WORLD TRADE ORGANIZATION

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Dispute Settlement Body
23 September 2005

MINUTES OF MEETING

Held in the Centre William Rappard
on 23 September 2005

Chairman: Mr. Eirik Glenne (Norway)

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

(a) Initiation of the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement and designation of the representative referred to in paragraph 4 of that Annex (WT/DS316/2)

1. The Chairman said that the above-mentioned item was on the agenda of the present meeting at the request of the United States. He then drew attention to the communication from the United States contained in document WT/DS316/2, and invited the representative of the United States to speak.

2. The representative of the United States said that his country had been seeking for over two months to have the DSB initiate the procedures provided for in Annex V of the SCM Agreement in this dispute, which was the US challenge to the EC's subsidies to Airbus. The United States understood that the EC was finally in a position to allow the Annex V process to move forward. Accordingly, at the present meeting the United States was renewing its request that the DSB initiate the procedures provided for in Annex V, pursuant to paragraph 2 of that Annex. The United States looked forward to beginning the process of developing information under that Annex. In addition, the United States also requested that the DSB designate Mr. Mateo Diego-Fernández as the representative that would facilitate the information-gathering process, pursuant to paragraph 4 of Annex V. The United States would also like to take this opportunity to thank the DSB Chairman for his assistance in

helping the parties to reach agreement on the representative. The United States very much appreciated the time and the effort that the Chairman had devoted to this matter.

3. The representative of the European Communities said that, first, his delegation wished to make a more general point related to the request for the initiation of the Annex V procedures in both DS316 and DS317 disputes. He recalled that at previous DSB meetings, the EC had not been in a position to agree to the initiation of the Annex V procedures. As had been pointed out then, this was not due to any unwillingness to see these procedures started, but rather due to a firm commitment to ensure that the basis of the procedures was the appropriate one. At the present meeting, his delegation was pleased to confirm that the EC had now reached that stage in close cooperation with the United States. The parties had been able to elaborate tailor-made Annex V procedures, which duly took into account the complex nature of both disputes and the factual documentation likely to be associated with it. The EC was confident that the procedures, which were to be agreed upon, would allow both the EC and the United States to prepare properly in each dispute towards a resolution of both disputes within the spirit and the letter of the DSU. He said that the parties had jointly approached, with the assistance of the DSB Chairman, Mr. Mateo Diego-Fernández, who had accepted the task of serving as a facilitator in both disputes (DS316 and DS317). The EC was grateful that he had offered to make himself available for these tasks. In addition to this, the parties to these two disputes continued to work towards an agreement on the treatment and handling of sensitive information, including business confidential information as well as government documents and had made further progress towards actual agreement on this. Therefore, in the light of the above, the EC could agree to the initiation of the Annex V procedure in the DS316 dispute.

4. The representative of Japan said that he wished to place on the record Japan's understanding regarding the initiation of the Annex V procedure. Japan understood that the time-period of 60 days, specified in paragraph 5 of Annex V, would start now; i.e. after the DSB's decision to initiate the procedures.

5. The representative of Brazil said that her country regretted the unnecessary length of the proceeding under consideration. Had the parties properly interpreted Annex V of the SCM Agreement, the fact-finding procedure and the facilitator would have already been in place when the request had first been made. She noted that the provisos of Annex V were clear and unconditional. Paragraphs 2 and 5 set out no additional requirement for the establishment of the fact-finding procedure, but the request itself and the "referral of the matter to the DSB under paragraph 4 of Article 7 of the SCM Agreement". As to the designation of the facilitator, paragraph 4 of Annex V was even more straightforward: "The DSB shall designate a representative to serve the function of facilitating the information-gathering process". These paragraphs included no reference whatsoever to a consensus rule. Nowhere in Annex V was there a need for mutual agreement between the parties to a dispute as a pre-condition for establishing the fact-finding procedure and for designating the facilitator for the information-gathering process.

6. The Chairman proposed that the DSB take note of the statements made and agree, as requested by the United States in document WT/DS316/2, to initiate the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement, pursuant to paragraph 2 of Annex V of the SCM Agreement.

7. The DSB took note of the statements and so agreed.

8. The Chairman said that, with regard to the second issue, namely the US request to designate a DSB facilitator pursuant to paragraph 4 of Annex V, he wished to recall that on 22 September 2005, a fax had been sent to delegations. In that fax, he had informed Members that he had identified, and that the parties to the dispute had agreed to, a representative whom he had proposed that the DSB designate to serve the function of facilitating the information-gathering process, pursuant to paragraph 4 of Annex V of the SCM Agreement. He had invited any delegation that desired further

information to contact him. At the present meeting, he wished to propose that the DSB designate Mr. Mateo Diego-Fernández as a representative to serve the function of facilitating the information-gathering process, pursuant to paragraph 4 of Annex V of the SCM Agreement.

9. The DSB so agreed.

10. On behalf of the DSB, the Chairman thanked Mr. Mateo Diego-Fernández for his willingness to undertake this task.

2. United States – Measures affecting trade in large civil aircraft

(a) Initiation of the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement and designation of the representative referred to in paragraph 4 of that Annex (WT/DS317/2)

11. The Chairman said that that the above-mentioned item was on the agenda of the present meeting at the request of the European Communities. He then drew attention to the communication from the European Communities contained in document WT/DS317/2, and invited the representative of the European Communities to speak.

12. The representative of the European Communities said that, under the previous agenda item, his delegation had already stated the fact that the EC and the United States, as a result of close co-operation, had reached agreement on the initiation of Annex V procedures in DS316 and DS317 disputes. Once again, the EC wished to thank the DSB Chairman for his assistance regarding this matter. At the present meeting, the EC, therefore, requested the initiation of the Annex V procedure in the DS317 dispute.

13. The representative of the United States said that, as mentioned with respect to the previous agenda item, the United States was pleased that the EC was finally willing to allow the Annex V process to go forward pertaining to the dispute DS316. The United States agreed to the initiation of Annex V proceedings in this dispute, and to the designation of Mr. Diego-Fernández as the DSB's representative, and looked forward to beginning the process of developing information under that Annex. Of course, the US joining the consensus to commence Annex V proceedings in the DS317 dispute extended only to the programs and measures that were properly included in the EC's panel request, namely, those consulted upon pursuant to their inclusion in the EC's consultation request. The United States would also like to thank the Chairman, once again, for his efforts to help the parties reach agreement on the representative. In addition, the United States wished to take this opportunity to express its gratitude to Mr. Diego-Fernández for his willingness to serve as the representative of the DSB in both disputes.

14. The representative of Japan said that he wished to place on the record that Japan's understanding regarding the time-period of 60 days for the information-gathering process was the same as indicated under the previous agenda item.

15. The representative of Brazil said that she wished to place on the record that the statement made by Brazil under the previous agenda item was also valid under the present item.

16. The Chairman proposed that the DSB take note of the statements made and agree, as requested by the European Communities in document WT/DS317/2, to initiate the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement, pursuant to paragraph 2 of Annex V of the SCM Agreement.

17. The DSB took note of the statements and so agreed.

18. The Chairman said that, with regard to the second issue, namely, the EC request to designate a DSB facilitator, pursuant to paragraph 4 of Annex V, he wished to recall that on 22 September 2005, a fax had been sent to delegations. In that fax, he had informed Members that he had identified, and that the parties to the dispute had agreed to, a representative whom he had proposed that the DSB designate to serve the function of facilitating the information-gathering process, pursuant to paragraph 4 of Annex V of the SCM Agreement. He had invited any delegation that desired further information to contact him. At the present meeting, he wished to propose that the DSB designate Mr. Mateo Diego-Fernández as a representative to serve the function of facilitating the information-gathering process, pursuant to paragraph 4 of Annex V of the SCM Agreement.

19. The DSB so agreed.

20. On behalf of the DSB, the Chairman thanked, once again, Mr. Mateo Diego-Fernández for his willingness to undertake this task.