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ANNEX B

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ANNEX B

EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT, REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES, WT/DS316/2

(3 June 2005)

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

On 6 October 2004, the United States requested 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 held consultations with the European Communities and the member States on 4 November 2004. These consultations provided some helpful clarifications, but unfortunately did not resolve the dispute.

Accordingly, the United States respectfully requests the Dispute Settlement Body to establish a panel pursuant to Article 6 of the DSU, Article XXIII:2 of GATT 1994, and Articles 4, 7, and 30 of the SCM Agreement (to the extent that Article 30 incorporates by reference Article XXIII of GATT 1994).

The measures of the EC and the member States that are the subject of this panel request include:

- (1) The provision by the member States of financing for large civil aircraft design and development to the Airbus companies¹ (hereinafter "launch aid").² This financing provides

¹ 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.

² 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, Rückzahlbare Zuwendungen, Entwicklungsbeihilfen, Zuschüsse zur Entwicklung von zivilen Flugzeugen, anticipo reembolsable, and prestamo reembolsable. Although the United States will hereinafter refer to the financing as "launch aid," the U.S. request 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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benefits to the recipient companies including financing for projects that would otherwise not be commercially feasible. The non-commercial terms of the financing may include no interest or interest at below-market rates and a repayment obligation that is tied to sales. If the aircraft is not successful, some or all of the financing need not be repaid. Specific examples of the financing at issue include:

- (a) French financing for the Airbus A300, A310, A320, A330/340, A330-200, A340-500/600, A380, and A350;
 - (b) German financing for the Airbus A300, A310, A320, A330/340, A380, and A350;
 - (c) United Kingdom financing for the Airbus A300, A310, A320, A330/340, A340-500/600, A380, and A350; and
 - (d) Spanish financing for the Airbus A300, A310, A320, A330/340, A340-500/600, A380, and A350.
- (2) In addition to launch aid, the provision by the EC and the member States, through the European Investment Bank ("EIB"), to the Airbus companies, of financing for large civil aircraft design, development, and other purposes. Specific examples of the financing at issue include:³
- (a) Financing to British Aerospace for the A320 and the A330/A340;
 - (b) Financing to Aérospatiale for the A330/340;
 - (c) Financing to Construcciones Aeronauticas SA ("CASA") for the A320 and the A330/340;
 - (d) Financing to Airbus Industrie for the A321;
 - (e) Financing to Aérospatiale Super Transporteurs; and
 - (f) Financing to EADS for the A380.
- (3) The provision by the EC and the member States of financial contributions to develop, expand, and upgrade facilities and other infrastructure for the Airbus companies. Specific instances include public investments by German authorities in Hamburg, Nordenham, Bremen, and Varel, by French authorities in the Toulouse region, by UK authorities at Broughton, and by Spanish authorities at numerous locations in Spain (such as Puerto Real, Illescas, Puerto de Santa Maria, and La Rinconada).
- (4) The assumption and forgiveness by the EC and the member States of debt resulting from launch aid and other financing for large civil aircraft development and production, including debt accumulated by Deutsche Airbus that was forgiven by the German government in 1997 and 1998 and debt assumed by the government of Spain on behalf of CASA and not repaid.

³ EIB financing to airline customers for the purchase of new aircraft is not within the scope of this panel request.

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- (5) 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 in 1989 and the return of the shares acquired through this transaction to Deutsche Airbus' parent, the Daimler group, without compensation, in 1992; equity infusions by the French Government into Aérospatiale in 1987 and 1988; an equity infusion by French state-owned Crédit Lyonnais into Aérospatiale in 1992; an equity infusion by the French Government into Aérospatiale in 1994; and the grant by the French Government of its 45.76 per cent share of Dassault Aviation's capital to Aérospatiale in 1998.
- (6) The provision by the EC and the member States of financial contributions for aeronautics-related research, development, and demonstration ("R&D"), undertaken by Airbus, whether alone or with others, or in any other way to the benefit of Airbus, including:
 - (a) EC funding for civil aeronautics-related R&D projects under the Second (1987-1991), Third (1990-1994), Fourth (1994-1998), Fifth (1998-2002) and Sixth (2002-2006) EC Framework Programs in which Airbus participated.
 - (b) Funding from the German federal government and sub-federal entities for civil aeronautics-related R&D projects in which Airbus participated, including:
 - (i) federal government funding as set forth in the most updated version of the government's Förderkatalog database, including funding under the federal aeronautics research programs Luftfahrtforschungsprogramm 1 (1995-1998), Luftfahrtforschungsprogramm 2 (1998-2002), and Luftfahrtforschungsprogramm 3 (2003-2007);
 - (ii) the regional Bremen Airbus Materials & System Technology Centre Bremen (AMST) (2000-2002) and the Airbus Materials & System Technology Centre Bremen II (AMST) (2002-2006);
 - (iii) the regional Bavaria "Hightechoffensive Bayern" program (1999-2003); and
 - (iv) the regional Hamburg Luftfahrtforschungsprogramm (2001-2005).
 - (c) Funding from the government of the United Kingdom since 1992 for civil aeronautics-related R&D projects in which Airbus participated, including funding under the Civil Aircraft Research and Development Program (CARAD) and the Technology & Strategy Program.
 - (d) Funding from the Spanish government, including regional and local authorities, since 1993 for civil aeronautics-related R&D projects in which Airbus participated, including loans and other financial support provided under the Plan Tecnológico Aeronáutico I and the Plan Tecnológico Aeronáutico II.
 - (e) Funding from the French government, including regional and local authorities, since 1986 for civil aeronautics-related R&D projects in which Airbus participated.
 - (f) The provision by government-controlled and financed research institutions of civil aeronautics R&D-related goods or services to Airbus and/or funding for civil aeronautics-related R&D projects in which Airbus participated, including by the German Deutsches Zentrum für Luft- und Raumfahrt ("DLR"), by the UK Defence

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Evaluation and Research Agency ("DERA") and its successor Qinetiq, and by the French Office National des Études et des Recherches Aérospatiales ("ONERA"), the Centre National de la Recherche Scientifique ("CNRS"), and the Centre National de la Recherche Technologique ("CNRT").

- (7) Any amendments, revisions, implementing or related measures to the measures described above.
- (8) Any other measures that involve a financial contribution by the EC or any of the member States that benefit the Airbus companies.

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 inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

The United States further is concerned that the measures of the EC and the member States that are the subject of this panel request appear to be causing adverse effects to its interests within the meaning of:

- 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 that are causing or threatening to cause injury to the US industry.
- Articles 5(c), 6.3(a), 6.3(b), and 6.3(c) 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 imports of large civil aircraft of the United States into the EC and third country markets, and through significant price undercutting by large civil aircraft of the EC as compared with the price of large civil aircraft of the United States in the same markets, and significant price suppression, price depression or lost sales in the same markets.

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

The United States 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 United States asks that this request for the establishment of a Panel be placed on the agenda for the next meeting of the Dispute Settlement Body.

The United States further requests that, upon establishment of a panel in this matter, the DSB initiate the procedures provided for in Annex V of the SCM Agreement pursuant to paragraph 2 of that Annex, and designate a representative to serve the function of facilitating the information-gathering process pursuant to paragraph 4 of that Annex.
