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UNITED STATES – CONDITIONAL TAX INCENTIVES FOR LARGE CIVIL AIRCRAFT

REQUEST FOR CONSULTATIONS BY THE EUROPEAN UNION

The following communication, dated 19 December 2014, from the delegation of the European Union to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the United States, pursuant to Articles 4.1 and 30 of the Agreement on Subsidies and Countervailing Measures ("*SCM Agreement*"), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (to the extent incorporated by Article 30 of the *SCM Agreement*), and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("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.

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). 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

These measures constitute specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement*. Specifically, the 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*.

The European Union is concerned that the 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", within the meaning of Article 3.1(b) of the *SCM Agreement*. Accordingly, the European Union considers that these measures are prohibited subsidies that are inconsistent with Articles 3.1(b) and 3.2 of the *SCM Agreement*.

IV. Statement of available evidence

In accordance with Article 4.2 of the *SCM Agreement*, an Annex to this request includes a statement of available evidence as to the existence and nature of these subsidies.

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The European Union looks forward to receiving a reply from the United States and to fixing a mutually convenient date for consultations. Pursuant to Article 4.12 of the *SCM Agreement*, read in conjunction with Article 4.3 of the DSU, a Member to which a request for consultations is addressed shall reply within 5 days of its receipt. In this regard and in view of the end of the year holiday period, the European Union can agree to receive the United States' reply by 7 January 2015.

ANNEX**STATEMENT OF AVAILABLE EVIDENCE**

For purposes of Article 4.2 of the *SCM Agreement*, the European Union sets out below evidence available to it at this time regarding the existence and nature of the subsidies subject to this request for consultations. The European Union reserves the right to supplement or alter this list in the future, as required.

- Substitute Senate Bill 5952 (Chapter 2, Laws of 2013 3rd Special Session) (Washington)
 - Final Bill Report, Engrossed Substitute Senate Bill 5952
 - Washington State Department of Revenue, Senate Bill 5952 (Aerospace Tax Incentives) Fiscal Note
 - Washington State Legislature, Bill Information: SB 5952 – 2013-14, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5952>
 - Notification Letter on SSB 5952 Contingency from Carol G. Hunter, Director, Washington State Department of Revenue, to Kyle Thiessen, Washington State Code Reviser (10 July 2014)
 - Revised Code of Washington 82.04.260(11); 82.04.4461; 82.04.4463; 82.08.975; 82.08.980; 82.12.975; 82.12.980; 82.29A.137; 82.32.850; 84.36.655 (2014)
 - Non-BCI Version of the First Written Submission of the United States, *US – Large Civil Aircraft (Article 21.5 – EU)*, 27 June 2013, available at http://www.ustr.gov/sites/default/files/DS353.US_Sub1_Non_BCI_Fin_Public.pdf
 - Boeing News Release, "Boeing Launches 777X with Record-Breaking Orders and Commitments", 17 November 2013
 - Governor Jay Inslee, News Release, "Legislature approves key elements of 777X incentive package", 9 November 2013
 - Boeing News Release, "Boeing Statement on IAM 751 Contract Extension Vote", 4 January 2014
 - Boeing News Release, "Boeing to Locate New 777X Composite Wing Center in Everett, Wash.", 18 February 2014
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