

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

**Geneva, October 26, 2020**

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.209)
    - The United States provided a status report in this dispute on October 15, 2020, 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.184)

- The United States provided a status report in this dispute on October 15, 2020, 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.147)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- We understand that the EU held another meeting of the Standing Committee on genetically modified food and feed on October 7, 2020. The United States looks forward to receiving an update regarding the outcomes of that meeting.
- We note that there is another Standing Committee meeting scheduled for November 12. We would welcome confirmation of the date and the agenda for that meeting.
- We also request an update from the EU regarding the date for the next Appeals Committee meeting.
- However, the United States continues to see persistent delays that affect a number of applications that have been awaiting approval for an extended period – delays that existed long before COVID-19 restrictions came into effect.
- The EU has previously suggested that, with respect to these delays, 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.
- Currently, approximately twenty (20) applications are pending risk management decisions in the standing committee on biotech and two (2) await final approval by the European Commission. Three (3) of these applications have been going through the EU approval system for over 10 years.
- We urge the European Union to adopt final approvals for those products that have completed evaluation by the Standing Committee. We also urge the Standing Committee and Commission to issue final approvals for those products that have successfully received an EFSA positive opinion, yet remain under the Committee’s “internal procedures”.
- As we stated at the last DSB meeting, we do not acknowledge the EU’s claims that there is no ban on genetically engineered (GE) products in the EU.
- Rather, the EU has failed to lift all of its WTO-inconsistent member-State bans covered by the DSB recommendation.
- The DSB adopted findings that, even where the EU had approved a particular product, in

many instances EU member States banned those products for certain uses without a scientific basis.

- This includes not only the two member States subject to panel findings – Austria and Italy.
- There are seven additional member States that previously maintained bans on cultivation and have since opted out of cultivation under the EU’s legislation: Bulgaria, France, Germany, Greece, Hungary, Luxembourg, and Poland.
- There are also nine member States that did not previously ban cultivation of MON-810 but have since opted out of cultivation under the EU’s legislation: Croatia, Cyprus, Denmark, Latvia, Lithuania, Malta, the Netherlands, Slovakia, and Slovenia.
- Further, Austria and Italy appear to maintain bans on other products subject to specific panel findings.
- 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.
- We also disagree with the EU’s response that opt-out procedures taken by member States are “proportional, non-discriminatory and based on compelling grounds.” The restrictions adopted by EU member States restrict international trade in these products, and have no scientific justification.
- Furthermore, despite the assertions of the EU during the last DSB meeting, this situation exists regardless of whether or not the European Commission receives “complaints” from seed operators or stakeholders. 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.31)

- The United States provided a status report in this dispute on October 15, 2020, 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.

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.23)
    - The United States provided a status report in this dispute on October 15, 2020, 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.

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.18)
    - The United States thanks Indonesia for its status report but is concerned that Indonesia has not brought 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 that 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 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 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 commonsense that is driving the EU’s approach to this agenda item. On June 26, the EU notified that it would apply 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.
- The EU has erroneously referred to a “clear obligation” under Article 21.6 for the United States to submit a status report in this dispute.
- 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 – Australia, Brazil, and China – have informed the DSB that they have come into compliance with the 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, or the EU would have inscribed that dispute as an item on today’s agenda. The EU took neither action.
- Therefore, it is once again clear that the European Union 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 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 of the 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 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.
- The United States notes that it is committed to obtaining a long-term resolution to this dispute. The United States recently showed great restraint in its review of WTO-authorized countermeasures for the EU’s WTO-inconsistent launch subsidies. The United States will engage with the EU in a new process in order to seek an agreement that will remedy the conduct that harmed the U.S. aviation industry and workers and will ensure a level playing field for U.S. companies.

Second Intervention

- The United States is aware that the EU recently 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 now asserts that it has amended 2 of these 8 measures; 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.
- The United States, as previously stated, is committed to obtaining a long-term resolution to this dispute.

5. STATEMENT BY CHINA REGARDING THE PANEL REPORT IN "UNITED STATES – TARIFF MEASURES ON CERTAIN GOODS FROM CHINA"
- The findings in the report *United States – Tariff Measures on Certain Goods from China* are based on legal errors. The United States has notified an appeal of this report to the DSB. Accordingly, the panel report cannot be adopted today.
  - The United States would submit a notice of appeal and an appellant submission once a Division of the Appellate Body can be established to hear this appeal. China may file its own appeal of the panel report now or at that point of time.
  - The United States nonetheless wishes to address this panel report because it reflects a major, missed opportunity for the WTO to begin to address the most serious problem faced by every Member that seeks a balanced and fair world trading system: namely, aggressive, state policies that seek to dominate broad industrial sectors.
  - In prior DSB statements, the United States has elaborated upon China’s far-reaching efforts to unfairly take technology from other Members.<sup>1</sup> And, as Member’s are aware, it was that action taken by the United States to combat these policies that led to the U.S. measures that China challenged in this dispute.
  - These unfair trade practices have cost U.S. innovators, workers, and businesses billions of dollars every year. Further, they harm every Member, and every industry in every Member, that relies on technology for maintaining competitiveness in world markets.
  - The tariff measures the United States took in response to China’s practices led earlier this year to the historic Phase One Economic and Trade Agreement Between the United States and China.<sup>2</sup> In this agreement, China committed to cease some – though not all – of its unfair and harmful technology transfer practices.<sup>3</sup> The Phase One Agreement includes a strong enforcement mechanism, including China’s agreement that the United States may impose additional tariffs on goods of China upon a U.S. finding that China has failed to meet its obligations. Pursuant to the Phase One Agreement, China is making changes to its economic and trade practices that will benefit not just the United States, but also China, and all WTO Members.
  - China would not have agreed to the technology transfer provisions of the Phase One Agreement but for the additional U.S. tariffs that China chose to challenge in this dispute. Moreover, it cannot credibly be asserted that alternative tools were available to the

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<sup>1</sup> See WT/DSB/M/410, paras. 11.2-11.3 (March 27, 2018, meeting); WT/DSB/M/412, paras. 5.5-5.11 (April 27, 2018, meeting); WT/DSB/M/413, paras. 4.1-4.4 (May 28, 2018, meeting); WT/DSB/M/423, paras. 8.3-8.7 (December 18, 2018, meeting); see also Findings of the Investigation into China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974, <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.

<sup>2</sup> Economic and Trade Agreement Between the Government of the United States and the Government of the People’s Republic of China (Phase One Agreement), [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic And Trade Agreement Between The United States And China Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic%20And%20Trade%20Agreement%20Between%20The%20United%20States%20And%20China%20Text.pdf).

<sup>3</sup> *Id.*, see Chapter 2 (“Technology Transfer”).

United States, nor to any other Member, to address China's unfair and harmful technology transfer policies.

- Accordingly, the Panel's findings against the U.S. tariff measures amount to an acknowledgement that the WTO system, as currently formulated, is an impediment to an improved world trading system. This is completely backwards. Rather, as stated in the preambles to the WTO Agreement and the Marrakesh Declaration, the WTO's role should be to promote "reciprocal and mutually advantageous arrangements";<sup>4</sup> "an integrated, more viable and durable multilateral trading system";<sup>5</sup> and "open, market-oriented policies."<sup>6</sup>
- The Panel reached its institutionally-harmful findings by making fundamental legal errors in the evaluation of two defenses presented by the United States.
- First, the Panel failed to conduct its own objective assessment of whether the facts on the record in the dispute established that China and the United States had both agreed that issues relating to the dispute were to be addressed outside the WTO system.
- The United States established, and China did not dispute, that China had already adopted its own remedy by imposing retaliatory tariffs on more than half of all U.S. exports to China. And China did this openly as a response to the same tariff measures that China challenged in this dispute.<sup>7</sup>
- Furthermore, in the Phase One Agreement, China agreed that the United States may impose additional tariff measures upon a U.S. finding that China was breaching its obligations under that agreement, including with respect to technology transfer.<sup>8</sup>
- In short, the Parties' actions demonstrated that they had agreed on bilateral mechanisms to address the issues related to the dispute. The Panel, however, took no account of the evidence. Rather, the Panel simply accepted China's assertion to the contrary – an assertion made during the litigation and only for the purpose of seeking a finding that essentially would signal the WTO's support for China's technology theft.<sup>9</sup>
- This erroneous result amounts to an approval for the cynical misuse of the WTO dispute settlement system. Even if adopted, the finding would not in any way promote the resolution of any dispute between China and the United States. At most, a Member that prevails in a WTO dispute can obtain the authority to suspend WTO concessions. But here, China had already taken the unilateral decision that the U.S. measures could not be justified, and China had already imposed tariff measures on U.S. goods.
- Second, the Panel incorrectly rejected the U.S. defense that the measures were necessary

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<sup>4</sup> *Marrakesh Agreement Establishing the World Trade Agreement*, preamble.

<sup>5</sup> *Id.*

<sup>6</sup> *Marrakesh Declaration of 15 April 1994*, preamble.

<sup>7</sup> Panel Report, paras. 7.4-7.6.

<sup>8</sup> Phase One Agreement, Chapter 7.

<sup>9</sup> Panel Report, para., 7.22.

to protect public morals under Article XX(a) of the GATT 1994.<sup>10</sup> The United States provided extensive evidence and argumentation, showing:

- the existence of China’s unfair and harmful technology transfer policies, as we summarized earlier in this statement;
  - that these policies were inconsistent with U.S. and international norms for moral conduct;
  - that the U.S. measures were taken for the explicit purpose of ending the unfair practices;
  - and that after years of unproductive negotiations and discussions in various fora, the United States had no other available tools to address this crucial issue.
- The U.S. showings on these factual matters were largely undisputed by China. China did not even attempt to rebut the existence of the unfair technology transfer policies documented by the United States.
  - At the outset of its analysis, the Panel did correctly find that the norms against theft, misappropriation, and unfair competition underlying the U.S. tariff measures could fall within the scope of public morals as used in Article XX(a).<sup>11</sup>
  - However, the Panel used an unsupportable approach for evaluating whether the U.S. measures were “necessary” within the meaning of Article XX(a).<sup>12</sup> As a result, the Panel findings are legally unsound.
  - Ironically, the Panel wrote that it was adopting a “holistic” approach to the analysis of necessity.<sup>13</sup> But the actual approach was anything but that; rather, it was myopic, addressed only to whether the public morals objective of the U.S. measure was sufficiently connected to the particular products subject to the U.S. tariffs.<sup>14</sup>
  - The Panel had no legal basis for adopting this single test to evaluate “necessity.” As an initial matter, nothing in the text of Article XX(a) requires any particular level of connectedness. And even if this were a valid consideration, the Panel had no basis for assuming that it was even possible for any Member to tightly connect particular sets of imported products to far-ranging and non-transparent policies involving technology theft.
  - Nor did the Panel even address the U.S. showing that there were no possible alternative means for the United States to achieve the public morality goals recognized under Article XX(a).

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<sup>10</sup> Panel Report, paras., 7.236-7.238.

<sup>11</sup> Panel Report, para., 7.140.

<sup>12</sup> Panel Report, paras., 7.178 and 7.180.

<sup>13</sup> Panel Report, paras., 7.111, 7.152 -7.1533, and 7.238.

<sup>14</sup> Panel Report, para., 7.178.

- In short, the Panel failed to conduct a holistic analysis, ignoring nearly all of the record evidence in the dispute. Instead, the Panel rejected the U.S. defense based only on the legally erroneous use of a narrow and unsupported legal test.
- In closing, the United States will turn to the real-world events involving China's unfair technology transfer policies, and U.S. efforts to address them. As noted, China committed in the Phase One Agreement not to pursue some of the unfair technology transfer policies that led to the U.S. tariff measures. This is a positive step, and the United States is closely monitoring China's compliance. The issuance of this report has no effect on the Parties' ongoing implementation of the Phase One Agreement, which will benefit all of China's trading partners.
- The Panel avoided any meaningful findings by taking flawed legal shortcuts, instead of considering the extensive record evidence involving China's harmful technology transfer policies and the past failed attempts to address these policies in other ways. In taking this approach, the panel report indicates that the WTO is incapable of handling these issues. The report thus serves as further confirmation that the U.S. tariff measures were the only available means to address the major problems to the world trading system resulting from China's forced technology transfer policies.

6. UNITED STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT (SECOND COMPLAINT)

A. RECOURSE TO ARTICLE 7.9 OF THE SCM AGREEMENT AND ARTICLE 22.7 OF THE DSU BY THE EUROPEAN UNION (WT/DS353/35)

- The United States regrets that the EU has requested to move forward with this request for authorization to impose countermeasures. As we will explain, the Arbitrator’s decision relates only to Washington State’s Business and Occupation tax rate reduction that was eliminated over six months ago.
- If the EU were to impose duties on U.S. goods in response to a measure that has been terminated, that would be contrary to WTO rules and would force a U.S. response that would move us away from finding a solution to the Aircraft disputes.
- The United States has recently provided proposals for a reasonable settlement that would provide a level playing field for the United States, the European Union, and the United Kingdom. With serious engagement by our close trading partners, the United States considers that we should be able to find a solution in a short period of time.
- As the EU is well aware, Washington State’s termination of the tax rate reduction took effect on April 1, 2020, over six months ago. The elimination of the preferential aerospace tax rate is straightforward. The EU has not disputed that this action taken by Washington State eliminated the preferential tax rate subject to the DSB’s non-compliance findings and the Arbitrator’s decision. Thus, Washington State’s termination of the preferential tax rate withdrew the WTO-inconsistent subsidy.
- Under WTO rules, countermeasures cannot be imposed following removal of the WTO-inconsistent measure. DSU Article 22.8 states: “The suspension of concessions or other obligations shall be temporary and *shall only be applied until* such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits . . . .” Accordingly, the EU has known for more than six months that it is not entitled to *apply* any countermeasures in any amount in relation to the Washington State tax measure that “has been removed.”
- If the EU imposes countermeasures despite withdrawal of the Washington State tax measure, the EU would not only breach WTO rules; it would seriously undermine the WTO system. The EU litigated successfully against the Washington State tax measure. And the system contributed to the desired change – the United States withdrew the WTO-inconsistent measure, eliminating any adverse effects.<sup>15</sup>

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<sup>15</sup> DSU Article 3.7: “The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements.”

- The EU has previously referred to NASA and Department of Defense research and development measures, as well as certain state and local measures. However, there should be no confusion.
- First, *none* of these measures were found to continue causing adverse effects in the compliance proceeding both parties agreed to. Therefore, there was *no* WTO finding of non-compliance for the NASA, Department of Defense, or other state and local measures.
- Second, the Arbitrator identified the level of countermeasures *only* for Washington State's tax measure in a past time period (2012-15). The Arbitrator explicitly said it would *not* examine Washington State's elimination of the tax measure earlier this year. The Arbitrator also explicitly *rejected* an EU request to assign countermeasures for the NASA or Department of Defense measures.
- Thus, any DSB action today to authorize countermeasures does *not* concern NASA or Department of Defense measures. And as we have explained, the EU has no right to apply countermeasures under WTO rules against the Washington State tax measure that has already been removed.<sup>16</sup>
- In conclusion, the United States strongly favors a negotiated resolution of its dispute with the EU over the massive launch aid subsidies it provided to Airbus. The United States has recently provided proposals for a reasonable settlement that would provide a level playing field. We consider that a solution to these disputes is within reach with serious engagement by our close trading partners.

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<sup>16</sup> DSU Article 22.8: "The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached."

10. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS (WT/DSB/W/609/REV.18)

- As we have explained in prior meetings, we are not in a position to support the proposed decision. The systemic concerns that the United States has identified remain unaddressed. Instead, Members should consider how to achieve meaningful reform of the dispute settlement system.
- The U.S. view across multiple U.S. Administrations has been clear and consistent: When the Appellate Body overreaches and itself breaks WTO rules, it undermines the rules-based trading system.
- The Appellate Body's abuse of the limited authority we Members gave it damages the interests of all WTO Members who care about a WTO in which the agreements are respected as they were negotiated and agreed.
- Earlier this year, the Office of the U.S. Trade Representative published a Report on the Appellate Body of the World Trade Organization. The Report details how the Appellate Body has failed to apply WTO rules as agreed by WTO Members, imposing new obligations and violating Members' rights.<sup>17</sup> We appreciate the number of Members who have reviewed the Report and share the view that the Report identifies serious errors by the Appellate Body.
- As the United States has explained repeatedly, the fundamental problem is that the Appellate Body has not respected the current, clear language of the DSU.
- Members cannot find meaningful solutions to this problem without understanding how we arrived at this point. Without an accurate diagnosis, we cannot assess the likely effectiveness of any potential solution.
- The United States has actively sought engagement from Members on these issues. Yet, some Members have remained unwilling to admit there is even a problem, much less engage in a deeper discussion of the Appellate Body's failures.
- And rather than seeking to understand why the Appellate Body has departed from what Members agreed, these Members and others have now redirected the focus and energies of the Membership to pursue an arrangement that would, at best, perpetuate the failings of the Appellate Body.<sup>18</sup>
- Nevertheless, the United States is determined to bring about real WTO reform. We Members must ensure that the WTO dispute settlement system reinforces the WTO's critical negotiating and monitoring functions, and does not undermine those functions by

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<sup>17</sup> United States Trade Representative, *Report on the Appellate Body of the World Trade Organization* (February 2020), available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/AB-Report\\_02.11.20.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/AB-Report_02.11.20.pdf).

<sup>18</sup> See U.S. Statement at the June 29, 2020, Meeting of the Dispute Settlement Body (Item 13), available at: [https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun29.DSB\\_.Stmt\\_.as-deliv.fin\\_.public13218.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun29.DSB_.Stmt_.as-deliv.fin_.public13218.pdf).

overreaching and gap-filling.

- The central objective of the dispute settlement system is to assist the parties to find a solution to their dispute. As before, Members have many methods to resolve a dispute, including through bilateral engagement, alternative dispute procedures, and third-party adjudication.
- Parties should redouble their efforts to find such a positive solution to their disputes.
- The United States will continue to insist that WTO rules be followed by the WTO dispute settlement system. We will continue our efforts to seek a solution on these important issues.