

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

Geneva, May 20, 2015

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB
 - A. UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998: STATUS REPORT BY THE UNITED STATES (WT/DS176/11/ADD.149)
 - The United States provided a status report in this dispute on May 7, 2015, in accordance with Article 21.6 of the DSU.
 - Several bills introduced in the current U.S. Congress would repeal Section 211. Other previously introduced legislation would modify Section 211.
 - The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

B. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.149)

- The United States provided a status report in this dispute on May 7, 2015, 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

C. UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT:
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.124)

- The United States provided a status report in this dispute on May 7, 2015, 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

D. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.87)

- The United States would like to thank the European Union (“EU”) for its status report and its statement today.
- In particular, the United States welcomes the EU’s recent approval of 19 pending applications, some of which had received scientific approval over two years ago.
- The United States hopes that this action signals that the EU will begin to make timely approvals, based on the risk assessments of the EU’s own scientific authority.
- At the same time, however, the fact that 19 products had reached the final stage of approval, without any prior decisions by the EU, illustrates the delays in the EU approval measures. The United States notes with concern that despite these recent approvals, dozens of biotech applications remain pending in the EU approval system. One of these applications, in fact, has been pending for well over a decade. The ongoing backlog and delays remain a serious impediment to trade in biotech products.
- The United States is further concerned about an EU proposal for major change in the EU approval measures, which the delegate from the EU has talked about today. If adopted, that measure would result in even greater disruptions in trade in agricultural products.
- As the United States noted at the April 2015 meeting of the DSB, the EU Commission has proposed to adopt an amendment to EU biotech approval procedures that would allow individual EU member States to ban biotech products within their territory, even for use as animal feed, and even where the EU has approved the product based on a scientific risk assessment.
- The United States is concerned about the relationship of such a proposal to the EU’s obligations under the SPS Agreement. Indeed, we would recall that product-specific EU member State bans were among the EU measures subject to the DSB’s recommendations in this dispute. The United States also is concerned that one or more EU member State bans would serve as a major impediment to the movement and use of biotech products throughout the entirety of the EU.
- As a result, the United States urges the EU to ensure a regular biotech approval process that operates in accordance with the EU’s own laws and regulations. To the extent that

the EU considers revisions to its approval process, the EU should ensure that these revisions are consistent with its WTO obligations.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

E. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.35)

- The United States provided a status report in this dispute on May 7, 2015, in accordance with Article 21.6 of the DSU.
- As we have noted at past DSB meetings, in February 2012 the U.S. Department of Commerce modified its procedures in a manner that addresses certain findings in this dispute.
- The United States will continue to consult with interested parties as it works to address the other recommendations and rulings of the DSB.

Second Intervention

- Vietnam spent a significant amount of time in its intervention today discussing DS429, but this is a different dispute with different recommendations and rulings adopted by the DSB. As a result, we will reserve most of our comments in relation to that dispute to the agenda item dedicated to it in today's DSB meeting.
- However, we would note more broadly that we appreciate Vietnam's comment that it wants to see these disputes resolved, and we remain open to discuss this issue bilaterally with Vietnam. As we have previously noted, we continue to prefer that mode to resolve this matter rather than to continue litigating the issues, especially in light of the workload problems facing the dispute settlement system.

2. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM

A. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE DSB

- On April 22, 2015, the DSB adopted the Appellate Body and panel reports in the dispute *United States – Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from Viet Nam* (DS429).
- Pursuant to the first sentence of Article 21.3 of the DSU, the United States would like to inform the DSB that it intends to implement the DSB’s recommendations and rulings in a manner that respects U.S. WTO obligations.
- The United States will need a reasonable period of time in which to do so.

Second Intervention

- I want to comment on a few things Members said today, including Vietnam’s views on how the United States should implement the DSB’s recommendation and rulings in this dispute and how the RPT should be negotiated between the parties.
- Vietnam stated that the United States should have been ready to implement the findings in this dispute six months ago when the panel report was circulated. However, I would like to remind Vietnam that it was the only party to appeal. The United States did not appeal the panel report and would have been ready to have these discussions much earlier had Vietnam not taken the action that it did.
- In this context, it may be useful to reflect on Vietnam’s comment today that we should “avoid additional dispute settlement proceedings due to the workload issues facing the system.” We agree entirely. In light of the current situation, it is particularly important that Members are judicious with respect to how they use the system, and we should all think twice about what claims we bring and when we appeal issues so as not to exacerbate this problem further.
- With respect to the timeliness of our discussions on the RPT, we are moving on the usual timeframe that is common to all Members. We came to today’s meeting to announce our intention to implement the DSB’s recommendations and rulings and to state that we will need a reasonable period of time in which to do so. We are happy to engage with Vietnam on these issues in the usual course following this meeting.

- With respect to what the RPT should be, I appreciate from Vietnam the recognition that the U.S. will need a reasonable period of time to implement. However, it is not appropriate and it is certainly not the most productive way forward to try to negotiate the RPT in public at the DSB, and I am not going to do so today.
- Vietnam also made comments on the Section 129 process, which was the subject of Vietnam's appeal. The AB has already disposed of this issue in this dispute, and it did so in an appropriate manner in the high quality report that it produced. We have already made our views known on this issue, as has Vietnam. Again, it is not appropriate to try to re-litigate this issue today.
- With respect to China's comments, we would like to note that China is not a party to this dispute. We will, however, refer its comments to capital.
- With respect to Cuba and Venezuela's comments, it is not accurate to characterize this dispute as an example of prolonged non-compliance. We appear to be putting the cart a bit before the horse here. The DSB's recommendations and rulings were adopted 28 days ago and while we have announced today that we fully intend to implement these recommendations and rulings, we also noted that we will need a reasonable period of time in which to do so. We look forward to agreeing on that period with Vietnam and coming into compliance, as we have indicated today that we would.

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

A. STATEMENTS BY THE EUROPEAN UNION AND JAPAN

- 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, Japan, and other Members have acknowledged that the Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007, which is over seven and a half years ago.
- We therefore do not understand the purpose for which the EU and Japan have inscribed this item today.
- With respect to comments regarding further status reports in this matter, as we have already explained at previous DSB meetings, the United States fails to see what purpose would be served by further submission of status reports which would repeat, again, that the United States has taken all actions necessary to implement the DSB’s recommendations and rulings in these disputes.
- Indeed, as these very WTO Members have demonstrated repeatedly when they have been a responding party in a dispute, there is no obligation under the DSU to provide further status reports once a Member announces that it has implemented those DSB recommendations and rulings, regardless of whether the complaining party disagrees about compliance.
- Further, I would like to comment on the EU’s statement with regard to suspension of concessions. We regret that the EU has decided to continue to apply its suspension of concessions and are disappointed with this decision.
- Indeed, previously the EU made clear that its purpose in suspending concessions was to “induce compliance.” As the United States has taken all steps necessary to comply with the DSB’s recommendations and rulings, we fail to see how the continued suspension of concessions could further that purpose.

- As we have observed previously, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.
- The United States continues to review the action that has been taken by the EU and would not accept any characterization of such continued retaliation as consistent with the DSB's authorization.

4. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- The United States continues to have serious concerns that China has failed to bring its measures into conformity with its WTO obligations, despite repeated interactions between the United States and China in the DSB and elsewhere.
- As we have noted, China continues to maintain a ban on foreign suppliers of electronic payment services (“EPS”) by imposing a licensing requirement on them, while at the same time not providing specific procedures to obtain that license.
- The United States takes note of the recent decision by China’s State Council that China will open the EPS market to qualified suppliers. However, specific regulations to implement the State Council’s decision have still not been issued.
- As a result, an enterprise located in China still remains, today, the only EPS supplier that can operate in China’s domestic market.
- As required for consistency with its WTO obligations, China must adopt the regulations necessary for allowing foreign EPS suppliers to operate in China. We look forward to the prompt issuance of those specific regulations.

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

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY NEW ZEALAND (WT/DS477/9)

B. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS478/9)

- As the United States noted at the April DSB meeting, the United States understands that Indonesia uses its import licensing measures to prohibit or restrict the importation of horticultural products, animals and animal products, including fruits, vegetables, cattle, beef, poultry, and other animal products.
- Indonesia's import restrictions include strict application windows and validity periods for import permits; restrictions on the type, quantity, and country of origin of products that may be imported; requirements that importers actually import a certain percentage of the volume of products allowed under their permits; and prohibitions on the importation of certain cuts of beef and on chicken parts.
- These restrictions appear to be in breach of core WTO obligations involving trade in goods, limiting opportunities for quality U.S. products to reach Indonesian consumers.
- For several years, the United States has attempted to resolve its concerns through dialogue, but Indonesia has repeatedly revised or replaced its import licensing measures, without eliminating their restrictive effect. As these efforts have failed to resolve the dispute, the United States and New Zealand are now proceeding for the second time to request that the DSB establish a panel.
- The United States therefore respectfully requests that the DSB establish a panel to examine the matter referred to in the U.S. panel request. The United States further requests, pursuant to DSU Article 9.1, that a single panel be established to examine the complaints of the United States and New Zealand.

OTHER BUSINESS

A. CHINA - MEASURES RELATED TO THE EXPORTATION OF RARE EARTHS, TUNGSTEN AND MOLYBDENUM: STATEMENT BY CHINA (WT/DS431 - WT/DS432 - WT/DS433)

- Thank you, Mr. Chairman. As an initial matter, we would like to associate ourselves with the remarks made by the EU and Japan regarding the importance of providing other Members directly concerned with advance notice of an item to be raised under Other Business pursuant to Rule 6 of the Rules of Procedure. Oddly enough, we actually did receive advance notice and thus are able to provide some brief remarks. In making these remarks, however, we will also remain cognizant of Rule 25, which indicates that Members should avoid unduly long debates or discussions on substantive issues under Other Business.
- Moving to the substance, the United States would like to thank China for its statement today.
- The DSB's recommendations and rulings in this dispute affirm that China made a clear commitment to eliminate export duties when it acceded to the WTO.
- The DSB further made clear that Members may only justify measures under Article XX(g) of the GATT 1994 that are legitimately aimed at conserving natural resources.
- The United States is encouraged by China's statement that it has eliminated the export duties and export quotas on the products at issue in this dispute by the end of the reasonable period of time.
- At the same time, we are concerned by China's imposition of a licensing requirement on the export of the same products. Such licensing requirements could potentially act as an export restriction.
- As a result, we are not yet in a position to share China's assessment that it has come into full compliance.
- We have already discussed this issue with China, and we appreciate the information that it has provided to date. We will be engaging further with China to understand the purpose of its licensing requirements and how those requirements operate in practice.

- Given the important systemic issues raised in this dispute, the United States invites China to rethink its continued widespread use of export restraints on products that are not subject to the findings of the *China – Raw Materials* dispute (DS394) or to these current disputes.