

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

Geneva, December 18, 2019

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.202)
 - The United States provided a status report in this dispute on December 5, 2019, 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.177)
 - The United States provided a status report in this dispute on December 5, 2019, 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.140)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The United States continues to see persistent delays that affect dozens of applications that have been awaiting approval for an extended period.
- The EU has previously suggested that the fault lies with the applicants. We disagree; our concerns relate to delays at every stage of the approval process resulting from the actions or inactions of the EU and its member States.
- Even when the EU finally approves a biotech product, EU member States continue to impose unwarranted restrictions on the supposedly approved product. As we have noted at prior DSB meetings, the amendment of EU Directive 2001/18, through EU Directive 2015/412, permits EU member States to restrict or prohibit certain uses of genetically-modified organisms (“GMOs”), even where the European Food Safety Authority (“EFSA”) has concluded that the product is safe. At least seventeen EU member States, as well as certain regions within EU member States, have submitted requests to adopt such measures with respect to MON-810 maize.
- The EU’s only response, which it continues to repeat, is that the member States do not restrict marketing or free movement of MON-810 in the EU. As we noted at the prior DSB meeting, this answer does nothing to address U.S. concerns. The restrictions adopted by the EU member States restrict international trade in these products, and have no scientific justification. Indeed, this is why the DSB adopted findings that such restrictions on MON-810 are in breach of the EU’s WTO commitments.
- The United States urges the EU to ensure that all of its measures affecting the approval of biotech products, including measures adopted by individual EU member States, are based on scientific principles, and that decisions are taken without undue delay.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

D. UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES ON LARGE RESIDENTIAL WASHERS FROM KOREA: STATUS REPORT BY THE UNITED STATES (WT/DS464/17/ADD.24)

- The United States provided a status report in this dispute on December 5, 2019, in accordance with Article 21.6 of the DSU.
- On May 6, 2019, the U.S. Department of Commerce published a notice in the U.S. Federal Register announcing the revocation of the antidumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (May 6, 2019)). With this action, the United States has completed implementation of the DSB recommendations concerning those antidumping and countervailing duty orders.
- The United States continues to consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

Second Intervention

- The United States recalls that Canada has commenced a dispute settlement proceeding against the United States concerning the use of a differential pricing analysis and zeroing. Canada lost that dispute before the panel. The United States is willing, of course, to discuss Canada's concerns on a bilateral basis.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

E. UNITED STATES – CERTAIN METHODOLOGIES AND THEIR APPLICATION TO ANTI DUMPING PROCEEDINGS INVOLVING CHINA: STATUS REPORT BY THE UNITED STATES (WT/DS471/17/ADD.16)

- The United States provided a status report in this dispute on December 5, 2019, in accordance with Article 21.6 of the DSU.
- As explained in that report, the United States continues to consult with interested parties on options to address the recommendations of the DSB.

Second Intervention

- The United States takes note of China’s statement and will convey it to capital.
- To be clear, however, it is incorrect to suggest that the United States has taken no action. As we have noted today, the United States continues to consult with interested parties on options to address the recommendations of the DSB. That internal process is ongoing.
- The United States is aware of the decision of the Arbitrator concerning the level of nullification or impairment. China’s decision to pursue that arbitration is disappointing, and not constructive.
- The United States is willing to discuss these matters with China on a bilateral basis.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB
 - F. INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS: STATUS REPORT BY INDONESIA (WT/DS477/21 – WT/DS478/22/ADD.11)
 - Indonesia continues to fail to bring its measures into compliance with WTO rules.
 - The United States and New Zealand agree that significant concerns remain with the measures at issue, including the continued imposition of: harvest period restrictions, import realization requirements, warehouse capacity requirements, limited application windows, limited validity periods, and fixed licensed terms.
 - The United States remains willing to work with Indonesia to fully and meaningfully resolve this dispute.
 - We understand that Indonesia claims to have “completed its enactment process” of certain regulations, but we are still waiting to hear from Indonesia on whether and how such action would bring its measures into full compliance. It also remains unclear how Indonesia’s proposed legislative amendments would address Measure 18 and when Indonesia will complete its process.
 - The United States looks forward to receiving further detail from Indonesia regarding the changes to its regulations and laws, especially with respect to Ministry of Agriculture Regulation 39/2019 on RIPH requirements and Regulation 46/2019 on Strategic Horticultural Commodities.

2. UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB
- 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 implemented 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, more than 12 years ago.
 - Even aside from this, we question the trade rationale for inscribing this item. In May 2019, the EU notified the DSB that disbursements related to pre-October 2007 EU exports to the United States totaled \$4,660.86 in fiscal year 2018. As such, the EU announced it would apply an additional duty of 0.001 percent on certain imports of the United States.
 - These minuscule tariffs vividly demonstrate what has been evident for years – it is not commonsense that is driving the EU’s approach to this agenda item.
 - While the EU suggests it has requested the DSB’s consideration of this item “as a matter of principle,” the EU’s principles shift depending on its status as the complaining or responding party. There is no obligation under the DSU to provide further status reports once a Member announces that it has implemented the DSB recommendations, regardless of whether the complaining party disagrees about compliance.
 - The practice of Members – including the European Union as a responding party – confirms this widespread understanding of Article 21.6. Accordingly, since the United States has informed the DSB that it has come into compliance in this dispute, there is nothing more for the United States to provide in a status report.

3. EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. STATEMENT BY THE UNITED STATES

- The United States notes that once again the European Union has not provided Members with a status report concerning the dispute *EC – Large Civil Aircraft* (DS316).
- As we have noted at several recent DSB meetings, the EU has argued – under a different agenda item – that where the EU as a complaining party does not *agree* with another responding party Member’s “*assertion* that it has implemented the DSB ruling,” “the issue remains unresolved for the purposes of Article 21.6 DSU.”
- Under this agenda item, however, the EU argues that by submitting a compliance communication, the EU no longer needs to file a status report, *even though* the United States as the complaining party does *not* agree with the EU’s *assertion* that it has complied.
- The EU’s position appears to be premised on two unfounded assertions, neither of which is based on the text of the DSU.
- First, the EU has erroneously argued that where “a matter is with the adjudicators, it is temporarily taken out of the DSB’s surveillance.”
- There is nothing in the DSU text to support that argument, and the EU provides no explanation for how it reads DSU Article 21.6 to contain this limitation.
- And as Members well know, based on the DSB’s findings of EU non-compliance in this dispute, the DSB recently authorized the United States to impose countermeasures of approximately \$7.5 billion annually due to the adverse effects on the United States from subsidies provided by 4 EU member States.
- Second, the EU once again relies on its incorrect assertion that the EU’s initiation of compliance panel proceedings means that the DSB is somehow deprived of its authority to “maintain surveillance of implementation of rulings and recommendations.” Yet again, there is nothing in Article 2 of the DSU or elsewhere that limits the DSB’s authority in this manner. It is another invention of the EU.
- The EU is not providing a status report because of its assertion that it has complied, demonstrating the EU’s principles vary depending on its status as complaining or responding party.
- Moreover, the EU’s inconsistent views appear convenient because, rather than actually attempt to achieve compliance in this dispute, the EU has pursued a strategy of endless and meritless litigation. The most recent reminder of this misguided approach was the

recently circulated report of the second compliance panel.

- This compliance panel, like the prior one, rejected the EU's claim of compliance. But despite yet another finding of non-compliance, the EU chose to appeal the panel report just days ago, seeking yet more litigation in this 15-year dispute.
- Would it not be more productive for the EU and its member States to focus on resolving this dispute?
- In sum, the U.S. position on status reports has been consistent and clear: under Article 21.6 of the DSU, once a responding Member provides the DSB with a status report that announces compliance, there is no further "progress" on which it can report, and therefore no further obligation to provide a report.
- But as the EU allegedly disagrees with this position, it should for future meetings provide status reports in this DS316 dispute, in which no adjudicator has ever agreed that the EU and its Member States are complying with WTO rules.

6. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS
(WT/DSB/W/609/REV.15)

- The United States thanks the Chair for the continued work on these issues.
- As we have explained in prior meetings, we are not in a position to support the proposed decision. The systemic concerns that we have identified remain unaddressed.
- The United States recognizes the work of the Facilitator, including the report provided to Members at the December meeting of the General Council.
- The U.S. view across multiple U.S. Administrations has been clear and consistent: When the Appellate Body overreaches and abuses the authority it was given within the dispute settlement system, it undermines the legitimacy of the system and damages the interests of all WTO Members who care about having the agreements respected as they were negotiated and agreed.
- As the United States explained, the fundamental problem is that the Appellate Body is not respecting the current, clear language of the DSU.
- Members cannot find meaningful solutions to this problem without understanding how we arrived at this point. The United States has not posed this question as part of an academic exercise. Rather, this question is critical in the context of any “solution-focused discussion”. Without an accurate diagnosis, we cannot assess the likely effectiveness of any potential solution.
- And the United States is determined to bring about real WTO reform, including to ensure that the WTO dispute settlement system reinforces the WTO’s critical negotiating and monitoring functions, and does not undermine those functions by overreaching and gap-filling.
- As discussions among Members continue, the dispute settlement system continues to function.
- The central objective of that system remains unchanged: to assist the parties in the resolution of a dispute. As before, Members have many methods to resolve a dispute, including through bilateral engagement and mutually agreed solutions.
- For instance, today, the United States appealed the compliance Panel’s report in DS436.
- While no division can be established to hear this appeal at this time, the United States will confer with India so the parties may determine the way forward in this dispute, including whether the matters at issue may be resolved at this stage or to consider alternatives to the appellate process.
- Consistent with the aim of the WTO dispute settlement system, the parties should make

efforts to find a positive solution to their dispute, and this remains the U.S. preference.

- And the United States will continue to insist that WTO rules be followed by the WTO dispute settlement system. We will continue our efforts and our discussions with Members to seek a solution on these important issues.