

**UNITED STATES – MEASURES AFFECTING TRADE
IN LARGE CIVIL AIRCRAFT
(SECOND COMPLAINT)**

Recourse to Article 22.6 of the DSU by the United States

The following communication, dated 22 October 2012, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.6 of the DSU.

The United States is in receipt of the request by the European Union ("EU") in the dispute *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (DS353) for authorization to take countermeasures against the United States (WT/DS353/17). My authorities have instructed me to inform you that, pursuant to Article 22.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the United States (i) objects to the level of suspension of concessions or other obligations proposed by the EU in document WT/DS353/17, and (ii) claims that the EU's proposal in document WT/DS353/17 does not follow the principles and procedures set forth in paragraph 3 of Article 22 of the DSU.

Accordingly, as required by Article 22.6 of the DSU,¹ the matter has been referred to arbitration.

In addition, the United States notes that the EU request purports to be pursuant to Article 4.10 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). However, the United States recalls that there were no DSB recommendations under Article 4 of the SCM Agreement. Accordingly, the EU can have no legal basis for its request. Indeed the EU itself seems to concede this at other parts of its request. The United States is surprised that the EU would disagree with the clear statements in the Panel and Appellate Body reports that those reports did not make any recommendation pursuant to Article 4 and that the EU would seek authorization that it has no legal basis to claim.²

¹ Pursuant to Article 22.6 of the DSU, "if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed" then "the matter shall be referred to arbitration."

² See, Appellate Body Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/AB/R, at para. 1352 and at footnote 971, and Panel Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/R at para. 8.7.