

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

Geneva, August 31, 2017

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.175)
 - The United States provided a status report in this dispute on August 18, 2017, 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.150)
 - The United States provided a status report in this dispute on August 18, 2017, 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.113)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The United States notes that EU measures affecting the approval of biotech products continue to involve prolonged, unpredictable, and unexplained delays at every stage of the approvals process. Numerous products, including corn and soybean event applications, remain stalled in the biotech approval pipeline.
- Some of these applications have been pending in the approval process for many years – and much longer than the time permitted by the EU’s own measures.
- The United States urges the EU to take action to ensure that pending biotech applications are evaluated on the basis of scientific evidence, and that decisions are taken without further delay.

2. UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. STATEMENT BY THE EUROPEAN UNION

- 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 has acknowledged that the Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007, over nine years ago.
- With respect to the EU’s request for status reports in this matter, as we have already explained at previous DSB meetings, there is no obligation under the DSU to provide further status reports once a Member announces that it has implemented the DSB recommendations and rulings, regardless of whether the complaining party disagrees about compliance.
- As we have noted previously, the EU has demonstrated repeatedly it shares this understanding, at least when it is the responding party in a dispute. Once again, this month the EU has provided no status report for disputes in which there is a disagreement between the parties on the EU’s compliance.

3. CHINA – TARIFF RATE QUOTAS FOR CERTAIN AGRICULTURAL PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS517/6)

- The United States recalls that all WTO Members, including China, are required to administer tariff-rate quotas consistently with the obligations of the GATT 1994. Upon accession to the WTO, China committed to administer its tariff-rate quotas consistently with additional obligations in its Accession Protocol and Working Party Report.
- Regrettably, it appears that China administers certain tariff-rate quotas for wheat, short- and medium-grain rice, long-grain rice, and corn inconsistently with its WTO commitments.
- In particular, China does not administer these tariff-rate quotas consistently with its commitments in its Accession Protocol and Working Party Report because China does not administer these tariff-rate quotas on a transparent, predictable, or fair basis, and does not use clearly specified administrative procedures and requirements that would not inhibit the filling of each tariff-rate quota.
- Further, China administers each of the tariff-rate quotas inconsistently with GATT 1994 Article X:3(a) on reasonable administration, Article XI:1 prohibiting import restrictions, and Article XIII:3(b) on providing public notice.
- Prior to initiating this dispute, the United States attempted to resolve these issues with China, both bilaterally and in the Committee on Agriculture. The United States and China also held formal dispute settlement consultations in February. However, these efforts failed to resolve the U.S. concerns.
- Accordingly, the United States is requesting that the DSB establish a panel to examine the matter set out in our panel request with standard terms of reference.

6. APPELLATE BODY MATTERS

A. STATEMENT BY THE CHAIR

- We appreciate the information the Chair has provided. The U.S. comments in relation to this item are also pertinent to items 7 and 8 on today's agenda.
- The resignation of Mr. Kim from the Appellate Body raises important systemic questions for the DSB to consider and resolve.
- At the time of Mr. Kim's resignation, he was one of three members of the Appellate Body serving on the appeal in the dispute *EU – Antidumping Measures on Imports of Certain Fatty Alcohols from Indonesia* (DS442).
- The Chair of the Appellate Body has informed the DSB that the Appellate Body expects to circulate its report in this dispute no later than Tuesday, September 5.¹
- However, Members have been informed that, on August 1, Mr. Kim “tender[ed] [his] resignation as an Appellate Body Member, effective 1 August 2017.”² A WTO press release dated 1 August 2017 reflects the view that “the resignation was with immediate effect.”³
- In light of that information, Mr. Kim is no longer an Appellate Body member as of August 1. Therefore, the report to be circulated on September 5 would not appear to be on behalf of three Appellate Body members. This raises concerns under Article 17.1 of the DSU, which states that “three [members] shall serve on any one case.”
- Given Mr. Kim's resignation to become Korea's Trade Minister, the United States considers it necessary and appropriate for his resignation to have been effective immediately. However, the WTO press release is in tension with Rule 14(2) of the *Working Procedures for Appellate Review*, which states that a “resignation shall take effect 90 days after the notification ... unless the DSB decides otherwise.” We note that the Appellate Body's rule as drafted would permit any appellate report on which the individual was working to be issued *before* that resignation became effective. This reinforces that a person must be a member of the Appellate Body when that report is circulated to the DSB.
- We further note that Mr. Ramirez is serving on this same appeal, although his second term expired on June 30. This means that on the date the Appellate Body report is

1 WT/DS442/8 (10 August 2017).

2 Communication from the Appellate Body: Resignation of an Appellate Body Member, WT/DSB/73 (2 August 2017).

3 https://www.wto.org/english/news_e/news17_e/ab_01aug17_e.htm

circulated to the DSB, only one signatory would appear to actually be an Appellate Body member.

- These are unprecedented circumstances, and the United States considers that the DSB needs to consider the implications and decide how to handle this situation.
- In addition to the *Alcohols* (DS442) dispute, Mr. Ramirez continues to serve on two other appeals. In a letter to the DSB Chair, the Chair of the Appellate Body has stated that Mr. Ramirez “has been authorized, pursuant to Rule 15, by the Appellate Body to complete the disposition of these appeals.” Rule 15 only applies to “[a] person who *ceases to be* a Member of the Appellate Body.”⁴
- Under DSU Article 17.2, it is the DSB that has the authority to appoint and reappoint members of the Appellate Body. The DSB exercised that authority in reappointing Mr. Ramirez “for a second four-year term of office, starting on 1 July 2013.”⁵
- As decided by the DSB, his appointment as an Appellate Body member expired on June 30, 2017. It is only by virtue of that DSB decision that WTO Members have been considering the issue of a selection process to replace him. But Members have not discussed how any continued service on appeals might affect that process.
- We appreciate that the approach of Rule 15 could contribute to efficient completion of appeals. As a party in two pending appeals, the United States would welcome Mr. Ramirez’s continued service on the appeals to which he had been assigned as of June 30.
- Under the DSU, however, the DSB has a responsibility to decide whether a person whose term of appointment has expired should continue serving, as if a member of the Appellate Body, on any pending appeals. We consider the DSB should also discuss this issue so it can take appropriate decisions.
- We look forward to consulting with the Chair and other Members on these important systemic issues.

4 *Working Procedures for Appellate Review*, Rule 15, WT/AB/WP/6 (16 August 2010) (“A person who ceases to be a Member of the Appellate Body may, with the authorization of the Appellate Body and upon notification to the DSB, complete the disposition of any appeal to which that person was assigned while a Member, and that person shall, for that purpose only, be deemed to continue to be a Member of the Appellate Body.”).

5 *Dispute Settlement Body, Minutes of the Meeting Held on 26 March 2013*, WT/DSB/M/330 (4 June 2013) (“In his statement, the then Chair of the DSB had stated the following: “Under Article 17.2 of the DSU the DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once”. The then Chair had continued to say that: “the reappointment of Appellate Body members for a second term of office was not automatic and required consideration by, and a formal decision of, the DSB”. Therefore, consistent with those requirements, the Chair proposed that the DSB adopt, at the present meeting, a formal decision and agree to reappoint Mr. Ricardo Ramírez for a second four-year term of office, starting on 1 July 2013.” The DSB so agreed.”).

7. APPOINTMENT OF APPELLATE BODY MEMBERS: PROPOSAL BY THE EUROPEAN UNION (WT/DSB/W/597/REV.3)

- As mentioned under item 6, we are not in a position to support the proposed decision.
- We consider that the first priority is for the DSB to discuss and decide how to deal with reports being issued by persons who are no longer members of the Appellate Body.
- Members should consider how resolution of those issues might affect a selection process.
- An informal DSB meeting would be a good place to start.

Second Intervention

- The United States thanks Members for their interventions. We have been listening carefully.
- A number of Members have raised questions on the logic of linking the concerns the United States has raised under Item 6 with the selection of Appellate Body members. There also seems to be some confusion regarding the U.S. position. We further hear the concern that the DSB has the responsibility to address the systemic concerns raised.
- As Members are aware, the United States has a number of long-standing concerns frequently expressed in the DSB regarding the critical necessity of the DSB asserting the authority assigned to it under the DSU.
- The issue the United States raised earlier concerning the continued service of former Appellate Body members is an important example of these concerns that we have been raising for some time.
- In our view, simply moving forward with filling vacancies risks perpetuating and leaving unaddressed the concerns we believe require the urgent attention of the DSB.
- Our view under this item also applies to the proposal that has been put forward under Item 8 by Mexico, Argentina, Brazil, Colombia, Chile, Guatemala, and Peru.