

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

Recourse to Article 21.5 of the DSU by the European Union

(DS577)

**CLOSING STATEMENT OF THE UNITED STATES OF AMERICA
AT THE PANEL’S SUBSTANTIVE MEETING WITH THE PARTIES**

October 26, 2023

Mr. Chairperson, Members of the Panel:

1. The question before the Panel is simple and discrete. The Panel is tasked with examining whether the measure taken to comply is consistent with the text of the GATT 1994 and the SCM Agreement “as such” and “as applied.”

2. As we have explained at length over the course of these proceedings, the USDOC revisited its interpretation of Section 771B, keeping in mind the DSB recommendation following the original Panel’s findings, and reached a new determination on the basis of its revised interpretation. The USDOC’s new determination is a valid interpretation of Section 771B under U.S. law, with legal effect, and further permits U.S. law to be understood in a WTO-consistent manner.

3. In its opening statement at paragraph 6, the EU stated that: “The USDOC did not legally revise its ‘interpretation’ of Section 771B.” The EU’s assertion is incorrect. We have explained why: as a matter of US law, the USDOC has authority and exercised that authority to revise its interpretation of the statute. The text of the statute has not changed, but the U.S. understanding has, as evidenced by the analysis in the Section 129 proceeding and the application of that understanding in the Section 129 proceeding. The Panel should, as a matter of fact, understand the current statute as interpreted by the USDOC because that interpretation is U.S. law – and is the measure taken to comply. This is because the USDOC is the agency charged with interpreting and applying the AD/CVD statute, and so, under our municipal law system, the USDOC’s interpretation is U.S. law.

4. The EU’s arguments detract from the core issue before the Panel. In repeatedly focusing on particulars of the explanation provided by the USDOC, and the form and manner of its

explanation, the EU buries the core question before the panel – whether Section 771B is now “as such” consistent, in that the USDOC’s re-interpretation allowed it to consider all potentially relevant facts and circumstances that may factor into the question of attribution of benefits.

5. This concludes the U.S. closing statement. We thank the Panel for their time and thoughtful discussion this week, and the Secretariat staff for its work assisting the Panel.