

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

**Geneva, May 28, 2021**

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.215)
    - The United States provided a status report in this dispute on May 17, 2021, 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 of the DSB that have yet to be addressed, the U.S. Administration will confer with the U.S. Congress with respect to the 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.190)
    - The United States provided a status report in this dispute on May 17, 2021, in accordance with Article 21.6 of the DSU.
    - The U.S. Administration will continue to confer with the European Union, and 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.153)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The EU continues to impose undue delays on the approval of biotech products. The United States has described these problems in detail, at nearly every monthly meeting of the DSB since the EU began submitting status reports more than thirteen years ago.
- To recall, the DSB found two basic types of WTO-inconsistencies with the EU measures affecting the approval and marketing of biotech products.
- First, the DSB found that the EU imposed undue delays on product applications, in breach of EU obligations under Annex C of the SPS Agreement.
- Second, the DSB found that even where the EU had approved a particular product, in many instances EU member States nonetheless banned those products without a scientific basis.
- The EU has failed to correct either of these problems.
- Moreover, the EU has expanded the scope of such EU Member State bans, with over a dozen members adopting bans on products approved at the EU level. In addition, the European Commission has also proposed legislation that would expand such “opt out” bans to products intended for use in food and feed.
- We fail to see how the opt out for cultivation, or the Commission’s attempt to introduce opt outs for food and feed safety authorizations, represent “efforts to reduce delays...at a high level at all stages of the authorization process.” We have reiterated this at every US-EU consultation, including the meeting held on October 22, 2020.
- Recent outcomes of both the Standing Committee and Appeals Committee on Genetically Modified Food and Feed and Environmental Risk Assessment demonstrate the political nature of the comitology process – which repeatedly delays safe products from receiving approval in the European market.
- For example, EU member States at the Standing Committee continue to cite “*no agreed national position*”, “*negative public opinion*”, and “*political reasons*” as justifications for reaching “no opinion” regarding product approvals.
- We fail to see how the EU’s current approval process addresses the undue delays

contemplated in DS291.

- We request that the EU move to issue final approvals for all products that have completed science-based risk assessments at EFSA, including those products that are with the Standing Committee and Appeals Committee.

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.37)

- The United States provided a status report in this dispute on May 17, 2021, 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 will 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.29)

- The United States provided a status report in this dispute on May 17, 2021, in accordance with Article 21.6 of the DSU.
- As explained in that report, the United States will 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.24)

- The United States thanks Indonesia for its status report. We understand that Indonesia has recently amended the relevant laws that would address Measure 18. The United States looks forward to receiving further detail from Indonesia regarding these legislative changes and their implementation by the government.
- With respect to Measures 1 to 17, the United States understands that Indonesia has revised certain regulations, but we are still waiting to hear more from Indonesia on how such actions would address the DSB’s recommendation and bring its measures into full compliance.
- The United States remains willing to work with Indonesia to fully resolve this dispute.

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 15 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 13 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 common sense that is driving the EU’s approach to this agenda item. The EU currently applies 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.
  - As it has done many times before, at the April DSB meeting, the EU once again called on the United States to abide by its “clear obligation” under Article 21.6 for the United States to submit a status report in this dispute. Notably, the EU did not call on any other Member in any other dispute to abide by this so-called “clear obligation,” despite the fact that several Members are in the same situation as the United States.
  - 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.
  - Canada, despite the views expressed in its statement today, shared this view as the responding party in *Canada – Measures Relating to the Feed-in Tariff Program* (DS426). Canada explained to the DSB that because it had submitted a notification of compliance “there was no further obligation on Canada to provide status reports to the DSB,” which Canada cited as “consistent with DSU provisions and the DSB practice.”<sup>1</sup> Canada maintained this systemic position that it was not required to submit a status report to the DSB if it had informed the DSB that it had taken the necessary steps to comply.
  - At recent meetings, three other Members – China, Brazil, and Australia – have acted consistently with this systemic position. Each Member informed the DSB that they have come into compliance with DSB recommendations in four disputes (DS472, DS497, DS517, and DS529), and the complaining parties did *not* accept the claims of compliance. Those Members have not provided a status report since announcing compliance – just like the United States.

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<sup>1</sup> Dispute Settlement Body, Minutes of the Meeting Held on July 22, 2014, WT/DSB/M/348, para. 4.4.

- 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 in that dispute, or the EU would have inscribed that dispute as an item on today’s agenda. The EU took neither action. At the April DSB meeting, the EU claimed once again that the circumstances between DS472 and the present dispute are “entirely different,” but we are still waiting for the EU to actually articulate the supposed difference between the two disputes.
- Through its actions, the European Union once again demonstrates that it 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 the previous agenda item – that where the EU as a complaining party does not agree with the 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 as the responding party 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.

Second Intervention

- The United States is aware that the EU filed yet another notice of supposed compliance. The United States disagrees that the EU has achieved compliance.
- The EU asserted in its 2020 so-called “compliance notice” that it has amended 2 of 8

launch aid measures that were found in the second compliance report to continue to cause adverse effects. Therefore, the EU 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.

- Indeed, the EU has claimed compliance repeatedly in 16 years of this dispute. The United States finds persuasive 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 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 and the sole basis for countermeasures authorized by the WTO. As it clearly has been withdrawn, the EU has no basis for countermeasures of any kind.

### Third Intervention

- The U.S. goal throughout this dispute has been to stop EU subsidies that harm U.S. workers and manufacturers and to ensure a level playing field.
- The United States has reengaged with the EU on this important dispute and looks forward to making swift and substantial progress.

6. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS  
(WT/DSB/W/609/REV.19)

- The United States is not in a position to support the proposed decision.
- The United States continues to have systemic concerns with the Appellate Body. As Members know, the United States has raised and explained its systemic concerns for more than 16 years and across multiple U.S. Administrations.
- We look forward to further discussions with Members on those concerns.