

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

**Geneva, March 23, 2016**

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB
  - A. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.158)
    - The United States provided a status report in this dispute on March 10, 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 this matter.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

B. UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT:  
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.133)

- The United States provided a status report in this dispute on March 10, 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.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

C. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.96)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- As the United States has noted at past meetings of the DSB, the EU’s measures affecting the approval and marketing of biotech products remain of substantial concern to the United States.
- Delays in the consideration of biotech products continue, as well as EU Member state bans on products previously approved by the EU, represent serious obstacles to trade in agricultural products.
- We are unaware of any recent positive developments in relation to the EU’s measures.
- As previously noted, even the EU official responsible for reviewing EU administrative actions recently confirmed that the Commission has failed to take biotech approval decisions within a reasonable time.
- And with regard to the problem of EU Member state bans, the situation appears to be growing worse, not better. At least nineteen Member States or sub-regions “opted-out” of certain biotech approvals without providing any scientific basis.
- The United States urges the EU to ensure that its biotech approval measures are applied in a timely manner and are consistent with its obligations under the SPS Agreement.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

D. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.44)

- The United States provided a status report in this dispute on March 10, 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.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

E. UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN HOT ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA: STATUS REPORT BY THE UNITED STATES (WT/DS436/14/ADD.4)

- The United States provided a status report in this dispute on March 10, 2016, in accordance with Article 21.6 of the DSU.
- The United States recalls that the findings in this dispute involve determinations by the U.S. Department of Commerce and the U.S. International Trade Commission (USITC).
- On October 5, 2015, 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.
- On November 6, 2015, the U.S. Trade Representative requested 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.
- On March 7, 2016, the USITC issued a new determination rendering the findings with respect to injury in the underlying proceeding concerning subsidized hot-rolled steel from India consistent with the findings of the panel and the Appellate Body in this dispute.
- On March 9, 2016, India and the United States agreed to extend the reasonable period of time by 30 days, so as to expire on April 18, 2016.
- The United States will continue to work to address the recommendations and rulings of the DSB and to consult with interested parties.

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, 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 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.

### 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. To recall, the DSB adopted its recommendations and rulings in this dispute in August 2012, and China’s agreed reasonable period of time expired in July 2013.
- But, as the United States has noted at past meetings of the DSB, 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.
- That decision, however, was issued one year ago, and, to date, China has not issued the implementing regulations.
- As required under its WTO obligations, China must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China.
- Furthermore, once adopted, any regulations must be implemented in a consistent and fair way.
- We continue to seek the prompt issuance and implementation of all measures necessary to permit foreign EPS suppliers to do business in China.

7. UNITED STATES – MEASURES CONCERNING THE IMPORTATION,  
MARKETING AND SALE OF TUNA AND TUNA PRODUCTS

A. RECOURSE TO ARTICLE 22.2 OF THE DSU BY MEXICO (WT/DS381/29)

- Mr. Chairman, on March 22, the United States submitted a written objection to Mexico's request for authorization to suspend the application to the United States of concessions or other obligations.
- Pursuant to the U.S. objection on March 22 to Mexico's request, this matter was thereby referred to arbitration pursuant to Article 22.6 of the DSU.
- In this circumstance, there was no need for this item to remain on the agenda for today's DSB meeting as there is no action the DSB may take with respect to Mexico's request.
- Nevertheless, while not an efficient use of the resources of the WTO and of Members, we have no objection if the DSB wishes to take note of the fact that no action can be taken on Mexico's request for authorization since the matter has been referred to arbitration.
- Regarding the U.S. objection submitted yesterday to Mexico's request for authorization, the United States strongly disagrees with Mexico's request. For example, and aside from any other issues, the level Mexico has requested is unsupportable compared to its actual or potential exports.
- Mr. Chairman, we also would like to take this opportunity to provide an update on U.S. actions relating to this dispute. Yesterday, the U.S. National Oceanic and Atmospheric Administration (NOAA) issued a new rule modifying the dolphin safe labeling measure. The new rule directly addresses the WTO's findings on the U.S. dolphin safe labeling measure and is being published in the U.S. *Federal Register* today.
- In revising the measure, the United States carefully analyzed not only the Appellate Body's findings, but all the issues debated during the compliance proceeding. This rule directly addresses issues raised by both the Appellate Body and the compliance panel. We will summarize briefly five changes in the rule.
- First, the rule changes the design of the so-called determination provisions to set one standard for all purse seine and non-purse seine fisheries, eliminating any alleged "gaps" that existed previously. This change directly responds to the only basis that the Appellate Body relied on in finding that the measure was discriminatory.

- Second, the rule requires that, where NOAA has made a positive finding under the determination provision with respect to a particular fishery, NOAA will require that a government certificate validating the catch documentation, segregation, and chain of custody will accompany the tuna and tuna product produced from that fishery.
- Third, the rule now requires the captain to certify that he or she has completed training to identify intentional deployment of fishing gear and dolphin mortality and serious injury, in addition to certifying that the tuna meets the dolphin safe standard.
- Fourth, the rule now requires that the industry collect sufficient information to allow NOAA to track and verify tuna product throughout the entire supply chain.
- Fifth, the rule provides for one straight forward certification, making clear that all tuna product must meet the same standard to be labeled “dolphin safe” in the U.S. market.
- Mr. Chairman, we would be pleased to provide any interested Member with a copy of the new rule. As just described, the United States considers that this measure fully addresses the DSB’s recommendations and rulings, and more.

#### Second Intervention

- Our position on this subject is well-known. As recently confirmed, no decision by the DSB is necessary to refer the matter to arbitration.<sup>1</sup> Article 22.6 does not refer to any action of the DSB, and the text is clear that once a Member objects to another Member’s request, that matter is automatically referred to arbitration.
- The situation here is not unique. Members may recall that no DSB decision was needed in this dispute to refer the matter to the Appellate Body, nor has any DSB decision been needed in past disputes to refer the matter of the reasonable period of time to an Article 21.3(c) arbitrator.

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<sup>1</sup> See Decision by the Arbitrator, *United States – Certain Country of Origin Labelling (COOL) Requirements: Recourse to Article 22.6 of the DSU by the United States*, WT/DS386/ARB, para. 2.17 (7 December 2015) (“As indicated above, the text of Article 22.6 does not explicitly require referral to arbitration by the DSB. Furthermore, the context found in other provisions of the DSU, particularly regarding other arbitration procedures, suspension and lapsing of panels, and initiation of appeals, suggests that it is not necessary for the DSB to have an active role in all dispute settlement procedures for them to occur.”).

- As just one illustration of why the DSB is not deciding today to refer these matters to arbitration, the United States would note that the DSB does not have before it any proposed decision to refer the matter to arbitration. DSB rules would require such a decision to be submitted 10 days before the DSB meeting. Clearly, the DSB is not taking a decision today, nor has it on any of the previous occasions when requests were referred to arbitration.
- Indeed, arbitration has commenced in the past without the need for a DSB meeting.<sup>2</sup>
- For example, the United States would refer Members to the minutes of the January 21, 2008, DSB meeting, where it was agreed to remove the agenda item with respect to requesting authorization to suspend concessions in light of the filing of an objection.<sup>3</sup>

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<sup>2</sup> See Decision by the Arbitrator, *United States – Certain Country of Origin Labelling (COOL) Requirements: Recourse to Article 22.6 of the DSU by the United States*, WT/DS386/ARB, para. 2.2 (7 December 2015) (“On 22 June 2015, the United States notified to the DSB its objection to Mexico’s proposed level of suspension and stated that ‘[a]ccordingly ... the matter has been referred to arbitration’. Thereafter, Mexico cancelled its request for a DSB meeting. On 26 June 2015, the Secretariat circulated a note indicating that ‘the parties agree that the matter has been referred to arbitration under Article 22.6 of the DSU”, and noting the composition of the Arbitrator.”) (footnotes omitted).

<sup>3</sup> WT/DSB/M/245, p. 2 (statements by Japan and the United States).