

**UNITED STATES – MEASURES AFFECTING TRADE
IN LARGE CIVIL AIRCRAFT
(SECOND COMPLAINT)**

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

The following communication, dated 24 April 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 United States and the European Union 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 *United States – Measures Affecting Trade in Large Civil Aircraft* (WT/DS353).

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

United States – Measures Affecting Trade in Large Civil Aircraft
(WT/DS353)

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

The European Union and the United States ("the parties") have agreed to the following procedures in the event that the Dispute Settlement Body ("DSB") recommends in the dispute *United States – Measures Affecting Trade in Large Civil Aircraft* that the United States bring its measures into conformity with the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). These procedures are 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. If the DSB recommends that the United States bring its measures into conformity with the SCM Agreement and the European Union considers that the situation described in Article 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") exists, the European Union will request that the United States enter into consultations with the European Union.¹ The parties shall hold such consultations within 15 days from the date of receipt of the request. After this 15-day period has elapsed, the European Union 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 EU request for the establishment of an Article 21.5 panel appears on the agenda, the United States 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.
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 European Union may request the DSB to authorize countermeasures pursuant to Article 22.2 of the DSU and Article 7.9 of the SCM Agreement if it considers that the United States has failed to comply with the DSB's recommendations and rulings within the time period referred to in Article 7.9 of the SCM Agreement or if 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. The United States shall not assert that the EU 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 right of the United States to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.

¹ This is without prejudice to the European Union's right to make a request under Article 22.2 of the DSU and Article 7.9 of the SCM Agreement as specified in paragraph 6 below.

7. If the European Union requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, the United States 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. If the matter is referred to arbitration prior to adoption by the DSB of its rulings following an Article 21.5 proceeding, the United States and the EU shall, at the earliest possible moment, request the arbitrator under Article 22.6 to suspend its work. In the event that the DSB 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.
9. The parties 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.
10. 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.
11. 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.
12. 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 DS353 – Procedures for the Protection of Business Confidential Information and Highly Sensitive Business Information used by the Panel in *US – Measures Affecting Trade in Large Civil Aircraft*, along with any modifications to those procedures that the parties agree to propose.²

Signed in Geneva, 12 January 2012

For the European Union

For the United States

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

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

² WT/DS353/R, Annex D.