

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

**Geneva, February 20, 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.169)**

- The United States provided a status report in this dispute on February 9, 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.144)
    - The United States provided a status report in this dispute on February 9, 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.107)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The EU measures affecting the approval and marketing of biotech products continue to be characterized by lengthy, unpredictable, and unexplained delays in approvals.
- For example, the EU’s scientific review process has slowed in recent years. Many corn and soybean products have now been under consideration by the EU’s scientific authority for several years.
- Furthermore, the EU has recently proposed regulations that create more, rather than less, uncertainty with regard to the information required for scientific evaluation of biotech products.
- The United States encourages the EU to ensure that only the scientific information relevant to environmental risk assessments is required to be provided to the EU’s scientific authority, and only by those applicants who seek authorization to conduct field trials or participate in cultivation of biotech products.
- The delays and uncertainty in approvals cause adverse effects on trade, particularly with respect to soybeans and corn.
- The United States encourages the EU to ensure that products in the biotech approval pipeline move forward in a timely manner, as required by EU regulations and WTO rules.

3. 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.
- Indeed, the EU has demonstrated repeatedly it shares this understanding, at least when it is the responding party in a dispute, such as in the *EC – Large Civil Aircraft* (DS316) dispute. But if the EU disagrees, it can demonstrate this different understanding by submitting a status report in that dispute for next month’s DSB meeting.

4. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- The DSB adopted its recommendations in this dispute in August 2012, and the reasonable period of time has long since expired.
- China issued a regulation several months ago that purports to set out a licensing application process for foreign EPS suppliers.
- However, the only entity authorized to provide electronic payment services (EPS) in China remains a business set up by the People’s Bank of China and other Chinese Government-related entities.
- The United States urges China to ensure that foreign EPS suppliers may apply for and receive permission to operate in China, in accordance with China’s WTO obligations.

6. UNITED STATES – CERTAIN MEASURES RELATING TO THE RENEWABLE ENERGY SECTOR

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE INDIA (WT/DS510/2)

- We are disappointed that India has sought the establishment of a panel in this matter. It appears that India launched this dispute for purely political reasons.
- Indeed, Indian government officials have been quoted as characterizing this dispute as motivated by the DSB's findings in DS456 that the domestic content requirements under India's National Solar Mission are contrary to WTO rules, a complaint brought by the United States.
- Article 3.10 of the DSU makes clear that the "use of the dispute settlement" mechanism should be made "in good faith" and that "complaints and counter-complaints [...] [in distinct matters] should not be linked."
- India does not export significant amounts of renewable energy equipment to United States, and the state-level programs identified in India's request would appear to have virtually no effect on commerce.
- At a time when WTO dispute settlement resources are stretched thin, we regret that India would seek to use WTO resources on such a matter.
- For all these reasons, the United States does not agree to the establishment of a panel today.

8. COLOMBIA – MEASURES RELATING TO THE IMPORTATION OF TEXTILES, APPAREL AND FOOTWEAR

A. RECOURSE TO DSU ARTICLE 22.2 BY PANAMA (WT/DS461/16)

- The United States supports Panama’s right to have recourse to Article 22.2 of the DSU.
- As an initial point, we note that a few delegates have commented that the parties should have entered into a sequencing agreement. There is nothing in the DSU that requires Members to enter into such an agreement. While some Members have found it appropriate to do so in certain circumstances, others may not consider it appropriate in their circumstances, such as where a responding party has not taken steps to address DSB recommendations at the time the complainant must take procedural action to preserve its rights under Article 22.
- Further, the United States agrees with Japan’s statement and considers that, upon Colombia’s objection to that request, the matter was automatically referred to arbitration under Article 22.6 of the DSU, as provided for in the text of that provision.
- Article 22.2 of the DSU states that if a Member fails to bring a challenged measure found to be inconsistent with a covered agreement into compliance within the reasonable period of time determined under Article 21.3 of the DSU, then such Member shall, if requested, enter into negotiations with the complaining Member “with a view to developing mutually acceptable compensation.” Panama indicated in its statement that such negotiations were undertaken, but no agreement on compensation was reached.
- If no such agreement is reached, DSU Article 22.2 states that “any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.”
- Further, DSU Article 23.2 sets out the actions to obtain redress for a breach of WTO rules and confirms that a Member shall “follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements *in response to the failure of the Member*

*concerned to implement the recommendations and rulings within that reasonable period of time.”<sup>1</sup>*

- There is thus no support in the text of Article 22.2, or Article 23.2, for the suggestion that a Member would be required to first bring a separate compliance proceeding under Article 21.5 of the DSU.
- The United States notes, however, that any level of suspension of concessions determined in the arbitration must be equivalent to the current level of nullification and impairment.
- This is clear from the text of Article 22.4 of the DSU, which states that the “level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment,” thus referring to the present level at the time suspension is authorized by the DSB.
- Therefore, if Colombia has, in fact, brought its measure into compliance with WTO rules, as it has stated, then the current level of nullification and impairment is zero. Consequently, the issue of compliance must be addressed as part of any award determining a level of suspension of concessions or other obligations.
- The United States notes that the next agenda item concerns Article 21.5. The United States considers that the issue of whether Colombia’s actions remove the WTO-inconsistency found by the DSB could be addressed in the context of the Article 22.6 proceeding or in a proceeding under Article 21.5 of the DSU.

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<sup>1</sup> DSU Article 23.2(c) (italics added).

9. COLOMBIA – MEASURES RELATING TO THE IMPORTATION OF TEXTILES, APPAREL AND FOOTWEAR (DS461)

A. COLOMBIA REQUEST TO ESTABLISH COMPLIANCE PANEL (WT/DS461/17)

- In regard to proceedings under Article 22.6 of the DSU, we refer to our statement made under the previous agenda item.
- We intervene now to comment on Panama’s statement that consultations must be held prior to the establishment of a compliance panel under Article 21.5 of the DSU. This issue has come up before, and we do not agree with Panama’s assertion. There is no requirement in the DSU to request consultations under Article 4 as a condition for requesting the establishment of a compliance panel pursuant to Article 21.5.
- And as we have noted before, 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.
- We recognize that Panama has a right to object to the establishment of a panel at this meeting. However, we consider the panel should be established as soon as possible so that the individuals comprising the arbitrator and the compliance panel can consider how to organize their work as efficiently as possible.