

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. UNITED STATES - SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998: STATUS REPORT BY THE UNITED STATES (WT/DS176/11/ADD.122)

- The United States provided a status report in this dispute on January 17, 2013, in accordance with Article 21.6 of the DSU.
- Legislation has been introduced in the current Congress to implement the recommendations and rulings of the DSB.
- The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings.

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B. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.122)

- The United States provided a status report in this dispute on January 17, 2013, 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 antidumping margins in the hot-rolled steel antidumping duty investigation at issue in this dispute.
- With respect to the recommendations and rulings of the DSB that have yet to be addressed, the U.S. Administration will work with the U.S. Congress with respect to appropriate statutory measures that would resolve this matter.

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C. UNITED STATES - SECTION 110(5) OF THE US COPYRIGHT ACT:  
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.97)

- The United States provided a status report in this dispute on January 17, 2013, in accordance with Article 21.6 of the DSU.
- The U.S. Administration will continue to confer with the European Union, and to work closely with the U.S. Congress, in order to reach a mutually satisfactory resolution of this matter.

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D. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.60)

- The United States would like to thank the EU for its status report and its statement today.
- The United States continues to have serious concerns regarding EU measures affecting the approval of biotech products.
- As the United States noted at the December meeting of the DSB, delays in approvals for biotech products frequently result from the failure of EU regulatory officials to take action on biotech products that have received positive safety assessments from the European Food Safety Authority (EFSA).
- For example, EFSA published positive opinions for a new biotech soy event and a new corn event last October and November, respectively. The next steps in the EU's process are the preparation of appropriate regulatory measures based on the safety assessment, and the presentation of these measures to a regulatory committee.
- The regulatory committee, however, has not met since September 2012, and no meeting was held this month. Accordingly, the consideration of these products has been delayed.
- We urge the EU to prepare the appropriate regulatory measures for all products that have received positive EFSA assessments, and to present these measures to the regulatory committee in February.
- Unless the EU takes steps to address delays in its biotech approval system, a backlog of over 70 applications for new or renewed approval will continue to grow.
- There will also continue to be a growing number of products that are approved by and produced in other Members, but that are still awaiting approval in the EU system.

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E. UNITED STATES - ANTI-DUMPING ADMINISTRATIVE REVIEWS AND OTHER MEASURES RELATED TO IMPORTS OF CERTAIN ORANGE JUICE FROM BRAZIL: STATUS REPORT BY THE UNITED STATES (WT/DS382/11/ADD.13)

- The United States provided a status report in this dispute on January 17, 2013.
- Pursuant to the sequencing agreement between Brazil and the United States,<sup>1</sup> the United States is ready to engage with Brazil should it have any further questions regarding this matter.

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<sup>1</sup> WT/DS382/11.

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G. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.9)

- The United States provided a status report in this dispute on January 17, 2013, in accordance with Article 21.6 of the DSU.
- In February 2012, the U.S. Department of Commerce published a modification to its procedures in order to implement the DSB recommendations and rulings regarding the use of “zeroing” in antidumping reviews. This modification addresses certain findings in this dispute.
- On June 28, 2012, the United States Trade Representative requested pursuant to section 129 of the Uruguay Round Agreements Act that the Department of Commerce take action necessary to implement the DSB recommendations and rulings in this dispute.
- The United States will continue to consult with interested parties as it works to address the recommendations and rulings of the DSB.

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H. PHILIPPINES - TAXES ON DISTILLED SPIRITS: STATUS REPORT BY THE PHILIPPINES (WT/DS396/15/ADD.3 - WT/DS403/15/ADD.3)

- The United States thanks the Philippines for its status report and its statement today.
- We are pleased at the efficient work by the Philippines in undertaking this reform, and we appreciate the Philippines' commitment to taking steps to implement the DSB's recommendations and rulings in this dispute.
- The new tax system eliminates the use of raw material type as a basis for applying different tax rates to distilled spirits, which is an excellent step forward. This had been the means by which the original Philippines measures provided less favorable treatment to imported distilled spirits.
- Because the new tax system has only been in place for a few weeks, we are continuing to closely watch its implementation. However, we are hopeful that it will result in full implementation of the DSB's recommendations and rulings.

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I. CHINA - MEASURES RELATED TO THE EXPORTATION OF VARIOUS RAW MATERIALS: STATUS REPORT BY CHINA (WT/DS394/19/ADD.1 - WT/DS395/18/ADD.1 - WT/DS398/17/ADD.1)

- The United States thanks China for its status report and statement today.
- As we have explained in previous DSB meetings, China's full implementation of the DSB recommendations and rulings with respect to China's trade-distorting export restraints is of major importance to the United States and other Members.
- The recommendations and rulings that were adopted by the DSB in this dispute are significant for a number of reasons. They affirm a clear and unequivocal commitment to eliminate export duties that China made to all WTO Members when it acceded to the WTO. And they make clear that measures sought to be justified under Articles XX(b) and XX(g) must be legitimately aimed at protecting health and the environment or conserving natural resources – not measures aimed at providing economic advantages to domestic users of raw materials.
- As such, the United States is encouraged that China appears to have eliminated the export duties and export quotas on the products at issue in this dispute as of January 1. The United States welcomes this action as a significant positive step towards compliance with China's WTO obligations. China's action also represents an important achievement for the creation of a level playing field for U.S. industry, and for supply chains throughout the global marketplace.
- We are also pleased that we were able to reach an understanding with China on procedures to be followed under Articles 21 and 22 of the DSU for purposes of this dispute. That document has been circulated to WTO Members as WT/DS394/20.
- At the same time, however, the United States is concerned that China continues to impose a licensing requirement on the export of products at issue in this dispute, which could potentially act as an export restriction.
- We have already discussed this issue with China, and we appreciate the information that China has provided to date. However, we will be engaging further with China to understand the purpose of its licensing requirements and to receive detailed information about the operation of these requirements in practice.
- The United States considers it critical to ensure that the significant findings in this dispute, and the steps China has taken to implement them, are not otherwise undermined.



To that end, we will continue to monitor actions that operate to restrict exports of raw materials at issue in this dispute.

- The United States would also urge China to eliminate its export restraints on the rare earths, tungsten, and molybdenum products that are subject to the second raw materials dispute the United States initiated earlier this year.
- Given the important systemic issues raised in this dispute, the United States hopes that China will rethink its continued widespread use of export restraints, thereby building upon the positive actions it has taken in this dispute.

### Second Intervention

- Thank you to the delegate from China for that intervention. As we mentioned in our initial statement in this matter, we did note some of the positive steps taken and that the additional information provided was appreciated. However, I want to make one quick comment: We do not agree with the assessment of China that the issue of export licensing is a moot one. We continue to have concerns about some of the materials at issue that appear to be subject to the import licenses and we look forward to continuing to engage with China on these issues.

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J. UNITED STATES - MEASURES AFFECTING THE PRODUCTION AND SALE OF CLOVE CIGARETTES: STATUS REPORT BY THE UNITED STATES (WT/DS406/11/ADD.1)

- The United States provided a status report in this dispute on January 17, 2013, in accordance with Article 21.6 of the DSU.
- As noted in the status report, U.S. authorities are conferring with interested parties and working to implement the recommendations and rulings of the DSB in a manner that is appropriate from the perspective of the public health.

2. UNITED STATES - CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. STATEMENTS BY THE EUROPEAN UNION AND JAPAN

- The United States thanks Members for their statements under this agenda item. With respect to comments regarding further status reports, as we have already explained at previous DSB meetings, the United States has taken all actions necessary to implement the DSB's recommendations and rulings in this disputes.
- In particular, the President signed the Deficit Reduction Act into law on February 8, 2006. That Act includes a provision repealing the Continued Dumping and Subsidy Offset Act of 2000.
- We therefore do not understand the purpose for which the EU and Japan have inscribed this item today and fail to see what purpose would be served by further submission of status reports repeating again the progress that the United States has made in the implementation of the DSB's recommendations and rulings in these disputes.

### 3. ARGENTINA - MEASURES AFFECTING THE IMPORTATION OF GOODS

- A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION (WT/DS438/11)
- B. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS444/10)
- C. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN (WT/DS445/10)

- On August 21, 2012, the United States requested consultations with Argentina regarding Argentina's broad use of non-automatic licensing measures – both product-specific licensing measures and a licensing measure applicable to all goods. Argentina uses these measures, together with requirements to undertake trade balancing or similar commitments, to restrict the importation of goods.
- After attempts to resolve our concerns through dialogue with Argentina, the United States requested that the DSB establish a dispute settlement panel at the December DSB meeting.
- As explained in that request for the establishment of a panel, and as discussed at the December meeting, Argentina's licensing measures are non-transparent and discretionary and serve to restrict imports from the United States and other Members, in breach of various provisions of the GATT1994 and the Import Licensing Agreement.
- Accordingly, the United States today requests for a second time that the DSB establish a panel to examine the matter set out in the U.S. panel request, with standard terms of reference. As the panel requests of the EU and Japan relate to the same matter, the United States requests pursuant to Article 9.1 of the DSU that a single panel be established to examine these complaints.

#### Second Intervention

- The United States understands that Argentina has only very recently issued a resolution that purports to repeal the product-specific non-automatic import license requirement, which is one of the measures that are the subject of this panel request. We appreciate the additional information provided by Argentina this morning and look forward to examining this information closely.

#### Third Intervention

- Just to clarify that we would like to associate ourselves with the comments by the EU and Japan with respect to standard terms of reference. With respect to the purported repeal of the measure, we appreciate the information provided but are not in a position to share Argentina's assessment. While we appreciate their information, we are not in a position to deviate from the standard terms of reference.

4. UNITED STATES - MEASURES AFFECTING THE IMPORTATION OF ANIMALS, MEAT AND OTHER ANIMAL PRODUCTS FROM ARGENTINA

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY ARGENTINA (WT/DS447/2)

- U.S. measures with respect to the importation of animals, meat and other animal products from Argentina are fully compliant with the obligations of the United States under the WTO Agreements.
- Furthermore, U.S. regulatory authorities are currently engaged in the process of evaluating sanitary issues related to Argentina's products that are the subject of this request.
- Unfortunately, despite these developments, it appears that Argentina has chosen to prioritize litigation over cooperation in moving forward the regulatory process.
- The United States is disappointed that Argentina has taken this action and has chosen to request the establishment of a panel for a second time.
- We understand that a panel will likely be established today, and we are ready to defend our measure in these proceedings.

5. UNITED STATES - ANTI-DUMPING MEASURES ON CERTAIN FROZEN WARMWATER SHRIMP FROM VIET NAM

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY VIET NAM  
(WT/DS429/2/Rev.1)

- We are disappointed that Vietnam has chosen to move forward with a request for panel establishment today.
- The United States has been encouraged by our ongoing dialogue with Vietnam over the past months, a dialogue that has been aimed at reaching a mutually agreed solution to this dispute as well as DS404.
- We continue to hope that such a solution is possible, and we remain prepared to work together with Vietnam toward that end.
- Accordingly, the United States urges Vietnam to reconsider its decision to pursue a panel in this dispute, and we are not in a position to agree to the establishment of a panel at this time.
- In conclusion, I would like to make a few remarks about DS404, as that dispute was referenced repeatedly in Vietnam's statement. The DSB's findings and recommendations in that dispute raised novel and complex issues that we must take time to address properly.
- As with DS429, we have also been discussing implementation issues related to this dispute bilaterally with Vietnam and look forward to continuing our dialogue with the aim of resolving this dispute.

## 6. UNITED STATES - MEASURES AFFECTING THE CROSS BORDER SUPPLY OF GAMBLING AND BETTING SERVICES

### A. RECOURSE TO ARTICLE 22.7 OF THE DSU BY ANTIGUA AND BARBUDA (WT/DS285/25)

- The United States is disappointed with Antigua and Barbuda's misplaced decision to abandon constructive settlement discussions and to pursue authorization to suspend concessions or other obligations under Article 22.7 of the DSU. This course will not achieve a positive outcome for the Antiguan economy or people and will make resolution of this longstanding matter more difficult.
- The United States fundamentally disagrees with Antigua's characterization of the status of this dispute and with U.S. efforts to reach a solution. As recently as Friday, we understood our two countries to be making progress on a settlement that would bring real benefits to Antigua.
- Throughout this process, the United States has urged Antigua to seek solutions that would benefit its broader economy. However, Antigua has stymied any progress toward finding common ground by insisting that the United States must not modify its schedule under the *General Agreement on Trade in Services* (GATS).
- As the United States has explained in the past, the United States never intended gambling and betting services to be included in its schedule under the GATS. This was the U.S. understanding of its own schedule. However, as a result of ambiguities in drafting, and despite the intent of the U.S. negotiators, the Appellate Body ultimately found that the U.S. schedule must be construed as including a market access commitment for cross-border gambling.
- Although the United States finds this outcome difficult to understand and highly unfortunate, the United States has accepted the results of the dispute settlement system.
- The United States has responded to this finding responsibly, and in a manner that involves substantial costs for the United States. As the United States previously notified the DSB and the Council on Trade in Services, the United States has invoked the established, multilateral procedures for modification of its GATS schedule of concessions.
- In May 2007, the United States initiated the modification procedure under Article XXI of the GATS so as to reflect the original U.S. intention to exclude gambling from the scope of U.S. commitments.
- Pursuant to the GATS procedures, the United States reached agreement with all interested Members, except one, on a package of substantial compensatory adjustments to



the U.S. GATS schedule.

- Only one single Member, out of the entire WTO membership, will not accept compensatory service concessions. That Member is Antigua.
- Instead of respecting the WTO process under Article XXI, Antigua insists that the United States must maintain its unintentional concession on gambling, and that the United States must change its domestic policies concerning public morals and public order so as to allow internet gambling.
- Despite this unreasonable and unrealistic demand, the United States has gone to great efforts to meet Antigua's concerns. Over a course of years, the United States has devoted substantial resources to settlement discussions. The United States has met repeatedly with Antigua at all levels of government, from the ministerial to the technical level.
- Based on specific requests made by Antigua, the United States has offered real and substantial benefits that would make important contributions to the further development of the Antiguan economy.
- At times, it has appeared that Antigua has been on the verge of accepting these benefits and putting this dispute behind us.
- At other times, however, as appears to be the case today, Antigua reverts to its unrealistic demands that the United States forego the modification of its schedule under the GATS.
- Moreover, Antigua today is taking the additional step of seeking authorization to suspend concessions with respect to intellectual property rights.
- The United States views this step as fundamentally at odds with the current status of this matter. It is Antigua's actions in refusing to engage in the Article XXI process, and not the actions of the United States, that are preventing the final resolution of this matter.
- Moreover, if Antigua does proceed with a plan for its government to authorize the theft of intellectual property, it would only serve to hurt Antigua's own interests. Government-authorized piracy would undermine chances for a settlement that would provide real benefits to Antigua. It also would serve as a major impediment to foreign investment in the Antiguan economy, particularly in high-tech industries.
- In closing, we note that Antigua has stated that it will not seek to implement a suspension at this time and that it will provide details on its plans to the DSB at a later time.
- Accordingly, as Antigua has acknowledged in its statements to the DSB and in its request before the DSB today, consistent with the terms of the December 2007 Decision by the

Arbitrator, Antigua will provide to the DSB an explanation of how it proposes to apply any suspension and how it will ensure that the level of the proposed suspension does not exceed the level authorized by the DSB; that explanation must be provided prior to applying the suspension that is being authorized today.

- As noted, however, implementing suspension of intellectual property rights is counter to Antigua's own interests, and Antigua should reconsider before taking this extraordinary and unprecedented step.

## 7. STATEMENT BY BRAZIL REGARDING REQUESTS FOR PRELIMINARY RULINGS

- The United States would like to thank Brazil for drawing this issue to the attention of Members. If Members are interested, we would be willing to engage in discussions with others in order to consider the issues raised and possible responses.
- As a general matter, the United States would agree that third parties should receive any request for a preliminary ruling, as well as related submissions, if they are made prior to the first meeting of the panel with the parties. The United States considers that this is part of the right conferred under Article 10.3 of the DSU.
- The DSU, and Article 10.2 in particular, however, does not address the specific question of whether third parties should be given the opportunity to submit comments with respect to preliminary ruling requests when the panel decides to resolve a particular issue through a preliminary process in advance of the parties' first written submissions and in advance of the third party submissions.
- However, a panel that has decided to address an issue through a preliminary process may also decide to afford third parties such an opportunity to comment, and the United States considers that it would be in most cases be helpful to do so, to enable the panel to benefit from the views of the third parties on the issues that are raised.