ANNEX A

EXECUTIVE SUMMARY OF THE UNITED STATES' SUBMISSION

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.

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ANNEX B

EXECUTIVE SUMMARY OF CHINA'S SUBMISSION

1. The United States argues in its submission that the reasonable period of time for it to implement the recommendations and rulings of the Dispute Settlement Body ("DSB") in the dispute *US – Countervailing Measures* (China) should be 19 months from the adoption of the panel and Appellate Body reports. The United States maintains that this period, which is substantially longer than the recommended guideline in Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), is necessitated by domestic legal requirements, the alleged complexity of the issues involved, and the USDOC's current workload. In China's view, however, these are not "particular circumstances" that justify a reasonable period of time ("RPT") for implementation longer than the 15-month guideline provided in Article 21.3(c) of the DSU. The United States has failed to establish that a reasonable period of time longer than 10 months is required to implement the recommendations and rulings of the DSB in this dispute.

2. Based on the language in Article 21 of the DSU, it is well established that any "reasonable period of time" under Article 21.3(c) must be "the shortest period possible within the legal system of the Member to implement the recommendations and rulings of the DSB".[1] The implementing Member is expected to use whatever flexibility is available within its legal system to promptly implement those recommendations and rulings.[2]

3. In this dispute, the recommendations and rulings of the DSB are limited to particular aspects of the USDOC's analysis in specific countervailing duty determinations. Thus, at issue in this arbitration is the "shortest period possible" for the United States to modify the relevant determinations pursuant to the procedures outlined in Sections 129(b)-(d) of the Uruguay Round Agreements Act ("URAA").

4. China notes that pursuant to Sections 129(b)-(d) of the URAA, the USDOC has considerable flexibility to implement the recommendations and rulings of the DSB in a much shorter period than it has proposed. This is evident from the absence of mandatory minimum timeframes for any of the component steps for a redetermination.[3] In fact, the only timeframe that appears in Sections 129(b)-(d) of the URAA is the *maximum* timeframe in Section 129(b)(2), which provides that the administering authority "shall, within 180 days after receipt of a written request from the Trade Representative, issue a determination in connection with the particular proceeding that would render the administering authority's action described in paragraph (1) not inconsistent with the findings of the panel or the Appellate Body." [4] This 180-day deadline in Section 129(b)(2) is undoubtedly an indication of the maximum amount of time that the *U.S. government* thought would be necessary for the USDOC *in every case* to issue a determination not inconsistent with the findings of a panel or the Appellate Body.

5. In its written submission, the United States explains that it needs 19 months in order to come into compliance with the recommendations and rulings of the DSB. This is more than three times the 180-day timeframe in Section 129(b)(2) of the URAA, and more than four times the normal timeframe for a standard USDOC countervailing duty investigation.[5] The United States seeks to justify the lengthy RPT that it proposes by reference to a breakdown of what it considers

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[1] See, e.g. Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 26.

[2] See, e.g. Award of the Arbitrator, *Colombia – Ports of Entry (Article 21.3(c))*, para. 65.

[3] See, e.g. Award of the Arbitrator, *Colombia – Ports of Entry (Article 21.3(c))*, para. 83; Award of the Arbitrator, *China – GOES (Article 21.3(c))*, para. 3.47.

[4] See Award of the Arbitrator, *US – Hot Rolled Steel (Article 21.3(c))*, para. 34.

[5] See 19 CFR §§ 351.201-351.211.

to be the necessary steps in the Section 129 proceedings. In China's view, certain of the time periods proposed by the United States are both unsupported and unsupportable. For example:

- The United States maintains that 3.5 months is the "shortest period possible" for USTR to consult with Congress and the USDOC, and for "pre-commencement analysis preparation".[6] However, China notes that the final panel report in this dispute, containing five of the six relevant findings, was issued to the parties in May 2014. Accordingly, it is unclear to China why the United States needed an additional 3.5 months after the report was adopted by the DSB in January 2015 to engage in "pre-commencement analysis preparation".[7]

- The United States maintains that six months is the "shortest period possible" for the USDOC to collect and analyse the information from interested parties, arguing that this dispute is "one of the most extensive in the history of the World Trade Organization".[8] However, the United States fails to account for the fact that China has made clear that it will not be responding to the USDOC's questionnaires in the majority of the relevant investigations, meaning that there will be no new information for the USDOC to analyse. And while the United States devotes a substantial portion of its submission to the complexity of the analysis that the USDOC confronts in relation to each of the relevant issues, the United States fails to acknowledge that in an ordinary countervailing duty investigation, an examination of these issues would encompass a mere fraction of the USDOC's overall analysis.

6. The United States has the burden of proof as the implementing Member to demonstrate that its proposed RPT is the "shortest period possible" for it to implement the recommendations and rulings of the DSB. For the reasons discussed above, China does not believe that the United States has come close to meeting its burden in relation to its proposed RPT of 19 months.

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[6] See U.S. submission, paras. 26-27, 37.
[7] See, e.g. Award of the Arbitrator, *China – GOES (Article 21.3(c))*, para. 3.37.
[8] See U.S. submission, p. 12 ("DS437 – Approximate 19 Month Case Calendar") and para. 4