

**UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN
HOT-ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA**

Recourse to Article 21.5 of the DSU by India

(DS436)

**CLOSING STATEMENT OF THE UNITED STATES OF AMERICA
AT THE MEETING OF THE PANEL AND THE PARTIES**

January 31, 2019

Mr. Chairperson, members of the Panel:

1. Pursuant to the DSB’s recommendations, the United States brought its measures into conformity with the SCM Agreement in this dispute. This compliance proceeding under Article 21.5 of the DSU is to determine whether India has shown that the United States has failed to implement the DSB recommendations. India, instead, appears to view this proceeding as an occasion for it to relitigate issues before the investigating authority, unrelated to the DSB’s recommendations. Similarly, it views these proceedings as a second chance to argue claims that it failed to raise, or raised unsuccessfully before the original panel.
2. The United States also recalls that the scope of these proceedings is limited to those issues falling within the measures taken to comply. And, in reviewing those measures, the United States would like to recall the standard of review to be applied by panels when reviewing an investigating authority’s determination in a countervailing duty proceeding – that is, a panel is to consider whether an objective and unbiased investigating authority *could* have reached its determination in evaluating the relevant evidence.¹
3. Contrary to this standard of review, India has attempted to engage the Panel to act as an initial trier of fact and conduct *de novo* review. In these proceedings, India also has mischaracterized and misconstrued the findings in the determinations at issue, and the findings of the original panel and Appellate Body. The Panel should reject India’s claims accordingly.
4. We look forward to responding in writing to the Panel’s questions and to commenting on responses provided by India.
5. The United States thanks the Panel, and the Secretariat staff assisting the Panel, for the careful attention you are giving to this matter. And with that, we shall conclude our closing statement.
6. Thank you.

¹ *US – Coated Paper (Indonesia) (Panel)*, para. 7.4. (citing Article 17.6 of the AD Agreement). *See also US – Coated Paper (Indonesia) (Panel)*, paras. 7.3-7.7, 7.61, 7.83, 7.113, 7.193.