UNITED STATES – FINAL ANTI-DUMPING MEASURES ON STAINLESS STEEL FROM MEXICO
(WT/DS344):
ARBITRATION UNDER ARTICLE 21.3(c) OF THE DSU

WRITTEN SUBMISSION OF
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US – Zeroing (EC) (AB)	Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/AB/R, adopted 9 May 2006

I. INTRODUCTION

1. Pursuant to Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Mexico has requested arbitration to determine the "reasonable period of time" for the United States to implement the recommendations and rulings of the Dispute Settlement Body ("DSB"), adopted May 20, 2008, in *United States – Final Antidumping Measures on Stainless Steel from Mexico* (WT/DS340).[1] After the DSB adopted its recommendations and rulings, the United States stated its intention to comply with its WTO obligations in this dispute.[2] The United States stated that it would need a reasonable period of time in which to do so and, accordingly, entered into discussions with Mexico pursuant to DSU Article 21.3(b) in an effort to reach agreement on a reasonable period of time. These discussions have not produced an agreement.

2. The Panel and the Appellate Body made findings in this dispute covering, *inter alia*: (1) the use of model zeroing in investigations "as such"[3]; (2) the application of model zeroing to a specific investigation[4]; (3) the use of simple zeroing in periodic reviews "as such"[5]; and (4) the application of simple zeroing to specific periodic reviews.[6] Compliance with these findings, and in particular the "as such" finding with respect to administrative reviews, will be a multifaceted and complex process. Nevertheless, the United States has begun taking steps toward complying with its WTO obligations in this dispute, and in some instances, has completed implementation and is in compliance with the DSB's recommendations and rulings.

3. In particular, with regard to model zeroing in investigations "as such", the Panel recognized that the United States has discontinued this practice.[7] Accordingly, the Panel did not make a recommendation with respect to the measure.[8]

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[1] These recommendations and rulings reflected the reports of the Appellate Body and Panel in the dispute: Appellate Body Report, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/R, adopted 20 May 2008; Panel Report, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/R, adopted 20 May 2008, as modified by the Appellate Body Report, WT/DS344/AB/R.

[2] WT/DSB/M/251.

[3] *US – Zeroing (Mexico) (Panel)*, para. 8.1(a).

[4] *US – Zeroing (Mexico) (Panel)*, para. 8.1(b).

[5] *US – Zeroing (Mexico) (AB)*, para. 165(a).

[6] *US – Zeroing (Mexico) (AB)*, para. 165(b).

[7] *US – Zeroing (Mexico) (Panel)*, para. 7.50.

[8] *US – Zeroing (Mexico) (Panel)*, para. 8.3.

4. The question for this arbitration concerns the reasonable period of time with regard to the use of simple zeroing in periodic reviews "as such."[9] The United States is engaged in consultations, within the Administration and with Congress, regarding possible paths to compliance with the U.S. WTO obligations. Given the complexities and sensitivities surrounding this issue, the United States is still in the process of considering which of two options for compliance to use. One option is to comply through legislative action. This could involve amending statutory provisions relating to the calculation of dumping margins in administrative reviews. The other option would involve amending Department of Commerce ("Commerce") regulations or practices through Section 123 of the Uruguay Round Agreements Act (a "Section 123" proceeding).[10] The United States must still determine which path to compliance it will follow but believes that either path will take, at a minimum, 15 months.

II. FIFTEEN MONTHS IS A REASONABLE PERIOD OF TIME FOR THE UNITED STATES TO COMPLY WITH ITS WTO OBLIGATIONS IN THIS DISPUTE

5. Due to the legal form and technical complexity of the contemplated compliance measures, compliance with the U.S. WTO obligations concerning simple zeroing in periodic reviews "as such" will require a reasonable period of time of no less than 15 months. This is a reasonable period of time in light of the WTO legal framework governing Article 21.3(c) awards and the nature of the necessary legislative or administrative action the United States will take.

A. THE WTO LEGAL FRAMEWORK

6. The task set for the arbitrator by Article 21.3(c) of the DSU is to determine the reasonable period of time a Member has to implement the recommendations and rulings of the DSB.[11] Previous arbitration awards have consistently recognized that the arbitrator's role under Article 21.3(c) 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.[12] Rather, it is the prerogative of the implementing Member to "determin[e] for itself the most appropriate, and probably effective, method of implementing the

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[9] With respect to the "as applied" findings in this dispute, the United States is not seeking any additional time beyond what would be reasonable for complying with its WTO obligations concerning the "as such" findings with respect to periodic reviews.

[10] Codified as 19 U.S.C. § 3533 (Exhibit US-1).

[11] *Chile – Alcohol (Article 21.3(c))*, para. 35; *Canada – Pharmaceuticals (Article 21.3(c))*, para. 41.

[12] *Canada – Pharmaceuticals (Article 21.3(c))*, paras. 40-43.

recommendations and rulings of the DSB,"[13] including the timing and sequence of necessary steps.[14]

7. In determining the reasonable period of time, Article 21.3(c) establishes as "a guideline for the arbitrator" that the reasonable period of time "should not exceed 15 months from the date of adoption of a panel or Appellate Body report," though that time "may be shorter or longer, depending upon 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]

8. The specific circumstances relevant to the arbitrator's determination of the reasonable period of time are the legal form of implementation; the technical complexity of the necessary measures the Member must draft, adopt, and implement; and the period of time in which the implementing Member can achieve the proposed legal form of implementation in accordance with its system of government.[18] In this dispute, both the potential legal forms of implementation and the technical complexity of the necessary measures require a "reasonable period of time" of 15 months.

9. Addressing zeroing in the context of administrative reviews will be complex, far more complex than in the context of investigations. Among the additional issues implicated in the

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[13] *Chile – Alcohol (Article 21.3(c))*, para. 43.

[14] *See, e.g., US – Hot-Rolled Steel (Article 21.3(c))*, para. 30*; Australia – Salmon (21.3(c))*, para. 35.

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

[16] *US – Hot-Rolled Steel (Article 21.3(c))*, para. 25 (quoting the Appellate Body report in *US – Hot-Rolled Steel*).

[17] *US – Hot-Rolled Steel (Article 21.3(c))*, para. 25 (quoting the Appellate Body report in *US – Hot-Rolled Steel*). 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.

context of administrative reviews is the allocation of antidumping duties among the importers for assessment purposes. The United States assesses antidumping duties on an importer-specific basis. As the Appellate Body previously recognized, the *Antidumping Agreement* "does not suggest that final anti-dumping liability cannot be assessed on a transaction or importer-specific basis . . . provided that the total amount of the anti-dumping duties levied does not exceed the exporters' or foreign producers' margins of dumping."[19] The Appellate Body also stated that "under the methodology currently applied by the USDOC to assess anti-dumping duties, the aggregation of the results of the multiple comparisons performed at an intermediate stage might result in a negative value, for a given importer, if zeroing is not allowed."[20] The Appellate Body also concluded that the *Antidumping Agreement* does not require the United States to "compensate an importer for the amount of that negative value (that is, when export prices exceed normal value)."[21] An exporter may have multiple importers, some with "positive" and others with "negative" amounts of antidumping duties. This factual scenario will arise regardless of which compliance approach the United States takes and it will be one of the more challenging issues that the United States must address.

10. An additional consideration is the preparatory process necessary to complete compliance in this dispute. The importance of the preparatory process in achieving compliance, whether by legislative or administrative action, has been consistently recognized by arbitrators. For instance, regarding legislative action, arbitrators have found that the "'pre-legislative' phase of the law-making process" during which consultations and technical assessments, as well as the building of support for the measure occur, "is clearly an important phase if the success of the legislative effort is important."[22] Similarly, with regard to administrative action, arbitrators have considered the preparatory phase essential for success. In *Canada – Autos*, for example, the arbitrator apparently 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*,[24] Canada proposed three months and two weeks for identification and

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[19] *US – Zeroing (EC) (AB)*, para 131.

[20] *US – Zeroing (EC) (AB)*, para 131, n. 234.

[21] *US – Zeroing (EC) (AB)*, para 131, n. 234.

[22] *Chile – Alcohol (Article 21.3(c))*, para. 43.

[23] *Canada – Autos (Article 21.3(c))*, paras. 18, 49, 56.

[24] Including preparatory steps, Canada estimated four months between adoption of the panel report on April 7 and publication of the proposed regulatory change in the *Canada Gazette* in early August. *Canada – Pharmaceuticals (21.3(c))*, paras. 1, 14, and 62. The arbitrator did not reduce this period. *Canada – Pharmaceuticals (21.3(c))*, para. 62.

assessment, drafting, and other preparatory steps. The arbitrator accepted these estimates without change.

11. Given the technical complexity of zeroing, adequate time must be allowed for "discussions aimed at building and organizing the broad support necessary" to adopt the required compliance measures.[25] In this regard, the United States notes that on November 4, 2008, a new Administration and a new Congress will be elected. Congress will not resume work until early January 2009, and the new Administration will not take office until January 20, 2009. Moreover, as is explained in more detail below, both branches of government will take time to get organized and put in place the staff and senior policymakers that will be necessary to make decisions related to the manner in which the United States will comply.

12. It is also well-accepted that "an implementing Member should not be forced to utilize 'extraordinary legislative procedures' . . . [r]ather, the Member's 'normal legislative procedures' are, generally, to be used."[26] In the *U.S. – Section 110(5)* dispute, the arbitrator found that it was reasonable for the U.S. to follow its normal legislative procedure for the consideration and adoption of legislation, and to allow extra time to account for the fact that Congress would be out of session for a number of months.[27] The arbitrator made a similar decision in *Korea – Alcohol*.[28]

B. SIMPLE ZEROING "AS SUCH"

13. In this dispute, Mexico challenged the use of simple zeroing in periodic reviews "as such" and "as applied" to specific reviews. The Panel rejected Mexico's claims, and found that "simple zeroing in periodic reviews is 'as such' not inconsistent" with the WTO Agreements, and that Commerce "did not act inconsistently . . . by using simple zeroing in the five periodic reviews" on stainless steel from Mexico.[29] On April 30, 2008, these findings were reversed by the Appellate Body, which found "instead, that simple zeroing in periodic reviews is, as such, inconsistent" with the WTO Agreements.[30] These findings were adopted by the DSB on May 20,

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[25] *Chile – Alcohol (Article 21.3(c))*, para. 43.

[26] *US – Copyright (Article 21.3(c))*, para. 45; *see also*, *Korea – Alcohol (Article 21.3(c))*, para. 42.

[27] *US – Copyright (Article 21.3(c))*, para. 45.

[28] *Korea – Alcohol (Article 21.3(c))*, para. 42.

[29] *US – Zeroing (Mexico) (Panel)*, para. 8.1.

[30] *US – Zeroing (Mexico) (AB)*, para. 165.

2008, and the United States announced its intent to comply with its WTO obligations at the June 2, 2008 DSB meeting. The United States has been working toward compliance since then.

14. The United States will need a reasonable period of time in which to complete these steps. The United States is in the process of consulting internally, including with Congress, and the private sector on compliance. Through these consultations it has become clear that changing the U.S. periodic review methodology will be a complex process. Two means of compliance are under consideration: legislative action and administrative action. These will be discussed in turn.

1. Fifteen Months Would be Required for Legislation

a. Fifteen months is reasonable in light of the U.S. legislative calendar and the timetable for consideration of legislation in the U.S. Congress

15. Before discussing the specific steps required for the introduction and passage of legislation, it is necessary to highlight the difficulties the United States faces under the current legislative calendar. One of the central factors that determines when a bill becomes law is the Congressional schedule. The Constitution mandates only that Congress meet "at least once in every year"[31] and that it convene on January 3rd, unless another date is chosen.[32] A Congress lasts two years, and meets in two sessions of one year each, beginning in January. The United States currently is nearing the end of the second session of the 110th Congress.

16. The current target adjournment date for the second session of the 110th Congress for the U.S. House of Representatives is September 26, 2008 (the adjournment date for the U.S. Senate is still to be determined).[33] Accordingly, any legislation to address this issue introduced before then, if it is not acted upon before adjournment, will die at the end of the Congress. In other words, for purposes of enacting legislation to comply with the WTO obligations in this dispute, the 110th Congress does not have the ability to "save" the work that it does during its second session in 2008 and complete it in 2009.

17. Taking into account the potential complexity of the issues that could arise, including possible impacts on various areas of the U.S. antidumping system, and the need to allow for an adequate period of time for public hearings and legislative consideration, it is the judgment of

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[31] *U.S. Constitution*, Article I, Section 4 (capitalization omitted) (Exhibit US-2).

[32] *U.S. Constitution*, 20th Amendment (Exhibit US-2).

[33] *See* House Schedule (2008), United States Senate Tentative Schedule (2008) (Exhibit US-3).

the United States that if it is determined that legislation is the most appropriate method of compliance, relevant legislation could not be completed in the second session of the current Congress, but instead would need to be addressed by the new Congress in 2009.

18. The new Congress convenes on January 3, 2009, or on another date of its choosing.[34] It is important to note, however, that members of Congress do not begin to conduct official business and act on legislation until late January or early February. Instead, the usual business during at least the first month of Congress is to choose committee chairs and committee members, fill leadership posts, and address other administrative concerns, including, in the House of Representatives, the adoption of its rules for that Congress.

19. At the same time, a new president and executive administration will take office. The new President will be sworn in on January 20, 2009. It will be some time after that before the officials who will have to vet and approve the new legislation will be appointed. These new officials will be the ones that have to address compliance in this dispute. It will, therefore, be months after January 2009 before any legislative proposal could be transmitted to Congress.

20. Thus, between a new Administration and a new Congress, an extremely optimistic estimate of when compliance legislation may be introduced is April or May 2009, 10-11 months after the adoption of the panel and Appellate Body reports. Allowing just four more months in which to pass legislation in the multi-stage, bicameral U.S. legislative system is, as will be detailed below, an extraordinarily short time frame.

b. The U.S. legislative process

21. Under the United States system of constitutional government, any changes to a federal statute must be enacted by the U.S. Congress, which sets its own procedures and timetable. The Executive branch of the U.S. Government has no control over these procedures and timetable. Securing the enactment of legislation in the U.S. Congress is a complex and lengthy process. Moreover, only a small fraction of the thousands of bills introduced in each Congress ever become law. This indicates that the process of obtaining the votes necessary to enact legislation is difficult and time-consuming. Viewed in this light, the U.S. position that this process could take at least 15 months is reasonable.

22. The power to legislate is vested in the United States Congress, which has two chambers, the House of Representatives and the Senate. Both chambers must approve all legislation in identical form, before it is sent to the President of the United States for signature or other

[34] As required by the 20th Amendment to the U.S. Constitution (*See* Exhibit 2). January 3, 2009 falls on a Saturday, so it is likely that Congress will convene at a later date.

action.[35] Only after presidential approval does proposed legislation become law.[36] Proposed legislation that will become public law usually takes the form of a "bill." From the time that a bill is introduced in Congress to the time that it is approved by both chambers, it will have passed through at least ten steps.[37] Most bills that are introduced do not survive this process to become law, and those that do are likely to have been significantly amended along the way. What follows is an abbreviated discussion of the steps involved in enacting legislation in the U.S. Congress.

23. The first step in the legislative process is for a bill to be introduced in the House of Representatives ("the House") or the Senate by a member of Congress. When the Executive branch seeks to initiate legislation, it may transmit proposed draft legislation to the Speaker of the House of Representatives or the President of the Senate. The draft legislation will then typically be introduced in either its original or revised form by the chairperson of the committee or ranking member of the committee with subject matter jurisdiction over the bill. Alternatively, the Executive branch may request that an individual member or members introduce proposed legislation.

24. After introduction, as a general rule, bills are referred to a standing committee or committees having jurisdiction over the subject matter of the bills.[38] These committees may also refer the proposed legislation to various subcommittees.[39] In the House, a bill may be referred to a number of committees,[40] while in the Senate a bill is more commonly referred to the committee

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[35] *See The Constitution of the United States,* Article I, Section 1 and Section 7 (Exhibit US-2); *How Our Laws are Made*, Charles W. Johnson, 2000 at 42 (Exhibit US-4).

[36] *The Constitution of the United States,* Article I, Section 7 (Exhibit US-2).

[37] The flowchart at Exhibit US-5 presents a general overview of the process.

[38] There are 20 committees in the House and 20 in the Senate (*see* Exhibit US-6). These committees process and manage the thousands of bills that are introduced in each Congress every two years. Committees are chaired by a member of the majority political party in the relevant chamber. There is also a "ranking minority member," a member of the other political party, who leads the minority party members on a committee.

[39] There are approximately 200 subcommittees.

[40] Johnson, at 10 (Exhibit US-4). This description, in the interest of economy, assumes that, like most bills, draft legislation would originate in the House and then move to the Senate to receive separate consideration.

with primary subject matter jurisdiction and then may be sequentially referred to other committees.[41]

25. Committee action is the key to the life of a proposed bill, since most bills "die" in committee, as a result of inaction. For those bills that survive, this is where the most intense consideration of their merits is given. Most bills are referred by the committee with jurisdiction to a subcommittee for consideration. Normally, the subcommittee schedules public hearings to hear from proponents and opponents of a bill, including government agencies, experts, interested organizations and individuals.[42] Testimony is generally based on a written statement that will later be included in a committee report. There is no specified time frame for committee consideration, although the Speaker of the House will generally place time limits on a second committee's consideration of a bill at his or her discretion.[43]

26. The next step in the process is the "mark-up." When the hearings are completed, the subcommittee usually meets to "mark-up" the bill – make changes and amendments prior to deciding whether to recommend (or "report") the bill to the full committee. The subcommittee may also suggest that a bill be postponed indefinitely (or "tabled").[44] The House has a complicated "germaneness" rule which, in principle, requires that an amendment relate to the subject matter under consideration, have a fundamental purpose germane to that of the bill, and be within the jurisdiction of the committee considering the bill.[45]

27. After receiving the subcommittee's report (recommendation), the full committee may conduct further study and hearings. There will again be a mark-up process. The full committee then votes whether to report the bill, either as originally introduced without amendment, or as revised, to the full House.[46] Once again, the bill may be tabled, or no action may be taken on it. If the full committee votes to report a bill to the House, a committee report is written by the committee's staff. The report supports the committee's recommendation and is generally a section-by-section analysis that describes the scope and purpose of the bill, its impact on existing laws and programs, the position of the executive branch, and amendments made by the

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[41] *Congressional Deskbook 2000*, Michael L. Koempel and Judy Schneider, The Capitol.Net Inc., at 222 (Exhibit US-7).

[42] Johnson, at 12 (Exhibit US-4).

[43] *Id.*, at 10.

[44] *Id.*, at 14.

[45] Congressional Deskbook, at 263 (Exhibit US-7).

[46] Johnson, at 14 (Exhibit US-4). A "clean bill" receives a bill number.

committee.[47] Committee reports also include dissenting views and can be supplemented by any committee member. An approved bill is "reported back" to the House.

28. The timing of consideration of legislation on the House floor is determined as a general rule by the Speaker of the House and the Majority Leader (*i.e.*, the leaders of the political party with the majority of seats in the House), who may place the bill on the Calendar for House debate. The House Rules Committee generally recommends the amount of time that will be allocated for debate and whether amendments may be offered. The Rules Committee recommends a rule, which takes the form of a House resolution, which is debated and voted on before the House considers the bill on its merits.[48] During the debate process, there is opportunity for members of Congress to offer further amendments.[49] After voting on amendments, the House immediately votes on the bill itself with any adopted amendments.[50] The bill can also be returned to the committee that reported it. If passed, the bill must be referred to the Senate, which may or may not have concurrent pending legislation.

29. The Senate, following its own legislative process and consideration, may approve the bill as received, reject it, ignore it or change it. While the Senate has similar procedures for consideration of legislation by relevant committees, there are significant differences in the way the Senate considers proposed legislation. The Senate functions in a less rule-driven manner than the House, and scheduling and floor consideration is generally decided by consensus.[51] Unlike the House, where debate time is strictly controlled, in the Senate, debate is rarely restricted. The Senate does not have a Rules Committee to govern floor consideration. Rather, there are complex rules mandating unanimous consent for Senate floor consideration.[52] In addition, because of the privileges accorded to Senators, an individual Senator may "filibuster" (hold the floor and speak for a very long period of time),[53] or place a "hold" on legislation which

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[47] *Id.*

[48] *Id.*, at 23.

[49] *Id.*, at 24.

[50] *Id.*

[51] *Congressional Deskbook 2000* at 267 (Exhibit US-7).

[52] *Id.*, at 268.

[53] *Id.*, at 274-279. *See also Congress and its Members,* Roger H. Davidson and Walter J. Oleszek, CQ Press (1997) at 251-255 (Exhibit US-8).

can prevent it from being considered.[54] Filibusters can only be ended by a "cloture" procedure, a rule that requires the vote of sixty senators, which is very difficult to achieve. The other major difference between the House and the Senate is that an amendment in the Senate generally does not have to be "germane," i.e., relevant to the bill to which it is attached.[55]

30. Most bills are unlikely to be passed by the Senate exactly as referred by the House. The Senate may amend a bill or pass its own similar legislation. Therefore, a conference committee is organized to reconcile differences between the House and Senate versions. Conference committee members are appointed by each chamber and given specific instructions, which may be revised every 21 days.[56] If the conference committee cannot reach agreement, the bill dies. If the conference committee reaches agreement on a single bill, a conference report is prepared describing the committee members' rationale for changes.[57] The conference report must be approved by both chambers, in identical form, or the revised legislation dies. After the bill proposed by the conference committee is approved by both chambers, it can be sent to the President for approval.[58]

31. In light of the foregoing, a minimum of fifteen months is a reasonable period of time for the United States, should legislative action be pursued, to come into compliance with its WTO obligations in this dispute.

2. Fifteen Months Would be Required to Amend Regulations or Practices

32. If, after further discussions within the Administration and with Congress and consultations with the private sector, the United States determines that compliance should be

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[54] *Congressional Deskbook* at 274-279 (Exhibit US-7); Davidson and Oleszek at 249-254 (Exhibit US-8).

[55] Johnson at 34 (Exhibit US-4); Davidson and Oleszek at 251 (Exhibit US-8); *Congressional Deskbook* at 280. Amendments that are not germane are often called "riders."

[56] Johnson at 36 (Exhibit US-4). House conferees are usually supporters of the House legislation, and members of the committee with jurisdiction over the bill. Senate conferees may be from either party and are chosen by unanimous consent.

[57] *See generally* Johnson at 35-40 (Exhibit US-4) and *The Legislative Process*, C-Span.org (Exhibit US-9).

[58] *See generally* Johnson at 41-42 (Exhibit US-4) and *The Legislative Process*, C-Span.org (Exhibit US-9).

achieved through administrative means – through section 123 of the Uruguay Round Agreements Act[59] – that process would also require a reasonable period of time of no less than 15 months.

a. Section 123

33. Section 123 sets forth the requirements for implementation of DSB recommendations and rulings involving a Commerce regulation or practice. It mandates that the following six steps must be taken.

34. First, USTR is required to consult with committees in the U.S. Congress with jurisdiction over trade matters.[60] USTR and Commerce have begun consultations with the appropriate congressional committees on the best manner of implementation. Second, USTR is required to seek advice from relevant private sector advisory committees.[61] Third, Commerce is required to publish the proposed modification and explanation for the modification in the *Federal Register* and provide an opportunity for public comment.[62] Fourth, USTR is required to submit a report to committees in the U.S. Congress with jurisdiction over trade matters, describing the proposed modification, the reasons for the modification, and a summary of the advice provided by the relevant private sector advisory committees.[63] Fifth, USTR and Commerce are required to consult with committees in the U.S. Congress with jurisdiction over trade matters on the proposed contents of the final rule.[64] Finally, Commerce is required to publish the final rule in the Federal Register.[65] However, the rule may not go into effect before the end of a 60-day period beginning on the date on which consultations between USTR/Commerce and committees in the U.S. Congress with jurisdiction over trade matters begin.[66]

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[59] Codified as 19 U.S.C. § 3533 (Exhibit US-1).

[60] 19 U.S.C. § 3533(g)(1)(A); *see also*, 19 U.S.C. § 3533(f)(3).

[61] 19 U.S.C. § 3533(g)(1)(B).

[62] 19 U.S.C. § 3533(g)(1)(C).

[63] 19 U.S.C. § 3533(g)(1)(D).

[64] 19 U.S.C. § 3533(g)(1)(E).

[65] 19 U.S.C. § 3533(g)(1)(F).

[66] 19 U.S.C. § 3533(g)(2). The 60-day period provides for consultation with committees in the U.S. Congress with jurisdiction over trade matters and provides an opportunity for those committees to express their views through a non-binding resolution on the proposed contents of the final rule. 19 U.S.C. § 3533(g)(3). The exception to the 60-day rule is where the President determines that an earlier effective date "is in the national interest." *Id*. One basis for such a

b. Time needed to comply

35. The United States is currently consulting internally to determine the best method of addressing the challenges that compliance will involve. It is impossible to predict how long this step will take to complete, but again, the unique difficulties posed by the impending elections and a new Administration and a new Congress taking office, means that this process will take time. Steps one, four and five required by Section 123 call for interaction between the Executive Branch and the U.S. Congress. The new decision-makers in both the Congress and Executive Branch will need reasonable time to study this complex issue (along with other urgent and critical issues) and determine the best method of complying with the U.S. WTO obligations.

36. Key Administration officials will not be in place to make the policy decisions necessary to determine how to comply until some time after January 20, 2009. Under normal circumstances, Commerce often requires around three months to circulate a proposed determination for internal approval, modify the proposal as a result of consultations with the U.S. Congress and private sector advisory committees, and publish the proposed rule or practice, and explanation for the proposed rule or practice, in the *Federal Register*. At least one additional month is appropriate to allow for new officials to be appointed, given time to study the amendments and related issues, and make changes and recommendations. Thus, the earliest an administrative proposal would be able to be circulated is early May 2009.

37. Commerce then will need an additional three months to make any modifications to the rule or practice as a result of public comments and to address public comments in its final determination. During this same three months, USTR and Commerce will hold final consultations with the U.S. Congress on the proposed content of the final determination. Commerce will then publish the final determination in the *Federal Register*. This – under the best possible scenario – would occur some time in August 2009.

III. CONCLUSION

38. In light of the need to comply with procedural requirements with respect to either the modification of U.S. statutes or Commerce's regulations and/or practice the issuance of a new investigation determination, 15 months is a reasonable period of time for the United States to comply with its WTO obligations in this dispute. Accordingly, the United States requests that the arbitrator award a reasonable period of time of 15 months, ending August 20, 2009.

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determination would be a clear consensus in the U.S. Congress and the private sector on the proposed change. *See* Statement of Administrative Action ("SAA") accompanying transmittal of the Uruguay Round Agreements implementing bill, H. Doc. 103-316, Vol. I (27 September 1994), p. 352 (pages 351-358 of the SAA explain Sections 123 and 129 and are attached hereto as Exhibit US-10).

List of Exhibits

US-1:	19 U.S.C. § 3533
US-2:	*The Constitution of the United States*
US-3:	United States House and Senate Tentative Schedules (2008)
US-4:	*How Laws are Made,* Charles W. Johnson
US-5:	Legislative Process Flowchart
US-6:	List of House and Senate Committees
US-7:	*Congressional Deskbook 2000,* Michael L. Koempel and Judy Schneider
US-8:	*Congress and its Members,* Roger H. Davidson and Walter J. Oleszek
US-9:	*The Legislative Process,* C-Span.org
US-10:	Statement of Administrative Action accompanying transmittal of the Uruguay Round Agreements implementing bill, H. Doc. 103-316 (27 September 1994)