

Statement by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, August 31, 2015

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.152)

- The United States provided a status report in this dispute on August 20, 2015, in accordance with Article 21.6 of the DSU.
- Several bills introduced in the current U.S. Congress would repeal Section 211. Other previously introduced legislation would modify Section 211.
- The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

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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.152)

- The United States provided a status report in this dispute on August 20, 2015, 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.

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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.127)

- The United States provided a status report in this dispute on August 20, 2015, 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.90)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The United States notes that dozens of biotech applications remain pending in the EU approval system. One of these applications has been pending for well over a decade. The ongoing backlog and delays remain a serious impediment to trade in biotech products.
- The United States remains concerned about an EU proposal for major change in the EU approval measures. If adopted, that measure would result in even greater disruptions in trade in agricultural products.
- As the United States has previously stated, the EU Commission has proposed to adopt an amendment to EU biotech approval measures that would allow individual EU member States to ban the use of biotech products within their territory, even where the EU has approved the product based on a scientific risk assessment. This is in addition to a cultivation opt-out already in effect. The United States is concerned about the relationship of such a proposal to the EU’s obligations under the SPS Agreement.
- Additionally, the United States notes that one or more EU member State bans on use would serve as a major impediment to the movement and use of biotech products throughout the entirety of the EU.
- The United States urges the EU to ensure that its biotech approval measures operate in accordance with the EU’s own laws and regulations and its obligations under the SPS Agreement. To the extent that the EU considers revisions to its biotech approval measures, the EU should ensure that these revisions are consistent with the EU’s WTO obligations and should notify these revisions to the SPS Committee pursuant to Article 7 of the SPS Agreement.

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E. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.38)

- The United States provided a status report in this dispute on August 20, 2015, in accordance with Article 21.6 of the DSU.
- As we have noted at past DSB meetings, in February 2012 the U.S. Department of Commerce modified its procedures in a manner that addresses certain findings in this dispute.
- The United States will continue to consult with interested parties as it works to address the other recommendations and rulings of the DSB.

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 the EU, Japan, and other Members have acknowledged that the Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007, over seven and a half 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.
- Indeed, as these very WTO Members have demonstrated repeatedly when they have been a responding party in a dispute, there is no obligation under the DSU to provide further status reports once a Member announces that it has implemented those DSB recommendations and rulings, regardless of whether the complaining party disagrees about compliance.

4. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- The United States reiterates its serious concerns regarding China’s failure to bring its measures into conformity with its WTO obligations, despite numerous interactions between the United States and China in the DSB and elsewhere.
- China continues to impose its ban on foreign suppliers of electronic payment services (“EPS”) by requiring a license, while at the same time failing to issue all specific measures or procedures for obtaining that license.
- The United States previously has taken note of an April 2015 State Council decision, which indicates China’s intent to open up its EPS market following issuance of implementing regulations by the People’s Bank of China and the China Banking Regulatory Commission.
- The United States notes that the People’s Bank of China issued draft regulations last month setting forth some procedures for EPS suppliers to follow when seeking a license.
- To date, the China Banking Regulatory Commission has not issued any draft or final regulations implementing the State Council’s April 2015 decision.
- As a result, one Chinese enterprise continues to be the only EPS supplier able to operate in the domestic market.
- As required under its WTO obligations, China still must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China. We continue to look forward to the prompt issuance of all measures necessary to permit foreign EPS suppliers to do business in China. We are mindful that any regulations must be consistent with WTO obligations and treat foreign EPS suppliers in a consistent and fair way.

6. UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA (DS449)

A. STATEMENT BY THE UNITED STATES ON IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

- The United States is pleased to inform the DSB that it has implemented the recommendations and rulings of the DSB in the dispute *United States – Countervailing and Anti-dumping Measures on Certain Products from China*.
- The United States and China agreed to a reasonable period of time of 12 months from the adoption by the DSB of its recommendations. The original reasonable period of time expired July 22, 2015. The United States and China agreed to extend the reasonable period of time, so as to expire on August 5, 2015.
- In the light of the DSB’s recommendations, the U.S. Department of Commerce investigated the existence of overlapping remedies in the 25 original investigations and administrative reviews covered by this dispute. The Department of Commerce issued new determinations with respect to these 25 proceedings pursuant to section 129 of the Uruguay Round Agreements Act.
- On July 20, 2015, and August 4, 2015, the United States Trade Representative directed the Department of Commerce to implement these determinations. Therefore, the United States implemented the recommendations and rulings of the DSB in the dispute prior to the expiry of the reasonable period of time.
- Despite U.S. disagreement with the legal basis for the underlying finding that there is an obligation to investigate the existence of overlapping remedies, this implementation action by the United States strengthens the multilateral trading system, as all those Members speaking under agenda item 1 will undoubtedly agree.

11. UNITED STATES – MEASURES AFFECTING THE IMPORTATION OF ANIMALS, MEAT AND OTHER ANIMAL PRODUCTS FROM ARGENTINA

A. REPORT OF THE PANEL (WT/DS447/R AND WT/DS447/R/ADD.1)

- Mr. Chairman, since the time Argentina requested the DSB to establish a panel, the view of the United States has been clear: the United States was moving forward with its evaluation of Argentina's requests for access for beef imports, and action on those requests would address Argentina's concerns about the length of the regulatory process. In fact, those evaluations did move forward, and the United States Department of Agriculture was able to propose and complete regulatory actions several months ago.
- These U.S. administrative actions, taken following the rigorous, science-based review that the United States applies to any application, now permit the import of Argentine beef under conditions that meet the high level of protection of the United States, in particular to ensure that foot-and-mouth disease (FMD) will not be introduced into the United States through beef imported from Argentina. Based on these actions, taken well in advance of the panel report, the United States considers that it has addressed the matters raised in this dispute.
- We would like to emphasize that neither the disease at issue nor the review process are trivial. The U.S. cattle herd consists of nearly 90 million head of cattle, with a value of some 60 billion dollars. The United States has been free of FMD since 1929. In light of the complex nature of FMD, and the fact that it is highly contagious and has serious biological and economic impact, the United States conducted a thorough and scientifically rigorous review of the sanitary situation in Argentina's two designated regions: Patagonia and Northern Argentina. The United States Department of Agriculture conducted several intensive field visits and collected significant amounts of veterinary and other data.
- Throughout this regulatory process, which overlapped with the dispute itself, the United States openly communicated with Argentina. Argentina agreed to permit U.S. experts to conduct a veterinary site visit after the first written submissions were submitted in this dispute.
- Before the first panel meeting, in relation to Argentina's request on beef from Patagonia, the United States issued an updated 87-page risk analysis and proposed administrative action that would find the Patagonia region to be free of FMD. Following public comments, the United States took final action more than one year ago, in August 2014, with the result that beef from Patagonia is no longer restricted on account of FMD.

- Before the second panel meeting, in relation to Argentina’s request on beef from Northern Argentina, the United States also issued in August 2014 an updated 103-page risk analysis and proposed administrative action that would permit fresh beef from Northern Argentina to enter into the United States with certain risk mitigations. Following public comments, the United States took final action in July 2015, consistent with its risk analysis and proposal that beef from Northern Argentina may, with scientifically justified conditions, be safely imported into the United States.
- Both of these administrative actions, then, were proposed one to two years ago, and became final from 1 to 12 months ago – that is, before the issuance of the panel’s report in this dispute. In that regard, we continue to consider that this dispute was not necessary, or the most efficient use of resources.
- The panel report makes no findings that are inconsistent with the actions now taken by the United States on Argentina’s applications – to the contrary, the panel’s findings support them.
- First, the panel report recognizes that the initial action taken by the United States to prohibit the importation of fresh beef after Argentina suffered severe outbreaks of FMD was appropriate and fully consistent with science. The panel report stated that “the undisputed science supports the conclusion in the June 2001 Interim Rule that Argentine products posed a significant risk for introduction of FMD into the United States.”¹
- Second, the panel report also recognizes that FMD is a substantial and harmful animal disease. The panel report referred to the statement by the World Organization of Animal Health, the international standard-setting body in this area, that FMD “is a high impact disease, a trans-boundary animal disease, highly contagious and has serious impact.”²
- Third, the panel report recognizes that the United States maintains a level of sanitary protection with respect to FMD that is “higher than that achieved” by the World Organization of Animal Health’s standard, the Terrestrial Code.³

¹ Panel Report, *United States – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina*, at para. 7.334.

² *Id.* at para. 7.331.

³ *Id.* at para. 7.387.

- Fourth, the panel made certain findings on the basis that the United States had previously evaluated the scientific evidence and applied conditions for the importation of beef from certain other regions that purportedly had the same FMD-status as Argentina. Now that the United States has completed its evaluation of the scientific evidence concerning imports from Argentina, U.S. authorities have, as explained, determined that in fact those same conditions that the panel noted the United States had already applied successfully in other cases can also ensure that beef from Argentina does not transmit FMD and meets the U.S. level of protection.
- Although the United States is disappointed that this dispute moved forward, despite the fact that the United States continued to work diligently and apply consistently its high standards of scientific review to determine Argentina's FMD disease status, we also consider that the panel report, coming many months after the United States took action to approve Argentina's applications, is no longer especially relevant. We are also cognizant of the need for Members to consider the many demands on the dispute settlement system. Therefore, we have decided not to appeal the panel's report.
- The adoption of the panel report provides a renewed opportunity for Argentina and the United States to work together, and in fact we are collaborating on separate technical matters. We look forward to working constructively, and we are available to confer further with Argentina in relation to the actions taken by the United States on its beef approval applications.

Second Intervention

- In relation to certain proposals in the Congress, to which Argentina has referred, we would clarify that these are proposals only and have not been enacted.
- As such, these proposals do not have any effect on the administrative action that USDA has taken.

12. CHINA – COUNTERVAILING AND ANTI-DUMPING DUTIES ON GRAIN ORIENTED FLAT-ROLLED ELECTRICAL STEEL FROM THE UNITED STATES: RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES

A. REPORT OF THE PANEL (WT/DS414/RW AND WT/DS414/RW/ADD.1)

- The United States is pleased to request the DSB to adopt the report of the compliance panel in this dispute. The report is important and of a high quality, and we thank the compliance panelists, and the WTO Secretariat assisting them, for their work in producing the report.
- Grain-oriented flat-rolled electrical steel (GOES) is a high-tech, high-value magnetic specialty steel. Prior to China's imposition of anti-dumping and countervailing duties, U.S. steel producers had been able to export over \$250 million of this specialty product to Chinese purchasers.
- The countervailing duties and anti-dumping duties that China imposed on U.S. exports of GOES unfairly restricted U.S. exports to this increasingly important market. In fact, since China imposed duties, U.S. exports of GOES to China fell to virtually nothing.
- The DSB will recall that the United States challenged China's duties, and the DSB adopted recommendations that China should bring those duties into conformity with WTO rules. China chose to continue those duties and simply provide further elaboration to, allegedly, support them. But there was no change in substance.
- The compliance panel found that China failed to address the findings of the original panel and the Appellate Body in this dispute. China repeated many of the same errors identified in the original proceedings, rather than come to grips with the recommendations and rulings of the DSB. In particular, the United States would like to draw attention to two points.
- First, the compliance panel found that China's price effects analysis in its injury re-determination was fundamentally flawed. The compliance panel's report underscores that China's analysis of price effects was not based on positive evidence and did not involve an objective examination. The report finds that China's determination that imports caused injury to the domestic industry was *not* supported by facts and evidence on the administrative record. And the report finds that China did not disclose the essential facts supporting this analysis.

- Second, the United States also notes that other Members are pursuing similar claims involving other AD and CVD measures adopted by China. The United States continues to hope 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.
- The United States notes that China announced, in the penultimate stages of this proceeding, that it would terminate the antidumping and countervailing duties on GOES from the United States. The United States obviously welcomes that action by China. Nonetheless, we regret that this action was only taken following original panel and appellate proceedings and towards the very end of a compliance panel proceeding when the conclusion of all of these WTO reports is that China never had a legal basis to impose those duties on U.S. exports.
- In sum, the United States is pleased to propose that the DSB adopt this important report. As noted, we hope China will begin to address these systemic deficiencies so as to ensure that all of its AD and CVD investigations comport with its WTO obligations.

13. DELAYS IN THE DISPUTE SETTLEMENT PROCESS

A. STATEMENT BY KOREA

- Mr. Chairman, Korea has raised an important systemic issue today. Unfortunately, it has also raised a bilateral dispute in this context so let me just make clear – we do not agree with Korea’s statement about harm to its companies since we consider that U.S. duties have been imposed consistently with WTO rules.
- That said, for some time the dispute settlement system has been facing significant delays, first at the appellate stage, and now at the panel stage.
- This raises some significant concerns, particularly in light of the fact that the WTO dispute settlement system for many years operated with admirable efficiency.
- We share the view that Members need a better understanding of the causes behind delays so that we can develop and consider appropriate solutions.
- We look forward to further discussion and analysis of this issue.