

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

Communication from the European Union

The following communication, dated 1 April 2011, from the European Union addressed to the Chair of the Dispute Settlement Body, is being circulated to Members.

Pursuant to Article 16.4 and Article 17.1 of the *DSU* the European Union hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (WT/DS353). Pursuant to Rule 20(1) of the *Working Procedures for Appellate Review*, the European Union simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

We realise that some Members (excluding the United States and Third Participants, whom we informed beforehand) may be surprised by the EU decision to be the first to appeal some (limited) aspects of this Panel Report. However, the timing of this appeal reflects an assessment by the European Union that we believe will *not* come as a surprise to Members that have been following developments: in all the circumstances the European Union could not reasonably be expected to accept further delays in this dispute, the unwarranted passage of time having become a matter of very serious concern.

At the same time, the European Union would like to take this opportunity to assure Members that it recognises that there are two pending appeals¹ and one panel report that remains the subject of a DSB Decision², and that these relatively unusual circumstances may have implications for the Appellate Body, the other Members involved in those cases, and the system as a whole, ***particularly as regards the timing of the hearing and issuance of the Appellate Body Report in this appeal***. As in other cases, we consider that the Appellate Body should take the time it needs to complete its work in this case, notwithstanding the 60 and 90 day rules in Article 17.5 of the *DSU*. We also accept that, with respect to the hearing and issuance of the report, a reasonable balance will need to be found between the interests of the European Union in this case and these other interests.

¹ DS371 (AB-2011-1) *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*; and DS397 *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (AB-2011-2).

² DS399 *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*. The Panel Report is to be adopted or appealed prior to 25 May 2011.

However, we believe that this balance can only properly be struck based on an objective assessment of the particular issues to be decided in this appeal, *once the written procedure is completed*. We believe that the issues will only become fully apparent once the Appellant Submissions are filed; and, subject to sight of the US Other Appellant Submission, we are in principle surrendering any additional time *for the European Union to file its own Appellee Submission*.

Thus, the timing of this appeal merely reflects a wish by the European Union to move without delay and according to the normal timetable provided for in the *Working Procedures for Appellate Review* to the point at which the Appellate Body will be in possession of all the information necessary for it to organise itself in an appropriate way, having fair regard to the interests of all Members.
