

**U.S. BUSINESS CONFIDENTIAL INFORMATION (BCI) AND  
HIGHLY SENSITIVE BUSINESS INFORMATION (HSBI) REDACTED**

***European Communities and Certain member States –  
Measures Affecting Trade in Large Civil Aircraft:  
Recourse to Article 22.6 of the DSU by the European Union***

**(DS316)**

**RESPONSES OF THE UNITED STATES  
TO THE FIFTH SET OF QUESTIONS FROM THE ARBITRATOR**

June 7, 2019



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**Question 169 (US)**

**With reference to the United States' response to question No. 116(b), could the United States please provide the number of deliveries that Boeing made with respect to each variant of the 747-400 aircraft before 1990, broken out by month, year, and variant?**

1. The requested 747-400 delivery data is provided below and in Exhibit USA-115.<sup>1</sup> It covers only 1989 because 747-400 deliveries began in that year. This information includes deliveries for all 747-400 variants delivered prior to January 1, 1990: 747-400 is the basic passenger model of the 747-400 and 747-400M is a passenger/freighter “combi” variant with a forward passenger cabin and an aft main deck cargo hold.

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<sup>1</sup> Boeing website, 747-400 Deliveries Pre-1990 (Exhibit USA-115).

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747-400 Deliveries for January 1986 through December 1989 (Boeing website)

<b>Model</b>	<b>Country/Area</b>	<b>Delivery Date</b>	<b>Total</b>
747-400	USA	Jan-89	1
	USA	Mar-89	1
	Singapore	Mar-89	1
	Singapore	Mar-89	1
	USA	Apr-89	1
	Netherlands	May-89	1
	Germany	May-89	1
	Hong Kong	Jun-89	1
	South Korea	Jun-89	1
	Netherlands	Jun-89	1
	United Kingdom	Jun-89	1
	USA	Jun-89	1
	Singapore	Jul-89	1
	United Kingdom	Jul-89	1
	South Korea	Jul-89	1
	United Kingdom	Jul-89	1
	Australia	Aug-89	1
	USA	Aug-89	1
	USA	Aug-89	1
	USA	Sep-89	1
	United Kingdom	Sep-89	1
	South Korea	Sep-89	1
	Australia	Sep-89	1
	France	Sep-89	1
	Hong Kong	Sep-89	1
	Germany	Sep-89	1
	Australia	Oct-89	1
	Germany	Oct-89	1
	Singapore	Nov-89	1
	United Kingdom	Nov-89	1
	USA	Dec-89	1
	USA	Dec-89	1
	Singapore	Dec-89	1
	New Zealand	Dec-89	1
<b>747-400 Total</b>			<b>34</b>
747-400M	Netherlands	Sep-89	1
	Germany	Sep-89	1
	Netherlands	Sep-89	1
	Malaysia	Oct-89	1
	China	Oct-89	1
	Malaysia	Nov-89	1
	Germany	Dec-89	1
<b>747-400M Total</b>			<b>7</b>
<b>Grand Total</b>			<b>41</b>

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**Question 170 (US)**

**With reference to the United States' response to question No. 71, paragraph 59, could the United States please:**

**a. reconcile its statement in that paragraph that "747 production levels {were} 70 aircraft per year in 1990" (emphasis added) with the table provided as part of the United States' response to question No. 116(b), indicating that Boeing delivered 62 747-400 aircraft (of all variants) in 1990; and, relatedly**

2. The number reported in response to Question 71, paragraph 59, reports the total number of all models of 747s delivered in 1990 (*i.e.*, including deliveries of 747-200 series and 747-300 series variants), whereas the number provided in response to Question 116(b) reports only 747-400 series aircraft delivered during 1990. In other words, Boeing delivered a total of 70 747 aircraft, but only 62 of those aircraft were 747-400 series aircraft.

**b. explain why the delivery data contained in Exhibit EU-79 appears to indicate that 68 747 aircraft, of all variants, were delivered in 1990?**

3. Again, these results are mainly a function of differentiating between deliveries of *all* 747 aircraft and only 747-400 series aircraft. Exhibit EU-79 indicates that a total of 68 747 aircraft were delivered during 1990, including 747-200 series, 747-300 series, and 747-400 series aircraft. However, Exhibit EU-79 also indicates that 62 747-400 series aircraft of all variants were delivered during 1990 if the following sort is applied: in column "AC\_MODEL," search for "747-400" in the column options and select the only two applicable to 747-400 series aircraft (*i.e.*, select "747-400" and "747-400C," but exclude "747-200F" and "747-300C").

4. The discrepancy between the 68 747s indicated in Exhibit EU-68 and the 70 747s referenced in the U.S. response to Question 71, paragraph 59, appears to be two 747-200B deliveries to the U.S. Air Force that were captured in the latter but not the former.

**Question 171 (US)**

**With reference to the United States' comments on the European Union's response to question No. 147, could the United States please explain:**

**a. how many 747-8I aircraft are currently on order and set for future delivery; and**

5. Boeing currently has [BCI]. The United States also notes that Boeing has [BCI].<sup>2</sup>

**b. whether there have been cancellations of 747-8I aircraft orders in the last five years? If so, how many orders have been cancelled, and in what years were they cancelled? Did these cancellations represent a perceived problem**

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<sup>2</sup> Boeing E-mail regarding Question 171 (Exhibit USA-116(BCI)).

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**with the 747-8I aircraft, specifically, or did they represent a shift away from  
VLA, generally?**

6. There have been only four cancelled 747-8I orders in the last five years. Those orders were placed by Transaero, and they were cancelled because of bankruptcy in 2015, not because of a perceived problem with the 747-8I or because of issues with VLA more generally.<sup>3</sup>

7. The United States notes that, even if cancellations represented a shift away from VLA, generally, that would not justify their exclusion from the level of countermeasures. The United States has explained that the SCM Agreement requires that the authorized countermeasures be commensurate with the degree and nature of the adverse effects determined to exist; the WTO agreements do not require an arbitrator to re-assess the degree and nature of the adverse effects. However, if more recent demand patterns in one market segment were considered, fairness and accuracy would require accounting for the shifts in demand in other market segments.

8. Demand for LCA generally is growing considerably.<sup>4</sup> Therefore, even if VLA demand were decreasing, that would not reflect decreasing demand for LCA, but rather a shift in demand from VLA to twin-aisle LCA. Of course, the Airbus model closest in size to the A380 is another subsidized product, the A350 XWB.

**Question 172 (US)**

**Could the United States please provide the monthly and annual GDP deflator for the  
United States for the period 2000 to 2018?**

9. The United States provides quarterly and annual GDP deflators for 2000 – 2018 in Exhibit USA-117. The United States provides quarterly deflators instead of monthly deflators because GDP is reported on a quarterly basis, but not a monthly basis. The United States considers that the GDP deflator for each quarter is applicable for each month in the quarter.

**Question 173 (US)**

**With reference to the United States' response to question No. 145, could the United  
States please explain how Boeing's monthly and annual cost of debt provided in  
Exhibit USA-98 (BCI) is constructed?**

10. The Boeing monthly cost of debt provided in Exhibit USA-98(BCI) was calculated by [BCI].<sup>5</sup>

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<sup>3</sup> See U.S. RAQ 135, para. 164-65.

<sup>4</sup> Press release, Airbus, *Global Market Forecast, 2018-2037* (Exhibit USA-113).

<sup>5</sup> Boeing E-mail regarding Question 173 (Exhibit USA-118(BCI)).

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**Question 174 (US)**

**With reference to Exhibit USA-71 (HSBI), could the United States please explain what are the components of the escalation formula reported in page six and how it can be computed?**

11. For the [BCI], escalation [[HSBI]].
12. [[HSBI]].
13. The table below provides calculations [BCI].
14. The calculation starts with [[HSBI]]. The formula then [[HSBI]].<sup>6</sup> [BCI].  
[[HSBI]]<sup>7</sup>
15. Thus, as shown in the illustration above, one can [BCI] escalation factor [[HSBI]] used to calculate counterfactual [BCI].

**Question 175 (US)**

**With reference to the United States' response to question No. 78(d), and paragraph 49 of the United States methodology paper (explaining that the discount rate is applied in the light of the "general principle that economic activity tomorrow is not as valuable as economic activity today"), could the United States please:**

- a. **elaborate on its assertion that, if "the valuation exercise were considered exclusively from Boeing's perspective, then there would be no reason to use an escalation factor or a discount rate. The Arbitrator could simply use the order year price of the aircraft. Where the base year is the same as the order year, the value would be the base price"? (emphasis added) Leaving aside adjustments for risk of cancellation and/or inflation, would "economic activity tomorrow {be} as valuable as economic activity today" for Boeing, thus requiring no adjustment be made to delivery-year prices in the form of a discount rate, and if so, why; and**
16. As the United States has explained, the exercise of discounting was intended to capture the value of significant lost sales to the United States in the year that the significant lost sales occurred. This is appropriate because the SCM Agreement addresses adverse effects to the interests of a Member.
17. However, if the exercise is simply to determine the value of the relevant LCA from Boeing's perspective in the year the adverse effect occurred, it is straightforward to simply use

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<sup>6</sup> See [BCI] at p. 7 (USA-71(HSBI)).

<sup>7</sup> Boeing E-mail regarding Question 174 (Exhibit USA-119(HSBI)).



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the contractual price for the appropriate year. The easiest example is the case in which the contractual base year is the year of the sale. For a particular sales campaign, the base year price is the same for all of the aircraft ordered. Because the parties have written down the order year price, it is straightforward to simply multiply the number of aircraft ordered times the price of the aircraft.

18. Where the base year precedes the order year, the contractual escalation formula could be used to calculate an order year price. The order year price could then be multiplied by the number of aircraft ordered.

19. In this case, there are no delivery-year prices, and therefore the question of an adjustment to delivery year prices does not arise. But the United States notes that the order year price will be lower than an unadjusted delivery year price. Indeed, this approach would be conservative compared to Boeing's [BCI].<sup>8</sup>

- b. explain – if the valuation exercise were undertaken exclusively from Boeing's perspective and assuming that for Boeing economic activity tomorrow is not as valuable as economic activity today – what discount rate Boeing would use to discount the value of an aircraft to be delivered in the future? Could the United States please provide this discount rate for the period 2011 to 2013?**

20. As noted in response to part (a) of this question, the valuation exercise is properly conducted from the perspective of the United States, not Boeing. And as further noted above, even if Boeing's perspective were used, Boeing [BCI]. That said, Boeing sometimes uses its weighted average cost of capital ("WACC") to discount anticipated future cash flows in order to determine their present value. That is a different context from the level-of-countermeasures valuation exercise at issue here. Nonetheless, the United States is providing Boeing's WACC figures for the mid-points of 2012 and 2013.<sup>9</sup>

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<sup>8</sup> See U.S. RPQ 140, para. 225; Boeing E-mail regarding Questions 136, 139-142 (Exhibit USA-101(HSBI)).

<sup>9</sup> See Boeing WACC Data for 2012, 2013 (Exhibit USA-120(BCI)).