



## The EU WTO challenge to US government subsidies to Boeing

- Following the United States' unjustified and unilateral withdrawal from the 1992 bilateral EC-US Agreement on Trade in Large Civil Aircraft and the initiation of WTO dispute settlement procedures against the EU, the EU for its part on 12 October 2004 decided to mirror the US steps by initiating WTO dispute settlement procedures regarding a number of US measures, including federal and state subsidies. A WTO panel was set up thereafter (for details see [http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc\\_129465.pdf](http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc_129465.pdf) - updated regularly).
- The EU has undertaken numerous good faith attempts towards a negotiated solution to the differences of opinion between the EU and the US, without success to date.
- For its part, the EU is challenging various US State subsidies benefiting Boeing. These subsidies amount to billions of USD for Boeing. Illustrative examples include a USD 4 billion package in the State of Washington (combining tax breaks, tax exemptions or tax credits and infrastructure projects for the exclusive benefit of Boeing) and a USD 900 million package in the State of Kansas in the form of tax breaks and subsidised bonds.
- As regards US federal measures, the EU has successfully challenged the tax breaks – now repealed in 2006 by US legislation – offered to Boeing under the Foreign Sales Corporation successor legislation, the American Jobs Creation Act. These tax benefits, which the EU estimates at a value to Boeing of USD 2.1 billion over the period 1989-2006, finally ceased to exist on 1 January 2007.
- In addition to the federal tax breaks, the EC is challenging the US system under which a large number of patents and other technologies are put at the disposal of Boeing free of charge, including through the transfer of patents held by US federal agencies (and resulting from US government funded research) to Boeing. The EU estimates the benefits of federal research programs to Boeing at around USD 15 billion.
- The EU intends to demonstrate before the WTO panel that the lavish subsidies benefiting Boeing has allowed Boeing to engage in aggressive pricing of its aircraft which has caused lost sales for and injury to Airbus.

- The EU remains open to pursuing a negotiated solution. However, the starting point for such negotiations should be realistic, balanced and pragmatic.

## **Details of the US subsidies to Boeing challenged by the EU**

### **1. State and Local Subsidies**

- a. State of Washington: incentive package of measures benefiting the development, production and sales of US LCA<sup>1</sup>. These incentives include but are not limited to tax and other advantages
- b. State of Kansas: incentives, including bond financing, tax benefits and other advantages, to the US LCA industry.
- c. State of Illinois: incentives, including tax incentives, relocation assistance and other advantages, to the US LCA industry

### **2. NASA Subsidies**

NASA transfers economic resources on terms more favourable than available on the market or not at arm's length to the US LCA industry, *inter alia*, by:

- a. allowing the US LCA industry to participate in research programmes, making payments to the US LCA industry under those programmes, or enabling the US LCA industry to exploit the results thereof by means including but not limited to the foregoing or waiving of valuable patent rights, the granting of limited exclusive rights data ("LERD") or otherwise exclusive or early access to data, trade secrets and other knowledge resulting from government funded research.
- b. providing the services of NASA employees, facilities, and equipment to support the R&D programmes listed above and paying 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.
- c. providing NASA Independent Research & Development, and Bid & Proposal Reimbursements.
- d. allowing the US LCA industry to use the research, test and evaluation facilities owned by the US Government, including NASA wind tunnels, in particular the Langley Research Center.
- e. entering into procurement contracts with the US LCA industry for more than adequate remuneration.

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<sup>1</sup> Large Civil Aircraft(s)

- f. granting the US LCA industry exclusive or early access to data, trade secrets, and other knowledge resulting from government funded research.
- g. allowing the US LCA industry to exploit the results of government funded research, including, but not limited to, the foregoing or waiving of valuable patent rights or rights in data as such.

### **3. Department of Defense 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, *inter alia*, by:

- a. allowing the US LCA industry to participate in DOD-funded research, making payments to the US LCA industry for such research, or enabling 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.
- b. allowing the US LCA industry to use research, test and evaluation facilities owned by the US Government, including the Major Range Test Facility Bases.
- c. entering into procurement contracts, including those for the purchase of goods, from the US LCA industry for more than adequate remuneration, including in particular but not limited to the US Air Force contract with Boeing for the purchase of certain spare parts for its Airborne Warning and Control System (AWACS) aircraft, the National Polar-orbiting Operational Environmental Satellite System-Conical Microwave Imager Sensor, the C-22 Replacement Program (C-40), the KC-135 Programmed Depot Maintenance, the C-40 Lease and Purchase Program, the C-130 avionics modernisation upgrade program, the C-17 H22 contract (Boeing BC-17X), the US Navy contract with Boeing for the production and maintenance of 108 civil B-737 and their conversion into long-range submarine hunter Multi-Mission Aircraft, the Missile Defense Agency's Airborne Laser (ABL) Program, and the Army's Comanche Program.
- d. by allowing the US LCA industry to exploit the results of government funded research, including, but not limited to, the foregoing or waiving of valuable patent rights or rights in data as such.

### **4. National Institute of Standards & Technology (US 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, as amended, and the American Technology Preeminence Act of 1991, 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.

## **5. 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, by granting to Edmonds Community College in the State of Washington funds for the training of aerospace industry workers associated with the Boeing 787.

## **6. 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; and
- c. American Jobs Creation Act of 2004.