

**UNITED STATES – MEASURES AFFECTING TRADE
IN LARGE CIVIL AIRCRAFT**

Request for the Establishment of a Panel by the European Communities

The following communication, dated 31 May 2005, from the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 6 October 2004, the European Communities requested consultations with the United States pursuant to Articles 4.1, 7.1, and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") with regard to measures affecting trade in large civil aircraft. This request was circulated to the WTO Members on 12 October 2004 as document WT/DS317/1, "*United States – Measures Affecting Trade in Large Civil Aircraft*."

Consultations were held on 5 November 2004 with a view to reaching a mutually satisfactory solution. By letter of 21 December 2004, the European Communities in the framework of the requested consultations submitted supplementary questions and asked for further consultations, but the United States declined to do so.

The European Communities requests that a panel be established pursuant to Article 6 of the DSU; Article XXIII:2 of the GATT 1994; and Articles 4, 7, and 30 of the *SCM Agreement* (to the extent that Article 30 incorporates by reference Article XXIII of the GATT 1994).

This dispute concerns prohibited and actionable subsidies provided to and benefiting the US producers of large civil aircraft¹ (the "US LCA industry"), including, in particular, the Boeing Company ("Boeing") and McDonnell Douglas Corporation prior to its merger with Boeing. The measures are currently reflected in and derive from the following:

¹ In accordance with the 1992 *Agreement between the European Communities and the Government of the United States of America concerning the application of the GATT Agreement on Trade in Civil Aircraft on trade in large civil aircraft*, large civil aircraft ("LCA") includes all aircraft as defined in Article 1 of the GATT Agreement on Trade in Civil Aircraft, except engines as defined in Article 1.1(b) thereof, that are designed for passenger or cargo transportation and have 100 or more passenger seats or its equivalent in cargo configuration. Boeing produces or markets the following families of LCA: 717, 737, 747, 757, 767, 777, and 787.

1. State and Local Subsidies

US States, including local authorities, where production and headquarter facilities of the US LCA industry are located, transfer in various ways economic resources to the US LCA industry.

These economic resources include numerous financial incentives and other advantages effectuated, for example, through tax breaks, bond financing, lease arrangements, corporate headquarters relocation assistance, research funding, infrastructure measures and other benefits.

a. State of Washington

Governmental authorities in the State of Washington provide an incentive package for the production of the Boeing 787, including but not limited to tax and other advantages for the US LCA industry, in particular, the production of Boeing LCA, pursuant to, *inter alia*:

- Washington House Bill No. 2294 (2003);
- Memorandum of Agreement for Project Olympus between Boeing and the State of Washington of 19 December 2003;
- The Master Site Development and Location Agreement between Boeing and the State of Washington of 19 December 2003;
- The First Amendment to the Master Site Development and Location Agreement of 2 February 2004, and any subsequent amendments; and
- City of Everett Ordinance 2759-04 (2004), amending Chapter 3.24 of the Everett Municipal Code.

b. State of Kansas

Governmental authorities in the State of Kansas provide financial incentives, including bond financing, tax benefits and other advantages to the US LCA industry, *inter alia* through the following:

- The Economic Revitalization and Reinvestment Act – Kansas Senate Bill No. 281 (2003);
- Tax abatements pursuant to K.S.A. 79-201a, as amended, for property associated with Industrial Revenue Bonds ("IRBs") issued for the financing of US LCA industry projects by the City of Wichita pursuant to K.S.A. §§ 12-1740 *et seq.*, as amended, including, but not limited to, those authorized by the following Ordinances of the Wichita City Council:
 - Wichita City Council Ordinance No. 46-401 authorizing \$67 million in IRBs for Boeing, dated November 16, 2004;
 - Wichita City Council Ordinance No. 45-914 authorizing \$60 million in IRBs for Boeing, dated November 18, 2003;
 - Wichita City Council Ordinance No. 45-495 authorizing \$96 million in IRBs for Boeing, dated November 19, 2002;

- Wichita City Council Ordinance No. 45-133 authorizing \$84 million in IRBs for Boeing, dated November 20, 2001;
- Wichita City Council Ordinance No. 44-811 authorizing \$41 million in IRBs for Boeing, dated November 21, 2000;
- Wichita City Council Ordinance No. 44-428 authorizing \$155 million in IRBs for Boeing, dated November 23, 1999;
- Wichita City Council Ordinance No. 44-102 authorizing \$350 million in IRBs for Boeing, dated December 8, 1998;
- Wichita City Council Ordinance No. 43-642 authorizing \$340 million in IRBs for Boeing, dated November 25, 1997;
- Wichita City Council Ordinance No. 43-325 authorizing \$194 million in IRBs for Boeing, dated November 26, 1996;
- Wichita City Council Ordinance No. 42-949 authorizing \$201 million in IRBs for Boeing, dated November 14, 1995;
- Wichita City Council Ordinance No. 42-553 authorizing \$280 million in IRBs for Boeing, dated November 15, 1994;
- Wichita City Council Ordinance No. 42-228 authorizing \$292 million in IRBs for Boeing, dated November 30, 1993;
- Wichita City Council Ordinance No. 41-916 authorizing \$274 million in IRBs for Boeing, dated December 8, 1992; and
- Wichita City Council Ordinance No. 41-592 authorizing \$206 million in IRBs for Boeing, dated November 26, 1991.

Letters of intent for IRBs for the US LCA industry, including, but not limited to, those issued pursuant to actions of the Wichita City Council taken on 17 May 2005, 13 July 2004, 9 November 1999, 13 February 1996, 24 March 1992, 5 December 1989, 21 December 1982, 9 June 1981, and 23 October 1979.

c. State of Illinois

Governmental authorities in the State of Illinois provide financial incentives, including tax incentives, relocation assistance and other advantages to the US LCA industry, including but not limited to:

- Tax credits from the State of Illinois pursuant to the Economic Development for a Growing Economy Tax Credit Act, Public Act 91-476, as amended, 35 Ill. Comp. Stat. §§ 5/211 *et seq.*;
- Reimbursement of relocation expenses from the State of Illinois pursuant to the Corporate Headquarters Relocation Act, Public Act 92-0207, 20 Ill. Comp. Stat. §§ 611/1 *et seq.*;

- Property tax abatements from Cook County pursuant to § 920 of the above-mentioned Corporate Headquarters Relocation Act, Public Act 92-0207, § 18 of the Property Tax Code, 35 Ill. Comp. Stat. 200/1 *et seq.*, as amended, and an Ordinance of the County of Cook, Illinois Approving Execution of a Tax Reimbursement Payment Agreement with the Boeing Company (2001);
- Property tax abatements from the City of Chicago pursuant to an Ordinance of the City of Chicago, Illinois Approving Execution of a Tax Reimbursement Payment Agreement with the Boeing Company (2001); and
- Payments by the City of Chicago pursuant to the Lease Termination Compensation Agreement between 100 North Riverside, LLC, and the City of Chicago.

2. NASA Research & Development Subsidies

The National Aeronautics and Space Administration ("NASA"), acting on the basis of the National Aeronautics and Space Act of 1958, Pub. L. No. 85-568, as amended, transfers economic resources on terms more favourable than available on the market or not at arm's length pursuant to the following research programmes, by allowing the US LCA industry to participate in these programmes, making payments to the US LCA industry under these programmes, or allowing the US LCA industry to exploit the results of the programmes, by means including but not limited to the foregoing or waiving of valuable patent rights, the protection of valuable trade secrets, and the grant of limited exclusive rights data ("LERDs") protection:

a. High Speed Research Program

- NASA Budget Requests for FY 1990 – FY 2001;
- NASA Appropriations Acts, Pub. L. No. 101-144 (FY 1990); Pub. L. No. 101-507 (FY 1991); Pub. L. No. 102-139 (FY 1992); Pub. L. No. 102-389 (FY 1993); Pub. L. No. 103-124 (FY 1994); Pub. L. No. 103-327 (FY 1995); Pub. L. No. 104-134 (FY 1996); Pub. L. No. 104-204 (FY 1997); Pub. L. No. 105-65 (FY 1998); Pub. L. No. 105-276 (FY 1999);
- High Speed Research Program Technology Transfer Control Handbook, April 1998.

b. Advanced Subsonic Technology Program

- NASA Budget Requests for FY 1992 – FY 2001;
- NASA Appropriations Acts, Pub. L. No. 102-139 (FY 1992); Pub. L. No. 102-389 (FY 1993); Pub. L. No. 103-124 (FY 1994); Pub. L. No. 103-327 (FY 1995); Pub. L. No. 104-134 (FY 1996); Pub. L. No. 104-204 (FY 1997); Pub. L. No. 105-65 (FY 1998); Pub. L. No. 105-276 (FY 1999);
- Advanced Subsonic Technology Program Technology Transfer Control Handbook, August 1998.

- c. Aviation Safety Program/Aviation Safety & Security Program/Aviation Security & Safety Program
- NASA Budget Requests for FY 2000 – FY 2006;
 - NASA Appropriations Acts, Pub. L. No. 106-74 (FY 2000); Pub. L. No. 106-377 (FY 2001); Pub. L. No. 107-73 & Pub. L. No. 107-117 (FY 2002); Pub. L. No. 108-7 (FY 2003); Pub. L. No. 108-199 (FY 2004); Pub. L. No. 108-447 (FY 2005).
- d. Quiet Aircraft Technology Program
- NASA Budget Requests for FY 2000 – FY 2006;
 - NASA Appropriations Acts, Pub. L. No. 106-74 (FY 2000); Pub. L. No. 106-377 (FY 2001); Pub. L. No. 107-73 & Pub. L. No. 107-117 (FY 2002); Pub. L. No. 108-7 (FY 2003); Pub. L. No. 108-199 (FY 2004); Pub. L. No. 108-447 (FY 2005).
- e. High Performance Computing and Communications Program
- NASA Budget Requests for FY 1991 – FY 2003;
 - NASA Appropriations Acts, Pub. L. No. 101-507 (FY 1991); Pub. L. No. 102-139 (FY 1992); Pub. L. No. 102-389 (FY 1993); Pub. L. No. 103-124 (FY 1994); Pub. L. No. 103-327 (FY 1995); Pub. L. No. 104-134 (FY 1996); Pub. L. No. 104-204 (FY 1997); Pub. L. No. 105-65 (FY 1998); Pub. L. No. 105-276 (FY 1999); Pub. L. No. 106-74 (FY 2000); Pub. L. No. 106-377 (FY 2001).
- f. Research & Technology Base Program
- NASA Budget Requests for FY 1991 – FY 2004;
 - NASA Appropriations Acts, Pub. L. No. 101-507 (FY 1991); Pub. L. No. 102-139 (FY 1992); Pub. L. No. 102-389 (FY 1993); Pub. L. No. 103-124 (FY 1994); Pub. L. No. 103-327 (FY 1995); Pub. L. No. 104-134 (FY 1996); Pub. L. No. 104-204 (FY 1997); Pub. L. No. 105-65 (FY 1998); Pub. L. No. 105-276 (FY 1999); Pub. L. No. 106-74 (FY 2000); Pub. L. No. 106-377 (FY 2001); Pub. L. No. 107-73 & Pub. L. No. 107-117 (FY 2002);
- g. Advanced Composites Technology Program
- NASA Budget Requests for FY 1996 – FY 1997;
 - NASA Appropriations Acts, Pub. L. No. 103-124 (FY 1994); Pub. L. No. 103-327 (FY 1995).
- h. Vehicle Systems Program

- NASA Budget Requests for FY 2003 – FY 2006;
 - NASA Appropriations Acts, Pub. L. No. 106-377 (FY 2001); Pub. L. No. 107-73 & Pub. L. No. 107-117 (FY 2002); Pub. L. No. 108-7 (FY 2003); Pub. L. No. 108-199 (FY 2004); Pub. L. No. 108-447 (FY 2005).
- i. Materials and Structures Systems Technology Program
- NASA Budget Requests for FY 1988 – FY 1995;
 - NASA Appropriations Acts, Pub. L. No. 100-202 (FY 1988); Pub. L. No. 100-404 (FY 1989); Pub. L. No. 101-144 (FY 1990); Pub. L. No. 101-507 (FY 1991); Pub. L. No. 102-139 (FY 1992); Pub. L. No. 102-389 (FY 1993).
- j. Aircraft Energy Efficiency Program, including Composite Primary Aircraft Structures, Transport Aircraft Systems Technology, and Advanced Composite Structures Technology Programs
- NASA Budget Requests for FY 1976 – FY 1987;
 - NASA Appropriations Acts, Pub. L. No. 94-116 (FY 1976); Pub. L. No. 94-378 (FY 1977); Pub. L. No. 95-119 (FY 1978); Pub. L. No. 95-392 (FY 1979); Pub. L. No. 96-103 (FY 1980); Pub. L. No. 96-526 (FY 1981); Pub. L. No. 97-101 (FY 1982); Pub. L. No. 97-272 (FY 1983); Pub. L. No. 98-45 (FY 1984); Pub. L. No. 98-371 (FY 1985).
- k. NASA Personnel and Institutional Support Costs Dedicated to US LCA Industry R&D

NASA provides the services of NASA employees and facilities to support the R&D programmes listed above and pays salaries, personnel costs, and other institutional support, thereby providing valuable services to the US LCA industry on terms more favourable than available on the market or not at arm's length:

- NASA Budget Requests for FY 1976 – FY 2006;
- NASA Appropriations Acts, Pub. L. No. 94-116 (FY 1976); Pub. L. No. 94-378 (FY 1977); Pub. L. No. 95-119 (FY 1978); Pub. L. No. 95-392 (FY 1979); Pub. L. No. 96-103 (FY 1980); Pub. L. No. 96-526 (FY 1981); Pub. L. No. 97-101 (FY 1982); Pub. L. No. 97-272 (FY 1983); Pub. L. No. 98-45 (FY 1984); Pub. L. No. 98-371 (FY 1985); Pub. L. No. 99-160 (FY 1986); Pub. L. No. 99-500 & Pub. L. No. 99-591 (FY 1987); Pub. L. No. 100-202 (FY 1988); Pub. L. No. 100-404 (FY 1989); Pub. L. No. 101-144 (FY 1990); Pub. L. No. 101-507 (FY 1991); Pub. L. No. 102-139 (FY 1992); Pub. L. No. 102-389 (FY 1993); Pub. L. No. 103-124 (FY 1994); Pub. L. No. 103-327 (FY 1995); Pub. L. No. 104-134 (FY 1996); Pub. L. No. 104-204 (FY 1997); Pub. L. No. 105-65 (FY 1998); Pub. L. No. 105-276 (FY 1999); Pub. L. No. 106-74 (FY 2000); Pub. L. No. 106-377 (FY 2001); Pub. L. No. 107-73 & Pub. L. No. 107-117 (FY 2002); Pub. L. No. 108-7 (FY 2003); Pub. L. No. 108-199 (FY 2004); Pub. L. No. 108-447 (FY 2005).

3. The Transfer of Trade Secrets and Valuable Data Rights by NASA

The US Government, acting on the basis of the National Aeronautics and Space Act of 1958, Pub. L. No. 85-568, as amended, grants the US LCA industry exclusive or early access to data, trade secrets, and other knowledge resulting from government funded research pursuant, *inter alia*, to:

- Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information, section 4.5.7.1 (NPG 2200.2A);
- 48 CFR §§ 27.400 *et seq.*

4. Department of Defense Research & Development Subsidies

The Department of Defense ("DOD") transfers economic resources to the US LCA industry on terms more favourable than available on the market or not at arm's length, by allowing the US LCA industry to participate in DOD-funded research, making payments to the US LCA industry for such research, or allowing the US LCA industry to exploit the results of such research, by means including but not limited to the foregoing or waiving of valuable patent rights, and the granting of exclusive or early access to data, trade secrets and other knowledge resulting from government funded research.

- a. Independent Research & Development, and Bid & Proposal Reimbursements
 - 10 U.S.C. § 2372;
 - 48 CFR § 31.205-18;
 - 48 CFR § 231.205-18;
 - Department of Defense Directive Regarding IR&D, Number 3204.1 (10 May 1999);
 - DOD Appropriations Acts Pub. L. No. 101-511 (FY 1991); Pub. L. No. 102-172 (FY 1992); Pub. L. No. 102-396 (FY 1993); Pub. L. No. 103-139 (FY 1994); Pub. L. No. 103-335 (FY 1995); Pub. L. No. 104-61 (FY 1996); Pub. L. No. 104-208 (FY 1997); Pub. L. No. 105-56 (FY 1998); Pub. L. No. 105-262 (FY 1999); Pub. L. No. 106-79 (FY 2000); Pub. L. No. 106-259 (FY 2001); Pub. L. No. 107-117 (FY 2002); Pub. L. No. 107-248 (FY 2003); Pub. L. No. 108-87 (FY 2004); Pub. L. No. 108-287 (FY 2005);
- b. A number of Research, Development, Test, and Evaluation Programs of the US Air Force, Navy, Army, and the Defense Research Projects Agency including, but not limited to:
 - Defense Research Sciences (PE# 0601102F)
 - Materials (PE# 0602102F)
 - Aerospace Flight Dynamics and Aerospace Vehicle Technologies (PE# 0602201F)

- Aerospace Propulsion (PE# 0602203F)
- Aerospace Sensors (PE# 0602204F)
- Dual Use Applications and Dual Use Science & Technology (PE# 0602805F)
- Advanced Materials for Weapon Systems (PE# 0603112F)
- Flight Vehicle Technology (PE# 0603205F)
- Aerospace Structures and Aerospace Technology Dev/Demo (PE# 0603211F)
- Aerospace Propulsion & Power Technology (PE# 0603216F)
- Flight Vehicle Technology Integration (PE# 0603245F)
- RDT&E For Aging Aircraft (PE# 0605011F)
- Manufacturing Technology/Industrial Preparedness (PE# 0603771F/0708011F/0708011N)
- C-17 (PE# 0401130F/0604231F)
- CV-22 (PE# 0401318F)
- Joint Strike Fighter (PE#0603800F/0603800N/0603800E/0604800F/0604800N)
- AV-8B Aircraft (PE# 0604214N)
- Comanche (PE# 0604223A)
- F-22 (PE# 0604239F)
- B-2 Advanced Technology Bomber (PE# 0604240F)
- V-22 (PE# 0604262N)
- A-6 Squadrons (PE# 0204134N)
- F/A-18 Squadrons (PE# 0204136N)
- Dual Use Applications Program (including its predecessor, the Technology Reinvestment Project).

These Programmes are currently reflected in, *inter alia*:

- DOD RDT&E Budget Item Justification, Exhibits R-2, FY 1991 – FY 2006;
- DOD FY 1991 – FY 2006 Budgets for RDT&E Programs (Exhibit R-1), DOD Component Summary;

- 10 U.S.C. § 2521 (statutory basis for Manufacturing Technology Program);
- 10 U.S.C. § 2511 (statutory basis for Dual Use Programs);
- DOD Appropriations Acts Pub. L. No. 101-511 (FY 1991); Pub. L. No. 102-172 (FY 1992); Pub. L. No. 102-396 (FY 1993); Pub. L. No. 103-139 (FY 1994); Pub. L. No. 103-335 (FY 1995); Pub. L. No. 104-61 (FY 1996); Pub. L. No. 104-208 (FY 1997); Pub. L. No. 105-56 (FY 1998); Pub. L. No. 105-262 (FY 1999); Pub. L. No. 106-79 (FY 2000); Pub. L. No. 106-259 (FY 2001); Pub. L. No. 107-117 (FY 2002); Pub. L. No. 107-248 (FY 2003); Pub. L. No. 108-87 (FY 2004); Pub. L. No. 108-287 (FY 2005).

5. National Institute of Standards & Technology (U.S. Department of Commerce) Subsidies

The US Department of Commerce ("DOC") transfers economic resources to the US LCA industry on terms more favourable than available on the market or not at arm's length, through the Advanced Technology Program operated pursuant to the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, as amended, and the American Technology Preeminence Act of 1991, Pub. L. No. 102-245 and 15 CFR §§ 295.1 *et seq.*, by allowing the US LCA industry to participate in this programme, making payments to the US LCA industry under this programme, or allowing the US LCA industry to exploit the results of this programme, including but not limited to the foregoing or waiving of valuable patent rights, and the granting of exclusive or early access to data, trade secrets and other knowledge resulting from government funded research. In particular, economic resources are transferred to the US LCA industry through a number of projects, including, but not limited to, the following:

- Project 93-01-0089 (CVD Diamond-Coated Rotating Tools for Machining Advanced Composite Materials);
- Project 95-12-0024 (An Agent-Based Framework for Integrated Intelligent Planning – Execution);
- Project 95-01-0108 (Precision Optoelectronics Assembly);
- Project 91-01-0267 (Pre-competitive Advanced Manufacturing of Electrical Products);
- Project 97-05-0020 (Extended Enterprise Coalition for Integrated Collaborative Manufacturing Systems);
- Project 98-01-0168 (Hot Metal Gas Forming).

6. Intellectual Property Right Waivers and Transfers by NASA and DOD

The US Government allows the US LCA industry to exploit the results of government funded research, including, but not limited to, the foregoing or waiving of valuable patents rights or rights in data as such, pursuant, *inter alia*, to:

- 35 U.S.C. §§ 200 *et seq.*;

- 48 CFR §§ 27.300 *et seq.*;
- Memorandum to the Heads of Executive Departments and Agencies: Government Patent Policy, Pub. Papers 248 (18 February 1983);
- Executive Order 12591 (10 April 1987);
- National Aeronautics and Space Act of 1958, Pub. L. No. 85-568, as amended;
- 14 CFR §§ 1245.100 *et seq.*;
- 14 CFR §§ 1274.911 - 1274.914;
- 48 CFR §§ 1827.301 *et seq.*;
- 48 CFR §§ 227.303 *et seq.*;
- 48 CFR §§ 27.400 *et seq.*;
- 48 CFR §§ 227.7100 *et seq.*;

7. US Department of Labor

The US Department of Labor transfers economic resources to the US LCA industry on terms more favourable than available on the market or not at arm's length, through the Aerospace Industry Initiative, an element of the President's High Growth Training Initiative, under the authority of the Workforce Investment Act, Pub. L. No. 105-220 (1998), by granting to Edmonds Community College in the State of Washington funds for the training of aerospace industry workers associated with the Boeing 787.

8. NASA and DOD Procurement Contracts

NASA and DOD transfer economic resources to the US LCA industry through the purchase of goods from the US LCA industry for more than adequate remuneration.

9. NASA and DOD Facilities

NASA and DOD transfer economic resources to the US LCA industry on terms more favourable than available on the market or not at arm's length, including but not limited to, through the use by the US LCA industry of research, test and evaluation facilities owned by the US Government.

10. Federal tax incentives

The US Government transfers economic resources to the US LCA industry through the federal tax system, and in particular through the following tax measures:

- a. Sections 921-927 of the Internal Revenue Code (prior to repeal) and related measures establishing special tax treatment for "Foreign Sales Corporations" ("FSCs");

- b. FSC Repeal and Extraterritorial Income Exclusion Act of 2000, Pub. L. No. 106-519; and
- c. American Jobs Creation Act of 2004, Pub. L. No. 108-357.

* * * * *

The European Communities considers that the above measures are inconsistent with the obligations of the United States under the following provisions:

- (1) Articles 3.1(a), 3.1(b) and 3.2 of the *SCM Agreement*;
- (2) Article 5(a) of the *SCM Agreement*;
- (3) Articles 5(c), 6.3(a), (b), and (c) of the *SCM Agreement*.
- (4) Article III:4 of the GATT 1994.

The European Communities is of the view that the above measures, reflected in the U.S., state, and local statutes, regulations, administrative procedures, and other programmes and policies as listed above, including any relevant subsequent amendments thereof or successory acts, are inconsistent with these provisions as such and as applied.

The measures listed above are subsidies because in each instance there is a financial contribution by the US, state or local government, and a benefit is thereby conferred within the meaning of Article 1.1(a)(1) and (b) of the *SCM Agreement*. They benefit and will continue to benefit in the future the production, sale, and export of each of the individual subsidised LCA products of the US LCA industry. Each of the listed subsidies is specific to the US LCA industry within the meaning of Article 2 of the *SCM Agreement*.

The subsidies listed above are *de jure* or *de facto* export contingent, and contingent on the use of domestic over imported goods.

The use of these measures causes adverse effects – *i.e.*, material injury or threat of material injury to the European Community LCA industry – and serious prejudice including threat of serious prejudice to the interests of the European Communities within the meaning of Article 5(a) and (c) of the *SCM Agreement*, because, *inter alia*:

- The effect of the measures is material injury, or a threat thereof, in violation of Article 5(a) of the *SCM Agreement*;
- The effect of the measures in benefiting the subsidised products is a significant price undercutting by subsidised products of the US LCA industry as compared with the price of competing European Community LCA products in the world, European Community, US, and third country markets where US and Community producers compete, or a threat thereof, in violation of Articles 5(c) and 6.3(c) of the *SCM Agreement*;
- The effect of the measures in benefiting the subsidised products is significant depression and suppression of the prices of competing European Community LCA products in the world, European Community, US, and third country markets where US and Community producers compete, or a threat thereof, in violation of Articles 5(c) and 6.3(c) of the *SCM Agreement*;

- The effect of the measures in benefiting the subsidised products is significant lost sales of competing European Community LCA products in the world, European Community, U.S., and third country markets where US and Community producers compete, or a threat thereof, in violation of Articles 5(c) and 6.3(c) of the *SCM Agreement*;
- The effect of the measures in benefiting the subsidised products is to displace or impede exports of competing European Community LCA products in the US market, or a threat thereof, in violation of Articles 5(c) and 6.3(a) of the *SCM Agreement*;
- The effect of the measures in benefiting the subsidised products is to displace or impede exports of competing European Community LCA products in third country markets, or a threat thereof, in violation of Articles 5(c) and 6.3(b) of the *SCM Agreement*.

The above measures are neither justified under any provision of a covered agreement, including the *Agreement on Trade in Civil Aircraft*, nor under the 1992 *Agreement between the European Communities and the Government of the United States of America concerning the application of the GATT Agreement on Trade in Civil Aircraft on trade in large civil aircraft*.

The European Communities requests that a panel be established with standard terms of reference, in accordance with Articles 4.4 and 7.4 of the *SCM Agreement* and Article 7 of the DSU.

The European Communities asks that this request for the establishment of a panel be placed on the agenda for the next meeting of the Dispute Settlement Body, which is scheduled to take place on 13 June 2005.

The European Communities further requests that the DSB, together with the establishment of the panel, initiate the procedures provided in Annex V of the *SCM Agreement* pursuant to paragraph 2 of that Annex. In particular, the European Communities requests that the DSB designate a representative to serve the function of facilitating the information-gathering process of Annex V. The European Communities will seek to agree on the name of a representative of the DSB with the United States and failing agreement will propose a name to the DSB.

The European Communities would like to indicate, in conformity with paragraphs 1 and 3 of Annex V, that the market considered relevant by the European Communities is a world market. In order to obtain sufficiently representative data to resolve this dispute while at the same time avoiding unnecessary burdens on other WTO Members, the European Communities intends to address questions under the Annex V procedure to the United States and the following third-country Members:

Argentina, Australia, Bahrain, Brazil, Brunei, Cameroon, Canada, Chile, China, Colombia, Egypt, El Salvador, Fiji, Hong Kong, Iceland, India, Indonesia, Israel, Japan, Jordan, Kenya, Kuwait, Madagascar, Malaysia, Mauritania, Mexico, Mongolia, Morocco, Namibia, New Zealand, Norway, Oman, Pakistan, Panama, Peru, Philippines, Romania, Senegal, Singapore, South Africa, South Korea, Switzerland, Chinese Taipei, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, and Venezuela.
