



BACKGROUND FACT SHEET

WTO DISPUTES EU/US LARGE CIVIL AIRCRAFT

(LAST UPDATE: 11 OCTOBER 2012)

General Context

Since October 2004, the EU and US have been contesting at the WTO their Governments' respective support to their aerospace industries. Both WTO challenges relate to alleged WTO-incompatible support to respectively Airbus and Boeing over a 20 to 30 year period.

Prior to these WTO challenges, US and EU government support to their aircraft producers had been regulated by the so-called "Bilateral EU-US Agreement on Trade in Large Civil Aircraft". This agreement, concluded in 1992, allowed each party to provide a certain level of support to their respective aircraft industries.

In the case of the EU, the agreement permitted granting of so-called "Repayable Launch Investment" to Airbus i.e. loans repaid with interest under terms specified in the Agreement.

In the case of the US, it allowed a certain level of government-financed R&D support to the US aerospace producer, Boeing. In order to monitor compliance with the terms of the bilateral agreement, annual meetings and regular exchanges of information took place.

On the 6 October 2004, the United States quite unexpectedly and unilaterally announced its withdrawal from the 1992 Agreement and immediately filed a challenge at the WTO of all EU support ever granted to Airbus, even though the US had previously agreed to this support.

In turn, the EU was left with little option other than to respond itself immediately with a parallel WTO challenge of US government support to US aerospace industry (i.e. Boeing) by Federal, State and local authorities, including benefits to Boeing under the so-called US Foreign Sales Corporation Scheme, which the US government had continued to provide to Boeing, despite these subsidies having repeatedly been found to violate WTO rules.

These two parallel WTO challenges, the "Airbus case" (DS 316: the US challenge of EU support for Airbus) and the "Boeing case" (DS 353: the EU

challenge of US support to Boeing), despite having been initiated on the same day (6 October 2004), have followed different timetables due to a number of delays at the WTO.

In the "Airbus case", the WTO panel made its report public on 30 June 2010 followed by the Appellate Body report in 18 May 2011. The EU has fully complied with its WTO obligations thanks to the comprehensive set of actions presented in December 2011. On 17 April a compliance panel was composed. Litigation is currently on-going.

In the "Boeing case", the panel issued its final public report on 31 March 2011 followed by the Appellate Body report on 12 March 2012. On 24 September the US submitted a compliance notice. The EU requested for the establishment of a WTO compliance panel on 11 October 2012.

EU'S CHALLENGE OF US SUBSIDIES TO BOEING (DS 353 "BOEING CASE")

Latest: 11 October 2012, the EU requested the establishment of a *WTO compliance panel* to address the failure of the US to remove WTO-inconsistent subsidies to Boeing.

In its WTO challenge against the US, the EU has challenged various US Federal, State and local subsidies benefitting Boeing, totalling as confirmed by the AB report **US\$ 5-6 billion** in WTO-inconsistent subsidies disbursed between 1989 and 2006. Subsidies to be granted after this date are estimated to be at least **US\$3.1 billion**.

Essential facts about the "Boeing case"

1. NASA has provided Boeing with more than US\$2.6 billion in subsidies through eight NASA-funded federal research programmes through direct payments and free access to facilities, equipment and employees.
2. The AB confirmed that the above programmes provided subsidies in the form of a direct transfer of funds or the provision of goods and services by NASA to Boeing for which no fee is payable and for which Boeing acquired the commercial IP rights.
3. The AB confirmed moreover that the US Department of Defence (DOD) under its Research Development, Test and Evaluation programmes has transferred to Boeing, at no cost, dual use technology worth up to US\$1.2 billion for direct use in Boeing's production of Large Civil Aircraft as well as free access to DOD's facilities.
4. The AB clarified that the relations between NASA and DOD on the one side, and Boeing on the other side was akin to that of a joint venture, with the essential feature that the fruits of the joint labour largely went to one partner, Boeing, which had provided none of the funding.
5. Boeing continued to be eligible for US\$2.2 billion in Foreign Sales Corporation export subsidies, despite previous WTO rulings that these are prohibited subsidies under WTO law.

6. The City of Wichita (Kansas) granted almost US\$ 500 million in the form of tax abatements on Industrial Revenue Bonds between 1989 and 2006.
7. Washington State tax breaks to be granted for the period 2006-24 amount to a subsidy value of close to US\$3.1 billion.
8. NASA and DOD research and development subsidies enabled Boeing to develop key technologies, without which it would not have been possible to launch the 787 "Dreamliner" in 2004.
9. The above research subsidies gave Boeing a competitive advantage causing Airbus to lose sales campaigns, thus losing sales of the A330 and A350 models (i.e. in the 200-300 seat market) and threatening to lose its share of certain export markets. Even where it was able to make sales, it had to make them at reduced prices because of the presence of the subsidized 787 on the market.
10. The AB has also confirmed that the Washington Tax subsidies and Foreign Sales Corporation subsidies, as well as the Wichita subsidies, enabled Boeing to beat Airbus to winning orders in the "single aisle" 100-200 seat market (Boeing 737 vs A320)
11. Boeing's illegal subsidies adversely impacts sales, market share and prices of Airbus' A320, A320 neo, A330, A350XWB and the A380 families of Large Civil Aircraft (LCA).

Proceedings in the "Boeing case"

Following the final report of the Appellate Body in the DS 353 case adopted by the DSB on 23 March 2012, the US compliance period ended on 23 September 2012. On 24 September 2012, the US submitted a compliance report.

After EU review of the US compliance claims, on 25 September the EU submitted a request for consultations on US compliance under Article 21.5 of the DSU and on 27 September 2012 a request for the authorization of countermeasures under Article 22.2 of the DSU.

After compliance consultations where the US failed to provide detailed evidence to the EU to support its compliance claims, on 11 October 2012, the EU requested the establishment of a WTO compliance panel to address the failure of the US to remove WTO-inconsistent subsidies.

US CHALLENGE OF EU SUPPORT TO AIRBUS (DS 316 "AIRBUS CASE")
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Latest: On request of the US a compliance panel was composed on 17 April 2012. Litigation is currently on-going.

The European Commission has welcomed the WTO Appellate Body report on the Airbus case. The Appellate Body overturned several key findings made by the Panel in favor of the EU. Most importantly, the Appellate Body found that support provided by Germany, Spain and the UK for the launch of Airbus' A380

aircraft is not a prohibited export subsidy under WTO Law. It also rejected the US appeal that other instances of Repayable Launch Investment (RLI) were export subsidies.

Essential facts about the "Airbus case"

The Appellate Body report contains a number of clear findings – vindicating many of the EU's long held positions, including:

1. Repayable Launch Investment (RLI) for the A380 granted by France, Germany, Spain and the UK is not a prohibited export subsidy;
2. All R&D programmes in the EU (European, national and regional) are fully compatible with WTO rules, especially relevant when compared to the findings on NASA and Department of Defense support in the Boeing case;
3. Treatment of infrastructure – the US challenge on Aéroconstellation in France has been fully rejected, and the finding for the Mühlenberger Loch facility in Hamburg substantially improved;
4. the French government's transfer of its interest in Dassault Aviation to Aerospatiale in 1998 was not a subsidy;
5. The Appellate Body reduced the element of subsidy that may exist in RLI, giving greater weight to the EU's proposed benchmark. It also substantially reduced the impact of adverse effects findings made by the Panel, reflecting the limited damage to Boeing from Airbus subsidies.
6. The EU has fully complied with its WTO obligations thanks to the comprehensive set of actions presented in December 2011.

Certain "actionable subsidy" findings do remain, even though the economic impact of these support measures in the Large Civil Aircraft (LCA) market has been found to be very limited. RLI may contain an element of subsidy, however nowhere near the allegations of US\$ 15-20 billion that have been claimed. Certain old equity infusions and restructuring measures by France and Germany, infrastructure measures in Germany and certain regional grants by Spain and Germany also remain.

Proceedings the "Airbus case"

On 30 March 2012, the US requested the establishment of a compliance panel, which was composed on 17 April 2012. Litigation is currently on-going.