

## World Trade Organisation

### *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (DS353)

#### **Request by the European Union pursuant to Article 22.2 of the DSU and Articles 4.10 and 7.9 of the SCM Agreement for authorisation from the DSB to take countermeasures against the United States in an annual amount of USD 12 billion**

The Panel Report in *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* concluded that the United States provides subsidies to Boeing that are prohibited by the *Agreement on Subsidies and Countervailing Measures (SCM Agreement)* and/or that cause adverse effects and serious prejudice to the interests of the European Union. The Panel recalled that prior recommendations of the Dispute Settlement Body (DSB) with respect to this matter continue to be operative, and recommended that the United States take appropriate steps to remove the adverse effects or withdraw the subsidies.<sup>1</sup>

The Appellate Body confirmed that the United States provides subsidies inconsistent with its obligations under the *SCM Agreement*, and recommended that the United States take appropriate steps to remove the adverse effects or withdraw the subsidies.<sup>2</sup>

At its meeting on 23 March 2012, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.<sup>3</sup>

Article 22 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)* provides that, in the event of a failure to comply with recommendations and rulings of the DSB within the specified period, the complaining Member may request authorisation from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements, and the DSB shall, upon request, grant such authorisation.

Articles 4.7 and 4.10 of the *SCM Agreement* require prohibited subsidies to be withdrawn without delay, failing which the DSB shall, upon request, grant authorisation to the complaining Member to take appropriate countermeasures.

Articles 7.8 and 7.9 of the *SCM Agreement* require a Member granting or maintaining a subsidy that has resulted in adverse effects to take appropriate steps to remove the adverse

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<sup>1</sup> Panel Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, particularly Section VIII.

<sup>2</sup> Appellate Body Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, particularly Section XI.

<sup>3</sup> WT/DS/353/13, 26 March 2012, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, Appellate Body Report and Panel Report, Action by the Dispute Settlement Body.

effects or withdraw the subsidy within six months, failing which, in the absence of agreement on compensation, the DSB shall grant authorisation to the complaining Member to take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist.

By communication dated 24 April 2012, the United States and the European Union informed the DSB of the "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 (Second Complaint)* (the Sequencing Agreement).<sup>4</sup> Paragraph 6 of the Sequencing Agreement provides that the European Union may request the DSB to authorise countermeasures if it considers that the United States has failed to comply with the DSB recommendations and rulings within the six-month period provided for in Article 7.9 of the *SCM Agreement*.

The six-month period provided for in Article 7.9 of the *SCM Agreement* expired on Monday 24 September 2012.

By communication dated 23 September 2012 the United States notified the European Union that the United States has taken a number of actions allegedly withdrawing the subsidies or removing their adverse effects, and thus complied with the recommendations and rulings of the DSB. The European Union considers that the United States continues to grant or maintain prohibited subsidies and that it has not taken appropriate steps to remove the adverse effects of the subsidies or to withdraw the subsidies, and that it has therefore failed to comply with the DSB recommendations and rulings within the six-month period provided for in Article 7.9 of the *SCM Agreement*.

There is no agreement on compensation.

Accordingly, pursuant to Article 22.2 of the *DSU* and Articles 4.10 and 7.9 of the *SCM Agreement*, the European Union requests the DSB to grant authorisation to the European Union to take countermeasures that are appropriate, and commensurate with the degree and nature of the adverse effects determined to exist, respectively. Based on currently available data, countermeasures consistent with these standards total approximately USD 12 billion<sup>5</sup> annually. The European Union may update this amount annually using the most recently available data.

In considering this request for authorisation to take countermeasures, the European Union has followed the principles and procedures set forth in Article 22.3 of the *DSU*. Accordingly, the European Union intends, in the first instance, to take countermeasures in the goods sector, under the covered agreements listed below. However, consistent with Article 22.3(c) of the *DSU*, the European Union considers that: (i) it is not practicable or effective to take countermeasures in the goods sector up to the full amount stated above; and, (ii) the

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<sup>4</sup> WT/DS353/14, 27 April 2012, *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*, concluded on 12 January 2012.

<sup>5</sup> Equivalent to approximately EUR 9.35 billion at current exchange rates. As a matter of commercial practice, sales of large civil aircraft are generally negotiated in USD, and, accordingly, the European Union's request for authorisation to take countermeasures is, as stated above, denominated in USD.

circumstances are serious enough, given, *inter alia*, the degree and nature of the adverse effects and serious prejudice.

Accordingly, the European Union's countermeasures would consist of one or more of the following:

- (1) suspension of tariff concessions and other related obligations under the *General Agreement on Tariffs and Trade 1994* on a list of US products to be established in due course;
- (2) suspension of concessions and other obligations under the *SCM Agreement*; and,
- (3) under the *General Agreement on Trade in Services*, suspension of horizontal or sectoral commitments contained in the consolidated EU Schedule of Specific Commitments, as supplemented to incorporate the individual Schedules of Specific Commitments of its Member States, with regard to all principal sectors identified in the Services Sectoral Classification List.

In accordance with Article 22.6 of the *DSU* and paragraph 7 of the Sequencing Agreement, if the United States objects to the level of suspension proposed and/or claims that the principles and procedures set forth in Article 22.3 of the *DSU* have not been followed, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available.