

**1 GENERAL..... 1**

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1. In *EC and certain member States – Large Civil Aircraft*, the Appellate Body referred to the general background of the Agreement on Trade in Civil Aircraft (which it referred to as the "1979 Agreement"). In the context of discussing a 1992 bilateral agreement between the United States and the European Union regulating the same matter, the Appellate Body stated that this 1992 bilateral agreement:

"[W]as negotiated against a background of differences on how to discipline subsidies to the aircraft sector. Accounts of the state of play of the Uruguay Round negotiations around 1992 suggest that the issue of disciplining such subsidies was one of the more difficult subjects dividing the European Communities and the United States, and that the relationship between the new *SCM Agreement* and the 1992 Agreement was contentious and ultimately remained unresolved.<sup>1</sup> It was agreed in Article 12 of the 1992 Agreement to negotiate a multilateral agreement on trade in civil aircraft.<sup>2</sup> The *SCM Agreement* itself reflects that, at the time of its conclusion, negotiations on multilateral rules on trade in the civil aircraft sector were anticipated.<sup>3</sup> However, we note that no such multilateral rules were ever agreed, except for the incorporation of the 1979 Agreement as a plurilateral agreement in Annex 4 to the *WTO Agreement*."<sup>4</sup>

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<sup>1</sup> (*footnote original*) See, for instance, Minutes of the GATT Committee on Trade in Civil Aircraft meeting held on 16 July 1992, AIR/M/32, and meeting held on 8 October 1992, AIR/M/33.

<sup>2</sup> (*footnote original*) Article 12.2 of the 1992 Agreement provides that "the Parties shall make their utmost efforts to ensure that these or similar disciplines are incorporated into the Aircraft Agreement or adopted by key signatories at the earliest possible date". Article 12.3 anticipates that "if multilateralization has not been achieved in one year, the Parties shall review the question of the continued application of this bilateral Agreement."

<sup>3</sup> (*footnote original*) Footnote 15 to (now expired) Article 6.1(a) of the *SCM Agreement* states that, "since it is anticipated that civil aircraft will be subject to specific multilateral rules, the threshold in this subparagraph does not apply to civil aircraft." Moreover, footnote 24 to (now expired) Article 8.2(a) of the *SCM Agreement* provides that "since it is anticipated that civil aircraft will be subject to specific multilateral rules, the provisions of this subparagraph do not apply to that product."

<sup>4</sup> Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 854.