

March 5, 2019

H.E. Mr. Marc Vanheukelen
Ambassador
Permanent Mission of the European Union
Rue du Grand-Pré 66
1211 Geneva

Dear Mr. Ambassador,

I am writing in connection with the dispute settlement proceedings conducted pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) concerning *United States – Certain Measures on Steel and Aluminum Products* (DS548), to which the European Union (EU) is a party.

On instructions from my authorities, I would like to inquire whether the EU agrees to make its statements to the Panel and Appellate Body (in the event of any appeal) open to observation by other WTO Members and the public. DSU Article 18.2 provides that every WTO Member has the right to make public statements of its own position. The United States will make its statements publicly available and will request each WTO adjudicator to make arrangements so the public may observe U.S. statements during any substantive meeting in this dispute. The opening of meetings to public observation would serve to enhance WTO Members’ and the public’s understanding of the dispute settlement system.

The United States and the EU have worked together to promote greater transparency in the WTO dispute settlement system for many years. In this regard, I recall that the United States and the EU have agreed to open meetings in a number of disputes, including, for example, in *EC and certain member States – Large Civil Aircraft*, *US – Large Civil Aircraft (2nd complaint)*, *EC – Bananas III (Article 21.5 – US)*, *US – Continued Zeroing*, *US – Zeroing (EC) (Article 21.5 – EC)*, *EC – IT Products*, *EC and certain member States – Large Civil Aircraft (Article 21.5 – US)*, *US – Measures Affecting Trade in Large Civil Aircraft (Article 21.5 – EU)*, *United States – Conditional Tax Incentives for Large Civil Aircraft*, *US/Canada – Continued Suspension*, and *EC and certain member States – Large Civil Aircraft (Article 22.6 – EU)*. I would also note that the EU has agreed to participate in several other dispute settlement mechanisms that provide for

open hearings, such as under the CETA,¹ EU-Korea FTA,² the International Court of Justice,³ and the International Tribunal for the Law of the Sea⁴. We do not see any reason why the EU would consider the WTO dispute settlement system should be less transparent than these other systems in which the EU participates.

I also would inquire whether the EU plans to make its submissions to the Panel in this dispute available to the public. If the EU intends to make its submissions available to the public, please so advise at your earliest convenience. If any submission is not to be made public, then pursuant to Article 18.2 of the DSU, please provide us a non-confidential summary of the submission promptly upon filing the submission. As you will recall, Article 18.2 of the DSU provides that “[a] party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.” Please consider this request to be applicable to all submissions to the Panel as well as any submission to the Appellate Body in the event of any appeal in this dispute.

I look forward to receiving your response to these inquiries and request.

Sincerely,

Dennis C. Shea
Ambassador

cc: Mr. Elbio Rosselli, Chairperson of the Panel

¹ Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States, Annex 29-A, Paragraph 38 (“Subject to paragraph 39, each Party shall make its submissions publicly available and, unless the Parties decide otherwise, the hearings of the arbitration panel shall be open to the public.”).

² Free Trade Agreement between the European Union and its Member States and the Republic of Korea, Article 14.14(2) (“Any hearing of the arbitration panel shall be open to the public in accordance with Annex 14-B.”) (“EU-Korea FTA”); *id.*, Annex 14-B, Article 7(7) (“The hearings of the arbitration panels shall be open to the public, unless the Parties decide that the hearings shall be partially or completely closed to the public.”).

³ Statute of the International Court of Justice, Article 46 (“The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.”).

⁴ Statute of the International Tribunal for the Law of the Sea, Article 26.2 (“The hearing shall be public, unless the Tribunal decides otherwise or unless the parties demand that the public be not admitted.”).