

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.130)

- The United States provided a status report in this dispute on September 12, 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.130)

- The United States provided a status report in this dispute on September 12, 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.105)

- The United States provided a status report in this dispute on September 12, 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.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

D. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.68)

- The United States thanks the EU for its status report and its statement today.
- As the United States has explained at past meetings of the DSB, the United States has substantial concerns regarding EU measures affecting the approval of biotech products.
- As of this date in September, the EU has not granted a single approval of a new biotech product in calendar year 2013. Yet dozens of products are waiting in the EU system. The only new approval so far has been to extend the scope of approval for a previously approved product.
- The United States is closely following EU delays. One product of particular interest is a biotech corn variety that received a favorable safety opinion from the European Food Safety Authority (EFSA) in November of last year. We had hoped that, in accordance with the EU's own laws, this product could have been approved within three months of the positive safety assessment.
- There are many other examples. For instance, the United States notes that two pending products have been considered by both the EU regulatory committee and the EU appeals committee, but have yet to see final action.
- As we have noted in the past, the EU measures are causing serious disruption of trade in corn and other agricultural products.
- We urge the EU to take steps to address these matters.

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BY THE DSB

F. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.16)

- The United States provided a status report in this dispute on September 12, 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.

2. 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 already 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 already 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. AUSTRALIA - CERTAIN MEASURES CONCERNING TRADEMARKS, GEOGRAPHICAL INDICATIONS AND OTHER PLAIN PACKAGING REQUIREMENTS APPLICABLE TO TOBACCO PRODUCTS AND PACKAGING

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY HONDURAS
(WT/DS435/16)

- The United States is surprised and disappointed with the position taken by Australia today. We had thought this issue was resolved years ago when it was first raised in this body. The view that was held then and now is that the DSU does not require that the second request for a panel be made at the meeting immediately following the first request in order for a panel to be established by negative consensus.
- Members have been operating under this assumption for years. There were a few examples identified by Guatemala and the Dominican Republic in their interventions that highlight the frequency with which this has happened. We have a few other examples that we could provide but will save those for a later date.
- Instead, to illustrate how frequently this can come up, Members should just look at the agenda item immediately preceding this one – the dispute between Colombia and Panama. A special DSB meeting was previously scheduled to be held at the beginning of September that would have fallen in between the first and second panel request in that dispute. If that meeting had not been cancelled, Australia’s interpretation would allow Colombia to block the second panel request in that dispute as well.
- In the past five or six years, we are not aware of any Member raising such a concern before the DSB. We thought that this issue was resolved and that is why the United States is disappointed to be having this discussion today.
- This is an issue of systemic concern to the United States and other Members and adopting Australia’s interpretation would impact the ability of Members to resolve disputes by forcing them to move forward with a second panel request.
- In terms of moving forward, the United States would like to echo a comment made by the European Union. While we don’t agree with everything that the European Union said in its statement about this issue, we do agree with them that it would be useful for Australia to reconsider its position and agree to establish the Panel without prejudice to its views. The United States believes that this issue has been settled and believes that there is a pragmatic way forward that is available to Australia - to reconsider its position without prejudice to its views or the views of all of the other Members here today.

Second Intervention

- We are having difficulty understanding what has just transpired and would appreciate clarification on the matter. There were remarks made by many delegations, which seemed to express a view in this particular instance in opposition to the position held by Australia.

- The United States appreciates the views of the Chair as well and the research that was provided by the Secretariat, but we are having trouble seeing how the panel will be established. Can Australia clarify, that for the purposes of this meeting, it is dropping its objection that this is not a second request and agreeing that it would be appropriate to establish a Panel?
- If that is not the case, the United States does not entirely understand what the Chair is proposing and whether there has been a ruling from the Chair, a decision by the DSB, or someone else. The United States feels that it is not appropriate to take a decision like this and doesn't understand what the mechanism would be to take a decision like this without the consent of the Members involved.

Third Intervention

- The United States is in a difficult position here because while we do not agree with Australia's interpretation of Article 6.1, we thought the issue had already been resolved, and we would like to support Honduras' position, we understand that Australia is still objecting to the establishment of a panel, or at least they haven't clarified that they have dropped that objection.
- We had hoped that Members could find a pragmatic way forward and that Australia would withdraw its objection without prejudice to its systemic views.

Fourth Intervention

- Our concern is that there is a Member objecting to a decision that is being taken and yet the DSB is proposing to take it anyway.

Fifth Intervention

- I'm still trying to understand Australia's position. If we aren't able to get clarity on this issue, we may need to consider whether there are other ways to resolve it and whether we need to suspend the proceedings to talk through exactly what is going on. Our concern is that by proposing to take a decision on the establishment of the Panel without Australia's consent on whether or not this is the second request, we are de facto taking a decision that this is a second request. It is the leap from the first step to the second step that is the problem with the approach.

Sixth Intervention

- Chair, you have been very constructive and creative. Our views have been fully reflected in this debate and perhaps more reflected than other delegations would like. For the purposes of today, without prejudice to their views, as we understand it, Australia is acknowledging the fact that a Panel is being established today. This is not being done by

the Chair but this decision is being taken by the Membership with the agreement of Australia.

Seventh Intervention

- To respond the comments raised by the EU, as we understand it, there are two issues: whether it's a first or second panel request and whether a panel can be established by negative consensus if it is a second request. Our concern was about the leap between the two steps rather than the latter step itself.

5. UNITED STATES - CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS
 - A. RECOURSE TO ARTICLE 21.5 OF THE DSU BY CANADA: REQUEST FOR THE ESTABLISHMENT OF A PANEL (WT/DS384/26)
 - B. RECOURSE TO ARTICLE 21.5 OF THE DSU BY MEXICO: REQUEST FOR THE ESTABLISHMENT OF A PANEL (WT/DS386/25)
- The United States is disappointed that Canada and Mexico have made second requests for the establishment of panels in this matter.
 - As the United States has explained at prior meetings of the DSB, the U.S. Department of Agriculture has issued a final rule that fully meets the concerns expressed in the adopted reports by ensuring that consumers are provided with detailed and accurate information on origin.
 - Accordingly, the final rule has brought the United States into full compliance with the DSB's recommendations and rulings in this dispute.
 - Although it is unfortunate that Canada and Mexico are nonetheless pursuing a compliance proceeding, the United States is prepared and ready to rebut any claims regarding the U.S. compliance measure.

6. CHINA - ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON BROILER PRODUCTS FROM THE UNITED STATES

A. REPORT OF THE PANEL (WT/DS427/R AND WT/DS427/R/ADD.1)

- The United States is pleased to place the *Broiler Products* report on the agenda of today's meeting.
- This dispute involves China's imposition of significant levels of anti-dumping (AD) duties and countervailing duties (CVD) on broiler products from the United States.
- As we will summarize in a few minutes, the Panel correctly found that China's AD and CVD measures had serious substantive and procedural deficiencies.
- The report is important in at least three respects.
- First, the report is important both for U.S. exporters, and for Chinese consumers, of U.S. chicken broiler products. The United States is the world's leading producer of these high quality poultry products. The duties that China has maintained on U.S. exports have unjustifiably restricted U.S. exports, resulting in a drop of nearly 80 percent since China initiated its investigations. The United States looks forward to China's compliance with the recommendations and rulings in the report, and to a return to prior levels of trade.
- Second, this dispute is important because it is one of a series of disputes involving what appears to be a systemic misuse by China of AD and CVD measures. In November 2012, the DSB adopted similar findings with regard to China's AD and CVD measures on a high-tech U.S. steel product. And a third panel is currently considering U.S. claims that China's AD and CVD measures on U.S. automobiles likewise involve pervasive breaches of WTO obligations. The United States also notes that other Members also are pursuing similar claims involving other AD and CVD measures adopted by China. The United States hopes that China will respond to this series of disputes by making the systemic changes necessary to begin operating its AD and CVD regimes in accordance with WTO rules.
- Third, this report also has important systemic findings that will benefit all Members. For example, the report confirms that WTO rules require meaningful transparency, including with respect to the disclosure of the information that resulted in the dumping margin. The report confirms that price comparisons in injury determinations must not be distorted by comparing dissimilar products. The report also finds that authorities may not arbitrarily reject legitimate cost information submitted by respondents in order to create artificially inflated margins.
- More specifically, the report that will be adopted today includes the following key

findings.

- The Panel found that China breached Article 6.2 of the AD Agreement¹ by failing to provide an opportunity for interested parties with adverse interests to meet and present opposing views and to offer rebuttal arguments.
- The Panel found that China failed to require non-confidential summaries of allegedly confidential information in breach of Article 12.4.1 of the SCM Agreement,² and Article 6.5.1 of the AD Agreement. This failure prevented the United States and U.S. companies from gaining a reasonable understanding of the substance of the information.
- The Panel found that China failed to disclose essential facts in breach of Article 6.9 of the AD Agreement, in particular the formulas and data used to determine the existence and margins of dumping.
- The Panel found that China breached Article 2 of the AD Agreement due to the unjustified rejection of certain U.S. producers' costs as kept in their books and records.
- The Panel found that China breached Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994 by levying countervailing duties in excess of the amount of subsidization.
- The Panel found that China breached its obligations under the AD and SCM Agreements when it applied facts available to calculate the "all others" rate for unknown producers and exporters in the AD and CVD investigations. The Panel also found that China breached the AD and SCM Agreements by failing to disclose the essential facts, as well as its findings and conclusions with regard to these rates.
- Lastly, the Panel found that China breached its obligations under the AD Agreement and the SCM Agreement with respect to its underselling analysis because China relied on subject import and domestic average unit values that included different product mixes, without taking any steps to control for differences affecting price comparability. In light of this flawed underselling analysis, the Panel also found China's finding of price suppression to be inconsistent with China's obligations.

¹ *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement").

² *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").

- The United States would also note, as is not surprising in a report covering such a broad range of issues, that the United States does not agree with every finding made by the Panel.
- The Panel did not uphold the U.S. claim that China skewed the injury analysis by excluding domestic producers that did not support the investigation. The panel made this finding even though the Appellate Body has previously confirmed that an injury analysis must not be based on a biased subset of the domestic industry. The United States understands that this finding relates only to the unique facts of this dispute.
- The Panel also did not find China's failure to compare prices at the same level of trade to be inconsistent with its obligations under the AD Agreement or SCM Agreement. Reconciling this finding with prior panel and Appellate Body reports is difficult. Again, the United States understands this finding is tied to the unique facts of the dispute.
- In conclusion, Mr. Chairman, for the reasons we have set out today, the United States is pleased to propose that the DSB adopt this important report. We look forward to prompt action by China to comply with the findings in this dispute. As noted, we also hope that China will begin to address its systemic problems so as to ensure that all of its AD and CVD investigations comport with its WTO obligations.

OTHER BUSINESS STATEMENT ON ELECTRONIC PAYMENT SERVICES DISPUTE:

- China's measures affecting electronic payment services continue to be of significant and substantial concern to the United States. In the EPS dispute, the DSB found that China instituted measures to block and discriminate against non-Chinese suppliers of electronic payment services, all to protect and to privilege its own state-favored entity, China Union Pay. China agreed to bring its measures into compliance 11 months after the adoption of the DSB recommendations and rulings—and that deadline was July 31, 2013.
- However, to date no foreign EPS suppliers are able to do RMB business in China; nor is there any way for them to obtain the authorization that China states is necessary in order to do business in China. This is despite China's WTO commitments, and the clear statement by the panel that China's services commitments include an obligation to give EPS suppliers of other WTO Members access to its market.
- It is now over one year from the adoption of the panel report and over two months from the conclusion of the RPT. We understand that a regulation to provide access for foreign EPS suppliers is being drafted. Although we have been engaging with China, China has not provided any specific time by which it will publish the draft nor has it communicated clearly what criteria it will employ in issuing licenses.
- We remain seriously concerned with China's compliance efforts and hope we can work together to achieve measurable progress in the near term.