

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

Geneva, March 21, 2017

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.170)

- The United States provided a status report in this dispute on March 9, 2017, 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.145)
 - The United States provided a status report in this dispute on March 9, 2017, 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.108)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The EU measures affecting the approval and marketing of biotech products continue to result in lengthy, unpredictable, and unexplained delays in approvals. The delays and uncertainty in approvals cause adverse effects on trade. The failure to approve biotech corn products is a source of particular concern to the United States.
- The EU’s scientific review process is subject to increasingly long delays. Many corn and soybean products have now been under consideration by the EU’s scientific authority for many years.
- For example, in 2016, the EU released seven scientific opinions for new products. The average period of review for these products was more than 6 years.
- Furthermore, the EU has recently proposed regulations that would create more, rather than less, uncertainty with regard to the information required for scientific evaluation of biotech products.
- The United States also strongly encourages the EU to ensure that it requires only the scientific information relevant to the type of risk assessment being conducted. For example, scientific information on environmental effects should only be required where applicants seek authorization to conduct field trials or to cultivate biotech products.
- In closing, the United States encourages the EU to ensure that, as required by EU regulations and WTO rules, products in the biotech approval pipeline are considered without unnecessary delays.

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

A. STATEMENT BY THE EUROPEAN UNION

- 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, over nine 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.
- Indeed, the EU has demonstrated repeatedly it shares this understanding, at least when it is the responding party in a dispute. Last month, we pointed out that the EU is not providing status reports in the *EC – Large Civil Aircraft* (DS316) dispute, despite the fact that the United States does not agree that the EU has implemented the DSB recommendations. Nor has the EU provided such a status report this month.
- Once again, if the EU actually believes the position it is taking under this agenda item, it can demonstrate this by submitting a status report in DS316 for next month’s DSB meeting.

3. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- The DSB adopted its recommendations in this dispute in August 2012, and the reasonable period of time has long since expired.
- China, however, continues to authorize only one entity to provide electronic payment services (EPS) in China. That one entity is China's pre-existing, long-time state champion EPS supplier, known as China UnionPay. The entity was formed by a consortium of Chinese government policy banks and Chinese state-owned banks.
- The United States urges China to ensure that foreign EPS suppliers may apply for and receive permission to operate in China, in accordance with China's WTO obligations.

4. UNITED STATES – CERTAIN MEASURES RELATING TO THE RENEWABLE ENERGY SECTOR

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE INDIA (WT/DS510/2)

- As the United States explained at last month’s meeting of the DSB, it appears that India has launched this dispute for purely political reasons.
- Indian government officials have been quoted in the press as characterizing this dispute as a response to the successful challenge of the United States to India’s domestic content requirements in the solar energy sector. But under DSU Article 3.10, complaints and counter-complaints “should not be linked”.
- Furthermore, India does not export significant amounts of renewable energy equipment to United States, and the state-level programs identified in India’s request would appear to have virtually no effect on commerce at all.
- Accordingly, we do not consider that India’s complaint is warranted and question whether the establishment of a panel is an appropriate use of the dispute settlement system’s resources. If India nonetheless determines to pursue this matter further, we will vigorously defend U.S. measures before the panel.

6. EUROPEAN UNION – MEASURES RELATED TO PRICE COMPARISON METHODOLOGIES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA (WT/DS516/9)

- The United States is intervening to express our support for the right of the European Union and other WTO Members to use a non-market economy methodology in antidumping proceedings involving China.
- WTO Members have long recognized that government intervention in a country's home market can be so significant that prices and costs are distorted and unsuitable for purposes of calculating an antidumping margin.
- Among other places, this recognition is reflected in the second Supplementary Provision to paragraph 1 of GATT Article VI, in GATT working party reports for several Contracting Parties that joined the GATT in the 1960s and 1970s, and in WTO Accession Protocols.
- As Members know, it is also reflected in China's Accession Protocol. When China joined the WTO, Members agreed that Chinese prices and costs could be rejected and that a non-market methodology could be used as long as the facts show that China remains a non-market economy.
- China's argument that the EU must cease using a non-market economy methodology regardless of the facts has no legal merit. China's argument fails to take account of the remaining provisions of China's Protocol.
- China's argument is also divorced from reality. As many Members are aware, China's government continues to intervene heavily in its economy, resulting in serious distortions to the international trading system.
- To cite just one example, China's intervention in the steel sector has significantly distorted prices and led to severe overproduction and excess capacity, with the resulting surplus dumped all over the world.

- China appears to believe that it can use the WTO dispute settlement system to take away the tools that other Members have under WTO rules to address China's distortions. This is wrong. WTO rules permit Members to use a non-market economy methodology for purposes of addressing China's distorted prices and costs. The WTO dispute settlement system cannot change the rights of WTO Members.
- The United States and many other Members affected by China's distortions use their own, different measures to treat China as a non-market economy, as we are entitled to under existing WTO rules. If China wishes to discuss those rules, it can engage with other Members and explain how it will eliminate the distortions its government policies are causing.
- If China does not address those distortions that are causing harm to so many Members' industries and workers, however, there is no basis to insist that Members cannot use appropriate WTO tools to address China's injurious dumping practices.
- In our statement today, we would also like to comment on China's attempt to bring an EU draft measure into the dispute. By their very nature, draft measures are subject to change, and it is not the appropriate role of WTO panels or the Appellate Body to offer speculative findings on such draft measures.
- In closing, we would suggest that there is no reason for China to move forward with a dispute with the EU, the United States, or any other Member.
- If China truly believes that it is a market economy, it should take advantage of our respective laws, which permit China to show that it is a market economy or that an industry is market-oriented, based on the facts.
- On the other hand, if China does not believe that it has become a market economy, then it should finally follow through with the reforms it promised WTO Members when it joined this organization.

9. APPELLATE BODY APPOINTMENTS

- We appreciate the information the Chair has provided.
- We look forward to consulting with the Chair, and other Members, on the process to fill these important positions.

10. ELECTION OF CHAIRPERSON

- The United States would like to take this opportunity to congratulate Ambassador Ihara on his election, and to extend our welcome to him as he assumes the chairmanship of the DSB. We very much look forward to working with him over the coming year.
- We also would like to thank Ambassador Carim for his many contributions to the work of the DSB during this past year.