# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/DSB/M/314**
5 June 2012

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**Dispute Settlement Body**
**13 April 2012**

## MINUTES OF MEETING

Held in the Centre William Rappard
on 13 April 2012

*Chairman: Mr. Shahid Bashir (Pakistan)*

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### 1. United States – Measures affecting trade in large civil aircraft (second complaint)

(a) Implementation of the recommendations of the DSB

1. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 23 March 2012, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the dispute: "United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)". He invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

2. The representative of the United States said that, on 23 March 2012 the DSB had adopted its recommendations and rulings in the dispute: "United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)", DS353. At the present meeting, as provided in the first sentence of Article 21.3 of the DSU, the United States said that it was informing the DSB that the United States intended to implement the recommendations and rulings of the DSB in this dispute in a manner that respected US WTO obligations. The United States intended to do so within the time-frame established in Article 7.9 of the SCM Agreement.

3. The representative of the European Union said that the EU welcomed the US statement that the United States intended to comply with the DSB's recommendations and rulings in this dispute.

Article 7.9 of the Subsidies Agreement provided a six-month period from the adoption of the Panel and Appellate Body Reports for the United States to take appropriate steps either to withdraw the subsidies or to remove the adverse effects of the subsidies. That six-month period would expire on 23 September 2012. The EU recalled that the WTO-inconsistent R&D and tax subsidies that had been granted at various levels of government in the United States were massive and would benefit Boeing for many years to come. These subsidies had been found to cause adverse effects not only in the form of significant lost sales and the threat of losing market share, but also of price effects, which caused Airbus financial losses to the tune of billions of Euros. The EU would be monitoring closely developments towards implementation in the United States and remained ready to work with the United States on this matter.

4. The DSB took note of the statements, and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

## 2. European Communities and certain member States – Measures affecting trade in large civil aircraft

(a) Recourse to Article 21.5 of the DSU by the United States: Request for the establishment of a panel (WT/DS316/23)

5. The Chairman drew attention to the communication from the United States contained in document WT/DS316/23, and invited the representative of the United States to speak.

6. The representative of the United States said that, on 1 June 2011, the DSB had adopted its recommendations and rulings in this dispute, "EC - Large Civil Aircraft". The DSB had recommended that the Member granting each subsidy found to have resulted in adverse effects bring that subsidy into compliance with its obligations under the SCM Agreement. Under Article 7.9 of the SCM Agreement, the EU and certain member States had six months from the date of adoption of the recommendations and rulings of the DSB to withdraw the subsidies or take appropriate steps to remove the adverse effects of the subsidies. That six-month period had ended on 1 December 2011.

7. In the view of the United States, it appeared that the EU and certain member States had failed to comply with the recommendations and rulings of the DSB both within that period and thereafter. On 9 December 2011, the United States had requested consultations with the EU in an effort to provide the EU with a further opportunity to explain how it had complied with its WTO obligations. The consultations, however, had not resolved the dispute. The United States remained concerned that the EU and its member States had failed to comply with the recommendations and rulings of the DSB. Indeed, the EU had introduced new subsidies, just like the ones that had been condemned by the DSB just last year. The United States said that this was a serious problem. EU subsidies to Airbus were, by any measure, massive and had equally massive adverse effects on the United States.

8. Over the six-year period between the initiation of the dispute and the adoption of the Reports, the EU had denied providing subsidies and had denied their effects. The Panel and the Appellate Body, however, had rejected the EU's arguments, and the DSB had adopted those findings. To be specific, the DSB had found that these subsidies had caused Boeing to lose sales of more than 300 aircraft and to lose market share throughout the world. In fact, in looking at the effect of the EU subsidies, the Appellate Body had confirmed the Panel's finding that among the most plausible scenarios was that "[w]ithout the subsidies, Airbus would not have existed … and there would be no Airbus aircraft on the market. None of the sales that the subsidized Airbus made would have occurred."[1] The EU's notification of alleged steps to comply with the recommendations and rulings of

[1] "European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft", WT/DS316/AB/R, para. 1264 (adopted 1 June 2011).

the DSB showed that it had not changed its behaviour in any meaningful way. In fact, the notification acknowledged that the largest launch aid subsidies, for the A380, remained in place. Furthermore, the actions the EU claimed to have taken with respect to earlier subsidies appeared to do nothing to withdraw them, or remove their adverse effects, as required under Article 7.8 of the SCM Agreement. Airbus itself reported that it had received new launch aid for the A350XWB. In short, while claiming to have complied, the EU seemed to have made the problem worse. For those reasons, the United States was requesting that the DSB establish a panel under Article 21.5 of the DSU to examine whether the EU had implemented the DSB's recommendations and rulings. Pursuant to paragraph 2 of the sequencing agreement between the EU and the United States, the EU had agreed to accept the establishment of the panel at the present meeting.

9. The representative of the European Union said that the EU regretted that the United States had made the request for the establishment of a compliance panel. The EU was in full compliance with the DSB's recommendations and rulings, as had been notified to the DSB on 1 December 2011 (WT/DS316/21). In line with the sequencing agreement of 12 January 2012 pertaining to this case, the EU agreed to the establishment of a panel at the present meeting. However, the EU wished to inform the DSB that a similar sequencing agreement had been agreed in the dispute: "US – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)" (DS353), and would be circulated to Members shortly.

10. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by the United States in document WT/DS316/23. The Panel would have standard terms of reference.

11. The representatives of Canada, China, Japan and Korea reserved their third-party rights to participate in the Panel's proceedings.