

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

Geneva, February 22, 2021

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.212)

- The United States provided a status report in this dispute on February 11, 2021, 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 of the DSB that have yet to be addressed, the U.S. Administration will confer with the U.S. Congress with respect to the 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.187)

- The United States provided a status report in this dispute on February 11, 2021, in accordance with Article 21.6 of the DSU.
- The U.S. Administration will continue to confer with the European Union, and with the U.S. Congress, in order to reach a mutually satisfactory resolution of this matter.

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C. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.150)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The EU has suggested that, with respect to these delays, the fault lies with the applicants. However, U.S. concerns relate to delays at every stage of the approval process resulting from the actions or inactions of the EU and its member States.
- Recent outcomes of both the Standing Committee and Appeals Committee on Genetically Modified Food and Feed and Environmental Risk Assessment demonstrate the political nature of the comitology process – which repeatedly delays safe products from receiving approval in the European market.
- EU member States cite the “Precautionary Principle” and “scientific reasons” as justification for not issuing approvals. However, these claims contradict the fact that the European Food Safety Authority (EFSA) has successfully completed a science-based risk assessment for every product under consideration at these meetings.
- EU member States at the Standing Committee also cited “no agreed national position”, “negative public opinion”, and “political reasons” as justifications for reaching “no opinion” and for not approving these products. None of these justifications are science-based.
- The Appeals Committee meetings held on November 12, 2020, and December 3, 2020, which were meant to address those instances where member States reach “no opinion” regarding product approvals, cited the foregoing reasons as justification for not issuing biotech product approvals.
- We fail to see how this approval process addresses the undue delays contemplated in DS291.
- We urge and request that the European Union move to issue final approvals for the remaining products that have completed science-based risk assessments at EFSA, including those products that are with the Standing Committee and Appeals Committee.

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.34)

- The United States provided a status report in this dispute on February 11, 2021, 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 will consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

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.26)

- The United States provided a status report in this dispute on February 11, 2021, in accordance with Article 21.6 of the DSU.
- As explained in that report, the United States will consult with interested parties on options to address the recommendations of the DSB.

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.21)

- The United States thanks Indonesia for its status report. We understand that Indonesia has recently amended the relevant laws that would address Measure 18.
- The United States looks forward to receiving further detail from Indonesia regarding these legislative changes and their implementation by the government.
- The United States remains willing to work with Indonesia to fully resolve this dispute.

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 more than 14 years ago in February 2006.
 - The Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007, more than 12 years ago. Accordingly, the United States long ago implemented the DSB’s recommendations and rulings in these disputes.
 - Even aside from this, it is evidently not common sense that is driving the EU’s approach to this agenda item. The EU currently applies an additional duty of 0.012 percent on certain imports of the United States. There is no trade rationale for inscribing this item month after month.
 - As it has done many times before, at the January DSB meeting, the EU once again called on the United States to abide by its “clear obligation” under Article 21.6 for the United States to submit a status report in this dispute. Notably, the EU did not call on any other Member in any other dispute to abide by this so-called “clear obligation,” despite the fact that several Members are in the same situation as the United States.
 - As we have explained repeatedly, there is no obligation under the DSU for a Member to provide further status reports once that Member announces that it *has implemented* the DSB recommendations.
 - The widespread practice of Members – including the European Union as a responding party – confirms this understanding of Article 21.6.
 - Indeed, at recent meetings, three Members – China, Brazil, and Australia – have informed the DSB that they have come into compliance with DSB recommendations in four disputes (DS472, DS497, DS517, and DS529), and the complaining parties did *not* accept the claims of compliance.
 - Those Members announcing compliance have not provided a status report for today’s meeting. This is consistent with the understanding that there is no obligation for a Member to provide further status reports once that Member announces that it has implemented the DSB recommendations.
 - The EU is the complaining party in one of those disputes (DS472). If the EU believes status reports are “required” under the DSU, it would have insisted that the responding Member provide a status report in that dispute, or the EU would have inscribed that dispute as an item on today’s agenda. The EU took neither action, nor has it explained the supposed difference between the two disputes.

- Through its actions, the European Union once again demonstrates that it does not truly believe that there is a “clear obligation” under Article 21.6 to submit a status report after a party has claimed compliance. The European Union has simply invented a rule for this dispute, involving the United States, that it does not apply to other disputes involving other Members.

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 the previous agenda item – that where the EU as a complaining party does not agree with the 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 as the responding party 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 is erroneous and not based on the text of the DSU.
- The EU argues that where “a matter is with the adjudicators, it is temporarily taken out of the DSB’s surveillance” and the DSB is somehow deprived of its authority to “maintain surveillance of implementation of rulings and recommendations.” Yet, there is nothing in the DSU text to support that argument, nothing in Article 2 of the DSU or elsewhere that limits the DSB’s authority in this manner, and the EU provides no explanation for how it reads DSU Article 21.6 to contain this limitation.
- The EU is not providing a status report because of its assertion that it has complied, demonstrating that the EU’s principles vary depending on its status as complaining or responding party.
- The U.S. position on status reports has been consistent: under Article 21.6 of the DSU, once a responding Member announces to the DSB that it has complied, there is no further “progress” on which it can report, and therefore no further obligation to provide a status report.
- But as the EU allegedly disagrees with this position, it should for future meetings provide status reports in this DS316 dispute.

Second Intervention

- The United States is aware that the EU filed yet another notice of supposed compliance. The United States disagrees that the EU has achieved compliance.

- Instead, the United States agrees with the second compliance panel report, which rejected the EU's assertions and found that 8 EU launch aid subsidies continue to cause adverse effects.
- The EU asserts that it has amended 2 of these 8 measures; and therefore, it admittedly has made no changes to 6 WTO-inconsistent measures. Unfortunately, the amendments the EU made to French and Spanish A350 XWB launch aid are marginal and insufficient to withdraw those subsidies.
- The EU has also expressed doubt about U.S. compliance in DS353 (*US – Large Civil Aircraft*). But no one can deny that Washington State terminated the aerospace tax break – and the EU has not denied it. The text of the measure is public, and its terms were notified to the WTO and the EU. This is the sole measure found to cause adverse effects in the compliance proceeding and the sole basis for countermeasures authorized by the WTO. As it clearly has been withdrawn, the EU has no basis for countermeasures of any kind.

5. UNITED STATES – ORIGIN MARKING REQUIREMENTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY HONG KONG, CHINA (WT/DS597/5)

- The United States regrets that Hong Kong, China, has chosen to move forward with a request for panel establishment.
- In the U.S. reply to Hong Kong, China’s consultation request, the United States made clear that the Executive Order identified by Hong Kong, China, suspended the application of section 201(a) of the United States-Hong Kong Policy Act of 1992 to section 1304 of title 19 of the United States Code. The Executive Order further determined that the situation with respect to Hong Kong, China, constitutes a threat to the national security of the United States.
- The clear and unequivocal U.S. position, for over 70 years, is that issues of national security are not matters appropriate for adjudication in the WTO dispute settlement system. We therefore do not understand the purpose of this request for panel establishment, seeking WTO findings that the United States has breached certain WTO provisions. The WTO cannot, consistent with Article XXI of the General Agreement on Tariffs and Trade 1994, consider those claims or make the requested findings.
- No WTO Member can be surprised by this view. For decades, the United States has consistently held the position that actions taken pursuant to Article XXI are not subject to review in GATT or WTO dispute settlement. Each sovereign has the power to decide, for itself, what actions are essential to its security, as is reflected in the text of GATT 1994 Article XXI.¹
- Infringing on a Member’s right to determine, for itself, what is in its own essential security interests would run exactly contrary to the efforts to revitalize and reform the WTO that are necessary to ensure that it lives up to its potential.
- There is no basis for a WTO panel to review the claims of breach raised by Hong Kong, China. Nor is there any basis for a WTO panel to review the invocation of Article XXI by the United States. We therefore do not see any reason for this matter to proceed further.

¹ GATT 1994 Article XXI(b) (“Nothing in this Agreement shall be construed ... (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* ... (italics added).

8. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS
(WT/DSB/W/609/REV.19)

- The United States is not in a position to support the proposed decision.
- The United States continues to have systemic concerns with the Appellate Body. As Members know, the United States has raised and explained its systemic concerns for more than 16 years and across multiple U.S. Administrations.
- We look forward to further discussions with Members on those concerns.