

**UNITED STATES – TAX TREATMENT FOR "FOREIGN SALES CORPORATIONS"**

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

Notification of an Appeal by the United States  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 14 November 2005, from the Delegation of the United States, is being circulated to Members.

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Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel on *United States – Tax Treatment for "Foreign Sales Corporations": Second Recourse to Article 21.5 of the DSU by the European Communities* (WT/DS108/RW2) ("Panel Report") and certain legal interpretations developed by the Panel in this dispute.

1. The United States seeks review of the Panel's conclusion that the United States continues to fail to implement fully the operative DSB recommendations and rulings to withdraw the prohibited subsidies and to bring its measures into conformity with its obligations under the relevant covered agreements. This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations, including with respect to Articles 6.2 and 21.5 of the DSU and Article 4.7 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").<sup>1</sup> These erroneous findings and related legal interpretations include that there was a recommendation pursuant to Article 4.7 of the SCM Agreement with respect to the Extraterritorial Income Exclusion Act ("ETI Act") and that a panel established under Article 21.5 of the DSU may make a recommendation pursuant to Article 4.7 of the SCM Agreement.

2. The United States seeks review of the Panel's legal conclusion that section 5 of the ETI Act is within the Panel's terms of reference pursuant to Articles 6.2 and 7.1 of the DSU.<sup>2</sup> This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations.

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<sup>1</sup>See, for example, Panel Report, paragraphs 7.39, 7.41 - 7.44, 7.51 - 7.58, 7.62 - 7.65.

<sup>2</sup>See, for example, Panel Report, paragraphs 7.61, 7.68, 7.72 - 7.73, 7.76, 7.78 - 7.87.