

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

**Geneva, April 22, 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.148)
    - The United States provided a status report in this dispute on April 9, 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.

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.148)

- The United States provided a status report in this dispute on April 9, 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.

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.123)

- The United States provided a status report in this dispute on April 9, 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.

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.86)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The EU measures affecting the approval of biotech products are seriously disrupting trade in agricultural products between the United States and the EU.
- As the United States has explained at recent meetings of the DSB, the EU has failed to approve a single new biotech product since November 2013. Nineteen product applications currently pending before the EU College of Commissioners are awaiting final, political approval. Each one of these products has received a positive safety evaluation from the EU’s scientific authority.
- Further, the United States is aware of reports indicating that the EU is considering a member State “opt-out” of the EU’s biotech approvals such that a member State could ban importation of a product. The United States is concerned about the relationship of such a proposal to the EU’s obligations under the SPS Agreement.<sup>1</sup>
- The United States recalls that every biotech product approved at the EU level has been subject to a full, positive safety assessment by the EU’s own scientific authority. In this light, the United States has difficulty understanding how an EU member State ban on a biotech product approved by the EU could, as required by the SPS Agreement, be based on scientific principles and a risk assessment appropriate to the circumstances and maintained with sufficient scientific evidence.
- The United States is further concerned with this proposal’s ultimate effects on trade in biotech products.
- The United States urges the EU to end the unwarranted delays in biotech approvals and to ensure that any revisions to its measures affecting the approval of biotech products do not result in breaches of WTO rules.

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<sup>1</sup> *Agreement on the Application of Sanitary and Phytosanitary Measures.*

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.34)

- The United States provided a status report in this dispute on April 9, 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.

Second Intervention

- The reports in DS429 are subject to a different agenda item, and like Vietnam, we will discuss that item when it arises.

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, more than 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.

### 3. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

#### A. STATEMENT BY THE UNITED STATES

- The United States continues to have serious concerns regarding China’s ongoing failure to bring its measures into conformity with its WTO obligations – now more than one and a half years after the expiration of the RPT.
- Since the United States began raising this matter in the DSB, and despite repeated interactions between the United States and China, the situation remains unchanged.
- China continues to maintain a ban on foreign suppliers of electronic payment services (“EPS”) by imposing a licensing requirement on them, while at the same time providing no procedures for foreign suppliers to obtain that license.
- Several months have now passed since China’s State Council announced that China would open the EPS market to qualified suppliers; but no action has yet been taken. China has yet to adopt any procedures under which foreign enterprises could apply for licenses, and as a result, foreign suppliers remain barred from operating in China. China Union Pay therefore continues to operate as the only EPS supplier in China’s domestic market.
- To comply with its WTO obligations, China must adopt the regulations necessary for allowing foreign EPS suppliers to operate in China.
- The United States therefore calls on China to follow through on the announcement by the State Council and to issue the necessary regulations immediately, so that China may come into compliance with its WTO obligations.

5. INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS
  - A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY NEW ZEALAND (WT/DS477/9)
6. INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS
  - A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS478/9)

- United States understands that Indonesia uses its import licensing measures to prohibit or restrict the importation of horticultural products, animals and animal products. The products subject to Indonesia's measures are many and varied, including fruits, such as apples, grapes and oranges; vegetables, such as potatoes, onions and shallots; dried fruits and vegetables; flowers; juices; cattle; beef; poultry, including chicken parts; and other animal products.
- Indonesia's import restrictions include strict application windows and validity periods for import permits; restrictions on the type, quantity, and country of origin of products that may be imported; requirements that importers actually import a certain percentage of the volume of products allowed under their permits; and prohibitions on the importation of secondary cuts of beef and on chicken parts.
- The WTO Agreement, however, generally obligates Members not to impose restrictions on the importation of goods from other Members. Accordingly, the United States is concerned that Indonesia's measures appear to be in breach of core WTO obligations involving trade in goods.
- For several years, the United States has attempted to resolve its concerns through dialogue with Indonesia. Indonesia has repeatedly revised or replaced its import licensing measures, without eliminating their restrictive effect – leading the United States to request consultations regarding Indonesia's import licensing regime three separate times.
- These efforts have failed to resolve the dispute. Accordingly, and together with New Zealand, the United States is now proceeding to request that the DSB establish a panel. As set out in the U.S. request for the establishment of a panel, Indonesia's measures serve



to restrict imports from the United States and other Members, in apparent breach of various provisions of the GATT 1994 and the Agreement on Agriculture.

- Indonesia's measures have significantly impacted trade in horticultural products and animals and animal products and raise serious concerns about Indonesia's compliance with its WTO obligations.
- The United States therefore respectfully requests that the DSB establish a panel to examine the matter referred to in the U.S. panel request. The United States further requests, pursuant to DSU Article 9.1, that a single panel be established to examine the complaints of the United States and New Zealand.

7. CHINA – MEASURES RELATED TO DEMONSTRATION BASES AND COMMON SERVICE PLATFORMS PROGRAMMES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS489/6)

- The United States is concerned that China appears to be providing export subsidies through a program establishing the Foreign Trade Transformation and Upgrading Demonstration Bases and the Common Service Platforms.
- In this program, China first identifies enterprises across seven industries based on, *inter alia*, export performance. China groups them into clusters it calls Demonstrations Bases.
- China then appears to provide export-contingent subsidies to these enterprises in the Demonstration Bases through free or discounted services or through grants. China delivers the free or discounted services to the enterprises in the Demonstration Bases through designated suppliers that are collectively referred to as Common Service Platforms.
- The Agreement on Subsidies and Countervailing Measures (“SCM Agreement”) prohibits subsidies contingent upon export performance. Accordingly, the United States is concerned that China’s measures appear to be in breach of an important WTO obligation.
- The United States held consultations with China on two separate occasions on this matter. However, these efforts have not resolved the dispute.
- As set out in the U.S. request for the establishment of a panel, because the Demonstration Base / Common Service Platform program and export subsidies under that program are subsidies contingent upon export performance provided to enterprises located in China, the measures appear to be inconsistent with Article 3.1(a) of the SCM Agreement, and China appears to have acted inconsistently with Article 3.2 of the SCM Agreement.
- Claims related to prohibited export subsidies are subject to special or additional dispute settlement rules and procedures under Article 4 of the SCM Agreement. Accordingly, the United States now respectfully requests that the DSB establish a panel immediately, pursuant to Article 4.4 of the SCM Agreement, to examine the matter referred to in the U.S. panel request.

## Second Intervention

- The SCM Agreement prohibits export-contingent subsidies and provides for an expedited dispute settlement process. Our panel request today reflects the urgency of this matter and the importance that we attach to enforcing our trading rights.
- The United States, however, made great efforts to consult twice with China relating to this program. We remain open to further discussions with China in this matter.

8. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM

A. REPORT OF THE APPELLATE BODY (WT/DS429/AB/R) AND REPORT OF THE PANEL (WT/DS429/R AND WT/DS429/R/ADD.1)

- The United States would like to thank the Panel, the Appellate Body, and the Secretariat staff assisting them for their work in this proceeding. While the United States does not agree with every finding in the panel report, both the panel and Appellate Body reports show a very welcome and careful engagement with the parties' arguments, contributing to the quality of the reports. We would like today to make a few comments on both the panel and Appellate Body reports.
- Starting with the panel report, the United States appreciates the Panel's thorough review of the facts and the legal claims in this dispute. In particular, the United States welcomes the finding by the Panel (affirmed by the Appellate Body) that Vietnam had failed to establish that Section 129 of the Uruguay Round Agreements Act is inconsistent with the AD Agreement.<sup>2</sup> This is now the third time that a WTO adjudicator has determined that Section 129 does not breach U.S. WTO obligations.
- The United States also welcomes the Panel's rejection of Vietnam's "as such" claim with respect to the U.S. Department of Commerce's application of the so-called "zeroing" methodology. The Panel correctly found that Vietnam's claim lacked merit because no such measure currently exists following U.S. implementation in other WTO disputes.
- The Panel also correctly rejected Vietnam's claims that Commerce uses a prescribed methodology to calculate the antidumping duty rate for the non-market economy-government entity or that Commerce systematically bases that rate on facts available. In this regard, the Panel disagreed with the finding of the panel in DS404 and rejected Vietnam's claim that the antidumping duty rate applied to the Vietnam-government entity in the fourth, fifth, and sixth administrative reviews was based on facts available. We welcome the panel's careful and objective examination of this issue, which Vietnam did not appeal.
- In fact, Vietnam appealed only one issue in this dispute, the panel's rejection of its claim on Section 129. Vietnam alleged that the panel had breached DSU Article 11 in evaluating Vietnam's arguments. The Appellate Body followed the applicable standard of review for a claim under Article 11, and appropriately found that Vietnam failed to establish that the Panel had breached its duty to conduct an objective assessment with

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<sup>2</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

respect to Vietnam’s challenge to Section 129. In this context, the Appellate Body stated that “[w]hile [a Member] may not agree with the Panel’s assessment of the relevancy of ... evidence, this, in itself, does not mean that the Panel committed legal error amounting to a violation under Article 11 of the DSU.”<sup>3</sup>

- Further, the Appellate Body highlighted that “it is incumbent on a participant raising a claim under Article 11 on appeal to explain why the alleged error meets the standard of review under that provision.”<sup>4</sup>
- We agree with these statements and believe they are a useful reminder to Members regarding the proper scope of a claim of error under Article 11, as well as reflecting the limited scope of appellate review under Article 17.6 of the DSU. The United States hopes that Members will keep these statements in mind when considering how to approach potential appeals in other disputes, in particular in light of the significant workload issues facing the dispute settlement system.
- The United States would also like to highlight that, not only did the Appellate Body reach the appropriate substantive outcome with respect to Vietnam’s Article 11 challenge, it also handled the appeal in an efficient manner. The report does not opine on issues that were not germane to the appeal and the oral hearing was focused on the specific issues appealed by the parties.
- This approach allowed the Appellate Body to issue a concise, high-quality report within the 90-day time frame established under Article 17.5 of the DSU. We appreciate the Appellate Body’s efforts in this regard. Following this approach in future proceedings would promote the efficient resolution of disputes and help to mitigate workload problems currently facing the WTO dispute settlement system.

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<sup>3</sup> Appellate Body Report, para. 4.21.

<sup>4</sup> Appellate Body Report, para. 4.23 (citing *China – Rare Earths (AB)*, para. 5.178 (quoting *EC – Fasteners (China) (AB)*, para. 442)).