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

RECOURSE TO ARTICLE 22.2 OF THE DSU BY THE EUROPEAN UNION

The following communication, dated 14 November 2024, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Request by the European Union for authorisation from the DSB to suspend the application to the United States of concessions or other obligations under the agreements listed in Annex 1A of the WTO Agreement, taken as a whole, pursuant to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)

On 20 December 2021, the DSB adopted the report of the Panel in *United States – Anti-dumping and countervailing duties on ripe olives from Spain*.¹

Among others, the Panel found that Section 771B of the 1930 US Tariff Act ("Section 771B") is as such inconsistent with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement because it requires the US Department of Commerce to presume that the entire benefit of a subsidy provided in respect of a raw agricultural input product passes through to the downstream processed agricultural product, based on a consideration of only two factual circumstances, without leaving open the possibility of taking into account any other factors that may be relevant to the determination of whether there is any pass-through and, if so, its degree. For the same reason, the Panel found that through the application of Section 771B in this case, the US Department of Commerce acted inconsistently with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement because it failed to establish the existence and extent of indirect subsidisation taking into account all relevant facts and circumstances.

The reasonable period of time for the United States to implement the DSB's recommendations and rulings expired on 14 January 2023.²

On 13 February 2023, the EU and the United States concluded a sequencing agreement, providing, among others, that in case the EU requested authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU following a proceeding under Article 21.5 of the DSU, the United States did not have the right to assert that the EU was precluded from obtaining such DSB authorization because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU.³

On 14 July 2023, the European Union requested the establishment of a compliance panel pursuant to Article 21.5 of the DSU. In its compliance panel request, the European Union claimed that the United States had failed to comply with the recommendations and rulings adopted by the DSB in

¹ DSB, Minutes of Meeting (20 December 2021), WT/DSB/M/459, 22 February 2022, at para. 7.7. See also *United States – Anti-dumping and countervailing duties on ripe olives from Spain*, Report of the Panel, WT/DS577/R and WT/DS577/R/Add.1, adopted 20 December 2021.

² WT/DS577/12.

³ WT/DS577/14.

relation to the inconsistency "as such" and "as applied" with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement of Section 771B.

At its meeting on 19 March 2024, the DSB adopted the compliance Panel report on *United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain – Recourse to Article 21.5 of the DSU by the European Union*.⁴

The Panel report concluded that the United States had failed to implement the relevant aspects of the adopted DSB recommendations and rulings that Section 771B is "as such" and its application to ripe olives "as applied" inconsistent with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement.

The United States and the European Union have not reached an agreement on a mutually acceptable compensation pursuant to Article 22.2 of the DSU.

The European Union hereby requests authorisation from the DSB to suspend the application to the United States of concessions or other obligations under the covered agreements, pursuant to Article 22.2 of the DSU.

In considering what concessions or other obligations to suspend, the European Union has applied the principles and procedures in Article 22.3 of the DSU. In the light of the foregoing, the European Union hereby requests authorization from the DSB to suspend concessions and other obligations with respect to the goods sector under the agreements listed in Annex 1A of the WTO Agreement, taken as a whole.

As required by Article 22.4 of the DSU, the annual level of suspension proposed is equivalent to the level of nullification or impairment of benefits accruing to the European Union from the United States' failure to bring the measure at stake into compliance with the recommendations and rulings of the DSB. On this basis, the European Union intends to suspend benefits at an annual level of approximately 35 million US Dollars.⁵ This amount may be adjusted for inflation for the year 2024 and on an annual basis thereafter.

In addition, the European Union requests authorization to suspend concessions and related obligations at an annual level based on a formula commensurate with the trade effects to be caused to the European Union by the United States' non-compliance with the "as such" recommendations and rulings. This additional request is to reflect the possible nullification or impairment the European Union would suffer if the "as such" violation continued to exist and Section 771B was applied to other exports from the European Union in the future.

The European Union will provide to the DSB a list of goods and the level of the tariffs to be applied to those goods in due course.

⁴ WT/DS577/19.

⁵ EUR 32.27 million based on the ECB official average exchange rate for 2023 of 1 Euro = 1.0813 USD.