

**UNITED STATES – TAX TREATMENT FOR "FOREIGN SALES CORPORATIONS"**

Recourse by the European Communities to Article 4.10 of the SCM Agreement  
and Article 22.2 of the DSU

The following communication, dated 17 November 2000, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU.

The European Communities requests that a special meeting of the Dispute Settlement Body be held on 28 November 2000 to consider the following agenda item:

United States – Tax Treatment for "Foreign Sales Corporations"

Recourse by the European Communities to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU.

On 8 October 1999, the Panel in this dispute found that the United States' "Foreign Sales Corporations" scheme violated Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement") and Article 3.3 of the Agreement on Agriculture. On 24 February 2000, the Appellate Body confirmed the findings of the Panel with respect to the violations of the SCM Agreement and modified the findings concerning the Agreement on Agriculture concluding that the Foreign Sales Corporations scheme violated Articles 10.1 and 8 of the Agreement on Agriculture. On 20 March 2000, the Dispute Settlement Body (the "DSB") adopted the Appellate Body report and the report of the Panel, as modified by the Appellate Body. The resulting DSB recommendations and rulings include the recommendation that the United States bring its measures found to be inconsistent with the SCM Agreement and the Agreement on Agriculture into conformity with the provisions of those agreements, and that the United States withdraw the export subsidies at the latest with effect from the 1 October 2000.

On 2 October 2000 the European Communities and the United States informed the DSB of the "Agreed procedures under Articles 21 and 22 of the Dispute Settlement Understanding and Article 4 of the SCM Agreement applicable in the follow-up to the United States - Tax Treatment of "Foreign Sales Corporations" WTO dispute" concluded between the parties on 29 September 2000. The present request is drawn up in the light of this agreement.

On 12 October 2000, in a special session, the DSB agreed to the United States' request to allow it a time period expiring on 1 November 2000 to implement the DSB recommendations and rulings.

As the United States has failed to implement the DSB recommendations and rulings by 1 November 2000, and as envisaged in the agreed procedure mentioned above, the

European Communities hereby requests authorization from the DSB to take appropriate countermeasures and to suspend concessions pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU in the amount of US\$4043 million per year.

The European Communities intends to take countermeasures and suspension of concessions in the form of the suspension of tariff concessions and related obligations under the GATT 1994 by imposing an additional duty of 100 per cent *ad valorem* above bound custom duties on a final list of US products drawn from the indicative list attached.

**ANNEX**

CN chapters	Description
1	Live animals
2	Meat and edible meat offal
4	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included
5	Products of animal origin not elsewhere specified or included
7	Edible vegetables and certain roots and tubers
8	Edible fruit and nuts; peel of citrus fruits or melons
10	Cereals
11	Products of the milling industry; malt; starches; inulin; wheat gluten
12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medical plants; straw and fodder
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes
16	Preparations of meat, fish or crustaceans, molluscs or other aquatic invertebrates
17	Sugars and sugar confectionery
19	Preparations of cereals, flour, starch or milk; pastrycooks' products
20	Preparations of vegetables, fruit, nuts or other parts of plants
21	Miscellaneous edible preparations
23	Residues and waste from the food industries; prepared animal fodder
33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations
34	Soaps, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or souring preparations, candles and similar articles, modeling pastes, "dental waxes" and dental preparations with a basis of plaster
35	Albuminous substances; modified starches; glues; enzymes
41	Hides and skins (other than furskins) and leather
42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)
43	Furskins and artificial fur; articles thereof
44	Wood and articles of wood; wood charcoal
48	Paper and paperboard; articles of paper pulp, paper or paperboard
49	Books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
51	Wool, fine and coarse animal hair; yarn and fabrics of horsehair
52	Cotton
54	Man-made filaments
57	Carpets and other textile floor coverings
61	Articles of apparel and clothing accessories, knitted or crocheted

CN chapters	Description
62	Articles of apparel and clothing accessories, not knitted or crocheted
63	Other made up textile articles; sets; worn clothing and worn textile articles; rags
64	Footwear, gaiters and the like; parts of such articles
69	Ceramic products
70	Glass and glassware
71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coins
72	Iron and steel
73	Articles of iron or steel
74	Copper and articles thereof
76	Aluminium and articles thereof
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal
83	Miscellaneous articles of base metal
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles
88	Aircraft, spacecraft, and parts thereof
95	Toys, games and sports requisites; parts and accessories thereof