

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

**Geneva, September 30, 2019**

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.199)
    - The United States provided a status report in this dispute on September 19, 2019, 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.174)
    - The United States provided a status report in this dispute on September 19, 2019, 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.137)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- While the United States appreciates the European Commission’s approval of several soy and corn products in July 2019, we remain concerned with the EU’s approval of biotech products. We continue to see delays that affect dozens of applications that have been awaiting approval for an extended period, or that have already received approval. And even when the EU finally approves a biotech product, EU member States continue to impose restrictions on the supposedly approved product.
- As we have noted at prior DSB meetings, the amendment of EU Directive 2001/18, through EU Directive 2015/413, permits EU member States to, in effect, restrict or prohibit cultivation of genetically-modified organisms (“GMOs”), even where the European Food Safety Authority (“EFSA”) has concluded that the product is safe. This legislation permits EU member States to restrict for non-scientific reasons certain uses of EU-authorized biotech products in their territories by demanding that EU cultivation authorizations be adjusted to exclude portions of an EU member State’s territory from cultivation. At least seventeen EU member States, as well as certain regions within EU member States, have submitted such requests with respect to MON-810 maize.
- We once again emphasize the public statement issued by the EU’s Group of Chief Scientific Advisors on November 13, 2018, in response to the July 25, 2018, European Court of Justice (ECJ) ruling that addresses the forms of mutagenesis that qualify for the exemption contained in EU Directive 2001/18/EC. The Directive was a central issue in dispute in these WTO proceedings, and concerns the deliberate release into the environment of genetically modified organisms, or GMOs. Contrary to the EU’s statement at prior DSB meetings, this ECJ ruling relates to previously authorized GMOs.
- The EU Group of Chief Scientific Advisors’ statement speaks to the lack of scientific support for the regulatory framework under EU Directive 2001/18. The message provided in that statement is clear: “in view of the Court’s ruling, it becomes evident that new scientific knowledge and recent technical developments have made the GMO Directive no longer fit for purpose.” The statement further advises that current scientific knowledge calls into question the definition of “GMOs” under the Directive and notes that mutagenesis, as well as transgenesis, occurs naturally. The EU should take this guidance into account in its reconsideration of the GMO Directive, in light of the evident advancements in scientific knowledge and technology.

- 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.21)

- The United States provided a status report in this dispute on September 19, 2019, 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.

Second Intervention

- As noted by Canada, the United States recalls that Canada has commenced a dispute settlement proceeding against the United States concerning the use of a differential pricing analysis and zeroing. Canada lost that dispute before the panel. The United States is willing, of course, to discuss Canada's concerns bilaterally.

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.13)

- The United States provided a status report in this dispute on September 19, 2019, 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.8)

- Indonesia continues to fail to bring 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 its process.
- The United States looks forward to receiving further detail from Indonesia regarding the planned changes to its regulations and laws.

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 in February 2006. Accordingly, the United States has implemented 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, more than 11 years ago.
- Even aside from this, we question the trade rationale for inscribing this item. In May 2019, the EU notified the DSB that disbursements related to EU exports to the United States totaled \$4,660.86 in fiscal year 2018. As such, the level of countermeasures under the Arbitrator’s formula in relation to goods entered before 2007 is \$3,355.82. The EU announced it would apply an additional duty of 0.001 percent – that is, one-one thousandth of a percent – on certain imports of the United States.
- If our math is correct, application to goods worth \$3,355.82 of an additional duty of 0.001 percent yields duties collected worth about \$3.35. We could round up to \$3.36. These values are no doubt outweighed by the associated costs resulting from the application of these countermeasures – or the DSB’s taking up this agenda item.
- 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’s recommendations, regardless of whether the complaining party disagrees about compliance.
- The practice of Members – including the European Union as a responding party – confirms this widespread understanding of Article 21.6. Accordingly, since the United States has informed the DSB that it has come into compliance in this dispute, there is nothing more for the United States to provide in a status report.

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 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 disagrees that the EU has complied.
- At recent DSB meetings, the European Union has attempted to reconcile this view with the EU’s longstanding, contrary position. The EU argues that the situation in CDSOA differs from *EC – Large Civil Aircraft* because, in CDSOA, the dispute has been adjudicated and there are no further proceedings pending.
- With this statement, the EU suggests that the issue of compliance in CDSOA has been adjudicated; in fact, it has not. The United States repealed the CDSOA measure after all of the proceedings in the dispute, and the EU has not brought a challenge to the U.S. claim of compliance.
- By way of contrast, in DS316, the EU’s claim of compliance has already been rejected by the DSB through its adoption of compliance panel and appellate reports.
- The EU has also erroneously argued that where “a matter is with the adjudicators, it is temporarily taken out of the DSB’s surveillance.”
- There is nothing in the DSU text to support that argument, and the EU provides no explanation for how it reads DSU Article 21.6 to contain this limitation.
- Under the EU’s own view, the EU should be providing a status report. Yet it has failed to do so, demonstrating the inconsistency in the EU’s position depending on its status as complaining or responding party.
- The U.S. position has been consistent and clear: Under Article 21.6 of the DSU, once a responding Member provides the DSB with a status report that announces compliance, there is no further “progress” on which it can report, and therefore no further obligation to provide a report.

- But as the EU allegedly disagrees with this position, it should for future meetings provide status reports in this DS316 dispute.

5. INDIA - ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS585/2)

- The United States is requesting a panel to address India's measures that are plainly inconsistent with the fundamental WTO obligation to provide Most-Favored-Nation (MFN) treatment and treatment no less favorable than that provided for in a Member's Schedule of Concessions, as set out respectively in Articles I and II of the GATT 1994.
- In particular, India has imposed additional duties on U.S. products with an annual trade value of approximately 1.1 billion U.S. dollars. India's measures imposing these additional duties breach its MFN obligation under Article I of the GATT 1994, and India's commitments under Article II of the GATT 1994 to abide by its tariff concessions.
- As the DSB is aware, several WTO Members are unilaterally retaliating against the United States for actions it has taken pursuant to Section 232 that, as national security actions, are fully justified under Article XXI of the GATT 1994.
- These Members, including India, are pretending that the U.S. actions under Section 232 are so-called "safeguards," and further pretend that their unilateral, retaliatory duties constitute suspension of substantially equivalent concessions under the WTO Agreement on Safeguards.
- Just as these Members appear ready to undermine the dispute settlement system by throwing out the plain meaning of Article XXI and 70 years of practice, so too are they ready to undermine the WTO by pretending they are following WTO rules while taking measures blatantly against those rules.
- We know even from their own actions that many of these Members do not seriously believe that the U.S. security measures under Section 232 are safeguards. India, for example, has not addressed whether its action is in response to an alleged "safeguard" taken as a result of an absolute increase in imports. If there were an absolute increase, the right to suspend substantially equivalent concessions under the Safeguard Agreement may not be exercised for the first three years of the safeguard measure.
- To be clear: Article XIX of the GATT 1994 may be invoked by a Member to depart temporarily from its commitments in order to take emergency action with respect to increased imports. The United States, however, is not invoking Article XIX as a basis for its Section 232 actions. Thus, Article XIX and the Safeguards Agreement are not relevant to the U.S. actions under Section 232, and the United States has not utilized its domestic law on safeguards to take the actions under Section 232.

- Because the United States is not invoking Article XIX, there is no basis for another Member to pretend that Article XIX should have been invoked and to use safeguards rules that are simply inapplicable.
- The additional, retaliatory duties are nothing other than duties in excess of India's WTO commitments and are applied only to the United States, contrary to India's most-favored-nation obligation. The United States will not permit its businesses, farmers, and workers to be targeted in this WTO-inconsistent way.
- For these reasons, the United States requests that the DSB establish a panel to examine this matter with standard terms of reference.

7. UKRAINE – ANTI-DUMPING MEASURES ON AMMONIUM NITRATE

A. REPORT OF THE APPELLATE BODY (WT/DS493/AB/R, AND WT/DS493/AB/R/ADD.1) AND REPORT OF THE PANEL (WT/DS493/R; WT/DS493/R/ADD.1 AND WT/DS493/CORR.1)

- The United States wishes to raise an important systemic concern. The United States considers that very serious issues are raised by the failure of the Appellate Body to follow the mandatory 90-day deadline in Article 17.5 of the DSU and the continued service on this appeal of an individual who ceased to be a member of the Appellate Body during the appeal, including with respect to the status of such a report.
- As the document has not been issued by three Appellate Body members and was not issued within 90 days, consistent with the requirements of Article 17 of the DSU, it is not an “Appellate Body report” under Article 17, and therefore it is not subject to the adoption procedures reflected in Article 17.14.
- For this item, we do not understand any party to oppose adoption of the reports, nor has any other WTO Member raised an objection. The aim of the dispute settlement system is to find a positive solution to the dispute. As neither party to the dispute has objected, we understand that the parties consider that adoption of the reports would assist them in finding a positive solution. We would seek to support the parties’ interests on this issue. Therefore, there is a consensus to adopt the reports before the DSB today.

8. KOREA – ANTI-DUMPING DUTIES ON PNEUMATIC VALVES FROM JAPAN
- A. REPORT OF THE APPELLATE BODY (WT/DS504/AB/R AND WT/DS504/AB/R/ADD.1) AND REPORT OF THE PANEL (WT/DS504/R AND WT/DS504/R/ADD.1)
- The United States wishes to raise an important systemic concern. The United States considers that very serious issues are raised by the failure of the Appellate Body to follow the mandatory 90-day deadline in Article 17.5 of the DSU, and the continued service on this appeal of an individual who ceased to be a member of the Appellate Body during the appeal, including with respect to the status of such a report.
  - As the document has not been issued by three Appellate Body members and was not issued within 90 days, consistent with the requirements of Article 17 of the DSU, it is not an “Appellate Body report” under Article 17, and therefore it is not subject to the adoption procedures reflected in Article 17.14.
  - For this item, we do not understand any party to oppose adoption of the reports, nor has any other WTO Member raised an objection. The aim of the dispute settlement system is to find a positive solution to the dispute. As neither party has objected, we understand that the parties consider that adoption of the reports would assist them in finding a positive solution. We would seek to support the parties’ interests on this issue. Therefore, there is a consensus to adopt the reports before the DSB today.

10. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS  
(WT/DSB/W/609/REV.14)

- The United States thanks the Chair for the continued work on these issues.
- As we have explained in prior meetings, we are not in a position to support the proposed decision.
- The systemic concerns that we have identified remain unaddressed.
- As the United States has explained at recent DSB meetings, for more than 16 years and across multiple U.S. Administrations, the United States has been raising serious concerns with the Appellate Body's overreaching and disregard for the rules set by WTO Members.
- The United States will continue to insist that WTO rules be followed by the WTO dispute settlement system, and will continue our efforts and our discussions with Members and with the Chair to seek a solution on these important issues.

Second Intervention

- We have listened closely as several Members have criticized the United States. These Members argue that the United States has failed to participate in ongoing discussions on Appellate Body reform.
- As explained at past meetings of the DSB, these statements are wrong. The facts establish that no Member has been more constructively and consistently engaged on these substantive issues than the United States.
- The United States continues, as it has always done, to be engaged on these important substantive issues, including by meeting regularly with the Facilitator and Members to exchange views on the issues under discussion.
- Indeed, for several months, both within the Informal Process and outside, the United States has actively sought engagement from Members on what we believe to be a fundamental issue. That is, how have we come to this point where the Appellate Body, a body established by Members to serve the Members, is disregarding the clear rules that were set by those same Members. In other words, Members need to engage in a deeper discussion of *why* the Appellate Body has felt free to depart from what Members agreed to.
- Engagement is a two-way street. Without further engagement from WTO Members on the cause of the problem, there is no reason to believe that simply adopting new or additional language, in whatever form, will be effective in addressing the concerns that the United States and other Members have raised.

11. CANADA-EUROPEAN UNION INTERIM APPEAL ARBITRATION  
ARRANGEMENT PURSUANT TO ARTICLE 25 OF THE DSU (JOB/DSB/1/ADD.11)

A. JOINT PRESENTATION BY CANADA AND THE EUROPEAN UNION

- We would first note that Members have the right to use DSU Article 25 arbitration to resolve their disputes. And indeed, the United States was one of the parties to the only instance to date in which Article 25 arbitration was used.
- However, the proposal presented today raises a number of systemic and practical concerns.
- The proposal explicitly states that the intent is “to replicate as closely as possible all substantive and procedural aspects *as well as the practice* of Appellate Review pursuant to Article 17 of the DSU.”
- In other words, Canada and the EU do not see any problem with the Appellate Body practice at all. This proposal demonstrates that, despite the fact that the Appellate Body through its practice has repeatedly breached the rules set by WTO Members, Canada and the EU appear to endorse and legitimize those breaches.
- This is confirmed, for example, by the fact that the proposal says that any arbitration award should be treated like an Appellate Body report “for purposes of interpretation.” Despite all of the discussion in the General Council and the DSB that the DSU has no system of precedent, Canada and the EU’s approach to “interpretation” demonstrates that these Members want binding precedent and would seek to require arbitrators to act inconsistently with the WTO Agreement.
- Apparently, more than one year of discussion of our agreed WTO rules on dispute settlement have brought us no closer to a shared understanding of what the plain words mean. This raises the grave concern that, not only does the Appellate Body not respect the rules as written, but those WTO Members do not *want* the rules to be respected as written. How can this attitude be consistent with a rules-based trading system?
- The proposal contains a number of legal flaws and elements that may not be workable, such as publication of a panel report that is not a panel report. Further, there is no basis for the Secretariat assigned to the Appellate Body to work instead on arbitrations as if these proceedings constituted the activity of a parallel Appellate Body.
- The United States continues to consider that the way forward is to understand and recognize the concerns that have been raised with the Appellate Body, and engage in a deeper discussion of *why* the Appellate Body has felt free to depart from what Members agreed to, so that appropriate solutions can be found.