

**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.”<sup>1</sup>
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

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

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 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”<sup>2</sup> 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.

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