

**EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES –
MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT**

Communication from the European Union*

The following communication, dated 1 December 2011, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated at the request of that delegation.

1. The European Union refers to the recommendations and rulings of the WTO Dispute Settlement Body (DSB) with respect to the dispute *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (WT/DS316). The European Union would like to inform the DSB that it has taken appropriate steps to bring its measures fully into conformity with its WTO obligations, and to comply with the DSB's recommendations and rulings.

2. In considering appropriate steps to bring its measures into conformity with its WTO obligations, the European Union took note of all elements of the DSB's recommendations and rulings, including, in particular, the Appellate Body's guidance on the way in which subsidies and adverse effects expire, dissipate, terminate or are otherwise removed or withdrawn. In undertaking this review, we consulted, among others, independent experts in: financial economics; investor behaviour; financial and cost auditing, accounting and controlling; product engineering; and Large Civil Aircraft (LCA) fleet management. We have also closely monitored and assessed LCA product and market developments in the months and years following the period covered by the Panel's review.

3. As a result of this review, the European Union has adopted a course of action that addresses all forms of adverse effects, all categories of subsidies, and all models of Airbus aircraft covered by the DSB's recommendations and rulings.

4. Specifically, in bringing its measures into conformity with its WTO obligations, the European Union has addressed all categories of subsidy covered by the DSB's recommendations and rulings: Member State Financing (MSF) loans, capital contributions, infrastructure support and regional aid. Amongst others, the European Union has secured repayment of MSF loans and terminated MSF agreements, increased fees and lease payments on infrastructure support to accord with market principles, and ensured that capital contributions and regional aid subsidies have, in the Appellate Body's words, "come to an end" and are no longer capable of causing adverse effects. Additionally, the course of action adopted by the European Union affects Airbus' A300, A310, A320, A330, A340 and A380 aircraft, as well as derivatives thereof, as implicated by the DSB's recommendations and rulings. Finally, as a result of these steps and other intervening market events, the European Union

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has addressed the forms of adverse effects covered by the DSB's rulings. Information concerning the steps that have been taken by the European Union is provided in the attached list.

5. In short, by having taken appropriate steps to bring our measures into conformity with our WTO obligations, as required by Article 7.8 of the *SCM Agreement* and Article 19.1 of the DSU, the European Union has ensured full implementation of the DSB's recommendations and rulings.

1. Termination of French MSF agreement for A300B;
2. Termination of French MSF agreement for A300B2/B4;
3. Termination of French MSF agreement for A300-600;
4. Termination of German MSF agreement for A300B;
5. Termination of German MSF agreement for A300B2/B4;
6. Termination of German MSF agreement for A300-600;
7. Termination of Spanish MSF agreement for A300B;
8. Termination of Spanish MSF agreement for A300B2/B4;
9. Termination of Spanish MSF agreement for A300-600;
10. Termination of French MSF agreement for A310;
11. Termination of French MSF agreement for A310-300;
12. Termination of German MSF agreement for A310;
13. Termination of German MSF agreement for A310-300;
14. Termination of Spanish MSF agreement for A310;
15. Termination of Spanish MSF agreement for A310-300;
16. Termination of French MSF agreements for A320;
17. Termination of German MSF agreement for A320;
18. Termination of Spanish MSF agreement for A320;
19. Termination of French MSF agreement for A330/A340 Basic;
20. Termination of German MSF agreement for A330/A340 Basic;
21. Termination of Spanish MSF agreement for A330/A340 Basic;
22. Termination of French MSF agreement for A330-200;
23. Termination of French MSF agreement for A340-500/600;
24. Termination of Spanish MSF agreement for A340-500/600;
25. Payment by Airbus, other than on deliveries under previously existing contractual terms, with respect to outstanding MSF obligations in the amount of approximately EUR 1,704,775,000;

26. Bringing "to an end"¹ the 1987, 1988, 1992 and 1994 French capital contributions into Aérospatiale; the 1989 capital contribution by Kreditanstalt für Wiederaufbau ("KfW") into Deutsche Airbus GmbH and the subsequent 1992 transfer of KfW's shares; the French MSF agreements for the A300B, A300B2/B4, A300-600, A310, A310-300, A320, A330/A340 Basic, A330-200 and A340-500/600; the German MSF agreements for the A300B, A300B2/B4, A300-600, A310, A310-300, A320 and A330/A340; the Spanish MSF agreements for the A300B, A300B2/B4, A300-600, A310, A310-300, A320, A330/A340 Basic and A340-500/600; the UK MSF agreements for the A320 and A330/A340 Basic; the regional development grant for an A380-related facility of Airbus Deutschland GmbH (now Premium AEROTEC GmbH) in Nordenham, Germany; and, the regional development grants for largely A380-related facilities of EADS/CASA in Tablada and Puerto de Santa Maria, Spain, and of Airbus España, S.L. (now Airbus Operations, S.L.) in Illescas and Puerto Real, Spain;
27. Isolation of Spanish regional development grants to the EADS/CASA facility at La Rinconada/San Pablo, Spain, from use for LCA purposes;
28. Amendment of take-off and landing fee schedule for use of the runway extensions at Bremen Airport;
29. Amendment of the lease agreement between Airbus Deutschland GmbH and Projektierungsgesellschaft Finkenwerder mbH & Co. KG for an A380-related Airbus Deutschland GmbH facility in Hamburg Finkenwerder;
30. Subsequent share transactions and cash extractions involving subsidy recipients;
31. Termination of the A300 LCA programme;
32. Termination of the A310 LCA programme;
33. Termination of the A340 LCA programme;
34. Completed deliveries of relevant LCA to markets for which displacement was found and completed performance of sales contracts for A319s with easyJet, A320s with Air Berlin, A319s and A320s with Czech Airlines, A320s with Air Asia, A340-600s with Iberia, A340-300s and A340-600s with South African Airways, A340-500s and A340-600s with Thai Airways International, A380s with Emirates Airlines, A380s with Singapore Airlines, and A380s with Qantas;
35. Non-subsidised subsequent investments in Airbus' A320 and A330 LCA programmes;²
36. Attenuation, through the actions or steps taken with respect to the subsidies and through further intervening causes, of any causal link to the point that it no longer constitutes "'a genuine and substantial relationship of cause and effect' between the subsidies and the alleged market phenomenon".³

¹ Appellate Body Report, *EC – Aircraft*, para. 709.

² Appellate Body Report, *EC – Aircraft*, para. 1233.

³ Appellate Body Report, *EC – Aircraft*, paras. 1232-1233.