

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

**Geneva, December 20, 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.222)
    - The United States provided a status report in this dispute on December 9, 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.197)

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

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- 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.
- It is our understanding that there are still approximately eight (8) biotech products for which the EFSA has successfully completed a risk assessment, yet which have not received final approval through comitology.
- 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.
- We appreciate the EU participating in the biannual EU-U.S. Biotechnology Consultations held December 9, 2021 to discuss the approval process for biotechnology products.

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D. UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES ON LARGE RESIDENTIAL WASHERS FROM KOREA: STATUS REPORT BY THE UNITED STATES (WT/DS464/17/ADD.44)

- The United States provided a status report in this dispute on December 9, 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.36)

- The United States provided a status report in this dispute on December 9, 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.31)
    - The United States is continuing to review Indonesia’s new laws and regulations in light of Indonesia’s recent statements and status reports.
    - We have learned that, last month, Indonesia’s Constitutional Court ruled that the Omnibus Law on Job Creation (No. 11/2020) was unconstitutional and ordered the government to revise the law. We question how that ruling affects Indonesia’s implementation of the DSB recommendation concerning measure 18.
    - With respect to measures 1-17, we would still appreciate further clarity on which regulations now comprise Indonesia’s import licensing regimes and on any 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
  - The United States takes note of the European Union’s statement. In that regard, the United States refers to our own prior statements under this agenda item regarding Article 21.6 of the DSU.

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 refers to its previous statements under this agenda item regarding Article 21.6 of the DSU.
- We would simply note today that, 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.”
- We look forward to engaging with our European partners to bring about a more level global playing field.



7. UNITED STATES – ANTI-DUMPING AND COUNTERVAILING DUTIES ON RIPE OLIVES FROM SPAIN

A. REPORT OF THE PANEL (WT/DS577/R AND WT/DS577/R/ADD.1)

- The United States thanks the Panel, and the Secretariat staff assisting it, for their work in this dispute. We acknowledge the Panel’s thorough review of the legal arguments put forward by the parties, and while we are disappointed in certain respects, we welcome the Panel’s findings on key issues in this dispute.
- The EU brought numerous claims regarding antidumping and countervailing duties on ripe olives from Spain, as well as one statutory provision. The Panel rightly rejected many of those claims, including key EU claims relating to injury and so-called “decoupled” payments.
- First, the United States appreciates the Panel’s rejection of all eight claims concerning the U.S. International Trade Commission’s injury determination.
- For example, the Panel agreed with the United States that nothing in Articles 15.1 and 15.2 of the SCM Agreement or Articles 3.1 and 3.2 of the Antidumping Agreement prohibits an investigating authority from paying particular attention to one segment of the domestic industry in its injury analysis. And as a factual matter, the USITC did not exclude certain segments of the domestic industry in its analysis.
- Furthermore, the USITC properly considered whether there was a significant increase in the volume of subsidized and dumped imports, and was not required to make a finding of absolute or relative volume increase, pursuant to Article 15.2 of the SCM Agreement or Article 3.2 of the Antidumping Agreement.
- The Panel also agreed that the USITC considered all of the relevant economic factors having a bearing on the state of the entire domestic industry, established a causal link between subject imports and injury to the domestic industry, and accounted for any injury caused by factors other than subject imports as part of its non-attribution analysis.
- Accordingly, the EU failed to make out its claims under Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement and Articles 3.1, 3.2, 3.4, and 3.5 of the Antidumping Agreement. We are gratified that the Panel agreed, and rejected *all of* the EU’s injury claims. (See, e.g., para. 7.319.)
- Second, we welcome the Panel’s narrow findings with respect to specificity. While we disagree that the U.S. Department of Commerce erred in certain aspects of its factual evaluation, the Panel correctly rejected the EU’s broader challenge regarding the proper interpretation of Article 2 of the SCM Agreement.
- Contrary to certain comments, including in press reports, the Panel has rejected the EU position that so-called “decoupled” agricultural payments cannot be subject to countervailable duties:

- In particular, and contrary to certain characterizations of these findings, the Panel did not find that the Common Agricultural Policy (CAP) programs at issue were outside the scope of the SCM Agreement.
- To the contrary, the Panel rejected the EU's arguments that the legal design of the CAP – in particular, “decoupling” subsidies from current production or basing them on an earlier reference program – means the subsidies conferred cannot be countervailed. (See, e.g., paras. 7.30-7.33, 7.37-7.39, 7.51-7.52, 7.85, and 7.124.)
- In doing so, the Panel similarly rejected the EU argument that decoupled “Green Box” subsidies under the Agreement on Agriculture are not actionable under the SCM Agreement. The Panel found that Article 2.1(a) does not prescribe particular facts or factors that may or may not be taken into account by an investigating authority, or any particular methodology or analytical approach in evaluating that information.
- Thus, on these two core issues in this panel proceeding, injury and countervailing so-called “decoupled” payments, the Panel disagreed with the very premise of the EU's claims.
- We are disappointed with other of the Panel's findings, however, and in particular its findings on a U.S. statute related to the calculation of subsidies for certain processed agricultural products.
- By enacting Section 771B, the U.S. Congress sought to eliminate the possibility that “a foreign nation could avoid U.S. countervailing duty on an agricultural product merely by doing some minor processing of the agricultural product before it is exported to the United States”.<sup>1</sup> The United States is evaluating the Panel's findings with a view to ensure that countervailing duties account for the economic realities of trade in raw agricultural products and processed downstream products.
- Mr. Chairman, although the United States is disappointed with certain of the Panel's findings, on balance, we have decided to permit the report to be adopted today. We take this step in light of all the circumstances, including the overall quality of the Panel report and our desire to work with the European Union to resolve this dispute.
- We thank Members for their attention to this statement.

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<sup>1</sup> See 133 Congressional Record S8814 (Exhibit USA-9) at S8815. See also Issues and Decision Memo for Final Determination C-469-818 (Exhibit EU-2), p. 23.

8. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS  
(WT/DSB/W/609/REV.20)

- 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 support rather than undermine the WTO's negotiating and monitoring functions.
- We look forward to further discussions with Members on these important issues.