

UNITED STATES – TAX TREATMENT FOR "FOREIGN SALES CORPORATIONS"

Second Recourse to Article 21.5 of the DSU by the European Communities

Constitution of the Panel

Note by the Secretariat

1. At its meeting on 17 February 2005, the Dispute Settlement Body (DSB) referred this dispute, if possible, to the original Panel in accordance with Article 21.5 of the Dispute Settlement Understanding (DSU) to examine the matter referred to the DSB by the European Communities in document WT/DS108/29.

2. At that DSB meeting, the parties to the dispute also agreed that the Panel should have standard terms of reference. The terms of reference are, therefore, the following:

"To examine, in the light of the relevant provisions of the covered agreements cited by the European Communities in document WT/DS108/29, the matter referred by the European Communities to the DSB in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."

3. On 22 April 2005, the European Communities requested the Director-General to determine the composition of the Panel in accordance with Article 8.7 of the DSU. This paragraph provides:

"If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request."

4. On 2 May 2005, the Director-General determined the composition of the Panel as follows:¹

Chairman: Mr. Germain Denis

Members: Mr. Didier Chambovey
Mr. Seung Wha Chang

5. Australia, Brazil and China reserved their rights to participate in the Panel proceedings as third parties.

¹ The Chairman of the original panel, Mr. Crawford Falconer, was not available for these proceedings. The parties agreed to his replacement.