

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.126)

- The United States provided a status report in this dispute on May 13, 2013, in accordance with Article 21.6 of the DSU.
- As noted in the U.S. status report, at least five bills have been introduced in the current Congress in relation to the recommendations and rulings of the DSB. These include H.R. 214, H.R. 778, H.R. 872, H.R. 873, and S. 647.
- The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings.

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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.126)

· The United States provided a status report in this dispute on May 13, 2013, in accordance with Article 21.6 of the DSU.

· The United States has addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute.

· With respect to the recommendations and rulings of the DSB that have yet to be addressed, 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.101)

The United States provided a status report in this dispute on May 13, 2013, 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.64)

- The United States thanks the EU for its status report and its statement today.
- The United States continues to have serious concerns regarding lack of progress in approvals of biotech products.
- For example, we were concerned to learn that the relevant regulatory committee will not be meeting this month, despite the fact that the EU's scientific authority has issued opinions that await action.
- Without regular meetings, we are doubtful that the EU will make the progress necessary to normalize trade in these products.
- For example, EFSA issued a positive opinion on a drought tolerant maize in November 2012, and the opinion was discussed at the March 20 meeting of the regulatory committee. However, the Commission has not presented to the regulatory committee a draft regulation for the approval of the product in the six months since EFSA issued the opinion.
- We urge the EU to take steps to address these problems with its measures affecting the approval of biotech products.

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F. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM  
(WT/DS404/11/ADD.13)

- The United States provided a status report in this dispute on May 13, 2013, in accordance with Article 21.6 of the DSU.
- 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 anti-dumping reviews. This modification addresses certain findings in this dispute.
- In June 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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G. UNITED STATES - MEASURES AFFECTING THE PRODUCTION AND SALE OF CLOVE CIGARETTES: STATUS REPORT BY THE UNITED STATES (WT/DS406/11/ADD.5)

- The United States provided a status report in this dispute on May 13, 2013, in accordance with Article 21.6 of the DSU.
- As noted in the status report, U.S. authorities are conferring with interested parties and working to implement the recommendations and rulings of the DSB in a manner that is appropriate from the perspective of the public health.

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H. UNITED STATES - MEASURES CONCERNING THE IMPORTATION, MARKETING AND SALE OF TUNA AND TUNA PRODUCTS: STATUS REPORT BY THE UNITED STATES (WT(DS381/18/ADD.1))

- The United States provided a status report in this dispute on May 13, 2013, in accordance with Article 21.6 of the DSU.
- As noted in our status report, on April 5, the United States published in the *Federal Register* a proposed rule related to the U.S. dolphin-safe labeling standards.<sup>1</sup>
- The proposed changes would help ensure that consumers receive accurate information concerning whether the tuna in a product labeled "dolphin safe" was caught in a manner that caused harm to dolphins.
- The period for comment on the proposed rule closed on May 6.
- The United States is currently evaluating the comments received concerning the proposed rule, and will continue to work to implement the recommendations and rulings of the DSB by the end of the RPT.

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<sup>1</sup> *Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products*, 78 Fed. Reg. 20604 (proposed Apr. 5, 2013) (to be codified at 50 CFR pt. 216).

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.

4. UNITED STATES - MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES

A. STATEMENT BY ANTIGUA AND BARBUDA REGARDING THE IMPLEMENTATION OF THE RECOMMENDATIONS AND RULINGS ADOPTED BY THE DSB

- The United States remains committed to constructive dialogue with Antigua to resolve this matter. We remain of the view that a negotiated resolution is the best outcome here, and will continue with those efforts.
- In relation to the statement on further DSB status reports, the United States recalls that it has invoked the GATS Article XXI process to withdraw the gambling concession at issue in this dispute. The United States has reached agreement with *all other* interested Members to complete that process by offering substantial new services concessions. Only Antigua prevents completion of that WTO process.
- The United States considers that the GATS Article XXI process is the proper forum for further discussion of this matter.

8. CANADA - CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR/CANADA - MEASURES RELATING TO THE FEED-IN PROGRAM

A. REPORTS OF THE APPELLATE BODY  
(WT/DS412/AB/R - WT/DS426/AB/R) AND REPORTS OF THE PANEL  
(WT/DS412/R AND WT/DS412/R/ADD.1 - WT/DS426/R AND  
WT/DS426/R/ADD.1)

- Mr. Chairman, the United States wishes to thank the Panel, the Appellate Body, and the Secretariat for their work in these proceedings. The United States was a third party in this dispute and, in view of the limited time available today, would like to take this opportunity to comment on just two points in the Appellate Body's report.
- First, with respect to the so-called "government procurement exception," the United States notes Article III:8(a) of the GATT 1994 applies only to measures governing the procurement of certain products by governmental agencies. The United States agrees with the Appellate Body finding in this case that the derogation in Article III:8(a) does not apply where the procurement by a government agency is of one product (electricity) while the domestic content requirements are on private entities purchasing a different product (renewable energy generation equipment).
- The United States also agrees with the Appellate Body's finding that a mere "connection" between two different products, where only one of the products is being procured by the government, is not sufficient to bring the other product within the scope of Article III:8(a).<sup>2</sup> The United States furthermore agrees that, in determining the scope of the product covered by a measure governing government procurement, the "competitive relationship" test set out by the Appellate Body can be helpful.<sup>3</sup>
- The United States is very concerned, however, by the Appellate Body's analysis of "benefit" under Article 1.1(b) of the SCM Agreement, and considers that Members will want to reflect further and discuss the consequences of such an approach.
- The United States notes that electricity markets may present some characteristics that differ from other product markets. Nevertheless, the Appellate Body's discussion of the "relevant market" for purposes of analyzing whether the FIT program confers a "benefit" raises difficult issues that the report does not appear to address.

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<sup>2</sup> Appellate Body Report, para. 5.78.

<sup>3</sup> Appellate Body Report, para. 5.79.

For instance, it is not clear in what situations a "supply-side" analysis focused on the recipients of a financial contribution will be necessary or appropriate in determining whether the products of those recipients compete with the identical product produced by lower-cost producers. Nor is it clear what factors are relevant to that analysis.

The Appellate Body acknowledges that in the present disputes that producers of solar- and wind-generated electricity have higher costs and states that currently "markets for wind- and solar PV-generated electricity can only come into existence as a matter of government regulation." (AB Report, para. 5.175.) But these statements tend to undermine and not support the approach in the report. First, it is not any "government regulation" that was being challenged, but the purchase of goods through specific tariff rates under the FIT program. Second, if there is no separate market today for electricity generated from certain renewable sources, and those generators have higher costs, that would suggest it is the government's financial contribution that permits such electricity to be purchased in the existing marketplace. The Appellate Body's approach in this dispute calls into question its long-standing interpretation of benefit as consisting of a determination whether the transaction "makes a recipient 'better off' than it would otherwise be in the marketplace." (AB Report, para. 5.163 (citing *Canada -- Aircraft* (AB), para. 155.)

In this case, the Appellate Body focused on the fact that due to their cost structures, certain producers, including the recipients of the FIT contracts, "cannot compete" with other producers of the same good, electricity.<sup>4</sup> In contrast to supply-side substitutability that focuses on the ability of producers to shift between production of arguably like products, it is not clear what relevance higher costs of production have for such a supply-side analysis. It is also not clear how, if one must define the relevant market to be used for a benchmark as a market that would not exist but for the government's "creation" of that market<sup>5</sup>, how that definition of a "relevant market" will continue to maintain SCM Agreement disciplines on a wide range of potential subsidies.

Mr. Chairman, the United States supports the increased use of renewable energy sources to meet the world's energy needs. And we strongly believe that the SCM Agreement allows Members to help bring those markets into being, while continuing to discipline inefficient, trade-distortive practices – such as domestic content requirements – that ultimately encumber the spread of renewable energy.

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<sup>4</sup> Appellate Body Report, para. 5.174.

<sup>5</sup> Appellate Body Report, para. 5.188.

9. APPOINTMENT/REAPPOINTMENT OF APPELLATE BODY MEMBERS

A. PROPOSAL BY THE CHAIR

- The United States very much appreciates the Chair's efforts to work with us and other Members on a DSB decision on the process for the appointment and possible reappointment of Appellate Body members this year.
- We are also pleased that the draft decision was placed on today's agenda, providing Members with the opportunity to approve the decision at a DSB meeting, which we believe to be the appropriate process for any decision taken by the DSB, in light of Article 2.4 of the DSU.
- With respect to the substance, while in some respects the decision could have been even more focused (for example, through the omission of the preamble), we believe that the revised draft provides greater clarity as to what the DSB is agreeing to, ensures consistency with past DSB decisions, and maximizes the opportunity for Members to have a robust pool of high quality candidates to consider for the Appellate Body.
- On the whole, we believe that the text circulated by the Chair on May 14 represents a very good product that reflects the views of the DSB and we are pleased to join in a consensus to adopt this decision at today's meeting.
- Finally, we would also like to add our support to the suggestion made by Japan. We agree that it would be helpful for nominating Members to make best efforts to ensure that materials about the Appellate Body candidates that they nominate are made readily available to the entire Membership.

## OTHER BUSINESS

### A. UNITED STATES - CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS (WT/DS384 AND WT/DS386)

- On May 23, 2013, USDA issued a final rule that makes certain changes to the country-of-origin (COOL) labeling requirements found by the DSB to be inconsistent with Article 2.1 of the TBT Agreement.
- Under the final rule, country of origin labels must include information about where each of the production steps (*i.e.*, born, raised, slaughtered) occurred for covered muscle cut commodities derived from animals slaughtered in the United States.
- The final rule ensures that U.S. consumers are provided with more detailed and accurate origin information for muscle cut meats to allow them to make informed purchasing decisions.
- This final rule brings the United States into compliance with the DSB's recommendations and rulings in this dispute.
- The United States has come into compliance within the 10-month reasonable period of time set by a WTO arbitrator, which expired yesterday, May 23.

### Second Intervention

- The United States has studied the DSB's recommendations and rulings closely and believes that the final rule brings us into compliance. If necessary, we are fully prepared to defend the final rule. At the same time, we remain open to further discussions with Canada/Mexico to address any concerns that they may have.