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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE EUROPEAN UNION

REQUEST FOR THE ESTABLISHMENT OF A PANEL

The following communication, dated 14 July 2023, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 28 April 2023, the European Union (EU) requested consultations with the United States (US) pursuant to Articles 1, 4 and 21.5 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), concerning the anti-dumping (AD) and countervailing (CVD) duties on ripe olives from Spain imposed by the US, and concerning a "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with recommendations and rulings" in DS577 *United States – Anti-dumping and Countervailing Duties on Ripe Olives from Spain*¹.

The consultations took place in Geneva on 24 May 2023 and failed to resolve the dispute. Hence the EU is requesting the establishment of a panel pursuant to Article 21.5 of the DSU.

In that regard, the EU also refers to the "Understanding between the United States and the European Union Regarding Procedures under Articles 21 and 22 of the DSU", dated 13 February 2023 (Sequencing Agreement), which applies "for the exclusive purposes of this dispute" and, in particular, points 1 and 2 thereof, which govern the procedures for the parties to proceed with the establishment of a panel for purposes of compliance proceedings in this dispute.²

The measures at issue

The measures at issue include:

- the Final Determination of the USDOC of 20 December 2022 under section 129 of the Uruguay Round Agreements Act (URAA), regarding the countervailing duty (CVD) investigation of ripe olives from Spain³ applicable as of 12 January 2023 as well as USDOC's notice of implementation of 13 January 2023⁴;

¹ WT/DS577/15.

² WT/DS577/14.

³ <https://www.federalregister.gov/documents/2023/01/19/2023-00930/ripe-olives-from-spain-implementation-of-determination-under-section-129-of-the-uruguay-round> and <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00930.pdf>

⁴ On January 12, 2023, the U.S. Trade Representative (USTR) directed Commerce to implement the section 129 final determination. Commerce issued a notice to that effect on January 13, 2023. The notice of the completed implementation was published in the U.S. Federal Register on 19 January, 2023, and can be found at 88 Fed. Reg. 3384. <https://www.federalregister.gov/documents/2023/01/19/2023-00930/ripe-olives-from-spain-implementation-of-determination-under-section-129-of-the-uruguay-round>

- the Preliminary Determination Memorandum of the USDOC of 23 September 2022⁵;
- Section 771B of the Tariff Act of 1930,⁶ insofar as the inconsistency with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement has not been removed;
- the CVD duty order issued on 1 August 2018 by the USDOC and applicable as from the same date, insofar as the Final Determination effectively amends and maintains it in force and effect, at least with regard to the parts pertaining to the findings of the panel report concerning the incompatibility as such and as applied with the WTO agreements in relation to Section 771B.⁷

The legal basis for the complaint and the reasons for the request

Each of the measures at issue, considered individually in isolation or in any combination, appears to be inconsistent with the US' obligations under Article 10 of the SCM Agreement and Article VI:3 of the GATT 1994.

This is, first, because the United States did not take any measures to remove the "as such" inconsistency of Section 771B with Article VI:3 of the GATT 1994 and Article 10 of the Agreement on Subsidies and Countervailing Measures. In particular, the US has not repealed or amended Section 771B. Therefore, Section 771B remains "as such" inconsistent with Article VI:3 of the GATT 1994 and Article 10 of the Agreement on Subsidies and Countervailing Measures and the US has failed to implement the DSB's recommendations and rulings.

* * *

In light of the above, it appears that, through its actions and omissions, the US has failed to comply with the recommendations and rulings adopted by the DSB in 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 in the panel report⁸.

The measures taken by the US adversely affect exports to the US of ripe olives from Spain, and also nullify or impact the benefits accruing to the EU and its Member States directly or indirectly under the cited agreements.

This panel request relates to the measures at issue and to any amendments, supplements, extensions, replacement measures, renewal measures and implementing measures, including but not limited to any such measures referred to by either party during the panel proceedings.

The European Union respectfully requests that the Panel be established at the next DSB meeting in accordance with Article 21.5 of the DSU and the Sequencing Agreement. The European Union recalls that Article 21.5 of the DSU provides that this matter shall be decided through recourse to the DSU, including wherever possible resort to the original panel.

⁵ Memorandum, "Ripe Olives from Spain: Preliminary Section 129 Determination Regarding the Countervailing Duty Investigation," dated September 23, 2022 (Preliminary Determination).

⁶ 19 U.S.C. § 1677-2.

⁷ Ripe Olives from Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 83 FR 37469, 1 August 2018; and Ripe Olives from Spain: Antidumping Duty Order, 83 FR 37467, 1 August 2018. Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination, C-469-818, DOC, 11 June 2018, published in 83 FR 28186, 18 June 2018; and Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value, A-469-817, DOC, 11 June 2018, published in 83 FR 28193, 18 June 2018. Ripe Olives from Spain, Investigation Nos 701-TA-582 and 731-TA-1377 (Final), US ITC, July 2018.

⁸ WT/DS577/R and WT/DS577/R/Add.1