) of the URAA requires that Commerce issue a preliminary determination in each investigation.³⁸ Commerce estimates it would take at least two months to draft all 15 preliminary determinations in this implementation proceeding. In addition, in accordance with Section 129(b)(2) of the URAA, USTR will send Commerce a written request to issue a final determination in each investigation.

³³ URAA 19 U.S.C. § 3538 (USA-2).

³⁴ URAA 19 U.S.C. § 3538(b)(1) (USA-2).

³⁵ See Communication from USTR, USDOC, Interested Parties, April 16, 2015 (USA-3).

³⁶ See, e.g., 19 C.F.R. § 351.302(b) and (c) (USA-4).

³⁷ 19 U.S.C. §1677m(i) (USA-5).

³⁸ 19 U.S.C. § 3538(d). (USA-2).

31. Next, Section 129 of the URAA requires Commerce to “provide interested parties with an opportunity to submit written comments” on that preliminary determination, and, “in appropriate cases,” “hold a hearing.”³⁹ The interested parties will require time to analyze the preliminary determinations and file affirmative and rebuttal written arguments before Commerce in each of the 15 investigations. Furthermore, if requested, the parties and Commerce will need to prepare for and hold one or more hearings to discuss the 15 preliminary determinations in this implementation proceeding. These hearings typically would be attended by the Government of China and Chinese exporters and producers, as well as interested domestic parties from the United States. Commerce estimates that it would take approximately 8 weeks after issuance of the preliminary determinations for the parties to prepare and file written comments and for Commerce to conduct hearings.

32. After all of the written arguments have been filed and any hearings have been held, Commerce will need time to prepare final determinations which will address the parties’ arguments and fully describe the Department’s analysis and conclusions in each of the 15 investigations. Given the number of legal issues, the novelty of the issues presented, and number of investigations, it is likely that Commerce will receive hundreds of pages of comments from the parties and as a result Commerce will have to prepare a lengthy final determination in each Section 129 proceeding explaining its reasoning and findings.⁴⁰ Commerce estimates that it will require at least eight weeks from the receipt of affirmative and rebuttal arguments to complete the final determinations.

33. Next, Commerce will provide the parties with the CVD calculations so the parties can analyze the calculations and provide Commerce with written arguments relating to any ministerial errors that may have been made. Commerce must then analyze the comments and issue a determination addressing these comments and correcting any ministerial errors.⁴¹ Commerce estimates that Commerce, along with the interested parties, will require at least 28 days from the issuance of the final Section 129 determinations to complete this ministerial error process.

34. Section 129(b)(3) then requires that USTR to consult with Commerce and Congress on the final Section 129 determinations. Section 129(b)(4) states that after such consultations, USTR may direct Commerce “to implement in whole or in part” those Section 129 determinations. Thus, in addition to the time Commerce needs to conduct its proceedings, USTR will also need sufficient time to conduct consultations and make its implementation determinations for each Section 129 proceeding.

³⁹ 19 U.S.C. §3538(d) (USA-2).

⁴⁰ For example, in the implementation proceeding for *US – Anti-Dumping and Countervailing Duties (China)*, the total number of pages on the record of the eight proceedings at issue was 130,275 pages. In light of the fact that this dispute involves fifteen investigations where the implementation proceeding for *US – Anti-Dumping and Countervailing Duties (China)* only covered four investigations, there is a strong possibility that when completed, these records may be comprised of twice that amount of argument and analysis. *See* 19 U.S.C. § 3538(b)(2) (USA-2).

⁴¹ *Id.*

35. As a final step in the process, Commerce will issue a *Federal Register* notice in which it officially implements the final Section 129 determinations in each of the 15 investigations.

36. As described, implementation process involves many steps, each of them involving extensive work by the investigating authority, and many steps require additional time for interested parties to review materials and to prepare submissions. In a dispute that involves only a single antidumping proceedings and a small number of implementation obligations, an appropriate RPT may be in the range of 12-13 months.⁴² Because this effort must be undertaken by an authority with limited resources with respect to 15 investigations and numerous findings, an RPT of at least 19 months is necessary to ensure that the findings can be fully implemented.

37. Based on the legal requirements laid out above, and the complicated nature of implementing the DSB rulings and recommendations in each of the 15 investigations, the approximate timetable appropriate for this dispute is as follows:

⁴² See, e.g. *US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c))* (The arbitrator granted 12 months when there was only a single investigation at issue, though the implementation process differed than these investigations).

DS437 – Approximate 19 Month Case Calendar⁴³	
Action	Approx. Time Period
Report Adopted by WTO Dispute Settlement Body Covering 15 CVD investigations.	January 16, 2015
USTR Consults with Relevant Congressional Committees.	Mid-February
USTR & Commerce Consult & Pre-Commencement Analysis Preparation.	February-May
Commerce Publishes a <i>Federal Register</i> Notice Commencing Implementation Proceedings in the 15 CVD Investigations.	April 27
Commerce sends out request to Domestic Industries on Export Restraints Initiation Issue; Domestic File Additional Record Information.	Late April - Early May
Commerce Issues Questionnaires on Public Body, Benchmark, & Specificity.	May - June
Commerce Analyzes Responses and Issues Supplemental Questionnaires Where Necessary.	July - October
Commerce Conducts On-Site Verifications in China As Needed.	November-December
USTR Issues Written Request to Commerce for Determinations.	February 2016
Commerce Issues Preliminary Determinations in all 15 CVD Investigations.	February 2016
Parties Submit Case & Rebuttal Briefs.	March 2016
Commerce Issues Final Determinations in 15 CVD Investigations in which It Analyzes and Addresses All Arguments Raised in the Parties' Briefs.	May 2016
Parties Submit Ministerial Error Comments.	June 2016

⁴³ These actions and dates are approximate. The necessity and length of time required for these actions depends on, *inter alia*, the participation of the parties in the Section 129 proceedings, the volume of the data contained in the responses, the complexity of the analysis required, and other factors which could vary greatly by investigation as well as issue.

Commerce Publishes a Memorandum Addressing Ministerial Errors Comments. This process takes a few weeks to consider the comments, analyze the data, and address those comments.	Mid-June 2016
USTR Consults with Congress Before Issuing a Letter to Commerce to Issue Determinations in the 15 CVD Investigations.	July 2016
USTR Issues Letter directing Commerce to Implement the final Determinations.	August 2016

b. Each Investigation Has Differing Factual and Legal Questions To Resolve

38. The 15 investigations at issue involve differing factual and legal questions, and as a result the investigations must be individually implemented. Further, even when similar questions are asked in each investigation through questionnaires, the responses may vary widely, and thus each one must be analyzed independently. The following is a brief description of each of the matters at issue, Commerce’s progress in implementation thus far, and an estimate as to a reasonable and expedient schedule to comply with the DSB’s recommendations and rulings.

39. **Thermal Paper:** At issue in this investigation was Commerce’s determination that land provided for less than adequate remuneration was specific (“land specificity”). Commerce issued a questionnaire to the Government of China on June 6, 2015⁴⁴ and the Government of China indicated to Commerce upon receipt that they will not be submitting a response regarding this issue. However, even in the absence of a response, in order to properly implement the findings for this issue Commerce will need to conduct an analysis of available information to fill in the information gap stemming from China’s failure to respond to the questionnaire.

40. **Pressure Pipe:** Commerce must address its public body, benchmarks, and input specificity determinations in this investigation. With respect to the public body issue in *Pressure Pipe*, a questionnaire was sent on May 1, 2015,⁴⁵ and a response was provided by China on May 15, 2015. At present, Commerce is engaging with the Government of China to request additional essential information regarding the numerous input producers at issue. The domestic industry has also already filed comments regarding the Government of China’s initial response. With notable deficiencies in the information received, Commerce issued a supplemental questionnaire on June 30, 2015, in order to allow the Government of China to correct these deficiencies.⁴⁶ In addition to the complexity of this issue, this investigation will also likely require Commerce to consider a broader range of input providers than in the original investigation. For example, in its initial response, the Government of China provided information for 75 input producers that were not at issue in the underlying investigation and also did not provide information for several

⁴⁴ Commerce Letter Issuing Questionnaire on Land Provided for Less Than Adequate Remuneration, June 5, 2015 (USA-7).

⁴⁵ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁴⁶ Commerce Letter Issuing Supplemental Questionnaire Concerning Public Bodies, June 30, 2015 (USA-10).

producers that were at issue in the underlying investigation. To prevent delays in the future due to any miscommunications, Commerce has met with the Government of China to ensure the supplemental questionnaire process is more efficient given time constraints. Going forward, Commerce anticipates that substantial time and resources will be required to thoroughly review all of the Government of China's forthcoming responses.

41. On the benchmark issue, the Appellate Body has articulated a multifaceted and novel analytical framework under which Commerce may assess the correct benchmark to use to measure the benefit for the provision of inputs for less than adequate remuneration (LTAR). Commerce issued an initial questionnaire on June 5, 2015.⁴⁷ Commerce expects that it may need to issue supplemental questionnaires in order to clarify the evolving body of evidence regarding the market dynamics of each individual input at issue. Commerce expects it will take several weeks to finish gathering the necessary information. Furthermore, on the input specificity issue, Commerce issued a questionnaire for certain information as to the length of time the subsidy has been in existence.

42. *Line Pipe*: Commerce must address its public body, benchmarks, input specificity, and land specificity determinations in this investigation. With respect to the public body issue in *Line Pipe*, Commerce issued a questionnaire on May 1, 2015.⁴⁸ The Government of China responded to the questionnaire on May 15, 2015. At present Commerce is engaging with the Government of China to request additional essential information regarding the numerous input producers at issue. The domestic industry has also already filed comments regarding the Government of China's initial response. With notable deficiencies in the information received, Commerce issued a supplemental questionnaire on June 30, 2015, in order to allow the Government of China to correct these deficiencies.⁴⁹ In addition to the complexity of this issue, this investigation will also likely require Commerce to consider a broader range of input providers than in the original investigation. For example, in its initial response, the Government of China provided information for 75 input producers that were not at issue in the underlying investigation and also did not provide information for several producers that were at issue in the underlying investigation. To prevent delays in the future due to any miscommunications, Commerce has met with the Government of China to ensure the supplemental questionnaire process is more efficient given time constraints. Going forward, Commerce anticipates that substantial time and resources will be required to thoroughly review all of the Government of China's forthcoming responses.

43. Regarding the proper benchmark to use in order to measure the benefit in the analysis of inputs for LTAR, Commerce is considering the novel analytical framework articulated by the Appellate Body and Commerce has already issued an initial questionnaire.⁵⁰ Commerce expects that it may need to issue supplemental questionnaires in order to clarify the evolving body of

⁴⁷ Commerce Letter Issuing Questionnaire Concerning the Benchmark Used to Measure Whether Certain Inputs Were Sold For Less Than Adequate Remuneration, June 5, 2015 (USA-11).

⁴⁸ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁴⁹ Commerce Letter Issuing Supplemental Questionnaire Concerning Public Bodies, June 30, 2015 (USA-12).

⁵⁰ Commerce Letter Issuing Questionnaire Concerning the Benchmark Used to Measure Whether Certain Inputs Were Sold For Less Than Adequate Remuneration, June 5, 2015 (USA-11).

evidence regarding the market dynamics of each individual input at issue. Commerce expects it will take several weeks to finish gathering the necessary information. On the input specificity issue, Commerce requested certain information as to the length of time the subsidy has been in existence in a questionnaire. Finally, Commerce has also issued a questionnaire regarding the land specificity issue,⁵¹ and issued one supplemental questionnaire on this matter.⁵²

44. **Lawn Groomers:** Commerce must address its public body and input specificity determinations in this investigation. Commerce issued a questionnaire on the public body matter on May 1, 2015.⁵³ The Government of China initially indicated that it did not intend to provide responses to that questionnaire. Commerce provided China with the continued opportunity to respond to the questionnaire until August 7, 2015.⁵⁴

45. **Citric Acid:** At issue in this investigation was Commerce's land specificity determination. Commerce issued a questionnaire to the Government of China on June 5, 2015.⁵⁵ The Government of China initially indicated it would not be submitting a response regarding this issue. However, even in the absence of a response, in order to properly implement the findings for this issue Commerce will need to conduct an analysis of available information to fill in the information gap stemming from China's failure to respond to the questionnaire.

46. **Kitchen Shelving:** Commerce must address its public body and input specificity determinations in this investigation. With respect to the public body issue, Commerce issued a questionnaire on May 1, 2015,⁵⁶ and at present Commerce is engaging with the Government of China to request additional essential information regarding the numerous input producers at issue. The United States domestic industry has also filed comments regarding the Government of China's initial response. Because there were notable deficiencies in the information received, Commerce issued a supplemental questionnaire.⁵⁷ In addition to the complexity of this issue, this investigation will also likely require Commerce to consider a broader range of input providers than in the original investigation. For example, in its initial response, the Government of China provided information for 75 input producers that were not at issue in the underlying investigation and also did not provide information for several producers that were at issue in the underlying investigation. To prevent delays in the future due to any miscommunications, Commerce met with the Government of China to ensure the supplemental questionnaire process is more efficient given time constraints. Going forward, Commerce anticipates that substantial time and resources will be required to thoroughly review all of the Government of China's

⁵¹ Commerce Letter Issuing Questionnaire on Land Provided for Less Than Adequate Remuneration, June 5, 2015 (USA-7).

⁵² Commerce Letter Issuing Supplemental Questionnaire on Land Provided for Less Than Adequate Remuneration, July 22, 2015 (USA-20).

⁵³ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁵⁴ Commerce Letter Extending Deadline for the Response of the Government of the People's Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

⁵⁵ Commerce Letter Issuing Questionnaire on Land Provided for Less Than Adequate Remuneration, June 5, 2015 (USA-7).

⁵⁶ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁵⁷ *Kitchen Shelving* Public Body Supplemental Questionnaire, June 30, 2015 (USA-18).

forthcoming responses. On the input specificity issue, Commerce requested certain information as to the length of time the subsidy has been in existence in a questionnaire.

47. **OCTG:** Commerce must address its public body, benchmarks, input specificity, and land specificity determinations in this investigation. With respect to the public body issue in *OCTG*, Commerce issued a public body questionnaire on May 1, 2015,⁵⁸ and at present Commerce is engaging with the Government of China to request additional essential information regarding the numerous input producers at issue. The domestic industry has also filed comments regarding the Government of China's initial response. Because there were notable deficiencies in the information received, Commerce issued a supplemental questionnaire, in order to allow the Government of China to correct these deficiencies.⁵⁹ In addition to the complexity of this issue, this investigation will also likely require Commerce to consider a broader range of input providers than in the original investigation. For example, in its initial response, the Government of China provided information for 75 input producers that were not at issue in the underlying investigation and also did not provide information for several producers that were at issue in the underlying investigation. To prevent delays in the future due to any miscommunications, Commerce met with the Government of China to ensure the supplemental questionnaire process is more efficient given time constraints.

48. Going forward, Commerce anticipates that substantial time and resources will be required to thoroughly review all of the Government of China's forthcoming responses. Regarding the proper benchmark to use in order to measure the benefit in the analysis of inputs for LTAR, Commerce is considering the novel analytical framework articulated by the Appellate Body for which Commerce has issued an initial questionnaire.⁶⁰ Commerce expects that it may need to issue supplemental questionnaires in order to clarify the evolving body of evidence regarding the market dynamics of each individual input at issue. Commerce expects it will take several weeks to finish gathering the necessary information. On the input specificity issue, Commerce requested certain information as to the length of time the subsidy has been in existence in a questionnaire. Finally, Commerce has also issued a questionnaire regarding the land specificity issue,⁶¹ and has issued two supplemental questionnaires on this matter.⁶²

49. **Wire Strand:** Commerce must address its public body, benchmarks, input specificity, and land specificity determinations in this investigation. Commerce issued a questionnaire addressing the public body matter⁶³; the Government of China initially indicated that it did not intend to provide a response to the questionnaire. However, Commerce has provided China

⁵⁸ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁵⁹ *OCTG* Public Body Supplemental Questionnaire, June 30, 2015 (USA-19).

⁶⁰ Commerce Letter Issuing Questionnaire Concerning the Benchmark Used to Measure Whether Certain Inputs Were Sold For Less Than Adequate Remuneration, June 5, 2015 (USA-11).

⁶¹ Commerce Letter Issuing Questionnaire on Land Provided for Less Than Adequate Remuneration, June 5, 2015 (USA-7).

⁶² Commerce Letter Issuing Supplemental Questionnaire on Land Provided for Less Than Adequate Remuneration, July 10, 2015 (USA-21); Commerce Letter Issuing Second Supplemental Questionnaire on Land Provided for Less Than Adequate Remuneration, July 22, 2015 (USA-22).

⁶³ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

with the continued opportunity to respond to the questionnaire until August 7, 2015.⁶⁴ Commerce also issued a questionnaire regarding the land specificity issue,⁶⁵ and will likely need to issue at least one supplemental questionnaire on this matter.

50. **Coated Paper/Print Graphics:** Commerce must address its public body and input specificity determinations in this investigation. Commerce issued a questionnaire on the public body matter on May 1, 2015.⁶⁶ The Government of China initially indicated that it does not intend to provide responses to that questionnaire. However, Commerce has provided China with the continued opportunity to respond to the questionnaire until August 7, 2015.⁶⁷ On the input specificity issue, Commerce requested certain information as to the length of time the subsidy has been in existence in a questionnaire.

51. **Drill Pipe:** Commerce must address its public body and input specificity determinations in this investigation. Commerce issued a questionnaire on the public body matter.⁶⁸ The Government of China initially indicated that it does not intend to provide responses to that questionnaire. However, Commerce has provided China with the continued opportunity to respond to the questionnaire until August 7, 2015.⁶⁹

52. **Aluminum Extrusions:** Commerce must address its public body and input specificity determinations in this investigation. Commerce issued a questionnaire on the public body matter on May 1, 2015.⁷⁰ The Government of China initially indicated that it does not intend to provide responses to that questionnaire. However, Commerce has provided China with the continued opportunity to respond to the questionnaire until August 7, 2015.⁷¹

53. **Steel Cylinders:** Commerce must address its public body and input specificity determinations in this investigation. With respect to the public body issue, Commerce issued a preliminary questionnaire.⁷² At present Commerce is engaging with the Government of China to request additional essential information regarding the numerous input producers at issue. The United States domestic industry has also filed comments regarding the Government of China's initial response. With notable deficiencies in the information received, Commerce issued a supplemental questionnaire, in order to allow the Government of China to correct these

⁶⁴ Commerce Letter Extending Deadline for the Response of the Government of the People's Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

⁶⁵ Commerce Letter Issuing Questionnaire on Land Provided for Less Than Adequate Remuneration, June 5, 2015 (USA-7).

⁶⁶ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁶⁷ Commerce Letter Extending Deadline for the Response of the Government of the People's Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

⁶⁸ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁶⁹ Commerce Letter Extending Deadline for the Response of the Government of the People's Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

⁷⁰ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁷¹ Commerce Letter Extending Deadline for the Response of the Government of the People's Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

⁷² Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

deficiencies.⁷³ In addition to the complexity of this issue, this investigation will also likely require Commerce to consider a broader range of input providers than in the original investigation. For example, in its initial response, the Government of China provided information for 75 input producers that were not at issue in the underlying investigation and also did not provide information for several producers that were at issue in the underlying investigation. To prevent delays in the future due to any miscommunications, Commerce has met with the Government of China to ensure the supplemental questionnaire process is more efficient given time constraints. Going forward, Commerce anticipates that substantial time and resources will be required to thoroughly review all of the Government of China's forthcoming responses.

54. **Magnesia Bricks:** Commerce must analyze its initiation on export restraints in light of new information supplied by the United States domestic industry on the administrative record.⁷⁴ If Commerce determines that this information meets the standard for initiation, an investigation will be initiated, and more questionnaires will be required, necessitating a sufficient amount of time in which to thoroughly conduct the questionnaire process. As explained above, Commerce may also conduct verifications and will issue a preliminary determination, invite parties to file briefs, conduct hearings, and in the end, issue a final Section 129 determination.

55. **Seamless Pipe:** Commerce must address its public body, export restraints, input specificity, and land specificity determinations in this investigation. With respect to the public body issue, Commerce issued a questionnaire on May 1, 2015.⁷⁵ The Government of China initially indicated that it does not intend to provide responses to that questionnaire. However, Commerce has provided China with the continued opportunity to respond to the questionnaire until August 7, 2015.⁷⁶

56. Regarding export restraints, Commerce must analyze its initiations on export restraints in light of information supplied by the United States domestic industry on the administrative record.⁷⁷ If Commerce determines that this information meets the standard for initiation, an investigation will be initiated, and more questionnaires will be required, necessitating a sufficient amount of time in which to thoroughly conduct the questionnaire process. On the input specificity issue, Commerce requested certain information as to the length of time the subsidy

⁷³ *Steel Cylinders* Supplemental Questionnaire on Public Bodies, June 30, 2015 (USA-23).

⁷⁴ Response to Invitation to Submit New Information, May 11, 2015 (USA-15).

⁷⁵ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁷⁶ Commerce Letter Extending Deadline for the Response of the Government of the People's Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

⁷⁷ Response to Submit New Information Regarding Certain Seamless Carbon and Alloy Steel Standard, May 11, 2015 (USA-16).

has been in existence in a questionnaire.⁷⁸ Commerce has also issued a questionnaire regarding the land specificity issue, and has issued at least one additional questionnaire on this matter.⁷⁹

57. **Solar Panels:** Commerce must address its public body, benchmarks, and input specificity determinations in this investigation. With respect to the public body matter, Commerce issued a questionnaire to the Government of China.⁸⁰ The Government of China initially indicated that it did not intend to provide responses to the questionnaire. However, Commerce has provided China with the continued opportunity to respond to the questionnaire until August 7, 2015.⁸¹

58. On the benchmark issue, the Appellate Body has set forth a multifaceted and novel analytical framework under which Commerce may assess the correct benchmark to use to measure the benefit for the provision of inputs for LTAR.⁸² Commerce has issued an initial questionnaire. However, Commerce expects that it may need to issue supplemental questionnaires in order to clarify the evolving body of evidence regarding the market dynamics of each individual input at issue. Commerce expects it will take several weeks to finish gathering the necessary information. On the input specificity issue, Commerce requested certain information as to the length of time the subsidy has been in existence in a questionnaire.

c. Considerations of Commerce’s Current Workload Supports an RPT of at Least 19 Months

59. In addition to conducting these 15 separate Section 129 proceedings, Commerce must also continue to work on its numerous ongoing antidumping and countervailing duty proceedings. In fact, Commerce is experiencing a 12-year record high for original investigations.

60. As perspective, in 2014, parties filed over two million pages of documents which Commerce’s employees considered, analyzed, and addressed. As of July 2015, parties have already filed nearly 1.7 million pages of documents. This indicates an increase in workload as compared to 2014 of over 68%.

61. In the last year, Commerce completed 57 original investigations, and as of this filing, Commerce has 21 ongoing antidumping investigations and 17 CVD investigations, in addition to the 15 proceedings in this dispute. In addition, Commerce has conducted 144 periodic reviews,

⁷⁸ Commerce Letter Issuing Questionnaire on Land Provided for Less Than Adequate Remuneration, June 5, 2015 (USA-7).

⁷⁹ Commerce Letter Issuing Supplemental Questionnaire Concerning the Provision of Land for Less Than Adequate Remuneration, July 10, 2015 (USA-17); Commerce Letter Issuing Second Supplemental Questionnaire Concerning the Provision of Land for Less Than Adequate Remuneration, July 22, 2015 (USA-22).

⁸⁰ Commerce Letter Issuing the Questionnaire on Public Bodies, May 1, 2015 (USA-9).

⁸¹ Commerce Letter Extending Deadline for the Response of the Government of the People’s Republic of China (GOC) to Certain Initial Questionnaires, July 24, 2015 (USA-14).

⁸² Commerce Letter Issuing Questionnaire Concerning the Benchmark Used to Measure Whether Certain Inputs Were Sold For Less Than Adequate Remuneration, June 5, 2015 (USA-11).

20 new shipper reviews, 24 expiry reviews, 35 scope inquiries, 11 changed circumstances reviews, and an anti-circumvention inquiry this year. And this increase in workload has occurred without the allocation of any additional resources to the administering authority.

62. These 15 proceedings are a significant addition to Commerce’s workload. The United States is fully committed to compliance as quickly as possible, but considerations of Commerce’s current workload should be included as part of the “particular circumstances” of this dispute as the arbitrator considers the length of the RPT.

III. CONCLUSION

63. 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 is to secure a “positive solution” for this dispute.⁸³ 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.

⁸³ DSU, Article 3.7.