

**UNITED STATES – CONTINUED EXISTENCE AND APPLICATION
OF ZEROING METHODOLOGY**

Understanding between the European Union and the United States
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 4 January 2010, from the delegation of the European Union and the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

The European Union and the United States would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" between the European Union and the United States with respect to the dispute *United States – Continued Existence and Application of Zeroing Methodology* (WT/DS350).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding
United States - Continued Existence and Application of Zeroing Methodology
(WT/DS350)

The Dispute Settlement Body (DSB) adopted its recommendations and rulings in the dispute *United States – Continued Existence and Application of Zeroing Methodology* (WT/DS350) on 19 February 2009.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) the European Union and the United States agreed that the reasonable period of time to implement the DSB recommendations and rulings would be ten months, expiring on 19 December 2009 (WT/DS350/17).

The European Union and the United States ("the parties to the dispute") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes and are without prejudice to either party's views on the correct interpretation of the DSU:

1. Should the European Union consider that the situation described in Article 21.5 of the DSU exists, the European Union will request consultations, which the parties to the dispute will hold within 12 days from the date of circulation of such request. The parties to the dispute agree that at the end of such period for consultations, should either party so state, the parties to the dispute will immediately and jointly consider that such consultations have failed to settle the dispute.

Consequently, the European Union may at any time following the failure of consultations to settle the dispute request the establishment of a panel pursuant to Article 21.5 of the DSU.

2. At the first DSB meeting at which the European Union's request for the establishment of an Article 21.5 panel appears on the agenda, the United States shall accept the establishment of that panel.
3. The parties to the dispute shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the parties to the dispute shall cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date of notification of the appeal to the DSB.
6. In the event of an appeal, either party to the dispute may request the DSB to adopt its recommendations and rulings at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
7. In the event that the DSB rules, in a proceeding under Article 21.5 of the DSU, that a measure taken to comply does not exist or is inconsistent with a covered agreement, the European Union may request authorization to suspend concessions or other obligations in accordance with Article 22 of the DSU after the adoption by the DSB of its recommendations

and rulings and may request negotiations with the United States with a view to developing mutually acceptable compensation pursuant to Article 22.2 of the DSU.

8. The United States shall not assert that the European Union is precluded from obtaining such DSB authorization to suspend concessions or other obligations on the grounds that the request was made outside the 30-day time-period specified in Article 22.6 of the DSU. This is without prejudice to the US right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
9. If the European Union requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, and if the United States objects under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claims that the principles and procedures set forth in Article 22.3 of the DSU have not been followed, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.
10. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
11. If any of the original panelists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), the parties to the dispute will promptly consult on a replacement, and either party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, the parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
12. The parties to this dispute will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in these procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

Signed in Geneva, 29 December 2009

For the European Union

(signed)
Eckart Guth
Ambassador

For the United States

(signed)
David P. Shark
Chargé d'affaires, a.i.
