

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

Geneva, January 25, 2016

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.156)
 - The United States provided a status report in this dispute on January 14, 2016, in accordance with Article 21.6 of the DSU.
 - Several bills introduced in the current U.S. Congress would repeal Section 211 – those are H.R. 274, H.R.403, H.R. 635 and H.R. 735. Other bills – H.R. 1627 and S. 757 – would modify Section 211.
 - The U.S. Administration will continue to work on solutions to implement the DSB’s recommendations and rulings.
 - The United States is also pleased to announce today significant positive developments in relation to the Havana Club trademark at issue in the Section 211 dispute.
 - As many here may know, action on a petition for renewal of the Havana Club trademark was suspended in 2006 pending the final disposition of certain litigation.
 - That litigation has since concluded.
 - Earlier this year, on January 11, 2016, the United States issued a specific license to Cubaexport that allowed it to pay fees for renewal of the U.S. trademark registration.
 - Then, almost two weeks ago, the U.S. Patent and Trademark Office granted the petition to renew the trademark registration. Therefore, the Havana Club trademark was successfully renewed. That Office is currently processing the trademark holder's renewal application for the period 2016-2026.
 - These important steps resolve a longstanding issue of concern to the European Union and others.
 - The United States has notified the EU of these positive developments. In light of this step, we are moving this dispute into a more cooperative phase that we hope may create conditions for achieving a final resolution of this dispute.

- As part of our collaboration with the EU, we will be providing the EU directly with information and updates regarding this matter going forward.
- The United States expects that these recent positive developments also will be welcomed by other WTO Members. Indeed, we have been reaching out to provide information as relevant and would expect to continue those efforts in the coming days.
- Thank you.

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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.156)

- The United States provided a status report in this dispute on January 14, 2016, 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 the 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.131)

- The United States provided a status report in this dispute on January 14, 2016, 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.94)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The United States remains concerned with the EU’s measures affecting the approval and marketing of biotech products.
- Dozens of biotech applications remain pending in the EU approval system and are subject to numerous delays.
- An EU official responsible for reviewing EU administrative actions recently confirmed the existence of widespread delays in the EU biotech approval measures. In particular, the EU Ombudsman concluded that the Commission has failed to take its decisions with respect to biotech products within a reasonable time.
- Further, even when the EU does approve a biotech product, the approval may not apply within one or more EU Member states. Instead, EU Member states have banned such products, and have done so without any apparent scientific basis.
- Instead of taking steps to address this problem, the EU Commission has proposed an amendment to EU biotech approval measures that would facilitate the adoption of additional EU Member state bans on biotech products approved at the EU-level.
- The United States understands that the European Parliament sought the withdrawal of this proposal. Nonetheless, the proposal has yet to be withdrawn.
- Accordingly, the United States remains concerned about so-called “opt-out” proposals for biotech products. Indeed, at least nineteen Member States or sub-regions have declared their intention to “opt-out” of certain biotech approvals without providing any scientific basis.
- In closing, the United States urges the EU to ensure that its biotech approval measures are

consistent with its obligations under the SPS Agreement.

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E. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.42)

- The United States provided a status report in this dispute on January 14, 2016, 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.

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F. UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN HOT ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA: STATUS REPORT BY THE UNITED STATES (WT/DS436/14/ADD.2)

- The United States provided a status report in this dispute on January 14, 2016, in accordance with Article 21.6 of the DSU.
- On October 5, 2015, pursuant to section 129(b) of the Uruguay Round Agreements Act (“URAA”), the U.S. Trade Representative requested the U.S. Department of Commerce to issue a determination in the underlying proceeding that is not inconsistent with the findings of the panel and the Appellate Body in this dispute.
- Also on October 5, 2015, pursuant to section 129(a) of the URAA, the U.S. Trade Representative requested the U.S. International Trade Commission (USITC) to issue an advisory report on whether U.S. law permits the Commission to take steps in connection with the underlying proceeding that would render its determination subject to the DSB’s recommendations not inconsistent with the WTO findings.
- On October 23, 2015, the USITC responded in the affirmative.
- On November 6, 2015, the U.S. Trade Representative proceeded to request that the USITC issue a determination in the underlying proceeding that is not inconsistent with the findings of the panel and the Appellate Body in this dispute.
- The United States will continue to work to address the recommendations and rulings of the DSB and to consult with interested parties.

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G. ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS: STATUS REPORT BY ARGENTINA (WT/DS438/23 – WT/DS444/23 – WT/DS445/24)

- The United States recalls that, in disputes brought by the United States, the European Union, and Japan, the DSB adopted the findings of the panel and the Appellate Body that Argentina's import licensing measures breached Argentina's obligations under the GATT 1994. These measures included the so-called DJAI – an import licensing regime – and other trade-related restrictions including unwritten trade balancing requirements.
- Pursuant to the agreement of the parties to the dispute, the period of time for Argentina to comply with the DSB's recommendations and rulings ended on December 31, 2015.
- Shortly before the end of the reasonable period of time, Argentina had a change of administrations. The United States welcomes the public statements of Argentina's new government that it intends to end the trade-restrictive policies of the prior government. The United States also looks forward to working with the new government to address U.S. concerns with Argentina's trade measures.
- We will need to do so with respect to the measures at issue in this dispute. The United States cannot agree today with Argentina's claim, in its status report of January 14, and at today's meeting that it has come into compliance with the recommendations and rulings of the DSB.
- The United States is in the process of reviewing the measures cited in Argentina's status report. Based on the face of the new measures, however, the United States has significant questions about how they could serve to bring Argentina's import licensing measures into compliance with its WTO obligations.
- In particular, the United States is concerned that Argentina appears to have replaced its DJAI import licensing system with a new system that subjects numerous products to non-automatic import licensing, and which appears to leave government officials with discretion on whether to grant or deny import licenses.

- This would, unfortunately, be the same problem that the WTO found with respect to the previous import licensing regime.
- The United States also has questions with regard to whether Argentina has released importers from the numerous trade restrictive commitments that were imposed as part of Argentina's trade-related requirements.
- Despite our concerns, we understand that Argentina would be prepared to confer with the complaining parties on implementation actions in this dispute, and we are willing and ready to engage in discussions with Argentina.
- The United States looks forward to working with Argentina's new government to address these matters with the goal of seeing full compliance with WTO rules and a satisfactory resolution of this dispute.

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 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, which is over eight 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 necessary actions 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.

3. 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.
- 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 has also noted that the People’s Bank of China has issued some draft regulations.
- To date, however, the China Banking Regulatory Commission has not issued any draft or final regulations implementing the State Council’s April 2015 decision. Nor has the People’s Bank of China issued final regulations.
- As a result, a single, Chinese enterprise continues to be the only EPS supplier able to operate in China’s domestic market.
- As required under its WTO obligations, China must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China, and any regulations must be implemented in a consistent and fair way.
- We continue to look forward to the prompt issuance and implementation of all measures necessary to permit foreign EPS suppliers to do business in China.

Second Intervention

- The State Council’s decision itself references the need for additional regulations for administrative licensing from PBOC and CBRC before foreign suppliers can conduct EPS business in China.

- Could China tell us when we can expect to see the publication of all the relevant measures?

5. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS429)

A. STATEMENT BY VIET NAM

- The United States simply does not understand Vietnam's rationale for placing this matter on the agenda of today's meeting.
- At the DSB meeting held on May 20, 2015, the United States stated its intention to comply with the DSB's recommendations in this dispute, and that it would need a reasonable period of time (RPT) to do so.
- Vietnam subsequently requested that the RPT be determined by an arbitrator.
- On December 15, 2015, the arbitrator determined that the RPT in this dispute would be 15 months, ending on July 22, 2016.
- Under Article 21.6 of the DSU, the first report of the United States to the DSB on the status of implementation is due 6 months after the date of the establishment of the RPT, that is, June 15, 2016.
- To recall, today's date is January 25, 2016.
- If Vietnam has particular questions regarding the ongoing U.S. implementation process, the United States is willing to address those questions on a bilateral basis.