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

Geneva, December 19, 2025

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

    1. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.266)

- The United States provided a status report in this dispute on December 8, 2025, 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

2. UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT: STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.241)

- The United States provided a status report in this dispute on December 8, 2025, 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

3. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.204)

- The United States thanks the European Union ("EU") for its status report and its statement today.

- We continue to engage with the EU on these issues, and we continue to provide recommendations as to how the EU can address the undue delays in its approval procedures.

- The United States has described these problems in detail and noted our concerns with the EU's biotech approval procedures monthly in the DSB and during the semiannual US-EU biotech consultations, the most recent of which occurred in November 2024.

- We note that, since the start of 2025, the Commission has granted only five product approvals. We understand that the European Food Safety Authority (EFSA) issued five opinions within the last few weeks, and we look forward to the Commission's timely action to approve or reapprove these products.

- We also understand that several products are still pending action by the Commission following a vote of "no opinion" at the Appeals Committee.

- We again request that the EU move to issue final approvals for all products that have completed science-based risk assessments at the EFSA, including those products that are with the Standing Committee and Appeals Committee.

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

4. UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES ON LARGE RESIDENTIAL WASHERS FROM KOREA: STATUS REPORT BY THE UNITED STATES (WT/DS464/17/ADD.88)

- The United States provided a status report in this dispute on December 8, 2025, 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

5. UNITED STATES – CERTAIN METHODOLOGIES AND THEIR APPLICATION TO ANTI DUMPING PROCEEDINGS INVOLVING CHINA: STATUS REPORT BY THE UNITED STATES (WT/DS471/17/ADD.80)

- The United States provided a status report in this dispute on December 8, 2025, 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

6. INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS: STATUS REPORT BY INDONESIA (WT/DS477/21 – WT/DS478/22/ADD.75)

- The United States continues to have concerns with Indonesia's compliance with the DSB's recommendations.

- We look forward to finalizing the Agreement on Reciprocal Trade with Indonesia and to Indonesia's implementation of the commitments expressed in the Joint Statement of July 22, 2025, through which Indonesia has committed to address U.S. concerns with its import licensing regimes, including commodity balance requirements.

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

2.1. RECOURSE TO ARTICLE 22.7 OF THE DSU BY THE EUROPEAN UNION (WT/DS577/23)

- The United States thanks the members of the Arbitrator for their work in this proceeding. While we agree with several aspects of the Arbitrator's reasoning, the United States has concerns with aspects of the Arbitrator's decision that underlie the EU's request pursuant to Article 22.7 of the DSU. In this statement, we draw attention to one aspect in particular.

- Specifically, although the EU is the WTO Member that brought the dispute, and the EU is the Member that requested authorization from the DSB, the Arbitrator nonetheless calculated the level of nullification and impairment for one sub-component of the EU in isolation – Spain. We disagree with the Arbitrator's approach which, as we will explain, necessarily affects the manner in which any countermeasures may be applied.

- Article 22 of the DSU lays out the process for requesting authorization to impose countermeasures and for challenging such a request. The text sets out that the level of suspension of concessions or other obligations must be equivalent to the level of nullification or impairment of benefits accruing to the WTO Member that invoked the dispute settlement procedures.

- Specifically, Article 22.2 of the DSU allows a "party having invoked the dispute settlement procedures [to] request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements."[1] Under Articles 22.2, 22.4, 22.6, and 22.7, the scope of the Arbitrator's nullification and impairment analysis, which determines the limit for countermeasures, is tied to the party that invoked the dispute settlement procedures. Here, that party is the EU, not Spain.

- Accordingly, under Article 22.4 of the DSU, "[t]he level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of nullification or impairment" of benefits accruing to the EU, not to Spain.

- Despite "how the European Union formally chose to bring this case"[2] (namely, through action by the EU, not by Spain), the Arbitrator limited its evaluation of nullification and impairment to Spain, in isolation. This evaluation has consequences. The United States understands the Arbitrator's approach necessarily to permit the imposition of countermeasures on imports of goods into Spain only, as is evident from the Arbitrator's decision.

- In reaching its conclusion, the Arbitrator focused on the "clear link between the right to suspend concessions and the measures that were found to be WTO-inconsistent,

[1] DSU, Art. 22.2.
[2] WT/DS577/ARB, para. 5.14.

including the scope of such WTO-inconsistent measures."[3] It accordingly identified two relevant "legal circumstances": (1) both the EU "and Spain are individual WTO Members in their own right" and (2) "the United States imposed WTO-inconsistent CVDs on ripe olives from Spain only."[4]

- Those two legal circumstances led the Arbitrator to conclude: "Considering the fact that the WTO-inconsistent measure was imposed on one of the EU member States, Spain, which is a WTO Member in its own right, and considering also the link that exists in the DSU between the right to suspend concessions and the scope of the measures found to be WTO-inconsistent, we deem it appropriate to calculate the level of [nullification or impairment] with respect to Spain only."[5] Thus, the Arbitrator's finding that nullification and impairment should be measured for Spain only – and not the EU as a whole – was based on the fact that Spain is, itself, a WTO Member.

- But this understanding would *also* mean that Spain, the only WTO Member whose nullification and impairment was assessed, is also the *only* WTO Member that could apply countermeasures not in excess of its nullification or impairment.

- The Arbitrator rejected the U.S. argument that because the EU had asserted the right to impose countermeasures, the nullification and impairment should be assessed for the EU as a whole, and not for Spain, in isolation.[6] The Arbitrator did not make any findings on the question of whether the DSU allows the EU to impose countermeasures across all of its member State markets, including those that suffered no nullification or impairment, for measures that are directed at a single member State.

- The Arbitrator's decision should be properly understood as allowing the EU, due to its unique political structure, to submit requests for the authorization of countermeasures to the DSB *on behalf of* any of its member States. But if nullification or impairment is assessed for only one of its member States, and not the EU as a whole, then the authorization must be understood to relate to that member State suffering the nullification or impairment.

- Any alternative reading of the Arbitrator's report would run afoul of the DSU rule that the "level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of nullification or impairment."[7] This is because the other EU member States, which are WTO Members in their own rights,[8] would nonetheless be entitled to impose countermeasures, even if those EU member States may have benefitted from the challenged measure, and thus suffered no nullification or impairment.

- This is evident from the circumstances in the ripe olives dispute. In this dispute, the EU made clear in its submissions that the rest of the EU, aside from Spain, *benefitted* from

[3] WT/DS577/ARB, para. 5.19.
[4] WT/DS577/ARB, para. 5.8.
[5] WT/DS577/ARB, para. 5.21.
[6] *See* WT/DS577/ARB, paras. 5.22, 5.23.
[7] DSU, Art. 22.4.
[8] *See* WT/DS577/ARB, paras. 5.21, 5.10.

the measures at issue and saw an increase in exports of ripe olives to the United States during the relevant time period.[9] In other words, other ripe olive exporting EU member States stepped in to capture U.S. market share from impacted Spanish exporters.

- If the EU imposed countermeasures across all EU member States, or any EU member State other than Spain, the Arbitrator's decision would be misunderstood to permit countermeasures in excess of the nullification or impairment for each member State other than Spain.

- For example, an EU member State that actually shipped *more* olives to the United States because of the CVD measure – like Greece – could impose countermeasures on U.S. goods entering its market, based on a calculation that only examined the trade impacts on another member State in isolation – that is, Spain.

- The DSU precludes such an outcome which would uniquely advantage the EU over all other WTO Members. Otherwise, the EU could bring a dispute, limit the calculation of nullification or impairment to only an impacted sub-market, but then impose countermeasures on goods entering any of its member States. Those EU member States could then impose countermeasures regardless of whether they were affected by, or even if they benefited from, the measure at issue.

- In sum, the United States maintains that the correct interpretation of the DSU requires nullification and impairment to be measured with respect to the WTO Member that has invoked dispute settlement and requested authorization to suspend concessions.

- In light of the Arbitrator's decision to assess nullification or impairment only with respect to Spain, and not the EU as a whole, then consistent with the requirement of the DSU that level of suspension may not exceed a Member's nullification or impairment, the Arbitrator's decision must be understood to limit the suspension of concessions to goods entering into Spain.

- Were the EU to apply a suspension of concessions or obligations with respect to any other goods, the United States would not consider that suspension to be consistent with the Arbitrator's decision or the DSU.

[9] *See, e.g.*, EU Methodology Paper, Table 1.

3. APPELLATE BODY APPOINTMENTS: PROPOSAL BY SOME WTO MEMBERS (WT/DSB/W/609/REV.26)

- The United States does not support the proposed decision.

- Our fundamental concerns with WTO dispute settlement have not been addressed and, as we have documented, the manner in which it departed from the plain text agreed by Members has exacted real costs on U.S. interests.[10]

- We also question the value of repeating this agenda item.

- If the aim of this agenda item is to achieve a reformed WTO dispute settlement system, then how does repeating it for a ninety-third time, after failing ninety-two times, advance that aim?

- Repeating the item yet again suggests a lack of seriousness about fixing the fundamental problems that are necessary to a viable, reformed WTO dispute settlement system.

- A more productive approach in this forum would be to introduce an item on dispute settlement reform that does not simply call for restoring an Appellate Body with all of its attendant, fundamental problems.

Second Intervention

- We would like to make one further point in response to the interventions we just heard that tout the Multiparty Interim Appeal Arbitration Arrangement (MPI-AAA) for preserving access to appellate review.

- In particular, we recall the recent interventions by certain MPI-AAA members criticizing aspects of the most recent MPI-AAA arbitrator's award – namely, the arbitrator's interpretation of certain obligations under the TRIPS Agreement.

- One MPI-AAA member noted that the MPI-AAA arbitrator had replaced the panel's interpretation of the plain language of the TRIPS Agreement with a "'corollary' theory" that is not based on the text of the agreement and that "mak[es] up new rights and obligations out of whole cloth." In "making up new rights and obligations" the interpretation threatens "confusion and uncertainty" as well as harmful "systemic consequences" for Members.

- Without opining on the substance, it strikes us that concerns expressed with the MPI-

[10] U.S. Trade Representative, The World Trade Organization and U.S. Interests *in* 2025 Trade Policy Agenda and 2024 Annual Report (February 2025), *available at* https://ustr.gov/sites/default/files/files/reports/2025/2025%20Trade%20Policy%20Agenda%20WTO%20at%2030%20and%202024%20Annual%20Report%2002282025%20--%20FINAL.pdf.

AAA arbitrator's award correspond to concerns with WTO dispute settlement that we have raised in the past.

- Specifically, the United States has identified numerous instances where the dispute settlement system has adopted interpretations that depart from the plain text as agreed to by Members, contrary to Article 3.2 of the Dispute Settlement Understanding.[11]

- In addition, the MPI-AAA arbitrator's "corollary theory" appears to rely on precedent, at least in part. Specifically, to reach its "corollary theory", the MPI-AAA arbitrator ascribes to Article 7 and Article 8 a particular function in interpreting different provisions of the TRIPS Agreement: that "IP rights are not an end in themselves" but must instead "contribute to a balance of rights and obligations."[12] The MPI-AAA arbitrator reached that conclusion after reciting a passage from a previous panel report, without further explanation of why it is persuasive or even makes sense. In its use of precedent, the MPI-AAA arbitrator appears to repeat the same systemic error that the United States has criticized in past reports.

- The experience of the MPI-AAA arbitrator's award underscores the need to address the fundamental problems that we have identified, not to simply restore the conditions that gave rise to the problems in the first instance.

[11] U.S. Trade Representative, The World Trade Organization and U.S. Interests *in* 2025 Trade Policy Agenda and 2024 Annual Report (February 2025), *available at* https://ustr.gov/sites/default/files/files/reports/2025/2025%20Trade%20Policy%20Agenda%20WTO%20at%2030%20and%202024%20Annual%20Report%2002282025%20--%20FINAL.pdf.
[12] *China – Enforcement of IP Rights (EU) (Art. 25)*, paras. 4.68 and 4.69.