

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

Geneva, November 23, 2016

1. APPELLATE BODY APPOINTMENTS

- Mr. Chairman, the United States would like to thank you and the other members of the Selection Committee for your hard work and recommendation which has aided the DSB in taking its decision today.
- We would like to take the opportunity to congratulate Ms. Zhao and Mr. Kim for their appointments to the Appellate Body. Given their previous extensive experience with the work of the WTO dispute settlement system, we are certain that they will make a major contribution to the work of the Appellate Body.
- The United States is a frequent participant in Appellate Body proceedings, and we very much look forward to working with Ms. Zhao and Mr. Kim in their new capacity.
- It is critical that the Appellate Body fulfill the important role assigned to it by Members in the DSU. That role is to review the legal interpretations and issues of law in a panel report as appealed by a party. The panel and appellate reports together assist the DSB in securing a positive solution to the dispute by finding whether a measure at issue is inconsistent with WTO rules and if so, then making the recommendation to bring a WTO-inconsistent measure into compliance with WTO rules.
- We trust that these new members will assist in ensuring that the Appellate Body fulfill its important responsibilities under the DSU.
- We also would like to thank all WTO Members that put forward candidates for the Appellate Body. The nominations of a diverse and well-qualified set of individuals shows the willingness of those Members, and their candidates, to contribute to building the strength of the WTO dispute settlement system. We appreciate those efforts and were pleased to have the opportunity to converse with each of the candidates.

2. 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.166)

- The United States provided a status report in this dispute on November 10, 2016, 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.

2. 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.141)

- The United States provided a status report in this dispute on November 10, 2016, 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.

2. 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.104)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- As the United States has noted at past meetings of the DSB, EU measures affecting the approval and marketing of biotech products remain of substantial concern to the United States.
- The EU measures are characterized by lengthy, unpredictable, and unexplained delays in approvals.
- We note that the EU’s scientific review process seems to have slowed in recent years. For instance, many corn and soy products have now been under consideration by the EU’s scientific authority for several years.
- Further, the United States is concerned that products that have received positive scientific evaluations continue to languish without approval by the relevant EU bodies.
- The delays 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. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE DSB

A. INDIA – CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES

- We thank India for its letter dated November 8, 2016, and its statement today, indicating that it intends to implement the DSB’s recommendations and rulings in this dispute.
- We note India’s comments regarding the need for a reasonable period of time and stand ready to discuss with India, under Article 21.3(b) of the DSU, a reasonable period of time for implementation of the DSB’s recommendations and rulings.

4. 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, nearly nine 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.

5. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- The DSB adopted its recommendations in this dispute more than four years ago, and the reasonable period of time expired more than three years ago.
- To this day, however, China’s domestic supplier and national champion – a business set up by the People's Bank of China and other Chinese Government-related entities – remains the only entity authorized to provide electronic payment services (EPS) in China.
- China issued a regulation a few months ago that appears to set out a licensing application process for EPS suppliers to enter the domestic market.
- However, to date no foreign EPS supplier is permitted to operate in the domestic Chinese market.
- The United States urges China to ensure that approvals for foreign EPS suppliers to operate in China occur without delay, in accordance with China’s WTO obligations.

6. UNITED STATES – COUNTERVAILING DUTY MEASURES ON CERTAIN HOT ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA

A. STATEMENT BY INDIA

- As we have explained at prior DSB meetings, the United States has completed implementation with respect to the DSB recommendations in this dispute. We would refer to our past statements in this regard.
- As stated previously, we remain willing to discuss with India any questions it may have.
- India, however, has not contacted us to do so.
- Accordingly, we fail to understand what purpose is served by India's decision to place this item on the agenda of today's meeting.

7. INDIA – MEASURES CONCERNING THE IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS (WT/DS430)

A. STATEMENT OF THE UNITED STATES

- We refer Members to our statements from previous meetings of the DSB in which we expressed concerns with India's actions.
- However, we would also note that India requires a sanitary import permit before any poultry products can enter India. India has stated that it has stopped accepting paper applications for these permits in favor of online applications. However, the online portal India directs applicants to is non-functional, meaning no importer can even attempt to obtain approval to enter poultry products.
- Despite this situation, the United States remains open to reaching a constructive solution with India that is consistent with the DSB's recommendations.
- We would rather work constructively with India to resolve this dispute than make further use of the WTO dispute settlement system.
- However, until our concerns are resolved, the United States will continue to preserve and enforce U.S. rights under the DSU.

8. UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES

A. STATEMENT BY ANTIGUA AND BARBUDA

- As the United States has noted at past meetings where Antigua and Barbuda placed this item on the agenda, the United States remains committed to resolving this matter.
- That said, we are disappointed that Antigua characterizes the United States as acting in bad faith when the United States has taken a constructive approach to resolving this matter in a way that would bring benefits to Antigua’s economy and its citizens.
- It is notable that the United States worked for months with Antigua on a settlement package in 2008 and thought that the parties had reached agreement, only to have Antigua subsequently repudiate it. The United States has also offered Antigua a broad range of useful suggestions to settle this dispute in November 2013, only to have Antigua ignore the U.S. offer for a long period of time before finally indicating that it was not acceptable.
- It is clear that the United States has tried repeatedly to resolve this dispute with Antigua, and we consider its suggestions to the contrary to be not based on any facts. The United States also has put forth, pursuant to Article XXI of the GATS, a generous package of services concessions as compensation for removing internet gambling from the U.S. schedule. Antigua is the *only* Member to block the United States from completing this process.
- We also recall that the regulation of cross-border gambling is a matter of public morality. Indeed, the Appellate Body confirmed that the U.S. measures at issue were “necessary to protect public morals” under Article XIV of the GATS. The only reason for the finding against U.S. gambling measures involved a narrow, technical issue under the chapeau of Article XIV.
- Regarding settlement, the United States has had numerous discussions with Antigua’s new government in the past several months, and we look forward to future engagement. We are reviewing this most recent communication, which we only recently received, and will continue to work expeditiously toward finding a realistic settlement.

- The United States also notes the explanation of how Antigua plans on applying a suspension of intellectual property rights. We will review Antigua's stated plans carefully. We expect further engagement with Antigua to ensure that any suspension is implemented in a transparent way and consistent with the DSB's authorization.
- We note, however, that implementing suspension of intellectual property rights is counter to Antigua's own interests and to the interests of other WTO Members. We would urge that Antigua reconsider before taking this extraordinary, unprecedented step.

9. CHINA – DUTIES AND OTHER MEASURES CONCERNING THE EXPORTATION OF CERTAIN RAW MATERIALS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION (WT/DS509/6)

- The United States shares the concerns of the European Union that China's export duties, export quotas, and restrictions on the rights of enterprises seeking to export are inconsistent with WTO rules.

In fact, the United States has also brought a dispute regarding those export restraints, in DS508. A panel was established in that dispute at a DSB meeting on November 8. As we noted at that meeting, it would have been more efficient for China and the DSB if China had accepted establishment of a single panel at that time.

- The United States notes that the EU's complaint relates to the same matter as is being examined by the panel that was established at the request of the United States in DS508. We therefore consider that the provisions of DSU Article 9.3 apply, so that both the U.S. and EU complaints can move forward together.
- For many years, the United States, as well as other WTO Members, has actively engaged China regarding its widespread use of export restraints on raw materials. Since the *China – Rare Earths* and *China – Raw Materials* disputes, we continued to raise our concerns. However, despite our repeated efforts to engage with China on those concerns, we have seen no movement by China to eliminate these export restraints.
- Regarding the October 31 measure referenced by China, it is not clear that this measure fully addresses the concerns reflected in our panel request. If China has additional information that it would like to provide, we would appreciate the opportunity to review that information.