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ABBREVIATIONS USED IN THIS AWARD

Abbreviation	Description
Anti-Dumping Agreement	Agreement on Implementation of o27.grGl(i)-e(t)] TJETQ205.85 664.42



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CASES CITED IN THIS AWARD

Short Title	Full Case title and citation
Argentina Hides and Leather (Article 21.3(c))	Award of the Arbitrator, Argentina Measures Affecting the Export of Bovine Hides and the Import of Finished Leather Arbitration under Article 21.3(c) of the DSU, WT/DS155/10, 31 August 2001, DSR 2001:XII, p. 6013
Brazil Retreaded Tyres (Article 21.3(c))	Award of the Arbitrator, Brazil Measures Affecting Imports of Retreaded Tyres

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Short Title	Full Case title and citation
US Stainless Steel (Mexico)	Appellate Body Report, United States Final Anti-Dumping Measures on Stainless Steel from Mexico, WT/DS344/AB/R, adopted 20 May 2008, DSR 2008:11, p. 513
US Stainless Steel (Mexico) (Article 21.3(c))	Award of the Arbitrator, United States Final Anti-Dumping Measures on Stainless Steel from Mexico Arbitration under Article 21.3(c) of the DSU, WT/DS344/15, 31 October 2008, DSR 2008:XX, p. 8619
US Washing Machines	A

1.6. On 12 January 2017, the United States sent a letter requesting that the due date for the United States' submission be no earlier than 27 January 2017, in light of expected difficulties in preparing that written submission due to office closures relating to the United States Presidential Inauguration on 20 January 2017, as well as a federal public holiday on 16 January 2017.

1.7. On 16 January 2017, I informed the parties of my acceptance of the appointment as Arbitrator, and invited Korea to comment on the United States' letter of 12 January 2017. On 18 January 2017, Korea indicated that it did not intend to comment on the United States' letter and that it thereby expressed no objection to the United States' request. On 19 January 2017, I transmitted to the parties a Working Schedule identifying the dates for the filing of the parties' written submissions and the date for the hearing.⁷

take seeks to achieve objectives unrelated to the DSB's recommendations and rulings, or forms part of a wider reform of that Member's municipal law, then these considerations cannot justify a longer implementation period for the WTO dispute.¹² At the same time, the mandate under Article 21.3(c) of the DSU is limited to determining the period of time within which it would be reasonable to expect implementation of the recommendations and rulings of the DSB to occur, and does not involve deciding on the content of the implementation needed, nor a determination of the consistency with the covered agreements of the measure that the Member envisages to adopt in order to comply. The latter question, should it arise, is to be addressed in proceedings conducted pursuant to Article 21.5 of the DSU.¹³

3.9. Pursuant to the last sentence of Article 21.3(c), the "particular circumstances" of a dispute may affect the reasonable period of time, making it "shorter or longer". Previous arbitrators have observed that the objective of "prompt compliance" in Article 21.1 of the DSU calls for the implementing Member to utilize the flexibilities available within its legal system in implementing the relevant recommendations and rulings of the DSB.¹⁴ An implementing Member is not, however, expected to utilize "extraordinary procedures" to bring its measure into compliance.¹⁵

3.10. Finally, with regard to the burden of proof, it is well established that the implementing Member bears the overall burden of proving that the time period requested for implementation constitutes a "reasonable period of time".¹⁶ However, this does not "absolve" the complaining Member of its duty to provide evidence supporting why it disagrees with the period of time proposed by the implementing Member, and to substantiate its view that a shorter period of time

- b. In respect of the Washers anti-dumping investigation²⁰:
 - i. the USDOC's determination to apply the W-T methodology on the basis of:

its identification of a pattern of export prices which differ significantly among different purchasers, regions or time periods; and its explanation as to why such differences could not be taken into account by the methodologies that are normally to be used; and

- ii. the USDOC's calculation of the margin of dumping.
- c. In respect of the Washers countervailing duty investigation²¹:
 - i. the USDOC's determination that Article 10(1)(3) of Korea's Restriction of Special Taxation Act (RSTA) is de facto specific, in particular:

the original and remand determinations that Samsung Electronics Co., Ltd (Samsung) received subsidies in disproportionately large amounts; and

3.4.1 Means of implementation

3.17. While the parties agree that separate proceedings are required for implementing the DSB's recommendations and rulings relating to the anti-dumping measures and those relating to the Washers countervailing duty investigation, they disagree on the means to implement the "as such" recommendations and rulings relating to the DPM and the application of the W-T methodology.

choice [by the USDOC] that extends well beyond the mere repetition of the methodology in certain specific cases" and is thus applicable in all cases.⁴²

3.22. Further, the text of Section 123(g)(1) explicitly indicates that, "[i]n any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements, that regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until" the relevant steps set forth under Section 123(g) have been followed.

3.23. On the basis of the foregoing, the United States has demonstrated that a Section 123 proceeding is an appropriate means to implement the DSB's "as such" recommendations and rulings in this dispute.

3.4.2 Steps in the implementation process

3.24. Turning to the implementation process, the subsections below address the steps required for: (i) implementation of the DSB's "as such" recommendations and rulings through a Section 123 proceeding; (ii) implementation of the DSB's "as applied" recommendations and rulings concerning the Washers anti-dumping investigation through a Section 129 anti-dumping proceeding; (iii) the sequencing of the Section 123 and Section 129 proceedings concerning the anti-dumping measures; and (iv) implementation of the DSB's "as applied" recommendations and rulings concerning the Washers countervailing duty investigation through a Section 129 proceeding.

3.4.2.1 Implementation of the DSB's "as such" recommendations and rulings

3.25. With regard to implementation of the DSB's "as such" recommendations and rulings concerning the DPM and the W-T methodology, the United States argues that it needs 5 months to conduct internal deliberations prior to the commencement of the Section 123 proceeding, during which: the United States would determine whether a WTO-consistent approach to applying the W-T methodology in anti-dumping proceedings "is possible under existing municipal law"; the United States Trade Representative (USTR) and the USDOC would conduct preliminary consultations; these agencies would conduct "pre-commencement analysis preparation"; and the USDOC would begin devising anti-dumping methodologies in preparation for the commencement of Section 123 and Section 129 proceedings.⁴³ The United States maintains that, thereafter, it needs "no less than 15 months to complete the entire section 123 proceess".⁴⁴ In considering the period of time required to complete both the initial deliberations and the Section 123 proceeding, the United States emphasizes that implementation requires the United States to redesign, and perhaps replace entirely, its methodology for identifying and addressing potential masked dumping in original and assessment proceedings in a way that, to date, has not been applied by WTO Members.⁴⁶

3.26. Korea argues that the United States' proposed time period fails to account for available flexibilities and incorporates steps not required under the proposed Section 123 proceeding.⁴⁷ Korea also contends that the time periods requested for certain steps are longer than the time periods actually needed to complete those steps. In particular, Korea contests the amount of time required to: (i) conduct initial deliberations and preparatory work; (ii) develop proposed methodologies for determining when to apply the W-T methodology and for calculating the margin of dumping; and (iii) conduct consultations with Congress and the private sector (including time

⁴² Panel Report, para. 7.115. See also para. 7.110; and Appellate Body Report, paras. 6.3-6.4 and 6.7-6.11.

⁴³ United States' submission, para. 55.

⁴⁴ United States' submission, para. 42.

⁴⁵ United States' submission, paras. 15-24.

⁴⁶ In its proposed timetable, the United States indicates that the Section 123 proceeding will conclude in June 2018 (i.e. 21 months following the adoption of the Panel and Appellate Body Reports in September 2016). (United States' submission, para. 55)

⁴⁷ Korea's submission, paras. 42-47.

for analysis of public comments on the proposed methodologies).⁴⁸ Korea also contests the extent to which the "novelty" of the DSB's "as such" recommendations and rulings and the technical complexities of implementation are relevant factors in determining the reasonable period of time.⁴⁹ Furthermore, Korea highlights that in US Stainless Steel (Mexico) the United States requested only 7 months to complete a Section 123 proceeding.⁵⁰ Korea submits that in the present dispute the United States requires no more than 8 months to complete the Section 123 proceeding.

3.27. Section 123(g) of the URAA provides, in relevant part:

- (g) Requirements for agency action
- (1) Changes in agency regulations or practice

In any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements, that regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until

- (A) the appropriate congressional committees have been consulted under subsection (f)⁵¹;
- (B) the Trade Representative has sought advice regarding the modification from relevant private sector advisory committees established under section 135 of the Trade Act of 1974 ;
- (C) the head of the relevant department or agency has provided an opportunity for public comment by publishing in the Federal Register the proposed modification and the explanation for the modification;
- (D) the Trade Representative has submitted to the appropriate congressional committees a report describing the proposed modification, the reasons for the modification, and a 100(Reg)7(i)-nablat(an)21()] TJETBT1 6rn961 0 ioa75

3.28. The parties agree that subparagraphs (A) through (F) quoted above identify the steps involved in a Section 123 proceeding and that the only prescribed time period is found in Section

3.48. The second main difference in the positions of the parties concerns whether the reasonable period of time should allow time for the USDOC to conduct additional fact-finding. The United States submits that, because it cannot yet "foreclose that" or "prejudge whether" it will be necessary to solicit additional factual information, conduct verifications, or hold a hearing in this Section 129 proceeding, time must be afforded to conduct such steps.⁸⁸ Korea highlights that the United States bears the burden of proving that these steps are necessary and argues that this burden cannot be met simply by making assertions that it "cannot prejudge whether [it] will need" further information, "potentially might need" such information, or, "depending" on the methodology to be developed in the Section 129 proceeding, whether further information may be needed.⁸⁹ Korea also points to previous Section 129 proceedings as evidence that the USDOC rarely engages in additional fact-finding or holds hearings during a redetermination proceeding.⁹⁰

3.49. In light of the DSB's recommendations and rulings, the factual information that may be required by the USDOC would be information relevant for: (i) a "qualitative" assessment of export price differences in order to determine the existence of a pattern of significant price differences; and (ii) consideration of "attendant factual circumstances" in explaining why such price differences could not be taken into account through a W-W or T-T comparison.⁹¹ Whether fact-finding and additional steps of verification, a hearing, or even a preliminary determination requires additional time seems an unnecessary question. The text of Section 129 seems to indicate that all steps necessary for a redetermination are to be completed within the 180-day period foreseen in Section 129(b)(2).

3.50. Although the United States draws analogies to the time periods for certain steps to be conducted in original anti-dumping investigations, it acknowledges that there is no provision of United States law that mandates that all steps in original investigations must also be taken in Section 129 redeterminations, or that imposes SiC BT1 0 0 1 191.57 479.83 Tm[(-)] TJE6 EMC /P &MCID 38BTBD0

relate to the anti-dumping measures and not the countervailing measures.¹⁰² Additionally, Korea asserts that, unlike the Section 129 anti-dumping redetermination, in the Section 129 countervailing duty redetermination, the United

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ANNEX A

EXECUTIVE SUMMARY OF THE UNITED STATES' SUBMISSION

1. At its meeting on September 26, 2016, the DSB adopted recommendations and rulings in United States Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464). Pursuant to Article 21.3 of the DSU, the United States informed the DSB at its meeting on October 26, 2016, that the United States 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 to do so. The United States engaged in discussions with Korea in an effort to agree on the RPT, but the parties were unable to reach agreement.

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ANNEX B

EXECUTIVE SUMMARY OF KOREA'S SUBMISSION

1. Korea requests that the Arbitrator determine a reasonable period of time of 6 months because implementation can be pursued exclusively through Section 129 proceedings, or 8 months if a Section 123 proceeding were to be considered as part of the implementation steps. This constitutes the shortest period of time possible within the legal system of the United States.

2. The United States has failed to explain why it requires "at least" 21 months for implementation. The requirements of the U.S. legal system, the complexities alleged by the United States, and the workload of the implementing agency do not justify such an extraordinarily lengthy implementation period.

3. Almost five months have passed since the Appellate Body and Panel reports were adopted and yet the United States has not taken any significant steps to bring its measures into conformity with the WTO Agreements. The United States should have begun implementation of the Panel's findings on disproportionality as soon as it was aware that these issues would not be appealed, and it should have begun implementation of the other findings immediately after the circulation of the Appellate Body report.

4. Contrary to the United States' proposal, there is no need to pursue implementation in three phases. The United States can implement the "as such" findings through Section 129 proceedings, and a prior Section 123 proceeding is unnecessary. The DPM is not reflected in the USDOC's regulations nor was it adopted by the USDOC through a formal rule-making process, but was

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Action Under Section 129	Approx. Time Period
USTR consults with administering authority and congressional committees	September 2016
Prior to issuing a determination, the administering authority shall provide interested parties with an opportunity to submit written comments, and in appropriate cases, may hold a hearing.	60 days
Before rendering a determination, USTR shall consult with congressional committees (to continue throughout implementation period)	30 months
Within 180 days of receipt of a written request from the USTR, the administering authority shall issue a determination rendering the action consistent with WTO obligations.	60 days
The administering authority shall publish in the Federal Register notice of the implementation	30 days

9. Finally, if the Arbitrator were to consider a Section 123 proceeding as part of the implementation steps, Korea requests that the Arbitrator award a reasonable period of time of 8 months, ending May 26, 2017.