

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

Geneva, August 15, 2018

1. EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT
 - A. RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE EUROPEAN UNION AND CERTAIN MEMBER STATES: REQUEST FOR THE ESTABLISHMENT OF A PANEL (WT/DS316/39)
 - The EU’s decision to move forward with a request for yet another compliance panel in this 14-year dispute does a disservice to the WTO and its dispute settlement system.
 - When the EU circulated its communication outlining the latest alleged steps it took to comply, the United States expressed deep skepticism about the seriousness of the EU’s claim of compliance.
 - This skepticism was based on the long history of the EU’s failure to take any meaningful steps to end launch aid subsidies, the significant overlap with a previous EU communication that a WTO compliance panel found to be almost entirely inaccurate, and the lack of even basic details about the new steps, let alone copies of the relevant measures.
 - The EU’s behavior has only reinforced our initial skepticism. If the European Union, France, Germany, Spain, and the United Kingdom were seriously interested in demonstrating that they have brought their WTO-inconsistent subsidies into conformity with WTO rules, and if they were seriously interested in finding a resolution to this dispute, then the United States would have expected them to explain their alleged compliance actions, candidly and in detail, to the United States.
 - As we sit here today, the EU and these four member States still have not provided even the most basic information about alleged amendments made to certain launch aid contracts.
 - That they have avoided such an explanation, or any attempt to resolve this dispute, and instead moved to a panel request, exposes this request as just one more step in the long EU history of tactics to drag out this dispute, instead of addressing their WTO-inconsistent behavior.
 - We note that the EU’s panel request refers to agreed procedures between the EU and the United States in relation to this dispute.¹ Specifically, the EU asserts that, under

¹ *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding and Article 7 of the SCM Agreement* (“Agreed Procedures”), WT/DS316/21.

paragraph 2 of the Agreed Procedures, “the Parties agreed to accept the establishment of a Panel at the first DSB meeting at which this request appears on the agenda.” The EU’s assertion is so obviously misleading, it is hard to regard it as anything but an intentional, and flagrant, misrepresentation. We invite other Members to look at the language to understand how concerning this is.

- Paragraph 2 unambiguously addresses the U.S. request for an Article 21.5 panel that was at issue at the time the Agreed Procedures were concluded in January 2012. Paragraph 1 explicitly discusses the timeline for consultations that the United States had already requested, and the timeline for when “the United States may request the establishment of a panel pursuant to Article 21.5 of the DSU.” Paragraph 2 then states: “At the first DSB meeting *at which the U.S. request* for the establishment of an Article 21.5 panel appears on the agenda, *the European Union* shall accept the establishment of that panel.” Accordingly, the provision very obviously does not apply to the present situation.
- Accordingly, Madame Chair, the United States is not required to accept today, and therefore is not accepting today, that the DSB should act on the EU’s request for establishment of a panel.
- With respect to the EU’s reference to Article 7.4 of the SCM Agreement, the EU and certain other Members have included references to other provisions in the covered agreements in a few past requests under Article 21.5, but they have been without legal effect, as the DSB has referred the matter exclusively under Article 21.5 of the DSU, without reference to any other provision. Should the EU again seek establishment of a panel at a future DSB meeting, we understand that referral under Article 21.5 alone is what is contemplated.
- The United States considers that there is no legal basis for the DSB to establish a panel under any other provision. All the DSB can do at a future DSB meeting is refer under Article 21.5 of the DSU the matter to the original panel, if possible.
- Indeed, the EU panel request references a ‘disagreement as to the existence or consistency with a covered agreement of measures taken to comply’ and thus makes it clear that the matter at issue is only what is provided in Article 21.5 of the DSU.

Second Intervention

- The EU’s insistence that the Agreed Procedures require the United States to accept the EU’s request for establishment of an Article 21.5 panel at today’s meeting is plainly contrary to the text of those Procedures. These Procedures have been circulated as WT/DS316/21, and we would invite every delegation to read them.
- Paragraph 1 states that “the United States” – not the EU – may request establishment of a

panel pursuant to Article 21.5 of the DSU at any time. And paragraph 2 refers to the first DSB meeting at which “the U.S. request” – not the EU request – for establishment of a panel appears on the agenda. It then indicates that “the European Union” – not the United States – shall accept establishment of that panel.

- The EU’s suggestion that this text is applicable to the EU’s panel request, and that the United States is not honoring a commitment, is frankly absurd.

2. INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

A. RECOURSE TO ARTICLE 22.2 OF THE DSU BY THE UNITED STATES (WT/DS478/20)

- On November 22, 2017, the DSB adopted the reports contained in WT/DS478/R and WT/DS478/AB/R, finding that Indonesia’s measures on horticultural products, animal, and animal products breached Article XI:1 of the GATT 1994. Accordingly, the DSB recommended that Indonesia bring its measures into conformity with its obligations under the GATT 1994.
- The United States and Indonesia agreed that the reasonable period of time for Indonesia to implement the DSB’s recommendations and rulings would expire on July 22, 2018.
- The RPT has now expired, and Indonesia has not brought its measures fully into compliance with WTO rules.
- In document WT/DS478/20, the United States has requested authorization from the DSB to suspend concessions or other obligations with respect to Indonesia at an annual level based on a formula commensurate with the trade effects caused to the interests of the United States.
- Based on a preliminary analysis for only certain products, the United States provisionally estimated this level at up to approximately \$350 million for 2017. The United States will update this figure annually.
- The United States remains open to working with Indonesia to resolve U.S. concerns. U.S. farmers are eager to serve Indonesian consumers their world-class products.
- To fully resolve this dispute, U.S. agricultural products must be able to access the Indonesian market as Indonesia committed under WTO rules.
- We note that Indonesia has submitted to the Chairperson of the DSB an objection under Article 22.6 to the level of suspension of concessions or other obligations proposed by the United States, thereby referring the matter automatically to arbitration.
- The United States notes that it was not necessary for the DSB to take up this item in light of Indonesia’s objection yesterday. Nonetheless, we have no objection to the DSB noting the matter has already been referred to arbitration pursuant to Indonesia’s objection.

Second Intervention

- Regarding sequencing agreements, as Indonesia and Canada know, the long-standing U.S. position is that sequencing agreements are not required under the DSU.
- Under Article 22.6 of the DSU, the negative consensus rule applies within 30 days of the end of the period for compliance.
- By submitting the Article 22.2 request, to which Indonesia objected yesterday, the United States is preserving its negative consensus rights.
- Taking this step is neither surprising nor unusual. For example, we would refer Members to the minutes from the DSB meeting of January 3, 2018,² where the EU stated that “the EU had requested the suspension of concessions to preserve its rights in these dispute settlement proceedings”. We also refer Members to the minutes of the DSB meeting of August 23, 2013,³ where Indonesia itself put forward a request to suspend concessions.
- We remain prepared to engage with Indonesia to facilitate its coming into compliance with the DSB’s recommendations in this dispute.

² WT/DSB/M/405 (*Russia – Pigs (EU)* (DS475)), para. 1.2.

³ WT/DSB/M/335 (*U.S. - Clove Cigarettes (Indonesia)* (DS406)), para. 1.3.