

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

Geneva, September 30, 2019

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.199)
 - The United States provided a status report in this dispute on September 19, 2019, 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 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.

7. UKRAINE – ANTI-DUMPING MEASURES ON AMMONIUM NITRATE

A. REPORT OF THE APPELLATE BODY (WT/DS493/AB/R, AND WT/DS493/AB/R/ADD.1) AND REPORT OF THE PANEL (WT/DS493/R; WT/DS493/R/ADD.1 AND WT/DS493/CORR.1)

- The United States wishes to raise an important systemic concern. The United States considers that very serious issues are raised by the failure of the Appellate Body to follow the mandatory 90-day deadline in Article 17.5 of the DSU and the continued service on this appeal of an individual who ceased to be a member of the Appellate Body during the appeal, including with respect to the status of such a report.
- As the document has not been issued by three Appellate Body members and was not issued within 90 days, consistent with the requirements of Article 17 of the DSU, it is not an “Appellate Body report” under Article 17, and therefore it is not subject to the adoption procedures reflected in Article 17.14.
- For this item, we do not understand any party to oppose adoption of the reports, nor has any other WTO Member raised an objection. The aim of the dispute settlement system is to find a positive solution to the dispute. As neither party to the dispute has objected, we understand that the parties consider that adoption of the reports would assist them in finding a positive solution. We would seek to support the parties’ interests on this issue. Therefore, there is a consensus to adopt the reports before the DSB today.

8. KOREA – ANTI-DUMPING DUTIES ON PNEUMATIC VALVES FROM JAPAN
 - A. REPORT OF THE APPELLATE BODY (WT/DS504/AB/R AND WT/DS504/AB/R/ADD.1) AND REPORT OF THE PANEL (WT/DS504/R AND WT/DS504/R/ADD.1)
 - The United States wishes to raise an important systemic concern. The United States considers that very serious issues are raised by the failure of the Appellate Body to follow the mandatory 90-day deadline in Article 17.5 of the DSU, and the continued service on this appeal of an individual who ceased to be a member of the Appellate Body during the appeal, including with respect to the status of such a report.
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 - For this item, we do not understand any party to oppose adoption of the reports, nor has any other WTO Member raised an objection. The aim of the dispute settlement system is to find a positive solution to the dispute. As neither party has objected, we understand that the parties consider that adoption of the reports would assist them in finding a positive solution. We would seek to support the parties’ interests on this issue. Therefore, there is a consensus to adopt the reports before the DSB today.

10. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS
(WT/DSB/W/609/REV.14)

- The United States thanks the Chair for the continued work on these issues.
- As we have explained in prior meetings, we are not in a position to support the proposed decision.
- The systemic concerns that we have identified remain unaddressed.
- As the United States has explained at recent DSB meetings, for more than 16 years and across multiple U.S. Administrations, the United States has been raising serious concerns with the Appellate Body's overreaching and disregard for the rules set by WTO Members.
- The United States will continue to insist that WTO rules be followed by the WTO dispute settlement system, and will continue our efforts and our discussions with Members and with the Chair to seek a solution on these important issues.

Second Intervention

- We have listened closely as several Members have criticized the United States. These Members argue that the United States has failed to participate in ongoing discussions on Appellate Body reform.
- As explained at past meetings of the DSB, these statements are wrong. The facts establish that no Member has been more constructively and consistently engaged on these substantive issues than the United States.
- The United States continues, as it has always done, to be engaged on these important substantive issues, including by meeting regularly with the Facilitator and Members to exchange views on the issues under discussion.
- Indeed, for several months, both within the Informal Process and outside, the United States has actively sought engagement from Members on what we believe to be a fundamental issue. That is, how have we come to this point where the Appellate Body, a body established by Members to serve the Members, is disregarding the clear rules that were set by those same Members. In other words, Members need to engage in a deeper discussion of *why* the Appellate Body has felt free to depart from what Members agreed to.
- Engagement is a two-way street. Without further engagement from WTO Members on the cause of the problem, there is no reason to believe that simply adopting new or additional language, in whatever form, will be effective in addressing the concerns that the United States and other Members have raised.

11. CANADA-EUROPEAN UNION INTERIM APPEAL ARBITRATION
ARRANGEMENT PURSUANT TO ARTICLE 25 OF THE DSU (JOB/DSB/1/ADD.11)

A. JOINT PRESENTATION BY CANADA AND THE EUROPEAN UNION

- We would first note that Members have the right to use DSU Article 25 arbitration to resolve their disputes. And indeed, the United States was one of the parties to the only instance to date in which Article 25 arbitration was used.
- However, the proposal presented today raises a number of systemic and practical concerns.
- The proposal explicitly states that the intent is “to replicate as closely as possible all substantive and procedural aspects *as well as the practice* of Appellate Review pursuant to Article 17 of the DSU.”
- In other words, Canada and the EU do not see any problem with the Appellate Body practice at all. This proposal demonstrates that, despite the fact that the Appellate Body through its practice has repeatedly breached the rules set by WTO Members, Canada and the EU appear to endorse and legitimize those breaches.
- This is confirmed, for example, by the fact that the proposal says that any arbitration award should be treated like an Appellate Body report “for purposes of interpretation.” Despite all of the discussion in the General Council and the DSB that the DSU has no system of precedent, Canada and the EU’s approach to “interpretation” demonstrates that these Members want binding precedent and would seek to require arbitrators to act inconsistently with the WTO Agreement.
- Apparently, more than one year of discussion of our agreed WTO rules on dispute settlement have brought us no closer to a shared understanding of what the plain words mean. This raises the grave concern that, not only does the Appellate Body not respect the rules as written, but those WTO Members do not *want* the rules to be respected as written. How can this attitude be consistent with a rules-based trading system?
- The proposal contains a number of legal flaws and elements that may not be workable, such as publication of a panel report that is not a panel report. Further, there is no basis for the Secretariat assigned to the Appellate Body to work instead on arbitrations as if these proceedings constituted the activity of a parallel Appellate Body.
- The United States continues to consider that the way forward is to understand and recognize the concerns that have been raised with the Appellate Body, and engage in a deeper discussion of *why* the Appellate Body has felt free to depart from what Members agreed to, so that appropriate solutions can be found.