

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

**Geneva, August 30, 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.218)
    - The United States provided a status report in this dispute on August 19, 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.193)

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

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C. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.156)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- We understand that on August 17, the EU approved seven biotech crops – three for corn, two for soybeans, one for canola, and one for cotton – and issued three renewals for previously authorized crops –two for corn and one for canola. We were pleased to see that the EU had moved to issue approvals for these products.
- However, it is our understanding that there are still approximately eight (8) products for which the European Food Safety Authority (EFSA) has successfully completed a risk assessment, yet which have not received final approval through comitology. This is illustrative of the undue delays in the EU’s biotech approval process.
- 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.
- We also discussed these concerns in our recent EU-US Biotechnology Consultation on Friday, June 18, 2021, a venue intended to normalize trade in biotech products.
- We continue to engage in good faith in those Consultations, and we have provided recommendations on several occasions as to how the EU can address the undue delays in its approval procedures.
- 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.40)

- The United States provided a status report in this dispute on August 19, 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.32)
    - The United States provided a status report in this dispute on August 19, 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.27)

- The United States thanks Indonesia for its overview last month of the adjustments it has made to the laws and regulations that were the subject of the DSB recommendation.
- The United States is reviewing Indonesia's new laws and regulations in light of Indonesia's recent statements and status reports.
- It seems, however, that Indonesia is now in the process of issuing new regulations implementing Law No. 11/2020 on Job Creation that will affect Indonesia's import licensing regimes. In particular, we understand that Indonesia is developing a Presidential Regulation on Commodity Balances, as well as new Ministry of Agriculture and Ministry of Trade regulations.
- We would appreciate further clarity on which regulations now comprise Indonesia's import licensing regimes and on forthcoming regulations that will affect the regimes. To that end, we will engage bilaterally with Indonesia with our questions in order to enable us to better understand Indonesia's efforts to implement the DSB's recommendation.
- 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 informed WTO Members of its implementation.
  - At the prior DSB meeting, the EU once again stated its view that the United States has an “obligation” under Article 21.6 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 “obligation,” despite the fact that several Members – including the European Union – 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 informs the DSB 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.
  - Through its actions, the European Union once again demonstrates that it does not truly believe that there is an “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. Under the next item, we will raise another such dispute.

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 has placed this item on the agenda of today’s meeting to highlight that the European Union has once again not provided Members with a status report concerning the dispute *EC – Large Civil Aircraft* (DS316).
- As Members are aware, on June 15, 2021, the United States and the European Union reached an “Understanding on a cooperative framework for Large Civil Aircraft.” This agreement seeks to forge a more cooperative future by suspending the tariffs related to this dispute for five years, agreeing to clear principles that any financing for the production or development of large civil aircraft will be on market terms, and committing to joint collaboration to address non-market practices in this sector.
- These efforts will help our companies and workers compete fairly, and we welcome the collaboration with our European partners.
- As part of this significant effort to enhance cooperation, the United States intends to discuss its concerns relating to outstanding EU support measures with the European Union bilaterally. We were therefore disappointed to again see the European Union inscribe the preceding agenda item for DS217, and call for a U.S. status report, while not submitting an EU status report for DS316. We have put this item on the agenda as an opportunity for the EU to explain its contradictory approach to the application of Article 21.6 of the DSU.
- In both disputes, the responding party has claimed that it has implemented the DSB recommendation. In both disputes, the complaining party does not agree with that claim.
- But the EU persists in calling for a status report and agenda item for DS217 – where it is the complaining party – while not providing such a report to the DSB in DS316 – where it is the responding party.
- The U.S. position on status reports has been consistent across disputes: 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.
- As noted under the previous item, we consider this understanding to be based on the text of the DSU and reflected in every responding Member’s behavior in other WTO disputes – including the EU’s own behavior.
- The United States will continue to engage bilaterally with the EU on the tension created by its position under these two items. We wish to reinforce our more cooperative relationship and focus our attention on bilateral challenges and opportunities.



4. CHINA – TARIFF RATE QUOTAS FOR CERTAIN AGRICULTURAL PRODUCTS

A. RECOURSE TO ARTICLE 21.5 OF THE DSU BY CHINA: REQUEST FOR THE ESTABLISHMENT OF A PANEL (WT/DS517/20)

- The United States is not in a position to agree with China that it has come into compliance with the DSB recommendations in this dispute.
- To recall, the DSB found that China failed to administer its wheat, rice, and corn TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ under China's Protocol of Accession, to the extent that it incorporates Paragraph 116 of the *Report of the Working Party on the Accession of China*.
- The United States reserved its right to suspend concessions under Article 22.6 of the DSU, and the matter has been referred to arbitration. We have paused that arbitration. We understand that China does not seek further litigation but requested a panel to preserve its rights under Article 21.5 of the DSU.
- The United States is willing to work together with China to reach a resolution to this dispute.
- In its statement, China states that the United States has failed to specify on what basis China's implementation falls short of compliance. The United States is under no obligation to present claims and arguments under this agenda item.
- The United States has engaged bilaterally with China on these issues on a regular and ongoing basis, and we will continue to do so.
- For the purpose of today's meeting, we note the lack of transparency in China's system, which highlights the underlying challenge to the United States and other WTO Members of understanding China's administration of basic import laws and regulations.
- Beyond that, we would simply note that, including because of China's lack of transparency, the TRQ measures notified by China in February 2020 and subsequent TRQ measures published in 2021 do not themselves demonstrate that China now administers its wheat, rice, and corn TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ.
- Indeed, several of the panel's findings were based on the discrepancy between what China's legal instruments stated *would* be done, and what China asserted – during the course of the litigation – *was in fact* done in practice.

8. 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.
- The United States believes that Members must undertake fundamental reform if the system is to remain viable and credible.
- The dispute settlement system can and should better support the WTO's negotiating and monitoring functions.
- We look forward to further discussions with Members on those concerns and to constructive engagement with Members at the appropriate time.