

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

**Geneva, July 26, 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.217)

- The United States provided a status report in this dispute on July 15, 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.192)

- The United States provided a status report in this dispute on July 15, 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.155)

- 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.
- 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.
- While we appreciate the EU’s comments in the June DSB meeting regarding the intent of its new Transparency Regulation, we fail to see how raising that initiative addresses the undue delays within the EU’s approval process.
- We also believe it is inaccurate to imply that the delays in the EU’s approval process are unrelated to the DSB’s findings.
- To date, there are still approximately fifteen (15) products for which the European Food Safety Authority (EFSA) has successfully completed a risk assessment. Four (4) of these products have been under evaluation since at least 2008.
- Despite receiving positive opinions in EFSA’s risk assessment process, all of these products remain stalled in the EU’s comitology process and have not received final approval.
- Thus, we would ask the EU for further information. When will 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? And on what date can we expect the College of Commissioners to vote on these products?

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.39)

- The United States provided a status report in this dispute on July 15, 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.31)

- The United States provided a status report in this dispute on July 15, 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.26)

- 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 statements last month and in its status report of July 15.
- 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 recommendations.
- 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.
- Even aside from this, it is evidently not a trade rationale or cooperation that is driving the EU’s approach to inscribing this agenda item month after month. Based on our independent review of the applicable EU regulation, it appears the EU currently applies a tiny additional duty of 0.1 percent on certain imports of the United States.
- At the prior 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 – 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’s recommendations.
- The widespread practice of Members – including the European Union as a responding party – confirms this understanding of Article 21.6.
- At recent meetings, three 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.
- 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 most recent DSB meeting, the EU argued once again that the circumstances between DS472 and the present dispute are “entirely different,” but we have heard no articulation based in the DSU text that would justify the inconsistent positions.

- 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. 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.

6. 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 DSB adopted its recommendation to China to bring its measures into conformity with its WTO obligations in May 2019. Since then, China has – among other things – continued to administer its wheat, rice, and corn TRQs in a non-transparent and unpredictable manner.
- Not only is the public process by which China administers its TRQs non-transparent, but China also has refused U.S. requests for additional information that would allow the United States to better understand how these TRQs have been administered in practice.
- Without such transparency, which most WTO Members provide as a matter of good governance, and to promote market-oriented agricultural trade, the United States and other WTO Members are left without the basic information necessary to assess China's compliance with fundamental WTO obligations.
- 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 have referred to the lack of transparency in China's system to highlight 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.

- Furthermore, contrary to the position taken by China, nothing in the DSU supports the view that an Article 22.6 arbitration proceeding must be suspended while the corresponding Article 21.5 proceedings are ongoing.
- Members have at times agreed through *voluntary* agreements on the sequencing of proceedings or otherwise to conduct proceedings in such an order, but as Members are well aware, this is not required under the DSU. In some disputes, an agreement provides for the completion of a 21.5 compliance proceeding before a Member may request authorization to suspend concessions or other obligations. In others, the parties agree that, once a Member requests authorization pursuant to Article 22.2 and the responding Member objects, the arbitration can be suspended to permit Article 21.5 proceedings to occur.
- Where no sequencing agreement has been reached between the parties, as is the case here, a complaining member must request authorization to suspend concessions or other obligations within the time frame specified in Article 22.6 of the DSU or risk prejudicing its rights to do so at a later date. Accordingly, in this proceeding, the United States has done so in a timely manner.
- Regrettably, the United States cannot at this time confirm China's assertion of compliance with the DSB's recommendations in this dispute.
- That said, the United States stands ready to work constructively with China to reach a resolution to this dispute, as we have done since adoption of the panel report.
- For these reasons, the United States is not in a position to agree to the establishment of a compliance panel.

7. 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.