

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

Geneva, July 20, 2018

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.185)
 - The United States provided a status report in this dispute on July 9, 2018, 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.160)

- The United States provided a status report in this dispute on July 9, 2018, 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.

Second Intervention

- By intervening under this item, China attempts to give the appearance of concern for intellectual property rights. At recent DSB meetings, we have discussed at some length some significant and trade distorting shortcomings in China's treatment of intellectual property. If China is interested in discussing the protection of intellectual property rights, the United States is certainly willing to cooperate by bringing that matter to the DSB's attention again.
- For now, we can say that, as the companies and innovators of China and other Members well know, the intellectual property protection that the United States provides within its own territory equals or surpasses that of any other Member.
- Indeed, as China also well knows, none of the damaging technology transfer practices of China that we have discussed at recent DSB meetings are practices that Chinese companies or innovators face in the United States.

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.123)
 - The United States thanks the European Union (“EU”) for its status report and its statement today.
 - The United States also thanks the EU for hosting recent discussions on these and related issues, and we look forward to continued engagement.
 - Nonetheless, the United States remains concerned with the EU’s measures affecting the approval of biotech products. Delays in approvals continue to affect the dozens of applications that have been awaiting approval.
 - Further, even when the EU finally approves a biotech product, EU member States continue to impose bans on the supposedly approved product.
 - The United States again 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.7)

- The United States provided a status report in this dispute on July 9, 2018, in accordance with Article 21.6 of the DSU.
- On December 15, 2017, the United States Trade Representative requested that the U.S. Department of Commerce make a determination under section 129 of the *Uruguay Round Agreements Act* to address the DSB's recommendations relating to the Department's countervailing duty investigation of washers from Korea. On December 18, the Department of Commerce initiated a proceeding to make such determination. Following initiation, Commerce issued initial and supplemental questionnaires seeking additional information.
- On April 4, 2018, Commerce issued a preliminary determination revising certain aspects of its original determination. Following issuance of the preliminary determination, Commerce provided interested parties with the opportunity to submit comments on the issues and analysis in the preliminary determination and rebuttal comments. Commerce reviewed those comments and rebuttal comments and took them into account for purposes of preparing the final determination.
- On June 4, 2018, Commerce issued a final determination, in which Commerce revised certain aspects of its original determination. Specifically, Commerce revised the analysis underlying the CVD determination, as it pertains to certain tax credit programs, in accordance with findings adopted by the DSB.
- The United States continues to consult with interested parties on options to address the recommendations of the DSB relating to antidumping measures challenged in this dispute.

Second Intervention

- With respect to Korea's statement on the antidumping measures, the United States has explained to Korea the special challenges arising from the recommendations in this dispute.

- Nevertheless, Korea has requested authorization pursuant to Article 22.2 of the DSU to suspend concessions and other obligations. Korea's decision to proceed in that regard is disappointing, and not constructive.
- As the United States objected to the level of suspension proposed by Korea, the matter has been referred to arbitration pursuant to Article 22.6 of the DSU.

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 taken all actions necessary to implement 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 10 years ago.
- 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 recommendations and rulings, regardless of whether the complaining party disagrees about compliance.
- And as we have noted many times previously, the EU has demonstrated repeatedly it shares this understanding, at least when it is the responding party in a dispute. Once again, this month the EU has provided no status report for disputes in which there is a disagreement between the parties on the EU’s compliance.
- For example, as we will note in a statement later at this meeting, the EU has not submitted a status report this month in the *EU – Large Civil Aircraft* dispute (DS316), despite the fact that the DSB has recently adopted two further reports finding that the EU has not complied.
- We fail to see how the EU’s behavior is consistent with the alleged systemic view it has been espousing under this item for more than 10 years.
- As the EU is aware, the United States has announced in this dispute that it has implemented the DSB’s recommendations and rulings. If the EU disagrees, there would simply appear to be a disagreement between the parties to the dispute about the situation of compliance.

3. CANADA – MEASURES GOVERNING THE SALE OF WINE IN GROCERY STORES
(SECOND COMPLAINT)

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED
STATES (WT/DS531/7)

- As stated at the June 22, 2018 DSB meeting, the United States has serious concerns with British Columbia regulations governing the sale of wine in grocery stores.
- The British Columbia (“BC”) regulations exclude all imported wine from grocery store shelves, an important retail channel for wine sales in BC. It is obvious that such discriminatory measures limit sales opportunities for U.S. wine producers and provide a substantial competitive advantage for BC wine.
- The U.S. panel request explains that the measures at issue appear to be inconsistent with Article III:4 of the GATT 1994 because they accord less favorable treatment to imported products than to like products of national origin.
- Accordingly, the United States today requests, for the second time, that the DSB establish a panel to examine the matter set out in our panel request with standard terms of reference.

4. UNITED STATES – ANTI-DUMPING MEASURES ON FISH FILLETS FROM VIET NAM

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY VIET NAM
(WT/DS536/2)

- We are disappointed that Viet Nam has chosen to move forward with a request for panel establishment.
- As the United States has explained to Viet Nam, the determinations identified in Viet Nam's request for panel establishment are fully consistent with U.S. obligations under the WTO Agreement.
- Additionally, as the United States noted at the June DSB meeting, Viet Nam seeks to challenge certain items that are not measures and would not fall within the scope of a dispute settlement proceeding.
- In the panel proceeding that Vietnam has requested, the United States will vigorously defend its rights to adopt antidumping measures with respect to unfairly traded imports.

6. APPELLATE BODY APPOINTMENTS: PROPOSAL BY VARIOUS MEMBERS
(WT/DSB/W/609/REV.4)

- 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. For example, an individual who is not currently a member of the Appellate Body continues to decide appeals. As we have explained many times, it is for the DSB, not the Appellate Body, to decide whether a person who is no longer an Appellate Body member can continue to serve on an appeal.¹ We refer back to our statements at earlier DSB meetings for more elaboration on our concerns.
- We therefore will continue our efforts and our discussions with Members and with the Chair to seek a solution on these important issues.

¹ *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Arts. 17.1, 17.2 (“DSU”).

**OTHER BUSINESS: STATEMENT BY HONDURAS CONCERNING A NON-PAPER ON
RULE 15 OF THE APPELLATE BODY WORKING PROCEDURES**

- The United States thanks Honduras for its engagement on this issue.
- We agree with the view that the only solution to the current situation is dialogue and engagement from all WTO Members.
- We look forward to reviewing the non-paper.

OTHER BUSINESS: STATEMENT BY CHINA ON UNITED STATES – CERTAIN
METHODOLOGIES AND THEIR APPLICATION TO ANTI-DUMPING PROCEEDINGS
INVOLVING CHINA (DS471)

- In accordance with Article 21.6 of the DSU, the United States will provide a status report in this dispute at the August DSB meeting.
- It is incorrect to suggest that the United States has taken no action in this dispute. If China seeks information on the internal U.S. process prior to the August DSB meeting, it may raise the issue bilaterally with the United States.
- If China wishes to receive information prior to that time, it may raise the issue bilaterally with the United States.

OTHER BUSINESS: STATEMENT BY THE UNITED STATES CONCERNING EC –
LARGE CIVIL AIRCRAFT (DS316)

- At last month's DSB meeting, the United States noted that the European Union had not provided a status report concerning the dispute *EU – Large Civil Aircraft* (DS316). The EU failed to provide such a report despite the recent adoption by the DSB of panel and appellate reports finding that the EU had failed to comply with the DSB's recommendations to bring its subsidies for Airbus into compliance with WTO rules.
- It is disappointing, if not entirely unexpected, that the EU has again this month failed to provide a status report. Members will recall that for many years, and again this month, the EU has taken the position that, under DSU Article 21.6, a responding party Member is required to provide a status report whenever a complaining party Member disagrees with the responding party's claim that it has complied.
- And yet, in this dispute (DS316), the United States disagrees with the EU's most recent claim that it has complied. Indeed, the EU has provided the United States with no information – and we mean, literally, *no information* – to support the EU's assertion that it has complied. The United States has therefore recently requested the WTO arbitrator to resume its work to determine the level of countermeasures in this dispute.²
- Given the disagreement on compliance between the parties, the EU should, to be consistent with the view it has taken when it is a *complaining* party, now be providing status reports. Instead, now that the EU is a *responding* party, the EU is choosing to contradict the reading of DSU Article 21.6 it has long promoted.
- Last month, the EU stated that it need not provide a status report because it requested consultations under DSU Article 21.5.
- But as the United States asked last month, where can Members find this status report exception in the text of Article 21.6? The answer, of course, is nowhere. The EU has simply invented a status report exception, just as it invented the supposed status report obligation.
- Rather than disregard the text of the DSU, the EU should acknowledge that it is applying the same approach as every responding party in every other dispute: that is, a responding party has no obligation under DSU Article 21.6 to continue supplying status reports once that Member announces that it has implemented the DSB's recommendations.

²See WT/DS316/37.