

UNITED STATES – TAX TREATMENT FOR "FOREIGN SALES CORPORATIONS"

Understanding between the European Communities and the United States
Regarding Procedures under Articles 21 and 22 of the DSU
and Article 4 of the SCM Agreement

The following communication, dated 2 October 2000, from the Permanent Delegation of the European Commission and the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body is circulated at the request of these delegations.

The European Communities and the United States would like to inform the Dispute Settlement Body that they have agreed on the following "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" (WT/DS108).

**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**

The Panel and Appellate Body reports in the WTO dispute United States – Tax Treatment for "Foreign Sales Corporations" (WT/DS108/R and WT/DS108/AB/R) between the European Communities (EC) and the United States of America (US) were adopted by the Dispute Settlement Body (DSB) on 20 March 2000.

The parties, in reaching this agreement, contemplate that the US Congress will pass legislation this Congressional session to replace the foreign sales corporation provisions of the Internal Revenue Code.

This agreement does not prejudice the parties' rights to take any action or procedural step to protect their rights or interests, including the activation of any aspect of dispute settlement proceedings.

The EC and the US have agreed on the following procedures:

1. Should the European Communities consider that the situation described in Article 21.5 of the DSU exists, the EC will request consultations which the parties agree to hold within 12 days from the date of circulation of the request so as to allow third parties to request to join the consultations. The EC and the US agree that at the end of this round of consultations, should either party so state, the parties will jointly consider that the consultations have failed to settle the dispute.
2. Consequently, the EC will be entitled to request immediately the establishment of a panel pursuant to Article 21.5 of the DSU (the Article 21.5 compliance panel).
3. At the first DSB meeting in which the EC request appears as an item on the agenda, the US will accept the establishment of the Article 21.5 compliance panel.
4. The EC and the US will cooperate to enable the Article 21.5 compliance panel to circulate its report within 90 days of its establishment, excluding any time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
5. Either party may request the DSB to adopt the report of the Article 21.5 compliance panel in a meeting at least 20 days after the circulation of the report unless either party appeals the report.
6. In case of an appeal of the Article 21.5 compliance panel report, the EC and the US will cooperate to enable the Appellate Body to circulate its report within 60 days from the date of notification of the appeal.
7. In the event of an appeal, either party may request the DSB to adopt the reports of the Appellate Body and the Article 21.5 compliance panel (as modified by the Appellate Body report) in a meeting within 15 days after the circulation of the Appellate Body report.

8. Where the EC has requested consultations under paragraph 1, and after the end of the period (the implementation period) available to the US to implement the DSB recommendations and rulings in the WTO dispute United States – Tax Treatment of "Foreign Sales Corporations", the European Communities may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU and to adopt countermeasures pursuant to Article 4.10 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).
9. Where there exist no measures taken to comply with the DSB recommendations and rulings by the end of the implementation period, the EC may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU and to adopt countermeasures pursuant to Article 4.10 of the SCM Agreement, without having recourse to Article 21.5 of the DSU.
10. Under Article 22.6 of the DSU including Article 4.11 of the SCM Agreement, the US will object to the appropriateness of the countermeasures and/or the level of the suspension of concessions or other obligations and/or make an Article 22.3 claim, before the date of the DSB meeting considering the EC request, and the matter will be referred to arbitration pursuant to Article 22.6 of the DSU. The European Communities will not pose any objection to referral of the matter to such arbitration.
11. Where the EC has requested the establishment of a panel under paragraph 2, both the EC and the US agree to request the arbitrator, at the earliest possible moment, to suspend its work until either (a) adoption of the Article 21.5 compliance panel report or (b) if there is an appeal, adoption of the Appellate Body report.
12. In the event that the DSB finds that measures taken by the US to comply with the recommendations and rulings of the DSB are inconsistent with the covered agreements referred to in the Article 21.5 compliance panel request, the arbitrator will automatically resume its work. In the event that the DSB finds that the measures taken by the US to comply with the recommendations and rulings of the DSB are not inconsistent with the covered agreements referred to in the Article 21.5 compliance panel request, the EC will withdraw its request under Article 22.2 of the DSU, thereby terminating the arbitration procedure.
13. The EC and the US will cooperate to enable the arbitrator to circulate its report within 60 days of the resumption of its work.
14. If any of the original panelists are not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), the EC and the US agree to request the Director-General of the WTO to appoint as soon as possible a replacement for the proceeding or proceedings in which this is required. If an original panelist is unavailable to serve in both proceedings, the parties will further request that in making this appointment the Director-General seek a person who will be available to act in both proceedings.
15. As this dispute has been conducted under the SCM Agreement and the Agreement on Agriculture, the parties agree that the timeframes under the DSU will continue to apply to the proceedings covered by this agreement, except as otherwise agreed herein.
16. The parties agree to continue to cooperate in all matters related to this agreement and not to raise any procedural objections to any of the steps set out in this agreement. If during the application of this agreement the parties consider that a procedural aspect has not been properly covered by this agreement, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps therein agreed.

Brussels, 29 September 2000

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 For the European Communities

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 For the United States of America
