



13 February 2015

(15-0925)

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Original: English

UNITED STATES – CONDITIONAL TAX INCENTIVES FOR LARGE CIVIL AIRCRAFT

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 12 February 2015, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the immediate establishment of a panel pursuant to Articles 4.4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("*SCM Agreement*"), Article XXIII:2 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") (to the extent incorporated by Article 30 of the *SCM Agreement*), and Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") (as modified by Article 4.4 of the *SCM Agreement*, and in light of Article 1.2 and Appendix 2 to the DSU), with respect to conditional tax incentives established by the State of Washington in relation to the development, manufacture, and sale of large civil aircraft.

On 19 December 2014, the European Union requested consultations with the Government of the United States, pursuant to Articles 4.1 and 30 of the *SCM Agreement*, Article XXIII:1 of the GATT 1994 (to the extent incorporated by Article 30 of the *SCM Agreement*), and Article 4 of the DSU, with respect to such conditional tax incentives. The request was circulated in document WT/DS487/1 on 23 December 2014.

Consultations were held on 2 February 2015, pursuant to each of the above-referenced provisions, with a view to reaching a mutually agreed solution. Unfortunately, the consultations failed to settle the dispute.

As a result, the European Union hereby requests the "immediate establishment" of a panel, as provided for in Article 4.4 of the *SCM Agreement*, with the standard terms of reference set out in Article 7.1 of the DSU with respect to the measures identified in this request.

The European Union recalls that Articles 4.6 and 4.12 of the *SCM Agreement* provide for expedited time-periods applicable to disputes such as this one, conducted under Article 4 of the *SCM Agreement*. The European Union expects that the panel will observe these expedited time-periods.

I. BACKGROUND

In November 2013, the State of Washington, as part of its efforts to induce The Boeing Company to manufacture its new 777X model of large civil aircraft in Washington State, vastly expanded and amended its existing aerospace tax incentives, thereby providing billions of dollars in additional subsidies to Boeing. These expansions and amendments also made the continuing availability of such tax incentives, in whole or in part, contingent upon (i) siting production of the wings and final assembly for a new commercial aircraft model or variant in Washington State, and (ii) maintaining all wing assembly and final assembly of such commercial aircraft exclusively in Washington State.

II. MEASURES AT ISSUE

The measures that are the subject of this request are tax incentives for civil aircraft provided by the State of Washington, as amended by Substitute Senate Bill 5952 (Chapter 2, Laws of 2013 3rd

Special Session, 2014 Wash. Sess. Laws 2). Specifically, the tax incentives are currently contained in the following sections of the Revised Code of Washington ("RCW"): 82.04.260(11) (preferential Business & Occupation tax rate with respect to the manufacture or sale of commercial airplanes); 82.04.4463 (tax credits for property taxes and leasehold excise taxes on commercial airplane manufacturing facilities); 82.04.4461 (tax credits for aerospace product development); 82.08.975 (sales tax exemption for computer hardware, software, and peripherals); 82.08.980 (sales tax exemption for construction services and materials); 82.12.975 (use tax exemption for computer hardware, software, and peripherals); 82.12.980 (use tax exemption for construction services and materials); 82.29A.137 (leasehold excise tax exemption); and 84.36.655 (leaseholder property tax exemption). Moreover, the availability of the tax incentives is subject to the conditions in Sections 2, 5, and 6 of Substitute Senate Bill 5952 (as codified at RCW 82.32.850 and 82.04.260(11)(e)(ii)), which are also covered by this request.

In addition to the measures cited in the above paragraph, this request also covers any amendments, supplements, extensions, replacement measures, renewal measures, related measures, or implementing measures.

III. LEGAL BASIS FOR THE COMPLAINT

The measures identified in Section II constitute specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement*. Specifically, these measures provide a financial contribution in the form of "government revenue ... otherwise due" that is "foregone" within the meaning of Article 1.1(a)(1)(ii), and "a benefit is thereby conferred" within the meaning of Article 1.1(b). For reasons explained in the following paragraph, the subsidies are specific within the meaning of Article 2.3 of the *SCM Agreement*.

These measures condition billions of dollars in subsidies upon the use of aircraft components manufactured in Washington State. Specifically, conditions contained in Sections 2, 5 and 6 of Substitute Senate Bill 5952 (as codified at RCW 82.32.850 and 82.04.260(11)(e)(ii)) make the subsidies "contingent ... upon the use of domestic over imported goods", in law or in fact, within the meaning of Article 3.1(b) of the *SCM Agreement*. Accordingly, these measures are prohibited subsidies that are inconsistent with Articles 3.1(b) and 3.2 of the *SCM Agreement*, and must be withdrawn without delay, pursuant to Article 4.7 of the *SCM Agreement*.

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The European Union asks that this request be placed on the agenda for the next meeting of the Dispute Settlement Body, which is scheduled to take place on 23 February 2015.