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## ANNEX A

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## ANNEX A

### EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT, REQUEST FOR CONSULTATIONS BY THE UNITED STATES, WT/DS316/1-G/L/697-G/SCM/D62/1

(12 October 2004)

The following communication, dated 6 October 2004, from the delegation of the United States to the delegations of the European Communities, France, Germany, Spain and the United Kingdom, and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the Governments of Germany, France, the United Kingdom, and Spain (the "member States"), and with the European Communities ("EC"), pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Articles 4, 7, and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") (to the extent that Article 30 incorporates Article XXIII of the GATT 1994) with regard to measures affecting trade in large civil aircraft.

The United States considers that measures of the EC and the member States provide subsidies that are inconsistent with their obligations under the SCM Agreement and the GATT 1994, including:

- The provision by the member States of financing for large civil aircraft design and development to the Airbus<sup>1</sup> companies (hereinafter "launch aid")<sup>2</sup> This financing provides benefits to the recipient companies including financing for projects that would otherwise not be commercially feasible. The non-commercial terms of the financing include no interest or interest at below-market rates and a conditional repayment obligation that is tied to the success of the aircraft model being financed; if a model is not successful, some or all of the financing is forgiven.

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<sup>1</sup> The Airbus companies, as referenced throughout this request, include Airbus SAS, its predecessor Airbus GIE and current and predecessor affiliated companies, including each person or entity that directly, or indirectly through one or more intermediaries or relationships, controls or controlled, is or was controlled by, or is or was under common control with Airbus SAS or Airbus GIE, such as parent companies, sibling companies and subsidiaries, including Airbus Deutschland GmbH, Airbus España SL, Airbus France S.A.S., Airbus UK Limited, European Defence and Space Company ("EADS"), and BAE Systems.

<sup>2</sup> The EC and the member States use different terms to describe the type of financing at issue, such as launch aid, launch investment, avances remboursables, Rueckzahlbare Zuwendungen, Entwicklungsbeihilfen, Zuschüsse zur Entwicklung von zivilien Flugzeugen, anticipo reembolsable, and prestamo reembolsable. Although the United States will hereinafter refer to the financing as "launch aid," the US request for consultations is with respect to all such types of financing, regardless of the specific term or terms that the entity providing the financing uses.

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- The provision by the EC and the member States of grants and government-provided goods and services to develop, expand, and upgrade Airbus manufacturing sites for the development and production of the Airbus A380. Specific instances include public investments in Airbus manufacturing facilities by German authorities in Hamburg and Nordenham, by French authorities in Toulouse, by UK authorities at Broughton, and at numerous locations in Spain by Spanish authorities (such as Puerto Real, Illescas, Puerto de Santa Maria, and La Rinconada).
- The provision by the EC and the member States, through the European Investment Bank ("EIB"), to the Airbus companies, including Airbus' parent company EADS, of research and development and other loans on preferential terms, including financing for the A320, the A321, the A330/340, and the A380.
- The assumption and forgiveness by the EC and the member States of debt resulting from launch aid and other large civil aircraft production and development financing, including debt accumulated by Deutsche Airbus and forgiven by the German government and debt assumed by the government of Spain on behalf of Construcciones Aeronauticas SA ("CASA").
- The provision by the EC and the member States of equity infusions and grants, including through government-owned and government-controlled banks. Examples include equity investment by the German government through Kreditanstalt für Wiederaufbau ("KfW") in Deutsche Airbus and the return of the shares acquired through this transaction to Deutsche Airbus' parent, the Daimler group, without compensation. The French government between 1987 and 1997 made equity infusions to offset losses of Aérospatiale and increased the company's share value through share transfers into the company in 1998.
- The provision by the EC and the member States of research and development loans and grants in support of large civil aircraft development. These loans and grants directly benefit the Airbus companies.
- Any amendments, revisions, implementing or related measures to the measures described above.
- Any other measures that involve a financial contribution by the EC or any of the member States that benefit the Airbus companies.

The subsidies in question include those relating to Airbus models A300, A310, A320 family, A330/340, A330-200, A340-500/600, and most recently the A380.

The United States is concerned that the launch aid provided by the EC and the member States to Airbus for the development of large civil aircraft, including but not limited to the Airbus A340-500/600 and the A380, and the EIB loan provided to EADS for the A380, appear to be export subsidies in breach of Articles 3.1(a) and 3.2 of the SCM Agreement.

The United States further is concerned that the measures appear to be causing adverse effects to its interests as provided in:

- Article 5(a) of the SCM Agreement because the measures are specific subsidies within the meaning of Articles 1 and 2 of the SCM Agreement and an evaluation of all relevant economic factors has shown that their effects are causing or threatening to cause injury to the US industry in the US market for large civil aircraft.

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- Articles 5(c), 6.3(a), 6.3(b), 6.3(c), and 6.4 of the SCM Agreement because the measures are specific subsidies within the meaning of Articles 1 and 2 of the SCM Agreement that are causing or threatening to cause serious prejudice to the interests of the United States through displacement and impedance of US imports of large civil aircraft into the EC and third country markets, and through significant price undercutting, price suppression, price depression or lost sales in the same market.

The United States also is concerned that the measures appear to be inconsistent with Article XVI:1 of the GATT 1994.

The United States also is concerned that the measures have caused and continue to cause nullification or impairment of benefits accruing directly or indirectly to the United States under the GATT 1994 within the meaning of Article XXIII:1.

Attached please find the statement of available evidence, pursuant to Articles 4 and 7 of the SCM Agreement.

We look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.

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