

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. UNITED STATES - SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998: STATUS REPORT BY THE UNITED STATES (WT/DS176/11/ADD.117)

- The United States provided a status report in this dispute on August 20, 2012, in accordance with Article 21.6 of the DSU.
- Legislative proposals have been introduced in the current 112<sup>th</sup> Congress to implement the recommendations and rulings of the DSB.
- The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings.

Second Intervention

- There were some questions about the activities being undertaken in the United States to address the recommendations and rulings of the DSB. There are bills pending in the current Congress that would address the WTO findings in this matter in different ways. For example, S. 603 and HR 1166 would modify Section 211 to address the DSB findings specifically. Other bills, such as HR 1887 and 1888, would repeal Section 211.

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B. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.117)

- The United States provided a status report in this dispute on August 20, 2012, in accordance with Article 21.6 of the DSU.
- As of November 2002, the U.S. authorities had addressed the DSB's recommendations and rulings with respect to the calculation of antidumping margins in the hot-rolled steel antidumping duty investigation at issue in this dispute.
- With respect to the recommendations and rulings of the DSB that were not already addressed by the U.S. authorities, the U.S. Administration will work with the U.S. Congress with respect to appropriate statutory measures that would resolve this matter.

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C. UNITED STATES - SECTION 110(5) OF THE US COPYRIGHT ACT:  
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.92)

- The United States provided a status report in this dispute on August 20, 2012, in accordance with Article 21.6 of the DSU.
- The U.S. Administration will continue to confer with the European Union, and to work closely with the U.S. Congress, in order to reach a mutually satisfactory resolution of this matter.

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D. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.55)

- The United States would like to thank the EU for its status report and its statement today.
- The United States remains greatly concerned about the effects of EU delays on U.S. exports of agricultural commodities and food products. These delays have resulted in restrictions on the importation of U.S. agricultural products, including corn and corn products from the current U.S. growing season.
- Even after the EU has approved a biotech product, individual EU member States have adopted their own product-specific bans. An important example is the biotech variety of corn known as Mon810. The DSB found in this dispute that EU member State bans on Mon810 are inconsistent with the EU's obligations under the SPS Agreement.<sup>1</sup>
- Despite this finding, additional EU member States have adopted bans on Mon810. The result has been the loss of market access in additional EU member States, including France and Germany.
- At the May meeting of the DSB, the United States noted that the EU's scientific authority published a scientific opinion finding that France had provided no scientific evidence in support of its ban.
- The United States regrets that despite the EU's own findings, the bans on Mon810 adopted by France and other EU member States remain in place.
- The United States urges the EU to take steps to address delays in approvals, and to take action to make EU biotech approvals effective in all EU member States.

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<sup>1</sup> Panel Report, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291/R, adopted 21 November 2006, paras. 8.24, 8.28.

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E. UNITED STATES - ANTI-DUMPING ADMINISTRATIVE REVIEWS AND OTHER MEASURES RELATED TO IMPORTS OF CERTAIN ORANGE JUICE FROM BRAZIL: STATUS REPORT BY THE UNITED STATES (WT/DS382/11/ADD.8)

- The United States provided a status report in this dispute on August 20, 2012.
- Pursuant to the sequencing agreement between Brazil and the United States,<sup>2</sup> the United States is ready to engage with Brazil should it have any further questions regarding this matter.

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<sup>2</sup> WT/DS382/11.

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F. UNITED STATES - DEFINITIVE ANTI-DUMPING AND COUNTERVAILING DUTIES ON CERTAIN PRODUCTS FROM CHINA: STATUS REPORT BY THE UNITED STATES (WT/DS379/12/ADD.7)

- The United States provided a status report in this dispute on August 20, 2012, in accordance with Article 21.6 of the DSU.
- As noted in that status report, on July 31, 2012, the U.S. Department of Commerce (“Commerce”) issued to interested parties final determinations with respect to the issues in this dispute in proceedings undertaken pursuant to section 129(b) of the Uruguay Round Agreements Act.
- On August 21, 2012, the U.S. Trade Representative directed the Department of Commerce to implement its final determinations.
- On August 30, 2012, a notice was published in the U.S. Federal Register announcing the implementation of Commerce’s final determinations, effective August 21, 2012. That notice can be found at 77 FR 52683.
- These steps complete the process under U.S. law for implementing the recommendations and rulings adopted by the DSB.
- As a result of the actions described in the U.S. status report and at this meeting this morning, the United States has brought the measures at issue in this dispute into full compliance with the DSB recommendations and rulings.

Second Intervention

- The United States said that it would like to make two points in response to China’s intentions.
- First, with regard to the issuance of questionnaires, the issues in this dispute are complex and involve several novel matters. The United States needed to consider the findings and recommendations of the DSB carefully in order to bring the challenged measures into compliance with them.
- Accordingly, the U.S. Department of Commerce, in conjuncture with other agencies of the U.S. government, and in consultation with the U.S. Congress, took the time necessary to consider the issues before preparing and issuing questionnaires.

- We would note that Chinese respondents, including the Government of China, also appear to recognize the complexity of the issues, as they requested, on numerous occasions, additional time to provide complete responses to Commerce's questionnaires.
- As we indicated previously, the United States and China agreed to extend the reasonable period of time for implementation, due in significant part to China's request for more time to respond to Commerce's questionnaires.
- China has also expressed some concerns in its statement today about U.S. implementation. As stated previously, the actions described in the U.S. status reports and in our statement today have resulted in full compliance with the DSB's recommendations and rulings. We stand ready to discuss with China any questions or concerns it may have about the actions taken by the United States, and we look forward to doing so.

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H. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.3)

- The United States provided a status report in this dispute on August 20, 2012, in accordance with Article 21.6 of the DSU.
- In October 2011, the United States and Vietnam jointly notified the DSB of their agreement that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on July 2, 2012.<sup>3</sup>
- In February 2012, the U.S. Department of Commerce published a modification to its procedures in order to implement DSB recommendations and rulings regarding the use of “zeroing” in antidumping reviews. This modification addresses certain findings in this dispute.
- On June 28, 2012, the United States Trade Representative requested pursuant to section 129 of the Uruguay Round Agreements Act that the Department of Commerce take action necessary to implement the DSB recommendations and rulings in this dispute.
- The United States will continue to consult with interested parties as it works to address the recommendations and rulings of the DSB.

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<sup>3</sup> WT/DS404/10.

2. UNITED STATES - CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

A. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE DSB

- Mr. Chairman, on July 23, the DSB adopted the reports of the Panel and the Appellate Body in the disputes *United States – Certain Country of Origin Labeling (COOL) Requirements* (DS384/386).
- On August 21, the United States informed the DSB by letter that it intends to implement the recommendations and rulings of the DSB in a manner that respects U.S. WTO obligations and has begun to evaluate its options for doing so. That letter has been circulated to the DSB (WT/DS384/19 and WT/DS386/18).
- Canada and Mexico agreed with the United States that it was appropriate to inform the DSB of U.S. intentions by letter, rather than at a special meeting, in light of the fact that the 30 day period of time described in Article 21.3 of the DSU expired before the next regularly scheduled DSB meeting.
- As the United States noted in its letter, it will need a reasonable period of time in which to implement the DSB’s recommendations and rulings, and it hopes to reach agreement with Canada and Mexico in accordance with Article 21.3(b) of the DSU.

3. UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. STATEMENTS BY THE EUROPEAN UNION AND JAPAN

- As the United States has explained at previous DSB meetings, the President signed the Deficit Reduction Act into law on February 8, 2006. That Act includes a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States has taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.
- We recall, furthermore, that Members have acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007.
- With respect to comments regarding further status reports in this matter, as we have explained at previous DSB meetings, the United States fails to see what purpose would be served by further submission of status reports repeating the progress the United States made in the implementation of the DSB's recommendations and rulings.
- Finally, Japan referred to its renewed retaliation measures; the United States will be reviewing carefully the measures taken by Japan. As we have observed previously, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

4. UNITED STATES - COUNTERVAILING MEASURES ON CERTAIN HOT-ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY INDIA  
(WT/DS436/3)

- As we noted at the July DSB meeting, Members have the right to levy countervailing duties to offset subsidies bestowed by another Member. As the United States and other Members have found, India – at both the state and national levels – provides numerous subsidies to its domestic steel industry. And, as the United States and other Members have found, these subsidies cause material injury to manufacturers attempting to compete with India’s steel industry.
- In light of India’s comments today, the United States also recalls our concern with India’s panel request, which appears to include provisions of U.S. law about which consultations were neither requested nor held.
- For these reasons, we remain disappointed that India has decided to request a panel on this matter.
- We stand ready to defend the use of WTO-consistent measures to countervail India’s injurious use of subsidies.

6. UNITED STATES - COUNTERVAILING DUTY MEASURES ON CERTAIN PRODUCTS FROM CHINA

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA  
(WT/DS437/2)

- First, with respect to China's comments related to item 1.F, we do not believe it is appropriate to be returning to that agenda item at this time and, therefore, will not further disclose that discussion here.
- Turning to the matter at hand, the United States is disappointed that China has requested the establishment of a panel on this matter.
- The WTO Agreements permit Members to levy a countervailing duty in order to offset injurious subsidies bestowed by another Member on the manufacture, production, or export of goods in or from that other Member's jurisdiction.
- With respect to the countervailing duty proceedings at issue in this dispute, the United States conducted the proceedings transparently and with all the procedural safeguards provided for under the WTO Agreement.
- We also note that China's panel request appears to include measures about which consultations were neither requested nor held.
- For these reasons, the United States is not in a position to agree to the establishment of a panel.

7. CHINA - CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. REPORT OF THE PANEL (WT/DS413/R AND WT/DS413/R/ADD.1)

- The United States would like to begin by thanking the Panel and the Secretariat assisting it for their hard work on this dispute.
- Electronic payment services (EPS) allow consumers to purchase goods and services without cash. EPS enable, facilitate and manage the flow of information and the transfer of funds from cardholders' banks to merchants' banks. EPS are vital to facilitating global commerce and are familiar to both consumers and merchants alike. Each year well over \$1 trillion worth of electronic payment card transactions are processed in China alone.
- China instituted and maintains measures that discriminate against foreign EPS suppliers at every stage of a card-based electronic payment that takes place in China in China's domestic currency, the renminbi (RMB). China's discriminatory measures have ensured the market dominance of a Chinese entity, China UnionPay, Ltd. (CUP) and prevented foreign suppliers from providing these EPS.
- China committed to eliminate any measures not consistent with its market access and national treatment obligations for "all payment and money transmission services, including credit, charge, and debit cards...".
- The Panel report that is being adopted today finds that China has failed to do so, and that each aspect of China's regulatory architecture for payment card transactions is inconsistent with China's WTO obligations.
- First, the Panel found that China requires that all payment cards issued in China bear a UnionPay logo. The Panel also found that China requires that the financial institutions that issue payment cards become members of the CUP network, and that the cards they issue in China meet certain uniform business specifications and technical standards. The Panel properly found that these requirements discriminate against services and service suppliers of other Members.
- Second, the Panel found that China requires that ATMs, merchant processing devices, and point-of-sale terminals in China be capable of accepting all payment cards bearing the UnionPay logo. The Panel properly found that these requirements also discriminate against services and service suppliers of other Members.
- Third, the Panel found that China imposes requirements on acquiring institutions (acquirers). These institutions seek to acquire payment card transactions, maintain

relationships with merchants, provide terminal equipment, and are also customers of EPS. The Panel found that China imposes requirements on acquirers to post the UnionPay logo, and to join the CUP network and comply with uniform business standards and technical specifications of inter-bank interoperability. The Panel found that China requires terminal equipment operated or provided by acquirers be capable of accepting bank cards bearing the UnionPay logo. The Panel properly found that these requirements also discriminate against other Members' services and service suppliers.

- In addition to finding that China breached its national treatment obligations in each of these ways, the Panel also found that China breached its market access obligations under Article XVI of the GATS. In particular, the Panel found that the requirements pertaining to certain card-based electronic transactions related to Hong Kong and Macao are inconsistent with China's market access commitments because China maintains a monopoly over the processing of such transactions.
- The United States also prevailed on each of the key threshold issues. In particular, the Panel confirmed that EPS is a single, fully integrated service and that EPS is properly classified under a single subsector of China's Schedule, subsector (d), rather than under subsectors for which China has no national treatment or market access WTO commitments.
- While the United States is very pleased with these findings, there are nevertheless a few aspects of the Panel Report with which we have concerns. The United States would like to take this opportunity to note one such area of concern.
- The United States is disappointed that, having found that China's measures severely discriminated against foreign suppliers in favor of CUP, and despite recognizing that CUP was the sole EPS supplier processing domestic RMB payment card transactions in China, the Panel nonetheless failed to find that China's measures provided CUP with the status of a monopoly or exclusive supplier. The United States is concerned that this result fails to recognize the opaque manner in which China's measures operate, as this lack of transparency is the principal reason for any perceived evidentiary insufficiencies cited by the Panel.
- Overall, however, the United States is extremely pleased that the DSB will adopt this important report. The policies of China, as reflected in the measures at issue in this dispute, have caused pervasive discrimination at every stage of a card-based payment transaction and severely distorted competition in China's market.
- We welcome China's decision to accept adoption of the Panel report today. We look forward to constructive engagement with China to put this dispute behind us, in particular action by China to address its measures affecting electronic payment services – and more broadly – to meet its WTO obligations in light of this report.

## Second Intervention

- The United States welcomes the sentiment of China's statement that CUP does not have a monopoly. The United States looks forward to seeing these assertions reflected in foreign EPS suppliers, including U.S. EPS suppliers, processing domestic RMB payment card transactions.