

WORLD TRADE ORGANIZATION

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EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS

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

The following communication, dated 14 January 2008, from the delegation of the European Communities and the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

Please find attached the agreed procedures between the European Communities and the United States under Article 21 and 22 of the Dispute Settlement Understanding in the dispute *European Communities - Measures Affecting the Approval and Marketing of Biotech Products* (WT/DS291).

For the European Communities

For the United States

Eckart Guth
Ambassador

Peter F. Allgeier
Ambassador

Agreed Procedures between the European Communities and the United States
under Articles 21 and 22 of the Dispute Settlement Understanding in the dispute
European Communities Measures Affecting the Approval and Marketing of Biotech Products
(WT/DS291)

The Dispute Settlement Body (DSB) adopted its recommendations and rulings in the dispute *European Communities - Measures Affecting the Approval and Marketing of Biotech Products* (WT/DS291) between the United States and the European Communities on 21 November 2006.

Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), the European Communities and the United States agreed on a one-year reasonable period of time (RPT) for implementation of the DSB's recommendations and rulings (WT/DS291/35). The European Communities and the United States subsequently agreed to extend the RPT so as to expire on 11 January 2008 (WT/DS291/36).

During the RPT, the European Communities and the United States have engaged in discussions with the goal of resolving this dispute and related issues. With the intent of allowing those discussions to continue, the European Communities and the United States have agreed on the following procedures for the exclusive purposes of this dispute. These procedures are without prejudice to either party's views on the correct interpretation of the DSU.

1. Should the United States request authorization to suspend concessions or other obligations pursuant to DSU Article 22.2, the European Communities shall object to the level of concessions or other obligations and/or claim that the principles and procedures set forth in DSU Article 22.3 have not been followed no later than before the DSB meeting at which the US request is proposed for the agenda. The matter will be referred to arbitration pursuant to DSU Article 22.6.
2. After the referral of the matter to Article 22.6 arbitration, the parties will request the Article 22.6 arbitrator, at the earliest possible moment, to suspend its work. The arbitration will resume if and when the condition in paragraph 6 is fulfilled.
3. The United States may at any time request consultations with regard to whether the situation described in Article 21.5 of the DSU exists. The parties will hold such consultations within 30 days of the circulation of such a request.
4. The United States may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time following 30 days after the circulation of the aforementioned consultation request. The European Communities shall not raise any objection to the panel request being made after this time period.
5. At the first DSB meeting at which the United States request for the establishment of an Article 21.5 panel appears on the agenda, the European Communities shall accept the establishment of that panel.
6. In the event that the DSB finds that a measure taken to comply with the recommendations and rulings of the DSB in this dispute does not exist or is inconsistent with a covered agreement, the Article 22.6 arbitrator will resume its work at the request of the United States.
7. The parties will cooperate to facilitate the participation of the original panelists in an Article 21.5 compliance proceeding and an Article 22.6 arbitration.

8. If an original panelist is not available for either an Article 21.5 compliance panel or an Article 22.6 arbitration, or both, the parties will promptly consult on a replacement, and either party may request the Director-General of the WTO to appoint, as soon as possible, a replacement for the proceeding or proceedings for which such a replacement is required. If an original panelist is unavailable to serve in either proceeding, the parties will further request that in making this appointment, the Director-General seek a person who will also be available to act in both proceedings.
9. The parties will cooperate to enable the Article 21.5 compliance panel, the Appellate Body in the event of an appeal of the compliance panel report, and the Article 22.6 arbitrator to complete their work as expeditiously as possible.
10. The parties will continue to cooperate in all matters related to these agreed procedures and will 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, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps herein agreed.

For the European Communities

For the United States

Geneva, 14 January 2008
