



11 December 2019

(19-8515)

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Original: English

**EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES - MEASURES AFFECTING
TRADE IN LARGE CIVIL AIRCRAFT**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE EUROPEAN UNION

NOTIFICATION OF AN APPEAL BY THE EUROPEAN UNION¹ UNDER ARTICLE 16.4 AND ARTICLE 17
OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF
DISPUTES (DSU), ARTICLE 7.6 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING
MEASURES (SCM AGREEMENT) AND UNDER RULE 20(1) OF THE
WORKING PROCEDURES FOR APPELLATE REVIEW

The following communication, dated 6 December 2019, from the delegation of the European Union, is being circulated to Members.

Pursuant to Article 16.4 and Article 17.1 of the DSU, and Article 7.6 of the SCM Agreement, the European Union hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *European Union – Measures Affecting Trade in Large Civil Aircraft (Recourse to Article 21.5 of the DSU by the European Union)* (WT/DS316/RW2). Pursuant to Rule 20(1) of the *Working Procedures for Appellate Review*, the European Union simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

The European Union is restricting its appeal to those errors that it believes constitute serious errors of law and legal interpretation that need to be corrected. Non-appeal of an issue does not signify agreement therewith.

For the reasons to be further elaborated in its submissions to the Appellate Body, the European Union appeals, and requests the Appellate Body to reverse, modify, or declare moot and of no legal effect, the findings, conclusions, and recommendations of the Panel, with respect to the following errors of law and legal interpretations contained in the Panel Report:²

1. The Panel erred in the interpretation and application of Articles 1.1 and 7.8 of the SCM Agreement when finding that the full repayment of the UK A350XWB Member State Financing ("MSF") loan failed to achieve the withdrawal of the subsidy.³

¹ Unless the context otherwise requires, as a matter of WTO law, references in this document (and any subsequent document filed in this dispute) to the European Union include the "certain member States" (France, Germany, Spain, and the United Kingdom) against which the United States commenced this dispute.

² Paragraph numbers provided in footnotes to the following description of the errors of the Panel are intended to indicate the primary instance of the errors. These errors have consequences throughout the report, and the European Union also appeals all findings and conclusions deriving from or relying on the appealed errors, and in particular the relevant findings and conclusions in Sections 7 and 8 of the Panel Report. The European Union also emphasises that the paragraphs listed in this Notice of Appeal comprise only an "indicative list", pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review.

³ Panel Report, paras. 7.188-7.190, 7.195-7.204, 7.259(b), 8.1(b)(ii).

2. The Panel erred in the interpretation and application of Articles 1.1 and 7.8 of the SCM Agreement when finding that amendment of the terms of a subsidy to align it with a contemporaneous market benchmark does not "withdraw the subsidy".⁴

3. The Panel erred in the application of Articles 1.1 and 7.8 of the SCM Agreement, and failed to make an objective assessment of the matter under Article 11 of the DSU, in finding that the amendment to the German A350XWB MSF loan agreement did not result in the withdrawal of the German A350XWB MSF subsidy.⁵

4. The Panel erred in the application of Articles 1.1 and 7.8 of the SCM Agreement, and failed to make an objective assessment of the matter under Article 11 of the DSU, in finding that the restructuring of the French, German, Spanish and UK A380 MSF loans has not achieved the withdrawal of each, or any, of those four A380 MSF subsidies.⁶

5. The Panel erred in the interpretation and application of Articles 1.1 and 7.8 of the SCM Agreement, and failed to make an objective assessment of the matter under Article 11 of the DSU, in finding that the Spanish A380 MSF subsidy has not been withdrawn as a result of the amortisation of benefit.⁷

6. The Panel erred in the interpretation of Article 7.8 of the *SCM Agreement* in finding that Airbus' 14 February 2019 announcement to wind down the A380 programme ("A380 wind-down announcement") does not demonstrate that the European Union has achieved compliance with the obligation to "take appropriate steps to remove the adverse effects".⁸ In the alternative, the Panel erred in the application of Articles 5, 6.3, and 7.8 of the SCM Agreement, in finding present adverse effects in the form of impedance in the Singaporean and United Arab Emirates' markets for very large aircraft ("VLA"),⁹ despite the A380 wind-down announcement having constituted an appropriate step to remove those adverse effects.

7. The Panel failed to make an objective assessment of the matter under Article 11 of the DSU in finding that the A380 and the A350XWB would not have been launched before December 2013, absent A380 and A350XWB MSF subsidies.¹⁰ The European Union requests the Appellate Body to consider this appeal only conditionally, if it reverses, following a possible appeal by the United States, the Panel's finding that, in the counterfactual considered by the Panel, Airbus would have launched the A350XWB in 2014.¹¹

8. The Panel failed to make an objective assessment of the matter under Article 11 of the DSU, and erred in the application of Articles 5, 6.3, and 7.8 of the *SCM Agreement*, when finding (i) impedance in the VLA product market in Singapore and the United Arab Emirates;¹² (ii) impedance in the twin-aisle product markets in the European Union, China, Korea and Singapore;¹³ and, (iii) lost sales in the global twin-aisle product market.¹⁴

9. The Panel erred in the interpretation and application of Articles 21.5 and 22.8 of the DSU, and failed to make an objective assessment of the matter under Article 11 of the DSU, in failing to address the implications of its finding that present adverse effects, in the form of significant lost sales, no longer exist in the VLA market. In particular, the Panel failed to address the implications of its findings of EU compliance, in view of the end of those adverse effects, for the amount of countermeasures, if any, that the United States continues to be authorised to impose.¹⁵ Additionally,

⁴ Panel Report, paras. 7.142-7.151, 7.158, 7.163-7.164, 7.217-7.219, 7.234, 7.259(a)(ii), 7.259(c)(i), 8.1(b)(i), 8.1(b)(iii).

⁵ Panel Report, paras. 7.156, 7.157, 7.158, 7.162-7.163, 7.164, 7.259(a), 8.1(b)(i).

⁶ Panel Report, paras. 7.227-7.229, 7.231, 7.232, 7.233, 7.234, 7.244, 7.245, 7.259(c)(i), 7.259(c)(ii), 8.1(b)(iii), 8.1(b)(iv).

⁷ Panel Report, paras. 7.239, 7.244, 7.245, 7.259(c)(ii), 8.1(b)(iv).

⁸ Panel Report, paras. 7.412, 7.421-7.427, 7.446, 8.1(c)(iii)(1).

⁹ Panel Report, paras. 7.412, 7.421-7.427, 7.446, 8.1(c)(iii)(1).

¹⁰ Panel Report, paras. 7.279, 7.284, 7.285, 7.290, 7.291, 7.293, 7.295, 7.296, 7.297, 7.298, 7.421-7.427, 7.428-7.430, 7.441-7.446, 8.1(c)(i), 8.1(c)(iii)(1), 8.1(c)(iii)(2), 8.1(c)(iii)(3).

¹¹ Panel Report, paras. 7.369, 8.1(c)(i).

¹² Panel Report, paras. 7.421-7.427, 7.446, 8.1(c)(iii)(1).

¹³ Panel Report, paras. 7.428-7.430, 7.446, 8.1(c)(iii)(2).

¹⁴ Panel Report, paras. 7.441-7.445, 7.446, 8.1(c)(iii)(3).

¹⁵ Panel Report, paras. 7.440, 8.1-8.4.

the Panel's errors listed in paragraphs 1 through 8, above, give rise to a consequential error in that the Panel has failed to address the implications of other aspects of the European Union's compliance for the amount of countermeasures, if any, the United States continues to be authorised to impose.
