



24 November 2016

(16-6462)

Page: 1/1

Original: English

**EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING
TRADE IN LARGE CIVIL AIRCRAFT**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES

**NOTIFICATION OF AN OTHER APPEAL BY THE UNITED STATES
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 10 November 2016, from the delegation of the United States, is being circulated to Members.

Pursuant to Rule 23(1) of the Working Procedures for Appellate Review, the United States hereby notifies the Appellate Body of its decision to appeal certain issues of law covered in the Report of the Panel in European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft: Recourse to Article 21.5 of the DSU by the United States (WT/DS316/RW & Add.1) ("Panel Report") and certain legal interpretations developed by the Panel.

1. The United States seeks review by the Appellate Body of the Panel's finding that the United States failed to establish that the French, German, Spanish, and UK LA/MSF subsidies for Airbus's A350 XWB constituted prohibited import substitution subsidies, within the meaning of Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement").¹ While the United States agrees with the Panel's interpretation of Article 3.1(b), a competing interpretation is under consideration in another dispute, US – Conditional Tax Incentives for Large Civil Aircraft (DS487). If the Appellate Body were to determine that this competing interpretation of Article 3.1(b) is correct, then the Panel here erred in its interpretation and application of Article 3.1(b) and its finding that the French, German, Spanish, and UK LA/MSF for the A350 XWB do not constitute import substitution subsidies prohibited by Article 3.1(b). The paragraphs relating to these errors include paragraphs 6.745-6.791 of the Panel Report.

2. In addition, the United States conditionally appeals the Panel's findings that the ex ante lives of the French, German, Spanish, and UK LA/MSF subsidies for the A320, A330/A340 Basic, and A330-200 had passively "expired" before December 1, 2011, as a result of the amortization of benefit.² These conclusions are in error and are based on erroneous findings of law and related legal interpretations, including an erroneous interpretation and application of Article 1.1(b) of the SCM Agreement. The paragraphs relating to these errors include paragraphs 6.872-6.879 of the Panel Report. However, the United States only requests the Appellate Body to address this issue if it modifies or reverses the Panel's finding that the passive "expiry" events cited by the European Union did not satisfy its obligation to "withdraw the subsidy" for purposes of Article 7.8 of the SCM Agreement.³

¹ See Panel Report, paras. 6.790, 7.1(c)(ii).

² See Panel Report, paras. 6.879, 7.1(d)(ii) and (iii).

³ See Panel Report, paras. 6.1094, 7.1(d)(viii).