

**EUROPEAN COMMUNITIES AND ITS MEMBER STATES – TARIFF TREATMENT  
OF CERTAIN INFORMATION TECHNOLOGY PRODUCTS**

Understanding between the European Union<sup>1</sup> and Japan  
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 6 July 2011, from the delegation of the European Union and the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

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Attached please find the agreed procedures between the European Union and Japan under Articles 21 and 22 of the Dispute Settlement Understanding in *EC and its Member States – Tariff Treatment of Certain Information Technology Products* (WT/DS376).

We kindly request that you circulate this communication to the Members of the DSB.

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<sup>1</sup> On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a Verbal Note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the European Union replaces and succeeds the European Community.

*EC and its Member States – Tariff Treatment of Certain Information Technology Products*  
(WT/DS376)

**Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding**

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *EC and its Member States – Tariff Treatment of Certain Information Technology Products* (WT/DS376) on 21 September 2010.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") Japan and the European Union ("EU") agreed that the reasonable period of time to implement the DSB recommendations and rulings would be nine (9) months and nine (9) days, expiring on 30 June 2011 (WT/DS376/16).

Japan and the EU ("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 Japan consider that the situation described in Article 21.5 of the DSU exists, Japan will request that the EU enter into consultations with Japan. The Parties agree to hold such consultations within 15 days from the date of receipt of the request. After this 15-day period has elapsed, Japan may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.
2. At the first DSB meeting at which Japan's request for the establishment of an Article 21.5 panel appears on the agenda, the EU 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. Further, 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.
6. Japan may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU in the event that the DSB rules as a result of 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 EU shall not assert that Japan is precluded from obtaining such DSB authorization because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This is without prejudice to the EU's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
7. If Japan requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, the EU shall have the right to object under Article 22.6 of the DSU

to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. In the event of such objection, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.

8. 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.
9. 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), or any person serving in such proceeding becomes unavailable to serve, 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, or a person serving in such proceeding becomes unavailable to serve, 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.
10. 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, 6 July 2011

For Japan

For the European Union

H.E. Mr. Yoichi Otabe  
Ambassador  
Permanent Representative to the WTO

H.E. Mr. Angelos Pangratis  
Ambassador  
Permanent Representative to the WTO

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