

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

Recourse to Article 7.9 of the SCM Agreement and  
Article 22.2 of the DSU by the United States

The following communication, dated 9 December 2011, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 7.9 of the SCM Agreement and Article 22.2 of the DSU.

The United States considers that the European Union ("EU") and France, Germany, Spain, and the United Kingdom ("certain member States") have failed to comply with the recommendations and rulings of the Dispute Settlement Body ("DSB") in the dispute *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (DS316) ("EC – Large Civil Aircraft"). Pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article 7.9 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), the United States requests authorization from the Dispute Settlement Body ("DSB") to take countermeasures with respect to the European Union ("EU") at an annual level commensurate with the degree and nature of the adverse effects caused to the interests of the United States by the failure of the EU and certain member States to withdraw subsidies or remove their adverse effects in compliance with the recommendations and rulings of the DSB. This amount corresponds to the annual value of lost sales, of imports of US large civil aircraft<sup>1</sup> displaced from the EU market, and of exports of US large civil aircraft displaced from third country markets. The amount will be updated annually using the most recent publicly available data. Based on currently available data in a recent period, the United States estimates this figure to be between \$7 and \$10 billion per year.

On 20 July 2005, the DSB established a panel at the request of the United States to examine measures by the European Union and certain member States affecting trade in large civil aircraft. The panel found that the EU and certain member States were providing subsidies inconsistent with their obligations under the SCM Agreement. On 1 June 2011, the DSB adopted its recommendations in *EC – Large Civil Aircraft*. The DSB recommendations and rulings include, *inter alia*, the recommendation that the Member granting each subsidy found to have resulted in such adverse effects bring the subsidy into compliance with its obligations under the SCM Agreement.<sup>2</sup>

Under Article 7.9 of the SCM Agreement, the EU and certain member States had six months from the date of adoption of the recommendation and rulings of the DSB to withdraw the subsidies or take appropriate steps to remove the adverse effects of the subsidies. In the view of the United States,

<sup>1</sup> Terms used in this request have the same meaning as in the reports adopted by the DSB.

<sup>2</sup> WT/DS316/AB/R, para. 1418; WT/DS316/R, paras. 8.6 and 8.7.

the EU and certain member States failed to comply with the recommendations and rulings of the DSB within that period. The parties have not reached agreement on compensation. Therefore, the United States is entitled to authorization by the DSB to take countermeasures under Article 22 of the DSU and Article 7.9 of the SCM Agreement.

In considering what countermeasures to take, the United States followed the principles and procedures set forth in Article 22.3 of the DSU. As required by Article 7.9 of the SCM Agreement, the countermeasures are commensurate on an annual basis with the degree and nature of the adverse effects determined to exist. The United States considers that it is neither practicable nor effective to suspend concessions or other obligations on imports of EU goods up to a value of approximately US \$10 billion. The United States also considers that, given the degree and nature of the adverse effects, the circumstances are "serious enough" within the meaning of Article 22.3(c) of the DSU. Therefore, the United States may suspend concessions or other obligations under the *General Agreement on Trade in Services*.

The countermeasures would consist of one or more of the following:

- (1) suspension of tariff concessions and related obligations (including most-favored-nation obligations) under the *General Agreement on Tariffs and Trade 1994* on a list of products of the EU and certain member States to be drawn from the Harmonized Tariff Schedule of the United States; and
- (2) suspension of horizontal or sectoral concessions and obligations contained in the US Schedule of Specific Commitments with regard to all services defined in the Services Sectoral Classification List, except for financial services (sector 7).

The United States is requesting that a meeting of the Dispute Settlement Body be convened on 22 December 2011, to consider this matter.

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