



**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

COMMUNICATION FROM THE APPELLATE BODY

The following communication, dated 21 December 2016, from the Chair of the Appellate Body addressed to the Chair of the Dispute Settlement Body, is circulated to Members in accordance with Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

I am writing to you pursuant to Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which stipulates that, as a general rule, the Appellate Body will circulate its report no later than 60 days after the appellant has formally notified the Dispute Settlement Body (DSB) of its decision to appeal. Article 17.5 states, furthermore, that, when the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

The European Union notified the DSB on 13 October 2016 of its decision to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the compliance Panel in this dispute, with the result that day 60 in this proceeding fell on Tuesday, 13 December 2016. On 10 November 2016, the United States filed a Notice of Other Appeal in this dispute.

The Appellate Body is not able to circulate its report by the end of the 60-day period, or within the 90-day timeframe provided for in the last sentence of Article 17.5 of the DSU, due to the exceptional size and complexity of these compliance proceedings. In this respect, we refer to the considerable volume of the Panel record and the size of the Panel Report, the number of issues appealed, and the many complex substantive and procedural aspects of these appellate proceedings, including the time needed for adopting and complying with additional procedures to protect business confidential information (BCI) and highly sensitive business information (HSBI), together with the consequential extensions of the deadlines for filing submissions. We further note the substantial workload faced by the Appellate Body, the overlap in the composition of the Divisions hearing several concurrent appeals, and the shortage of staff in the Appellate Body Secretariat.

The circulation date of the Appellate Body report in this appeal will be communicated to the participants and third participants in due course.
