

**Statements by the United States at the Meeting of the WTO Dispute Settlement Body
Geneva, August 29, 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.140)

- The United States provided a status report in this dispute on August 18, 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, some of which would repeal Section 211 while others would modify it. In prior meetings of the DSB, the United States described the status of each of these bills.
- 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 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.

- Finally, I note that Members have heard certain inflammatory language this morning; the flippant use of certain terms diminishes the significance of those terms.

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.140)

- The United States provided a status report in this dispute on August 18, 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.115)

- The United States provided a status report in this dispute on August 18, 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.78)

- The United States thanks the EU for its status report and its statement today.
- At recent meetings of the DSB, the United States has provided examples of ongoing, substantial delays in the EU's measures affecting the approval of biotech products. As a result, the EU measures are causing serious disruption of trade in agricultural products.
- Indeed, even the EU's own animal-feed manufacturers are expressing concern about the impact of these delays on the availability of protein feeds for European livestock.
- As we noted previously, and as is still the case, the EU has not approved a single new biotech product in 2014.
- The applications delayed from the beginning of 2014 include a number of pending applications for which the EU's scientific authority (the European Food Safety Authority, or EFSA) has completed its work and issued positive safety assessments. These include three applications for approval of new biotech products, two applications for approval of new uses for biotech products, and six applications for the renewal of biotech product approvals.
- Furthermore, over the last nine months, the European Food Safety Authority has issued final positive safety assessments for eight additional products. The Commission also has failed to take final decisions on these products.
- As a result, at least nineteen (19) pending applications are currently awaiting Commission action.
- We urge the EU to take steps to address these matters.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

E. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.26)

- The United States provided a status report in this dispute on August 18, 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.

2. UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA

A. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE DSB

- Mr. Chairman, on July 22, 2014, the DSB adopted the reports of the Panel and the Appellate Body in the dispute *United States – Countervailing and Anti-Dumping Measures on Certain Products from China* (DS449).
- In this dispute, the 30-day period of time described in Article 21.3 of the DSU expired before the next regularly scheduled DSB meeting. In these circumstances, China agreed with the United States that it was appropriate for the United States to inform the DSB of U.S. intentions by letter, rather than at a special meeting of the DSB.
- Accordingly, on August 21, 2014, 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. The letter has been circulated to the DSB as WT/DS449/11.
- 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.
- In accordance with Article 21.3(b) of the DSU, the United States will seek to reach agreement with China on the period of time for implementation.

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 noted at previous DSB meetings, the Deficit Reduction Act -- which includes a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 -- was enacted into law in February 2006. 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 nearly seven 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 also 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.
- Indeed, as we have expressed at past DSB meetings, there is no obligation under the DSU to provide further status reports once a Member announces that it has implemented these DSB recommendations and rulings. And we have in the past noted that Members speaking under this item have followed the same approach in disputes where they have been the responding party and have not continued to provide status reports where the complaining party has disagreed over compliance.
- We agree, and for the same reason, the United States is not required to provide status reports in relation to this dispute in which the necessary action was taken nearly seven years ago.
- With respect to Japan's statement today that it will not apply the suspension of concessions in the coming year, the United States views this as a positive development.
- At the same time, the United States regrets Japan's statement indicating that it may renew the suspension of concessions in the future.

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 last month or since the United States first began raising this matter in the DSB.
- China continues to maintain a ban on foreign suppliers of electronic payment services (“EPS”) by imposing a licensing requirement on them while providing no procedures for them to obtain that license.
- As a result, China’s own domestic champion China Union Pay remains the only EPS supplier that can 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 EPS.¹
- The United States takes note of China’s statements that it is working on the necessary regulations to allow for the licensing of foreign EPS suppliers.
- The United States calls on China to move forward with these regulations swiftly and to allow the licensing of foreign EPS suppliers in China, consistent with its WTO obligations.

¹ *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413/R (adopted Aug. 31, 2012), paras. 7.575, 7.678.

Second Intervention

- As we have stated before, we strongly disagree with China's statement. The DSB's rulings and recommendations clearly state that "China has made a commitment on market access concerning mode 3"² and that "China has made a commitment on national treatment concerning mode 3."³
- 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.
- China knows, as we all do, that China has WTO commitments here. In fact, China's explanation that it is working on regulations is a recognition that it must take action to provide access to foreign EPS suppliers. The United States urges China to move forward with these regulations and allow the licensing of foreign EPS suppliers in China consistent with China's WTO obligations.

Third Intervention

- China has repeatedly stated that it does not have any further obligations with which to comply. In this context, China has characterized the report language clarifying China's commitments (*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") as mere "precursors" and not really DSB findings. This is extremely troubling.
- It would be a significant repudiation of China's WTO obligations for China to disagree with the findings in the panel report adopted by the DSB that clarify China's WTO commitments and are at the core of the dispute.

² *Id.*, at para. 7.575.

³ *Id.*, at para. 7.678.

6. 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 noted at past meetings where Antigua and Barbuda placed this item on the agenda, the United States remains committed to resolving this matter.
- The United States notes that as of June 2014, Antigua and Barbuda has a new government. The United States looks forward to working with the new government in a spirit of cooperation on resolving this issue and the process pending under Article XXI of the GATS.
- However, we are disappointed that Antigua characterizes the United States as not making any serious settlement offer when the United States has taken a constructive approach to resolving this matter in a way that would bring benefits to Antigua's economy and its citizens. It is notable that the United States worked for months with Antigua on a settlement package in 2008 and thought that the parties had reached agreement, only to have Antigua subsequently repudiate it. The United States also offered Antigua a broad range of useful suggestions to settle this dispute in November 2013, only to have Antigua ignore the U.S. offer for a long period of time before just last month indicating that it was not acceptable.
- It is clear that the United States has tried repeatedly to resolve this dispute with Antigua, and we consider its suggestions to the contrary to be not based on any facts. The United States also has put forth, pursuant to Article XXI of the GATS, a generous package of services concessions as compensation for removing internet gambling from the U.S. schedule. Antigua is the *only* Member to block the United States from completing this process.
- It is U.S. policy not to comment publicly on ongoing negotiations.
- The United States has had numerous discussion with Antigua's new government in the past several months, and we look forward to future engagement. We are reviewing this most recent communication, which we only recently received, and will continue to work expeditiously toward finding a realistic settlement.

7. THAILAND – CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES

A. STATEMENT BY THE PHILIPPINES

- To briefly comment on one procedural issue raised in the statement by the Philippines, as this matter is not subject to another WTO proceeding, the Philippines is of course free to bring the item to the attention of the DSB.
- However, with respect to the issue of whether further status reports are required in this dispute, we note that Thailand has stated that it has taken all necessary actions to implement the recommendations and rulings of the DSB.
- In these circumstances, the United States would agree with Thailand that no further status reports in this dispute are required.

8. CHINA – MEASURES RELATED TO THE EXPORTATION OF RARE EARTHS, TUNGSTEN, AND MOLYBDENUM
- A. REPORT OF THE APPELLATE BODY (WT/DS431/AB/R) AND REPORT OF THE PANEL (WT/DS431/R AND WT/DS431/R/ADD.1)
- B. REPORT OF THE APPELLATE BODY (WT/DS432/AB/R) AND REPORT OF THE PANEL (WT/DS432/R AND WT/DS432/R/ADD.1)
- C. REPORT OF THE APPELLATE BODY (WT/DS433/AB/R) AND REPORT OF THE PANEL (WT/DS433/R AND WT/DS433/R/ADD.1)
- The United States is pleased to support the adoption of the panel and Appellate Body reports in DS431, as well as the reports in the disputes brought by Japan and the EU. The outcome of this dispute is important for the United States, as well as for the WTO system as a whole.
 - The United States would like to thank the Panel, the Appellate Body, and the Secretariat assisting them for their hard work on this matter. We also acknowledge and appreciate the cooperation of the European Union and Japan as co-complainants in these disputes, as well as the active support of a number of other WTO Members as third parties.
 - This is, regrettably, the second WTO dispute the United States and other Members have brought to address China's export restraints on industrial raw material inputs.⁵ The export restraints at issue, imposed in the form of export duties, export quotas, and export quota licensing, provide significant unfair advantages for Chinese users as compared to the industries of other Members. China's export restraints put economic pressure on foreign downstream producers to move their operations, jobs, and technologies to China.
 - The United States repeatedly raised its concerns regarding these export restraints through bilateral and multilateral engagement, including in China's annual Transitional Review Mechanism. However, China was unwilling to address our concerns.
 - The Panel and the Appellate Body reports being adopted today uphold the claims of the United States, and our co-complainants, on every major issue in this dispute.
 - The reports are significant for a number of reasons.
 - First, the reports confirm that China's imposition of export duties on rare earths, tungsten, and molybdenum is not consistent with China's WTO obligations.

⁵ See *China – Raw Materials* (DS394/DS395/DS398).

- Second, the reports make clear that such duties may not be justified pursuant to the exceptions provided in Article XX of the GATT 1994. The United States welcomes these findings. The limitations on export duties in China’s Accession Protocol were an important commitment negotiated between WTO Members and China, and the application of duties on products where China had committed to eliminate them was clearly contrary to China’s Protocol.
- In addition to the products covered in this dispute, China currently maintains export duties on a number of other products where it has committed not to apply export duties. The United States looks forward to China’s elimination of these duties.
- Third, the reports properly rejected China’s assertions that its export quotas on rare earths, tungsten, and molybdenum are justified under Article XX of the GATT 1994.
- In making these findings, the reports make clear that any measures sought to be justified pursuant to Article XX(b) and XX(g) must be measures legitimately aimed at protecting health and the environment or at conserving exhaustible natural resources, rather than measures aimed at providing economic advantages to domestic users of raw materials. We welcome these findings as well.
- Of minor note, and perhaps arising from a ministerial error, at one point in its report, the Appellate Body refers to the appeal by the United States as “made on a conditional basis.”⁶ The appeal by the United States was not, however, “conditional,” as the Appellate Body report itself makes clear at paragraph 2.9 of Annex 4. The U.S. appeal simply noted a circumstance in which the Appellate Body “need not” reach the claim of error – that is, where the Appellate Body could validly exercise judicial economy.
- In closing, the United States would like to emphasize that all WTO Members are bound together through a global interdependence in the trade of raw materials. The policies of China, as reflected in the measures covered in this dispute, have caused massive distortions and harmful disruptions in supply chains throughout the global marketplace. For this reason, China’s implementation of the recommendations and rulings in these disputes will benefit all Members, and will contribute to global growth and prosperity.
- Accordingly, the United States looks forward to prompt action by China to address its export restraints on rare earths, tungsten, and molybdenum at issue in this dispute – and more broadly – to meet its WTO obligations in light of these reports.

⁶ AB Report at para. 5.255.