

WORLD TRADE ORGANIZATION

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EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT

Understanding between the European Union and the United States Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 12 January 2012, from the delegation of the European Union and the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

The European Union and the United States would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the *Dispute Settlement Understanding* and Article 7 of the *SCM Agreement*" between the European Union and the United States with respect to the dispute *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (WT/DS316).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

*European Communities and Certain Member States –
Measures Affecting Trade in Large Civil Aircraft
(WT/DS316)*

Agreed Procedures under Articles 21 and 22 of the *Dispute Settlement Understanding*
and Article 7 of the *SCM Agreement*

At its meeting on 1 June 2011, the Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*.¹

At the meeting of the DSB on 17 June 2011, pursuant to Article 21.3 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the European Union informed the DSB that it intended to implement the DSB recommendations and rulings in a manner that respected its WTO obligations within the time period indicated in Article 7.9 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), that is, within six months from 1 June 2011, expiring on 1 December 2011.²

On 9 December 2011, the United States requested consultations with the European Union pursuant to Article 4 of the DSU and Articles 4, 7, and 30 of the *SCM Agreement*. On the same day, the United States also requested that a meeting of the DSB be held on 22 December 2011 to consider recourse by the United States to Article 22 of the DSU and Article 7.9 of the *SCM Agreement*.

The United States and the European Union ("the parties") 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 and the SCM Agreement.

1. The parties note that the United States considers that the situation described in Article 21.5 of the DSU exists and has requested that the European Union enter into consultations with the United States. The parties agree to hold such consultations within 15 days from the date of receipt of the request unless the parties otherwise agree. After this 15-day period has elapsed, the United States 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 the US request for the establishment of an Article 21.5 panel appears on the agenda, the European Union shall accept the establishment of that panel.
3. The parties 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 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.

¹ WT/DS316/16 of 6 June 2011, Action by the Dispute Settlement Body.

² WT/DSB/M/298 of 29 July 2011, paras. 51 to 54.

5. In the event of an appeal of the Article 21.5 panel report, the parties 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 may request the DSB to adopt the report of the Article 21.5 panel and the report of the Appellate Body at a DSB meeting held within 20 days of the circulation of the Appellate Body report to the Members.
6. The United States has requested the DSB to authorize countermeasures pursuant to Article 22.2 of the DSU and Article 7.9 of the SCM Agreement. As the matter has been referred to arbitration, the United States and the EU shall request the arbitrator to suspend that proceeding. In the event that the DSB following a proceeding under Article 21.5 of the DSU rules that a measure taken to comply does not exist or is inconsistent with a covered agreement, either party may request the Article 22.6 arbitrator to resume its work.
7. The parties will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the date on which the suspension of its proceedings ends under paragraph 6.
8. 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 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 will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
9. The parties to this dispute will continue to cooperate in all matters related to these agreed procedures and shall not raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties 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.
10. On or before the date on which the Article 21.5 compliance panel or the Article 22.6 arbitrator is composed, the parties shall propose the adoption for purposes of each proceeding of procedures for the protection of confidential information based on the Additional Working Procedures for DS316 – Procedures for the Protection of Business Confidential Information and Highly Sensitive Business Information used by the Panel in *EC – Large Civil Aircraft*, along with any modifications to those procedures that the parties agree to propose.³

³ WT/DS316/R, Annex E.

Signed in Geneva, 12 January 2012

For the United States

Mr. David P. Shark
Chargé d'affaires a.i.

For the European Union

Mr. Detlev Brauns
Chargé d'affaires a.i.
