

**Statements by the United States at the Meeting of the WTO Dispute Settlement Body
Geneva, April 25, 2014**

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.136)

- The United States provided a status report in this dispute on April 14, 2014, in accordance with Article 21.6 of the DSU.
- At least six bills have been introduced in the current Congress in relation to the DSB recommendations and rulings in this dispute. This includes H.R. 214, H.R. 778, H.R. 872, H.R. 873, H.R. 1917, and S. 647.
- The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings.

Second Intervention

- We regret that some Members have suggested that the U.S. Administration is not providing sufficient details of U.S. implementation efforts. We have, in our status report and at past DSB meetings, cited the various legislative proposals that have been introduced by Members of the current U.S. Congress.
- Further, the Administration continues to work with Congress to implement the recommendations and rulings in this dispute. As we have explained at previous DSB meetings, it is not always possible or appropriate to recount internal governmental conversations or efforts to pass legislation.
- The fact that internal deliberations may not be appropriate for public discussion should not be misconstrued as meaning that no steps are being taken.
- To the contrary, we heard similar criticisms about the level of detail of U.S. status reports in other disputes in which Congress ultimately passed legislation or took other measures to come into compliance.
- In our statement today, we mentioned six bills that were introduced in the current Congress. Some of the legislation we mentioned would modify Section 211 while other bills would repeal it outright.

- We are ready to provide more specific information on any bill to Members upon inquiry. However, we would note that all of these bills are publicly available from the time of introduction. In fact, it is possible to track the progress of any particular bill through the legislative process using available online tools. Therefore, any delegation interested in reviewing these bills may do so using the public material readily available online.
- In response to the statements by some Members that this dispute raises concerns for the dispute settlement system, as the United States has noted on several occasions, we do not believe that those concerns are well-founded.
- The facts simply do not support Members' assertions or justify such systemic concerns. The record is clear: the United States has come into compliance, fully and promptly, in the vast majority of its disputes.
- As for the remaining few instances where our efforts to do so have not yet been entirely successful, the United States has been working actively towards compliance in furtherance of the purpose of the dispute settlement system.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

B. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.136)

- The United States provided a status report in this dispute on April 14, 2014, 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.
- 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.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

C. UNITED STATES - SECTION 110(5) OF THE US COPYRIGHT ACT:
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.111)

- The United States provided a status report in this dispute on April 14, 2014, 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.74)

- The United States thanks the EU for its status report and its statement today.
- At prior DSB meetings, the United States recalled that the EU had not addressed the product-specific DSB recommendation and ruling with respect to a variety of biotech corn known as BT-1507.¹ The application for approval of this product has been pending since 2001.
- The United States also takes note that the EU representative stated at the February DSB meeting that measures approving the use of BT-1507 "are now to be adopted by the Commission in accordance with the applicable rules."
- The EU's scientific authority has already issued at least three positive safety assessments for this application. And, no further regulatory procedures are called for under the EU's own rules.
- The United States regrets, however, that the Commission has yet to take action. As a result, the EU measures on the approval of BT-1507 continue to be delayed.
- The handling of the BT-1507 application over the past 13 years exemplifies the problems with EU measures affecting the approval of biotech products. In addition to this biotech product, there are at least six other pending approval applications for which positive opinions have been issued by the EU's scientific authority.
- Yet, these applications continue to face delays in approval.
- In closing, the United States urges the EU to take steps to address the problems with EU measures affecting approval of biotech products, including delays in approvals and bans imposed by EU member States on products approved at the EU level.

¹ *European Communities — Measures Affecting the Approval and Marketing of Biotech Products* (WT/DS291/R), adopted Nov. 21, 2006, at para. 8.18(a)(xi).

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

F. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.22)

- The United States provided a status report in this dispute on April 14, 2014, in accordance with Article 21.6 of the DSU.
- As we have noted at past DSB meetings, the U.S. Department of Commerce published a modification to its procedures in February 2012 in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. This modification addresses certain findings 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.

Second Intervention

- We are disappointed by Vietnam's comments today. As Vietnam is aware, we have continually tried to engage Vietnam in bilateral discussions to resolve their concerns with respect to this issue. We encourage Vietnam to make use of that avenue, which we believe would be a more productive way forward to address the concerns that have been raised.
- The United States is actively working on this matter, and would be pleased to consult with interested parties, including Vietnam, 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 noted at previous DSB meetings, the President signed the Deficit Reduction Act into law on February 8, 2006, which includes a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Accordingly, the United States has taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.
- We recall, furthermore, that Members, including the EU and Japan, 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, which is more than six years ago.
- We therefore do not understand the purpose for which the EU and Japan have inscribed this item today.
- 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 which would repeat, again, that the United States has taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.
- We also regret that the EU has decided to continue to apply its suspension of concessions and are disappointed with this decision.
- Indeed, previously the EU made clear that its purpose in suspending concessions was to "induce compliance". As the United States has taken all steps necessary to comply with the rulings and recommendations of this Body, we fail to see how the continued suspension of concessions could further that purpose.
- Furthermore, as we have observed previously, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.
- The United States continues to review the action by the EU and would not accept any characterization of such continued retaliation as consistent with the DSB's authorization.

3. 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

- As the United States has stated before, we remain committed to constructive dialogue with Antigua to resolve this matter and has been open to meeting with Antigua on this matter at many different levels of the U.S. government.
- As the Members are aware, the United States has invoked the GATS process to withdraw the gambling concession at issue. In fact, and was acknowledged by Antigua in its statement, all affected WTO Members except for Antigua have agreed to our proposed amendment. Nevertheless, we remain of the view that a negotiated resolution is the best outcome here, and we will continue with those efforts.
- At the most recent meeting between Antigua and the United States Trade Representative,, in November 2013, the United States presented, in good faith, a range of items that could be part of a final settlement package. The United States continues to await a detailed response or counter-proposal from Antigua and remains ready to engage with Antigua on these issues.
- It is U.S. policy not to comment publicly on ongoing negotiations, but as noted, we continue to await a constructive answer or a realistic counter-proposal from Antigua in response to the settlement package that we have presented and we disagree with the characterizations made by Antigua on this point.
- Finally, with respect to comments regarding the U.S. respect for the WTO dispute settlement system, the WTO dispute settlement system concluded with a definitive finding on the scope of the U.S. schedule as drafted in 1994. We have accepted that result.
- Following the final DSB report, the United States has made consistent, good-faith efforts to settle the dispute with Antigua. The United States also has proceeded to use the multilateral GATS Article XXI rules, which were adopted for the purpose of allowing Members to make modifications to their schedules while maintaining a balance of benefits among Members. Both of these courses reflect the United States' respect for the findings of the dispute settlement system.

4. CHINA - CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- The United States continues to have serious concerns that China has failed to bring its measures into conformity with its WTO obligations.
- The situation has not changed since the United States first began raising this matter in the DSB.
- In particular, China maintains a ban on foreign suppliers by imposing a licensing requirement to provide EPS, while providing no procedures for foreign suppliers to obtain that license.
- As a result, China's own domestic champion remains today the only EPS company that has ever been able to operate in China's domestic market.
- China's measures cannot be reconciled with the DSB's findings that China's WTO obligations include both market access and national treatment commitments concerning Mode 3 for electronic payment services.²
- The United States does take note again of China's statements in prior DSB meetings that China is working on the necessary regulations that would allow for the licensing of foreign EPS suppliers. The United States observes that the regulations have still not yet been issued.
- Accordingly, the United States urges China to adopt measures that would allow the licensing of foreign EPS suppliers and that would bring its measures into conformity with China's WTO obligations.

Second Intervention

- As we have stated before, we strongly disagree with China's statement that it has come into full compliance. The DSB's rulings and recommendations clearly state that "China has made a commitment on market access concerning mode 3"³ and that "China has made

² *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413/R (adopted Aug. 31, 2012), paras. 7.575, 7.678.

³ *Id.*, at para. 7.575.

a commitment on national treatment concerning mode 3.”⁴

- Currently, China does not allow foreign EPS suppliers access to the market under mode 3 due to a licensing restriction that sets forth no criteria and no procedure under which to obtain the license. Meanwhile, China Union Pay, the only domestic supplier, continues to operate while foreign EPS suppliers cannot.
- In light of these facts, China should live up to its commitments and come into compliance.

Third Intervention

- China’s statement that language in the report adopted by the DSB (*e.g.*, that “China has made a commitment on market access concerning mode 3” and that “China has made a commitment on national treatment concerning mode 3”) are merely “precursors” and not really findings or recommendations and rulings is extremely troubling.
- It would be a significant repudiation of China’s WTO obligations for China to disagree with these findings of the panel adopted by the DSB that define China’s WTO commitments and are the core of the dispute.
- China knows, and we all know, that China has commitments here – it should live up to them.

⁴ *Id.*, at para. 7.678.

8. INDIA - CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS456/5)

- On February 6, 2013, the United States requested consultations with India concerning domestic content requirements under Phase I of a solar energy program known as the National Solar Mission ("NSM"). Consultations failed to resolve the dispute.
- Regrettably, when India launched a Phase II of its NSM, India again imposed domestic content requirements. Moreover, India chose to extend the domestic content requirements to additional types of solar cells and modules.
- Accordingly, on February 10, 2014, the United States requested consultations with India concerning domestic content requirements under Phase II. Consultations again failed to resolve the dispute.
- As set out in the U.S. request for the establishment of a panel, the domestic content requirements under Phase I and Phase II of the NSM appear to constitute a breach of India's obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Trade-Related Investment Measures (TRIMs Agreement).
- Specifically, the measures at issue appear to be inconsistent with Article III:4 of the GATT 1994 because they accord less favorable treatment to imported products than to like products of national origin.
- The measures also appear to be inconsistent with Article 2.1 of the TRIMs Agreement because they are investment measures related to trade in goods that are inconsistent with Article III:4 of the GATT 1994.
- For these reasons, the United States requests that the DSB establish a panel to examine the matter set out in the U.S. panel request.