

***UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES
ON CERTAIN COATED PAPER FROM INDONESIA***

(DS491)

**CLOSING STATEMENT OF THE UNITED STATES OF AMERICA
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES**

December 7, 2016

1. In closing, we would like to return to the issue with which we started, the standard of review. The Panel started with a question about where to draw the line between a claim under SCM Agreement Article 22.3 on the detail to be provided in a determination and review of a substantive claim under a provision of the Antidumping or SCM Agreement.
2. We are not going to offer a bright line in this closing statement but want to highlight what we see as a problem in WTO review of trade remedy determinations. The standard of review for the panel has been articulated as not a *de novo* review, as the Panel is not the initial trier of fact. We think that is correct. But some WTO reports seem to have moved away from the review envisaged in Article 17.6 of the AD Agreement - that is, was the evaluation by the investigating authority unbiased and objective - and instead move towards a search for magic words on an issue set out in an Appellate Body report.
3. Of course, those magic words won't appear if, for example, the relevant Appellate Body report was issued years after the challenged determination. That would indeed be magic if those words appeared.
4. The United States would submit that the Panel's task is not a mechanical search for magic words but rather to examine the determinations and record as a whole, to test whether the evaluation was unbiased and objective, viewed under the proper legal standard.
5. This issue arises again and again in Indonesia's claims. For example, in its claim that USDOC resorted to an out-of-country benchmark based on an alleged *per se* rule of government predominance, Indonesia isolates and misreads two sentences from the determination, and then ignores the import of the findings in those sentences, as recognized under past WTO reports, and all other relevant USDOC findings and explanations on the record.

6. It arises again in Indonesia's challenge to the USITC's threat determination, which attempts to diminish that evaluation by isolating one aspect or another, rather than taking account the USITC's detailed, unitary analysis and explanations.

7. It even arises in relation to the debt buy-back issue, in which Indonesia tries to assert that the USDOC should have conducted a verification on PPAS sales, but really, that USDOC should have provided it with yet another opportunity to supply missing information well after two missed deadlines. This is an extraordinary idea.

8. As we'll explain in detail in writing, the SCM Agreement and AD Agreement, and past WTO reports, are clear that a verification visit is not required of an investigating authority. And verification is not an opportunity for an interested party to give itself a unilateral extension to supply missing information past the deadlines established for responding. For example, Annex VI of the SCM agreement provides that verification "should be carried out after the response to the questionnaire has been received".

9. But as we discussed, no such response had been received when the verification of that issue was canceled. Nor were the documents ever provided by Indonesia. In the full context, it was eminently reasonable for USDOC to decide it could not verify non-existent documents and information.

10. I could go on to other claims. But in sum, the United States would ask the Panel to look at the determinations of the investigating authorities as a whole, in the context of the entire record, as the Panel evaluates whether the conclusions reached were reasoned and adequate.