

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

Geneva, September 27, 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.219)
 - The United States provided a status report in this dispute on September 16, 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.194)

- The United States provided a status report in this dispute on September 16, 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.157)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- The EU has previously suggested that, with respect to these delays, the fault lies with the applicants. We disagree; our concerns relate to delays at every stage of the approval process resulting from the actions or inactions of the EU and its member States.
- The United States has described these problems in detail, at nearly every monthly meeting of the DSB since the EU began submitting reports on the status of its implementation.
- While it was welcome to see the EU issue approvals and renewals in August, the persistent delays in the EU’s biotech approval system have yet to be addressed.
- For example, the average approval time for the seven biotech crops approved in August was approximately 72 months (6 years) – from the time that European Food Safety Authority (EFSA) accepted the dossiers for review to the approvals granted last month. One of those products was within the EU’s approval system for over nine years.
- It is our understanding that there are still approximately eight (8) products for which the EFSA has successfully completed a risk assessment, yet which have not received final approval through comitology. Several of those products have also been under EU evaluation since before 2010.
- We continue to engage with the EU in good faith on these issues, 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.41)

- The United States provided a status report in this dispute on September 16, 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.33)

- The United States provided a status report in this dispute on September 16, 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.28)
 - The United States is continuing to review Indonesia’s new laws and regulations in light of Indonesia’s recent statements and status reports.
 - We also reiterate the question we asked last month. It seems that Indonesia is 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.
 - 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. Under the next agenda item, we will discuss a dispute in which the European Union, as a responding party, applies a standard different from the standard it applies to the United States in the present 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.
- 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.

8. STATEMENT BY CHINA REGARDING THE PANEL REPORT IN THE DISPUTE: “UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF CRYSTALLINE SILICON PHOTOVOLTAIC PRODUCTS” (DS562)
- China as a WTO Member has the right to bring a matter to the attention of the DSB. Why China should want to highlight for Members that China is the first complaining party ever to lose a WTO challenge to a safeguard action – or the second, if we count China’s own previous loss in its challenge to the China-specific tires safeguard – is a matter for Beijing alone to consider.
 - But in bringing this matter forward, China should focus on what matters. First, it matters that the WTO panel found the U.S. safeguard to be consistent with WTO rules. We welcome those findings – but cannot pass without mentioning the very high cost of this victory. A thriving U.S. industry was essentially crushed by China’s massive non-market excess capacity – and this formed the factual basis for the U.S. safeguard action. So while we welcome the panel report findings, this dispute demonstrates, perversely, that WTO rules do not effectively constrain China’s damaging non-market behavior.
 - Second, it matters that China, once again, sought to use the WTO dispute settlement system as a vehicle to create new rules that would limit a Member’s ability to defend itself from China’s non-market practices. The United States has expressed grave concerns with Appellate Body interpretations that go well beyond the terms of WTO safeguards rules. But in this dispute, China sought to go even beyond those erroneous interpretations. China encouraged the panel to read Article XIX of the GATT 1994 and the Agreement on Safeguards as creating a procedural minefield with no realistic path for Members seeking to use a safeguard measure for its intended purpose. The Panel rightly rejected every single one of China’s misplaced arguments.
 - China tries to depict the uniform failure of its arguments as evidence that the Panel must have been wrong or that the Panel committed certain missteps. But the Panel’s thorough evaluation demonstrates that it is China that committed fundamental errors in its approach to this case. In particular, China attempted to read the relevant WTO safeguard provisions in a way that is inconsistent with the text of the covered agreements, and in a way that no competent authorities or no Member could ever meet in practice. That, and not some malfeasance by the Panel, is why China lost this dispute.
 - It was China’s burden to establish a prima facie case that the U.S. solar safeguard measure is inconsistent with one of the enumerated provisions of the GATT 1994 or the Agreement on Safeguards. The Panel held China to that burden. It addressed each of China’s arguments, and explained why China failed to discharge that burden in each instance. We will focus on just a few of those rejected arguments in our statement today.
 - Before the panel, China conceded that the U.S. competent authorities correctly found that

the domestic industry was suffering from serious injury. That is beyond dispute, as numerous U.S. producers exited the industry, and remaining producers suffered profitability losses and declining investment. China conceded that imports were increasing from multiple sources, or that import prices were decreasing over the course of the period covered by the investigation. This is exactly the situation that GATT 1994 Article XIX and the Safeguards Agreement were designed to address. And, after a massive investigation with multiple parties and thousands of pages of evidence and arguments, the U.S. International Trade Commission (USITC) found that increased imports caused serious injury.

- In its challenge, China instead sought to avoid the logical implication of these facts by attacking the competent authorities. It asked the Panel to essentially conduct a new investigation and issue a new determination, uncritically accepting the views of Chinese producers and rejecting out of hand any contrary evidence and argument. The Panel correctly rejected this view of its role. In line with the terms of the Safeguards Agreement, it evaluated the report of the competent authorities and whether the report provided findings and reasoned conclusions in support of the ultimate determination. The Panel properly declined to make new findings or a new determination.
- The Panel also correctly focused on the substance of the USITC's findings, and rejected China's efforts to portray Article XIX of GATT 1994 and the Safeguards Agreement as mandating formulaic cookie-cutter approaches to the analysis. You can see a good example of this correct approach in the Panel's handling of whether the United States showed that increased imports were a result of U.S. tariff concessions. There was no dispute that the U.S. bound rate on CSPV solar products was zero, or that the binding prevented the United States from raising tariffs in response to the documented surge in imports. China nonetheless argued that the United States failed to satisfy the obligation because the USITC did not couch its findings in the exact words used in Article XIX. The Panel correctly focused on substance over form, finding that:

the USITC identified the United States' domestic tariff treatment of CSPV products when it observed that CSPV products covered by the safeguard measure "are provided for in subheading 8541.40.60 of the U.S. Harmonized Tariff Schedule [and] have been free of duty under the general duty rate since at least 1987". Although we recognize that this statement does not explicitly establish that such tariff treatment was required under the United States' WTO obligations, we consider that the supplemental report appropriately demonstrates that this was the implication of the USITC's statement.¹

¹ *US – Safeguard Measure on PV Products*, para. 7.53.

- That is exactly what a Panel should do in evaluating a safeguard measure. It should examine the totality of the competent authorities' findings, and not fasten on quibbles over phrasing as excuses to reject their conclusions.
- The United States is disappointed that China has now decided to press onward by appealing the Panel report in spite of overwhelming evidence of the damaging effects of China's non-market practices, instead of focusing its energy on changing those practices that are harming workers and businesses worldwide. Indeed, it is important to recall why the United States imposed the solar safeguard in the first place. The safeguard measure serves to support our domestic industry's efforts to adjust to import competition, after global excess solar cell and module capacity pushed our industry to the brink of extinction. Chinese producers in China and around the world are largely responsible for this excess capacity, fueled by China's non-market practices, which are in direct contradiction to the commitments China made when it joined this organization in 2001. Meanwhile, China's solar industry has attempted to undercut U.S. antidumping and countervailing measures on imports from China for years by shifting operations to other countries.
- The United States will not stand idly by while China continues trying to undermine the solar safeguard measure and to continue harming U.S. solar producers and indeed market-oriented solar producers worldwide.

9. 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.