

The US' WTO Challenge of EU Support to Airbus

- Since 1992 direct and indirect government support to aircraft industry in the US and the EU was regulated by the bilateral EU-US Agreement on Trade in Large Civil Aircraft. The EU in good faith had continuously met all commitments under this agreement whereas US compliance had been less than adequate, in particular by not disclosing large hidden subsidies to Boeing including prohibited production subsidies in Washington State for the 787 and other Boeing commercial aircraft.
- Nevertheless, during the course of the Summer 2004 the United States unilaterally withdrew from the bilateral 1992 Agreement and unexpectedly filed a WTO challenge of all EU support even though it had been granted in accordance with the Agreement. In so doing, the US opted for an escalation of the rivalry between the two competitors in the manufacturing and sale of large civil aircraft, Airbus and Boeing.
- On 12 October 2004 the US requested formal WTO consultations with the EU regarding alleged subsidisation of Airbus by the EC and certain of its Member States. The US consultation request – and later panel request – revealed fundamental misunderstandings on the part of the US as regards the European systems of financing of research and development.
- The major bone of contention is that of EU Member State co-financing of R&D for new Airbus aircraft (**reimbursable launch investment**). **This form of support had been expressly agreed under the bilateral EU-US Agreement** and has been used on three of the eight Airbus aircraft launched since 1990. It provides for government funding to Airbus repaid with interest under terms specified in the Bilateral Agreement (loan rates of return are cost to government plus 1%, and interest and principal is repaid on deliveries, even before the programs break-even). In some cases the terms are more onerous than those commercially available in that the lending governments are receiving royalty payments that will last through the life of a particular aircraft program even though the original loan and interest are completely repaid. In fact, EU governments so far have made handsome returns on their initial “investments”, even though there are instances where Airbus has been able to obtain financing on more favourable terms from private lenders, compared with government offers. In particular, since 1992, Airbus has, according to publicly available documents, borrowed less than 4 billion euros and repaid more than 5 billion euros. According to these sources, Airbus continues to repay loans at the rate of 300 to 400 million euros a year and its payments have amounted to 40% more than it has received in government loans since 1992.
- The US also claims that a number of infrastructure projects were allegedly built or upgraded exclusively for Airbus, or that Airbus enjoyed preferential treatment. However, unlike infrastructure projects in the State of Washington (which were designed for Boeing and for which Boeing benefited from preferential treatment), Airbus pays a market-based rent and clearly did not benefit from any preferential treatment for these projects, or they were for the use of the general public.

- As regards research and development in the EU (be it at EU or EU Member State level), such activities are always 50-50 co-financed by the industry and the EU abides by the cap provided in the bilateral EU-US agreement for such support.
- The US also argues that Airbus benefited from preferential loans from the European Investment Bank (EIB). The EIB has indeed provided loans to Airbus but it has done so in full conformity with its lending rules and policy on conditions strictly similar to that of loans to other clients. For instance, the EIB has provided loans to European airlines for the purchase of Boeing aircrafts, as well as to several other large US companies for investments in the EU.
- The EC remains open to pursuing a negotiated solution provided this time it is binding. However, the starting point for such negotiations should be realistic, balanced and pragmatic.

*European Commission
10 July 2006*

The EU's WTO Challenge of US Subsidies to Boeing

- Following the United States' unjustified and unilateral withdrawal from the 1992 bilateral EC-US Agreement on Trade in Large Civil Aircraft and the initiation of WTO dispute settlement procedures against the EU, the EU for its part on 12 October 2004 decided to mirror the US steps by initiating WTO dispute settlement procedures regarding a number of US measures, including federal and state subsidies.
- The EU has undertaken numerous good faith attempts towards a negotiated solution to the differences of opinion between the EU and the US, without success to date.
- For its part, the EU is challenging various US State subsidies benefiting Boeing. These subsidies amount to billions of USD for Boeing. Illustrative examples include a USD 3.2 billion package in the State of Washington (combining tax breaks, tax exemptions or tax credits and infrastructure projects for the exclusive benefit of Boeing) and a USD 650 million package in the State of Kansas in the form of tax breaks and subsidized bonds.
- As regards US federal measures, the EU has successfully challenged the tax breaks – now repealed this year by US legislation – offered to Boeing under the Foreign Sales Corporation successor legislation, the American Jobs Creation Act. These tax benefits, which the EU estimates at a value to Boeing of USD 1.6 billion dollars over the period 1995-2004, will finally cease to exist on 1 January 2007.
- In addition to the federal tax breaks, the EC is challenging the US system under which a large number of patents and other technologies are put at the disposal of Boeing free of charge, including through the transfer of patents held by US federal agencies (and resulting from US government funded research) to Boeing. The EU estimates the benefits of federal research programs to Boeing at around USD 15 billion.
- The EU intends to demonstrate before the WTO panel that the lavish subsidies benefiting Boeing has allowed Boeing to engage in aggressive pricing of its aircraft which has caused lost sales for and injury to Airbus.
- The EU remains open to pursuing a negotiated solution. However, the starting point for such negotiations should be realistic, balanced and pragmatic.

See Appendix for details of the US subsidies to Boeing challenged by the EU.

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Appendix – Details of the US subsidies to Boeing challenged by the EU

1. State and Local Subsidies

- a. State of Washington: incentive package of measures benefiting the development, production and sales of US LCA¹. These incentives include but are not limited to tax and other advantages
- b. State of Kansas: incentives, including bond financing, tax benefits and other advantages, to the US LCA industry.
- c. State of Illinois: incentives, including tax incentives, relocation assistance and other advantages, to the US LCA industry

2. NASA Subsidies

NASA transfers economic resources on terms more favourable than available on the market or not at arm's length to the US LCA industry, *inter alia*, by:

- a. allowing the US LCA industry to participate in research programmes, making payments to the US LCA industry under those programmes, or enabling the US LCA industry to exploit the results thereof by means including but not limited to the foregoing or waiving of valuable patent rights, the granting of limited exclusive rights data ("LERD") or otherwise exclusive or early access to data, trade secrets and other knowledge resulting from government funded research.
- b. providing the services of NASA employees, facilities, and equipment to support the R&D programmes listed above and paying salaries, personnel costs, and other institutional support, thereby providing valuable services to the US LCA industry on terms more favourable than available on the market or not at arm's length.
- c. providing NASA Independent Research & Development, and Bid & Proposal Reimbursements.
- d. allowing the US LCA industry to use the research, test and evaluation facilities owned by the US Government, including NASA wind tunnels, in particular the Langley Research Center.
- e. entering into procurement contracts with the US LCA industry for more than adequate remuneration.
- f. granting the US LCA industry exclusive or early access to data, trade secrets, and other knowledge resulting from government funded research.
- g. allowing the US LCA industry to exploit the results of government funded research, including, but not limited to, the foregoing or waiving of valuable patent rights or rights in data as such.

3. Department of Defense Subsidies

The Department of Defense ("DOD") transfers economic resources to the US LCA industry on terms more favourable than available on the market or not at arm's length, *inter alia*, by:

- a. allowing the US LCA industry to participate in DOD-funded research, making payments to the US LCA industry for such research, or enabling the US LCA industry to exploit the results of such research, by means including but not limited to the foregoing or waiving of valuable patent rights,

¹ Large Civil Aircraft(s)

and the granting of exclusive or early access to data, trade secrets and other knowledge resulting from government funded research.

- b. allowing the US LCA industry to use research, test and evaluation facilities owned by the US Government, including the Major Range Test Facility Bases.
- c. entering into procurement contracts, including those for the purchase of goods, from the US LCA industry for more than adequate remuneration, including in particular but not limited to the US Air Force contract with Boeing for the purchase of certain spare parts for its Airborne Warning and Control System (AWACS) aircraft, the National Polar-orbiting Operational Environmental Satellite System-Conical Microwave Imager Sensor, the C-22 Replacement Program (C-40), the KC-135 Programmed Depot Maintenance, the C-40 Lease and Purchase Program, the C-130 avionics modernisation upgrade program, the C-17 H22 contract (Boeing BC-17X), the US Navy contract with Boeing for the production and maintenance of 108 civil B-737 and their conversion into long-range submarine hunter Multi-Mission Aircraft, the Missile Defense Agency's Airborne Laser (ABL) Program, and the Army's Comanche Program.
- d. by allowing the US LCA industry to exploit the results of government funded research, including, but not limited to, the foregoing or waiving of valuable patent rights or rights in data as such.

4. National Institute of Standards & Technology (US Department of Commerce) Subsidies

The US Department of Commerce ("DOC") transfers economic resources to the US LCA industry on terms more favourable than available on the market or not at arm's length, through the Advanced Technology Program operated pursuant to the Omnibus Trade and Competitiveness Act of 1988, as amended, and the American Technology Preeminence Act of 1991, by allowing the US LCA industry to participate in this programme, making payments to the US LCA industry under this programme, or allowing the US LCA industry to exploit the results of this programme, including but not limited to the foregoing or waiving of valuable patent rights, and the granting of exclusive or early access to data, trade secrets and other knowledge resulting from government funded research.

5. US Department of Labor

The US Department of Labor transfers economic resources to the US LCA industry on terms more favourable than available on the market or not at arm's length, through the Aerospace Industry Initiative, an element of the President's High Growth Training Initiative, under the authority of the Workforce Investment Act, by granting to Edmonds Community College in the State of Washington funds for the training of aerospace industry workers associated with the Boeing 787.

6. Federal tax incentives

The US Government transfers economic resources to the US LCA industry through the federal tax system, and in particular through the following tax measures:

- a. Sections 921-927 of the Internal Revenue Code (prior to repeal) and related measures establishing special tax treatment for "Foreign Sales Corporations" ("FSCs");
- b. FSC Repeal and Extraterritorial Income Exclusion Act of 2000; and
- c. American Jobs Creation Act of 2004.