

**UNITED STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT  
(SECOND COMPLAINT)  
(DS353)**

**Closing Statement of the United States  
at the first substantive meeting of the Panel with the parties**

September 27, 2007

Comments on points in the EC Closing Statement

- In paragraph 8 of its Closing Statement, the EC claims that it is not challenging “NASA R&D contracts related to ‘air traffic management and air traffic safety’ and ‘ways to modify airplane flight paths to decrease’ fuel consumption.” In fact, these topics were part of the research conducted under the programs identified by the EC. Therefore, the EC is challenging this type of research.
- In paragraph 9, the EC once again refers to the purpose of NASA programs as being “to assure the pre-eminence of US aeronautics.” But that is only one factor among many, which include the expansion of human knowledge of the Earth and of phenomena in the atmosphere and space.
- In paragraph 12, the EC states that it is interested only in “the portion of DOD RDT&E support that benefits Boeing’s commercial division.” But the EC has conceded that all of DoD research projects, even the so-called “dual use” projects, have a military purpose. As Adm. Ginman explained, DoD pays only for that military purpose. Once that military purpose is taken into account, there is no “portion” of the DoD RDT&E left that could go to civilian uses.
- In paragraph 17, the EC asserts that the Appellate Body in *Cotton* endorsed the so-called “unitary” approach for assessing causation. The Appellate Body said only that the text of Article 6.3(c) does not “preclude” the approach taken by the panel – certainly not an endorsement of any particular analysis. The Appellate Body went on to specify that in any event the panel should consider the same types of factors that we have identified for this Panel.
- In paragraph 19, the EC once again misstates the proper standard, asserting that “the complaining Member needs to show only that prices, sales, and market share would be higher, *but for the subsidies*.” That is not the standard. In fact, the causation inquiry is whether “but for the subsidies,” *serious* prejudice would have occurred. That is not any change in prices, sales, or market share, but rather *significant* lost sales, *significant* price suppression, and displacement/impedance that rises to the level of *serious* prejudice.

## General comments

- The EC earlier today belittled the importance of the scientific reports that NASA releases to the world. In fact, a single scientific report can change the world. In the United States, a scientific report on the effects of cigarette smoking led to a dramatic decline in the number of smokers. Closer to the issues in this dispute, NASA performed the initial research on the positive aerodynamic effects of winglets, which are little upturns or downturns at the tips of wings. Boeing participated in this research. And yet, it was Airbus, and not Boeing, that first put winglets on its airplanes, many years ahead of Boeing.
- It is also important to realize that the standard advocated by the EC would make it potentially inconsistent with the SCM Agreement for any Member to conduct research on topics of public interest. Such research would invariably be found to be a subsidy.
- And finally, the standards advocated by the EC would leave set in stone the rates of any Member that employed variable rate taxes. Under its theory, any lowering of an excessive tax rate would be a subsidy, leaving Members no flexibility but to increase taxes.