

**UNITED STATES – MEASURES AFFECTING TRADE
IN LARGE CIVIL AIRCRAFT
(SECOND COMPLAINT)**

Communication from the United States

The following communication, dated 23 September 2012, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated at the request of that delegation.

On behalf of the United States I am pleased to provide the attached notification of the withdrawal of subsidies and removal of adverse effects in the dispute *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (DS353). Through the steps identified in the notification, the United States has fully complied with the recommendations and rulings of the Dispute Settlement Body in this dispute.

We request that you please circulate the enclosed notification to the DSB.

**NOTIFICATION OF THE WITHDRAWAL OF SUBSIDIES
AND REMOVAL OF ADVERSE EFFECTS IN
UNITED STATES – MEASURES AFFECTING
TRADE IN LARGE CIVIL AIRCRAFT
(SECOND COMPLAINT)**

1. On March 23, 2012, the Dispute Settlement Body ("DSB") of the World Trade Organization ("WTO") adopted its recommendations and rulings with respect to the dispute *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (WT/DS353). By that action, the DSB adopted findings that the United States caused adverse effects to the interests of the European Union ("EU") within the meaning of Article 5(c) of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") through the use of certain subsidies, and recommended that the United States "take appropriate steps to remove the adverse effects or . . . withdraw the subsidy."¹

2. The United States, in consultation with the relevant federal, state, and local authorities, has carefully considered the recommendations and rulings of the DSB. In light of these and other relevant considerations, the United States has taken a number of actions to withdraw the subsidies found to have caused adverse effects or to remove their adverse effects.

3. The National Aeronautics and Space Administration ("NASA") has modified the rights accorded to the parties under the contracts listed in Annex A so as to make them consistent with commercial practice. These modifications apply to all of the NASA contracts covered by the recommendations and rulings of the DSB. NASA has made identical modifications, as necessary, with regard to contracts subsequent to those covered by the recommendations and rulings of the DSB, without prejudice to the U.S. view that those contracts were not subsidies causing adverse effects to EU interests. These contracts are also listed in Annex A.

4. NASA has terminated the Advanced Composites Technology, High Speed Research, Advanced Subsonic Technology, High Performance Computing and Communications, Quiet Aircraft Technology, Vehicle Systems, and Research and Technology Base programs, and reduced funding for aeronautics research contracts with private parties under other aeronautics research programs. NASA has changed its policies so as to remove limitations on access to the results of NASA research and development efforts, including by ceasing the use of limited exclusive data rights ("LERD") clauses. NASA has implemented a policy of seeking greater prompt disclosure of the results of its sponsored research when it purchases research and development services from private entities.

5. The U.S. Department of Defense ("DoD") has modified the rights accorded to the parties under the cooperative agreements, technology investment agreements, and Other Transactions listed in Annex B so as to make them consistent with commercial practice. The modifications apply to all of the DoD assistance instruments covered by the recommendations and rulings of the DSB. DoD made identical modifications with regard to contracts subsequent to those covered by the recommendations and rulings of the DSB, without prejudice to the U.S. view that those contracts were not subsidies causing adverse effects to EU interests. These contracts are also listed in Annex B.

6. DoD has ceased funding of the following programs: Dual Use Application and Dual Use Science and Technology (Program Element ("PE") 0602305F); Navy Manufacturing Technology ("ManTech") (PE 0603771F); Air Force ManTech (PE 0708011F); Defense Advanced Research Projects Agency research on the Joint Strike Fighter (PE 0603800E); Army research related to the

¹ *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/R, para. 8.9.

Comanche (PE 0604223A); Air Force research on the B-2 (PE 0604240F); and Air Force research on A-6 Squadrons (PE 0604240F).

7. The United States enacted legislation terminating the Foreign Sales Corporation and Extraterritorial Income ("FSC/ETI") tax benefits.

8. The United States has confirmed that Boeing did not use FSC or ETI tax benefits after 2006.

9. The State of Washington is applying rates of Business and Occupancy Tax ("B&O") for aerospace manufacturing and retailing consistent with Article 5(c) of the SCM Agreement.

10. The City of Wichita is applying its Industrial Revenue Bond ("IRB") program in a manner consistent with Article 5(c) of the SCM Agreement. It has not provided any IRBs to Boeing since 2007.

11. In light of the conditions of competition in the market for large civil aircraft and actions taken by the United States, any adverse effects of the subsidies in question have ceased to exist, or a "genuine and substantial relationship of cause and effect"² no longer exists between the subsidies subject to the recommendations and rulings of the DSB and any adverse effects within the meaning of Article 5(c) of the SCM Agreement.

12. Through these actions, the United States has withdrawn the subsidy or removed the adverse effects with respect to each of the subsidies found to be inconsistent with Article 5(c) of the SCM Agreement: payments and access to facilities, equipment, and employees provided under NASA procurement contracts, payment and access to facilities provided pursuant to DoD assistance instruments, the FSC/ETI measures, B&O tax rate reductions, and IRB subsidies. The United States notes that this holds true with regard to all of the Boeing aircraft covered by the DSB recommendations and rulings, namely the Boeing 737 and 787, as well as the Airbus aircraft with respect to which the adverse effects existed, namely, the A320, A330, and Original A350.

² *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/AB/R, para. 913.

ANNEX A

NAS1-11668	NAS1-20341	E3104D	NNC10CA40C
NAS1-15148	NAS1-20342	L70828D	NNC10CA40C
NAS1-18862	NAS1-99150	L71159D	NNC11CA12C
NAS1-18889	NAS2-10955	L71310D	NNC11CA20C
NAS1-20546	NAS2-11250	L71543D	NNC11QA17P
NAS1-20090	NAS2-11485	NAS1-00106	NNC11VA99P
NAS1-20103	NAS2-11966	NAS1-01057	NNC12CA05C
NAS1-20267	NAS2-12393	NAS2-12468	NAS4-00041
NAS1-20268	NAS2-12876	NCC1-287	NND07AA08B
NAS1-97040	NAS2-12913	NCC1-343	NND08AA66C
NAS3-25965	NAS2-13070	NNL05AA36C	NND11AG03C
NAS3-27018	NAS2-13312	NNL06AA63T	NND11AQ73C
NAS3-27238	NAS2-13625	NAS1-00092	NNL09AB50T
NAS1-15325	NAS2-14181	NAS1-99070	NNL10AC38T
NAS1-17145	NAS3-25421	NAS3-25447	NNL06AA04B
NAS1-17147	NAS3-25454	NNL04AA29C	NNL06AG30P
NAS1-18027	NAS3-25796	NNL04AA30C	NNL07AA03A
NAS1-18028	NNA06BC41C	NNL04AA36C	NNL07AA44C
NAS1-18037	NAS2-14096	NNL05AB29T	NNL07AA48C
NAS1-18377	NAS2-14090	NNA06BC41C	NNL07AA54C
NAS1-18378	NAS2-14091	NNA08BA33C	NNL08AA02B
NAS1-18574	NCC1-388	NNA09DA56C	NNL08AA16B
NAS1-18586	NAS1-19245	NNC07CB38C	NNL10AA00B
NAS1-18762	NAS1-19345	NNC07CB76C	NNL10AA05B
NAS1-18763	NAS1-19349	NNC08CA47C	NAS2-01064
NAS1-18954	NAS1-19360	NNC08CA70C	NND08AA04P
NAS1-19060	NAS1-19568	NNC08CA81C	NNL10AA05B
NAS1-19184	NAS1-20013	NNC08CA88C	
NAS1-19703	NAS1-20220	NNC08CA93C	
NAS1-20014	NAS3-25446	NNC09CA32C	
NAS1-20095	NAS3-25963	NNC10AA02A	
NAS1-20096	NAS1-00086	NNC10AA03A	
NAS1-20275	NNL04AA11B	NNC10BA05B	

ANNEX B

F33615-95-2-5562
F33615-96-2-5618
N00019-96-H-0118
F33615-97-2-3220
F33615-97-2-3400
F33615-97-2-3407
F33615-97-2-3805
F33615-97-2-5153
DAAH10-98-2-0003
F33615-98-2-5113
F33615-98-3-5103
F33615-98-3-5104
N00014-98-3-0022
DAAH10-99-2-0003
F29601-99-2-0149
F33615-99-2-5100
F33615-99-2-5501
N00014-99-3-0011
N00014-99-3-0012
N00014-99-3-0017
F33615-00-2-1717
F33615-00-2-3000
F33615-00-2-3002

F33615-00-2-5203
F33615-00-2-5208
F33615-00-2-5900
F49620-00-2-0384
MDA972-00-3-0007
N00014-00-3-0004
N00014-00-3-0019
N00421-00-3-0123
DAAH10-01-2-0005
F29601-01-2-0042
F29601-01-2-0045
F33615-01-2-3101
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F33615-01-2-3152
F33615-01-2-5204
F33615-01-2-5206
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N00421-01-3-0098
F04611-02-2-0003
F33615-02-2-3220
F33615-02-2-3251
F33615-02-2-6037
DAAH10-03-2-0002

F33615-03-2-1403
F33615-03-2-2306
F33615-03-2-3300
F33615-03-2-3304
F33615-03-2-5201
F33615-03-2-5202
F33615-03-2-6316
F33615-03-2-6318
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FA8650-04-2-3449
FA8650-04-2-5000
W911NF-04-2-0039
FA8650-05-2-3503
FA9550-05-2-0001
W911W6-05-2-0006
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W991W6-08-2-0014
HR0011-10-2-0001
FA8650-11-2-1187
FA8650-11-2-2138
