



18 September 2017

(17-4908)

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Original: English

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

**RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE EUROPEAN UNION**

**NOTIFICATION OF AN OTHER APPEAL BY THE UNITED STATES UNDER ARTICLE 16.4 AND  
ARTICLE 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE  
SETTLEMENT OF DISPUTES ("DSU"), AND UNDER RULE 20(1) OF THE WORKING PROCEDURES  
FOR APPELLATE REVIEW**

The following communication, dated 10 August 2017, from the delegation of the United States, is being circulated to Members.

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Pursuant to Rule 23(1) of the *Working Procedures for Appellate Review*, the United States hereby notifies the Appellate Body of its decision to appeal certain issues of law covered in the Report of the Panel in *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint): Recourse to Article 21.5 of the DSU by the European Union* (WT/DS353/RW) ("Compliance Panel Report") and certain legal interpretations developed by the Panel.

1. The United States seeks review by the Appellate Body of the Panel's finding that European Union ("EU") claims regarding procurement contracts between the U.S. Department of Defense ("DoD") and The Boeing Company ("Boeing") were within its terms of reference. This conclusion is in error and is based on erroneous findings of law and related legal interpretations, including an erroneous interpretation and application of Articles 6.2 and 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). The paragraphs relating to these errors include paragraphs 7.111-7.131 and 11.5.a.ii of the Compliance Panel Report.

2. The United States appeals the Panel's finding regarding the approximate rate of subsidization per 737 MAX and 737NG, resulting from the Washington State B&O tax rate reduction. This finding is in error and is based on erroneous findings of law and related legal interpretations, including an erroneous interpretation or application of Articles 5(c) and 6.3(c) of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). In the alternative, the Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability and conformity with the relevant covered agreements for purposes of Article 11 of the DSU. The paragraphs relating to these errors include paragraphs 9.385, 9.395, and 9.402-9.403 of the Compliance Panel Report.

3. The United States appeals the Panel's findings that the price difference in the Air Canada sales campaign was somewhat smaller than the price difference in the Icelandair 2013 sales campaign, and that, in the concluding stages of the Air Canada 2013 sales campaign, Airbus thought it was close enough to Boeing on price that relatively small improvements on price could affect the outcome of the campaign. The Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability and conformity with the relevant covered agreements for purposes of Article 11 of the DSU. The paragraphs relating to these errors include paragraph 9.403 of the Compliance Panel Report and paragraph 264 of the HSBI Appendix to the Compliance Panel Report.

4. The United States appeals the Panel's finding that the evidence regarding the price differential in the Icelandair 2013 sales campaign was somewhat contradicted by other evidence, which suggests that at the final stage, Airbus may have closed the gap. The Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability and conformity with the relevant covered agreements for purposes of Article 11 of the DSU. The paragraphs relating to these errors include paragraph 9.403 of the Compliance Panel Report and paragraphs 247 and 250 of the HSBI Appendix to the Compliance Panel Report.

5. The United States appeals the Panel's finding that the European Union has established that the effects of the Washington State B&O tax rate reduction are a genuine and substantial cause of significant lost sales within the meaning of Articles 5(c) and 6.3(c) of the SCM Agreement of A320neo and A320ceo families of LCA in the single-aisle LCA market, in respect of the sales campaigns for Fly Dubai in 2014, Air Canada in 2013, and Icelandair in 2013, in the post-implementation period. This conclusion is in error and is based on erroneous findings of law and related legal interpretations, including an erroneous interpretation or application of Articles 5(c) and 6.3(c) of the SCM Agreement. In addition, the Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability and conformity with the relevant covered agreements for purposes of Article 11 of the DSU. The paragraphs relating to these errors include paragraphs 9.385, 9.395, 9.402-9.404, 9.407, and 11.8(c) of the Compliance Panel Report.

6. The United States appeals the Panel's finding that the European Union has established that the effects of the Washington State B&O tax rate reduction are a genuine and substantial cause of a threat of impedance of imports of the A320ceo to the United States single-aisle market, and a threat of impedance of exports of Airbus single-aisle LCA in the United Arab Emirates third country market, within the meaning of Articles 5(c) and 6.3(a) and (b) of the SCM Agreement in the post-implementation period. This conclusion is in error and is based on erroneous findings of law and related legal interpretations, including an erroneous interpretation or application of Articles 5(c) and 6.3(c) of the SCM Agreement. The paragraphs relating to these errors include paragraphs 9.385, 9.395, 9.402-9.404, 9.438, 9.443, 9.444, and 11.8(d) of the Compliance Panel Report.

7. The United States *conditionally* appeals the Panel's findings that post-2006 National Aeronautics and Space Administration ("NASA") procurement contracts and cooperative agreements, DoD assistance instruments, and the Aviation Administration ("FAA") Other Transaction Agreement DTFWA-10-C-00030 conferred a benefit on Boeing. These conclusions are in error and are based on erroneous findings of law and related legal interpretations, including an erroneous interpretation and application of Article 1.1(b) of the SCM Agreement. In addition, the Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability and conformity with the relevant covered agreements for purposes of Article 11 of the DSU. The paragraphs relating to these errors include paragraphs 8.30, 8.44-8.50, 8.176-8.178, 8.181-8.187, 8.408-8.414, 8.533-8.541, and 11.7(b)(i)-11.7(b)(iii) of the Compliance Panel Report. The United States only requests the Appellate Body to address this issue if it modifies or reverses the Panel's finding that subsidies conferred through the measures referenced in this paragraph did not cause adverse effects under Articles 5 and 6.3 of the SCM Agreement.

8. The United States *conditionally* appeals the Panel's findings that subsidies conferred by the NASA, DoD, and FAA measures referenced in paragraph 2 were specific subsidies. These conclusions are in error and are based on erroneous findings of law and related legal interpretations, including an erroneous interpretation and application of Article 2.1 of the SCM Agreement. The paragraphs relating to these errors include paragraphs 8.210-8.211, 8.222-8.231, 8.460-8.469, 8.547, 8.548-8.533, and 11.7(b)(i)-11.7(b)(iii) of the Compliance Panel Report. The United States only requests the Appellate Body to address this issue if it finds that DoD procurement contracts create the same type of financial contribution as the measures referenced in paragraph 2.

9. The United States *conditionally* appeals the Panel's finding that the State of South Carolina's payment to Boeing of \$270 million in Economic Development Bond and Air Hub Bond proceeds, conferred a benefit to Boeing. The Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability and

conformity with the relevant covered agreements for purposes of Article 11 of the DSU. The paragraphs relating to these errors include paragraphs 8.823, 8.849, and 11.7(b)(ix) of the Compliance Panel Report. The United States only requests the Appellate Body to address this issue if it modifies or reverses the Panel's finding that subsidies conferred through the measures referenced in this paragraph did not cause adverse effects under Articles 5 and 6.3 of the SCM Agreement.

10. The United States *conditionally* appeals the Panel's finding that the EU's claim of A330 price suppression did not fail as a matter of law, despite that the EU failed to allege that the A330 is "in the same market" as an allegedly subsidized product. This conclusion is in error and is based on erroneous findings of law and related legal interpretations, including an erroneous interpretation or application of Articles 5(c) and 6.3(c) of the SCM Agreement. The portions of the compliance Panel report relating to these errors include footnote 3173. The United States only requests the Appellate Body to address this issue if it modifies or reverses Panel findings regarding the EU's claim of adverse effects suffered by the A330.

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