

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

Geneva, April 22, 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.159)

- The United States provided a status report in this dispute on April 11, 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.

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B. UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT:
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.134)

- The United States provided a status report in this dispute on April 11, 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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C. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.97)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- As the United States has noted repeatedly at past meetings of the DSB, EU measures affecting the approval and marketing of biotech products remain of substantial concern to the United States. And unfortunately, we are unaware of any recent positive developments in relation to the EU’s biotech measures.
- Significant delays in the consideration of biotech products are restricting U.S. exports of agricultural products to the EU.
- At this meeting, the United States would like to highlight its serious concerns regarding the EU’s treatment of approval applications for three varieties of biotech soybeans. These varieties are critical for U.S. farmers because they include important technologies that promote weed control. Yet, the approval of these varieties are stalled in the EU system.
- In particular, the EU’s scientific body concluded extensive scientific reviews of these soybean varieties in June and July of 2015. The reviews confirmed that these biotech products were safe for use in the EU. The EU, however, continues to delay the final approval of these products. The United States urges the EU to complete these approvals as soon as possible.
- The United States also recalls that EU Member state bans of products previously approved by the EU represent additional, serious obstacles to trade in agricultural products. Several EU Member States have “opted-out” of certain biotech approvals without providing any scientific basis.
- In closing, the United States again asks the EU to ensure that its biotech approval measures are consistent with its obligations under the SPS Agreement.

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D. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.45)

- The United States provided a status report in this dispute on April 11, 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 regarding matters related to the other recommendations and rulings of the DSB.

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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.5)

- The United States provided a status report in this dispute on April 11, 2016, in accordance with Article 21.6 of the DSU.
- On March 9, 2016, India and the United States agreed to extend the RPT by 30 days, so as to expire on April 18, 2016.¹
- The United States recalls that this dispute involves determinations by the U.S. Department of Commerce (“USDOC”) and the U.S. International Trade Commission (USITC) on certain hot-rolled carbon steel flat products from India.
- On October 5, 2015, the U.S. Trade Representative requested that USDOC issue a determination that would render its determinations not inconsistent with the WTO’s findings. On November 6, 2015, the U.S. Trade Representative requested the USITC to issue a determination in the underlying proceeding that is not inconsistent with the WTO’s findings.
- With respect to the USITC determination, on March 7, 2016, the USITC issued a new determination rendering the findings with respect to injury in the underlying proceeding on the product from India consistent with the DSB recommendations and rulings in this dispute.
- With respect to the USDOC determination, on April 14, 2016, USDOC issued a new final determination rendering its determination with respect to subsidization and the calculation of countervailing duty rates consistent with the DSB recommendations and rulings in this dispute. The U.S. Trade Representative proceeded to complete this implementation process by directing USDOC to implement its new determinations pursuant to section 129(b)(4) of the *Uruguay Round Agreements Act*.

¹ WT/DS436/15.

- Accordingly, the United States has completed implementation with respect to the DSB recommendations and rulings concerning the countervailing duty measure on hot-rolled carbon steel flat products from India.

Second Intervention

- As noted, USDOC's recent determinations fully comply with the findings of the panel and Appellate Body in this dispute regarding subsidization and the calculation of countervailing duty rates.
- Also, the USITC's determination renders the injury findings in the underlying proceeding regarding subsidized hot-rolled steel imports from India consistent with the findings of the panel and Appellate Body in this dispute.

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F. UNITED STATES – COUNTERVAILING DUTY MEASURES ON CERTAIN PRODUCTS FROM CHINA: STATUS REPORT BY THE UNITED STATES (WT/DS437/18)

- The United States provided a status report in this dispute on April 11, 2016, in accordance with Article 21.6 of the DSU.
- The United States recalls that the findings in this dispute involve fifteen separate countervailing duty (CVD) determinations by the U.S. Department of Commerce (USDOC).
- On December 14, 2015, the U.S. Trade Representative requested USDOC to issue new determinations as necessary to render the challenged measures consistent with the recommendations and rulings of the DSB.
- The United States has completed the implementation process with respect to nine separate investigations, as well as with respect to the one “as such” finding in this dispute.
- Specifically, USDOC issued new final determinations with respect to eight separate CVD investigations, and the U.S. Trade Representative has completed the implementation process by directing USDOC to implement these determinations. In one other investigation covered by the DSB recommendations and rulings, USDOC revoked the CVD order, making unnecessary any determination in that proceeding.
- The United States has also completed implementation with respect to the one “as such” finding adopted by the DSB. As detailed in the status report, USDOC withdrew the approach addressed by that finding prior to the DSB’s adoption of the reports in this dispute.
- With respect to the remaining “as applied” findings in six investigations, USDOC made a series of preliminary determinations in December 2015 through March 2016. USDOC then sought and accepted comments from interested parties on those preliminary determinations. On March 31, 2016, Commerce held a hearing requested by interested

parties. Commerce is currently reviewing comments received from interested parties and will address those in its final determinations.

- The United States is working to complete the ongoing administrative process in the remaining six CVD proceedings as soon as possible.
- The United States also notes that, as notified to the DSB,² the United States and China have reached a procedural understanding regarding possible further proceedings under Articles 21 and 22 of the DSU that is designed to facilitate the resolution of the dispute.

Second Intervention

- We clearly do not agree with China's description of USDOC's actions. The United States recalls that the scope of this dispute is one of the most extensive in the history of the dispute settlement system. The DSB recommendations and rulings call for further administrative action with respect to 15 separate CVD investigations. That is, the claims here could have been brought in 15 separate disputes. For most of these separate investigations, the recommendations and rulings involve multiple obligations under the SCM Agreement.
- As the United States has noted, the United States was able to implement all of the DSBs recommendations and rulings with respect to nine separate CVD proceedings, as well as the one "as such" finding in this dispute.
- Given the tremendous volume of work arising from the extensive scope of this dispute, the remaining six proceedings could not be completed by the end of the RPT, and the United States is committed to doing so as soon as possible.
- We regret that China questions the U.S. commitment to implementing the DSB's recommendations and rulings in this dispute. The record shows that China has no basis for doing so.
- Again, due to China's decision to bring one single, combined dispute challenging multiple CVD determinations on multiple grounds, rather than 15 separate disputes each covering one CVD proceedings and advancing multiple claims, this single dispute is one of the most extensive in the history of the dispute settlement system. Nonetheless, through the expenditure of extensive administrative resources, the United States has managed to complete implementation with respect to the majority of the CVD

² WT/DS437/19.

proceedings within the RPT. And as explained, we are committed to completing the remaining work as soon as possible.

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 the 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 the specific measures or procedures for actually obtaining that license.
- Meanwhile, China’s domestic supplier continues to do business as usual.
- 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 over a 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. We also expect that the applications of foreign EPS suppliers should be approved without delay.

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

A. RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES (WT/DS381/32)

- Mr. Chairman, the United States finds itself in a rather unusual position today.
- As the United States discussed at the March DSB meeting, the U.S. National Oceanic and Atmospheric Administration (“NOAA”) issued a new rule modifying the dolphin safe labeling measure at issue in this dispute.
- The new rule directly addresses the DSB’s findings on the U.S. dolphin safe labeling measure, and brings the United States into compliance with its WTO obligations.
- The United States has discussed the recent rule with Mexico on a number of occasions now.
- However, Mexico has indicated that it is not prepared to refer the matter of compliance back to a compliance panel at this point. Mexico has insisted that the arbitration under Article 22.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) to review Mexico’s request for authorization to suspend concessions must move forward immediately and, at the DSB meeting on March 23, Mexico said that it considered that the U.S. compliance action was not “legally pertinent” for the arbitration.
- Thus, Mexico appears to be seeking to avoid the fact that the United States has now changed its measure to come into compliance with its WTO obligations and instead proceed as though the measure at issue is unchanged.
- As a result, today the United States is taking the unusual step of requesting that the DSB establish a compliance panel pursuant to Article 21.5 of the DSU to confirm that the United States has brought its measure into compliance with the DSB’s recommendations and rulings. The United States is aware of only one prior instance in which the Member concerned requested the establishment of a panel pursuant to Article 21.5.

- At the same time, this is a course of action specifically endorsed in an Appellate Body report for a Member concerned.³
- We understand that Mexico shares our desire to bring this dispute to a close as soon as possible and surely does not seek further delay. Initiating this Article 21.5 proceeding at this meeting best facilitates resolving this dispute.
- Accordingly, the United States expects that Mexico will not object to the establishment of the panel today, which would only mean that referral of this matter to a compliance panel is delayed by some days by the need to convene yet another DSB meeting.

Second Intervention

- We would like to address a few of the comments made in Mexico’s statement. Mexico asserts there have been no consultations. However, there is no requirement to request consultations under Article 4 of the DSU as a condition for requesting the establishment of a compliance panel pursuant to Article 21.5 of the DSU – a point that the Appellate Body has made in two reports, one of which involved Mexico as a party.⁴
- Consultations are not referred to in Article 21.5, and the parties have already consulted on the initial matter giving rise to the situation under Article 21.5. Indeed, we cannot see how Article 4 of the DSU could apply to an instance in which it is the Member concerned who is requesting a compliance panel to confirm that Member’s compliance.
- Accordingly, any objection to the U.S. panel request based on the failure to request Article 4 consultations could not prevent the establishment of a panel.
- That said, the United States has discussed the recent rule with Mexico on a number of occasions now, including under the Understanding between the United States and Mexico Regarding Procedures under Articles 21 and 22 of the DSU.
- And, of course, we stand ready to consult further with Mexico on this matter as long as those consultations do not cause any delay in the compliance panel proceedings.

³ Appellate Body Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, adopted Nov. 14, 2008, para. 353 (“*US – Continued Suspension (AB)*”).

⁴ See *Mexico – HFCS (Article 21.5) (AB)*, para. 65; *US – Continued Suspension (AB)*, para. 340.

- Finally, we would note that this is consistent with the approach agreed under that same Understanding which specified that Mexico was not required to hold consultations with the United States prior to requesting the establishment of an Article 21.5 panel.
- Mexico also asserts the rule discriminates against Mexican tuna. To be clear, most Mexican tuna is not eligible for the dolphin-safe label because of the manner in which most Mexican vessels have chosen to fish for tuna. The fleets of other nations have abandoned the practice, but those Mexican vessels have chosen to employ a method of fishing – setting on dolphins – that is recognized to pose a particular risk to dolphins.
- It involves deliberately chasing dolphins and capturing them. In so doing, it may result in dolphins being killed or seriously injured, separating dolphin calves from their mothers, reducing reproduction rates, and other harms. Simply put, tuna caught using this damaging fishing method is clearly not “dolphin safe,” and it would be misleading to consumers to claim that it is.
- As mentioned, in recognition of the harms posed to dolphins from this fishing method, other countries, including the United States, have chosen not to use this fishing method.
- And there is no finding in the DSB recommendations or rulings that required the United States to provide access to the dolphin safe label for tuna product produced from setting on dolphins. Consequently, tuna produced from setting on dolphins remains ineligible for the dolphin safe label.
- We are disappointed, but perhaps not surprised, that Mexico has decided to object to the establishment of a panel today.
- It is in both parties’ interest, in order to reach a final resolution of this dispute, to move efficiently to resolve the fundamental issue of compliance.
- So it is ironic to hear concerns about delay when Mexico at this meeting is objecting to the establishment of a panel, thereby delaying the compliance proceeding.
- In light of Mexico’s action, the United States would like to inform Members that the United States will request that the DSB Chair convene a special DSB meeting in order to consider the U.S. compliance panel request for the second time.

Third Intervention

- We would like to take the floor again to comment in response to Mexico's last intervention. Contrary to Mexico's suggestion, the panel and Appellate Body did *not* find that setting on dolphins was not harmful. We would challenge Mexico to identify such a finding in any report in this dispute.
- We would also question the link Mexico is apparently attempting to make between U.S. compliance in this dispute and other agenda items. But as we have explained, the United States has addressed and complied with the DSB rulings and recommendations in this dispute.