EUROPEAN UNION – COUNTERVAILING MEASURES ON CERTAIN POLYETHYLENE TEREPHTHALATE FROM PAKISTAN

(AB-2017-5 / DS486)

Third Participant Closing Statement of the United States of America

February 9, 2018

1.   The expiry of a measure does not alter a panel's task under the terms of Article 7.1 of the DSU[1] – that is, "to examine … the matter referred" to it by the DSB[2] and "to make such findings as will assist the DSB in making [its] recommendations". Those terms of reference delineate two fundamental concepts: one is to examine the matter, and the other is to make the findings that will assist the DSB.

2.   That examination – as elaborated under DSU Article 11 – is to make an objective assessment of the matter referred to it by the DSB, that is, with respect to the measure as it existed at the time the DSB established the panel. [3]

3.   A complaining party's decision not to seek a recommendation – in other words, a complaining party's acknowledgement that compliance has already been achieved – impacts the *second* part of Article 7.1 – that is, whether there are any findings a panel could "make as will assist the DSB in making [its] recommendations", and, under Article 11, assist the DSB in discharging its responsibilities under the DSU.

4.   With respect to what has been put before the Appellate Body in this appeal, under DSU Article 17.12, the Division here can "address" all the claims of error by finding that Pakistan's request for findings but no recommendation rendered all of the Panel's findings advisory and outside its terms of reference.

5.   The United States thanks the Division for the opportunity to participate in this hearing and its consideration of these comments.

---

[1] *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU).
[2] Dispute Settlement Body (DSB).
[3] *See, e.g.*, *EC – Selected Customs Matters (AB)*, paras. 187, 259; *EC – Chicken Cuts (AB)*, para. 156; *EC – Approval and Marketing of Biotech Products (Panel)*, para. 7.456; *EC – Large Civil Aircraft (Panel)*, para. 7.680.