

***EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES –
MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT***

(WT/DS316)

**EXECUTIVE SUMMARY OF THE
FIRST SUBMISSION OF
THE UNITED STATES OF AMERICA**

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I. INTRODUCTION

1. For over thirty years, the governments of France, Germany, the United Kingdom, and Spain (the “Airbus governments”) have been giving Airbus the means to “win the battle” against its U.S. competitors in the market for large civil aircraft (“LCA”). They have done so systematically and methodically in pursuit of a “European industrial policy” to create the world’s largest producer of LCA. And they have succeeded. In less than four decades, Airbus has gone from a zero percent market share to its current position as the world’s largest producer.

2. Over the course of this time, two U.S. producers – Lockheed and McDonnell Douglas – have been forced from the market. The sole remaining U.S. producer has seen its market share fall below 50 percent. In the last five years alone, the U.S. share of worldwide deliveries has fallen by nearly 20 points, industry revenues have decreased by 35 percent, and industry earnings have decreased by 25 percent. Tens of thousands of U.S. workers have lost their jobs.

3. If the losses that the United States has suffered were the result of fair competition, the United States would not be pursuing this dispute. The United States values competition and acknowledges Europe’s right to pursue its own interests in the LCA sector in a WTO-compatible manner. But the U.S. losses are not the result of fair competition. The Airbus governments created and fuel Airbus’s success with massive amounts of WTO-inconsistent subsidies.

A. The French, German, UK, and Spanish Governments Have Provided Massive Subsidies to Airbus in the Form of Launch Aid

4. The Airbus governments maintain a formal and institutionalized “European industrial policy” toward Airbus. A core part of that policy has been the systematic and coordinated provision of massive subsidies that Airbus has used to develop a family of LCA targeted at its U.S. competitors.

5. The single largest category of subsidy is Launch Aid. Launch Aid is a form of highly preferential financing that the Airbus governments designed and use to offset the enormous costs and extremely high risks that characterize the development of LCA. All of the Launch Aid that the Airbus governments have provided to Airbus has taken the same form: long-term unsecured loans at zero or below-market rates of interest, with back-loaded repayment schedules that allow Airbus to repay the loans through a levy on each delivery of the financed aircraft. If Airbus fails to sell enough of the aircraft to repay the loan, the outstanding balances are indefinitely extended or forgiven. Repayment of the aid is entirely dependent on the success of the financed aircraft.

6. By providing Launch Aid on a back-loaded and success-dependent basis, the Airbus governments assume a substantial portion of the commercial and financial risks of developing new models of LCA. Unlike commercial lenders, however, they do not charge Airbus for assuming these risks. Instead, they provide the aid either interest-free or at interest rates that are substantially below the rates that commercial lenders would demand for financing with similarly advantageous characteristics.

1. The Airbus Governments Have Supported Airbus with Launch Aid For

Over 30 Years and Continue to Do So

7. The Airbus governments have provided between 33 and 100 percent of the financing that Airbus has needed to develop its LCA family. Every time that Airbus asks for further grants of Launch Aid under the Launch Aid regime, the Airbus governments provide it. As former French Prime Minister Lionel Jospin stated in a March 2000 speech before the French Parliament, their purpose in providing the aid is to “give Airbus the means to win the battle against Boeing.”

8. The roots of the Airbus governments’ Launch Aid program can be traced to 1969, when the governments of France and Germany entered into an agreement to “reinforce European cooperation in the field of aeronautics.” The 1969 agreement was only the first of a number of agreements in which the Airbus governments have memorialized their program to support Airbus with Launch Aid. In addition to the 1969 agreement, there were at least four additional agreements relating to the A300 and A310 and their derivatives, an agreement relating to the A320, an agreement relating to the A330/340, and a joint decision by the Airbus governments to provide Launch Aid for the A380. Most recently, the Airbus governments made legally-binding commitments to provide Launch Aid for the A350.

9. The Airbus governments have also created and maintain a set of formal intergovernmental institutions that they use to oversee Airbus and to work with it to determine whether and when to launch new Airbus aircraft. The core intergovernmental institutions are the Airbus Intergovernmental Committee, the Airbus Executive Committee, and the Airbus Executive Agency, which the governments established in 1969 and which have been in continuous operation ever since. Other institutions include the Airbus Ministers Conference and the Permanent Working Group for Sales Financing.

10. In addition to the intergovernmental institutions, the Airbus governments also maintain dedicated bureaucracies at the national level. These bureaucracies perform the administrative tasks involved in maintaining the Launch Aid system and coordinating the provision of Launch Aid to Airbus.

11. In France, a special unit in the *Direction des Programmes Aéronautiques Civils* oversees Airbus and the Launch Aid system. The so-called “transport aircraft of more than 100 seats” unit participates in the Airbus intergovernmental institutions and administers the provision of Launch Aid to Airbus for the company’s new projects. The UK Launch Aid system is administered by the “aerospace team” located within DTI’s Aerospace and Defence Unit, which is “responsible for relations with civil aerospace companies, and launch investment.” In Germany, the entity that is responsible for administering the Launch Aid system is the office of the Coordinator for the Aerospace Industry and for Aeronautics Research, an office within the Federal Ministry of Economics and Technology. In Spain, the Ministry of Science and Technology is responsible for administering the “system of reimbursable advances.” It also “participates in the Council of Ministers of the four countries, the {Airbus} Executive Committee and the other bodies that manage and coordinate the system.”

12. The national Airbus bureaucracies work with the intergovernmental institutions to “manage and coordinate” the Launch Aid system. The Airbus governments also conclude

agreements with Airbus to facilitate their coordination of the system. The United States discusses an agreement pertaining to the A380, which is quite revealing of the pattern.

13. The European Commission and the Airbus governments have each confirmed the integrated nature of the Launch Aid program that they use to ensure the success of the Airbus enterprise. For example, on the same day that President Chirac described the A380 as a “success of European industrial policy,” British Prime Minister Blair described the aircraft as “the result of unprecedented co-operation between the four countries” And on the day after the ceremony, the European Commission stated that “for the EU, the A380 represents the fruit of European state-level co-operation.” Indeed, the former UK Secretary of Trade and Industry has stated that the provision of Launch Aid:

reflects our approach to industrial policy. We are not standing to one side and leaving everything to the market

14. It is also clear that the Airbus governments will continue to work together to provide Launch Aid to Airbus. For example, a European Commission report on the future of the European aerospace industry stated in October 2003 that member States will retain the “crucial responsibility” of “providing support in terms of R&D programmes, repayable launch aid and contributions to ESA programmes” In May 2005, the European Commission defended the prospect of Launch Aid for the new Airbus A350 because Launch Aid is “part of the commercial landscape of aircraft development” in Europe. That same month, the French Transport Minister stated that “the French state has given its financial support to the A380 programme and we expect to continue in this vein”

15. Similarly, in June 2006, an EADS spokesman stated that “Launch aid is the only available system right now.” In July 2006, the Airbus ministers “reaffirmed their agreement to support Airbus to continue to innovate and to develop programmes in the context of international competition.” And on November 14, 2006, the French Prime Minister Dominique de Villepin said the role of the State in EADS (and thus Airbus) is “to defend a strategic long term vision, which is guarantor of jobs and economic dynamism of the company. I can ensure you that the State will fully play its part.” The financial market standing of Airbus’s parent company EADS hinges on these plans. The Moody’s commercial rating service, for example, has explained that it takes the continued availability of Launch Aid into account in determining EADS’s debt rating.

16. In light of the Airbus governments’ consistent and systematic approach to their support of Airbus for over three decades, the institutional structures and bureaucracies they have created to maintain and provide this support, and their statements and actions concerning this support, the specific content of their Launch Aid program and the future conduct it will entail is clear. The Airbus governments will continue to use Launch Aid to facilitate Airbus’s commercial strategy, without regard to their WTO obligations or the effects of the subsidies on the United States.

2. Launch Aid is a Subsidy Within the Meaning of Article 1 of the SCM Agreement

17. In this section, the United States demonstrates that Launch Aid is a subsidy within the meaning of Article 1 of the SCM Agreement because it involves a financial contribution within the meaning of Article 1.1(a)(1) of the SCM Agreement that confers a benefit that is specific to Airbus within the meaning of the SCM Agreement.

a. *Launch Aid Constitutes a Financial Contribution to Airbus*

18. Article 1.1(a)(1)(i) of the SCM Agreement states that “there is a financial contribution” by a government where “a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion)” or “potential direct transfers of funds or liabilities (e.g. loan guarantees).” The Airbus governments’ Launch Aid program is a government practice that involves the direct transfer of funds or potential direct transfer of funds in the sense of Article 1.1(a)(1)(i) – namely, success-dependent loans. Therefore, “there is a financial contribution” within the meaning of Article 1.1(a)(1)(i) of the SCM Agreement.

b. *Launch Aid Confers a Benefit on Airbus*

19. The Airbus governments have designed the Launch Aid system to benefit Airbus by providing the funds it needs to develop new models of LCA, carefully tailored to address the extremely high costs and risks of LCA development, at interest rates that are substantially below what the market would demand for financing with similar characteristics. In this section, the United States describes the ways in which the Airbus governments have designed Launch Aid to insulate Airbus from those risks and the reasons why the financing confers a benefit within the meaning of the SCM Agreement.

20. ***The Development of LCA is Risky and Expensive.*** Developing new models of LCA is both extremely risky and extraordinarily expensive. The development programs require huge up-front investments to fund the development work that must be completed before deliveries can begin. Once this investment has been made, very little can be recovered in the event the program fails. There are many uncertainties at the time of commitment to launch an LCA program, and it is difficult to predict the prices that various customers will pay for the aircraft over the life of the program. Since the initial development investment is essentially a sunk cost and is incurred well before revenues are received, the size of these non-recurring costs is a key element affecting an aircraft program’s risk and expected profitability. If a program is successful, the up-front investment is eventually recovered with margins earned on each aircraft delivery. Given the typical magnitude of program non-recurring costs, however, hundreds of sales are usually required before a program reaches its break-even point. If a program fails to reach break-even sales, the remainder of the non-recurring costs must instead be written off as a loss.

21. ***Repayment of Launch Aid is success-dependent.*** One of the principal ways in which the Airbus governments assume Airbus’s risks in developing new models of LCA is by allowing Airbus to repay the aid through “levies” on each delivery of the financed product. The Launch

Aid is unsecured, and the government has no recourse to obtain repayment if the expected sales fail to materialize. Repayment is therefore “success dependent.” A company that receives financing on a “success-dependent” basis enjoys the obvious benefit of no down-side risk. As one UK scholar has observed, “the distinctive risk-sharing feature of Launch Aid confers Airbus with an advantage over a rival who is constrained to debt and equity instruments alone.”

22. ***Repayment of Launch Aid is back-loaded.*** The Airbus governments further assume Airbus’s risks by back-loading the repayment obligations. First, levy-based repayment terms are inherently back-loaded. One inevitable consequence of tying repayment to deliveries is that repayments only begin once deliveries begin. For the ordinary LCA program, this normally means there will be at least a five-year lag between disbursement of the aid to Airbus and the first repayments (in the case of the A380, the lag will be closer to ten years). Second, the Airbus governments further back-load the repayment schedules by allowing Airbus to make relatively small levy payments on early deliveries and progressively larger payments only on later deliveries. Third, in some cases, the Airbus governments allow Airbus to forego levies entirely on an initial tranche of deliveries.

23. ***Launch Aid Carries Below-Market Interest Rates.*** The Airbus governments do not require Airbus to pay a commercial rate of interest that reflects the substantial risks that the governments assume on its behalf. In some cases, the Airbus governments have provided Launch Aid to Airbus interest-free. Moreover, even the Launch Aid contracts that purport to include an interest component do not actually require Airbus to pay interest. Since the financing is success-dependent, the Airbus governments actually provide the aid without requiring any return, even of principal. The “Ellis Report,” included as an exhibit to the U.S. submission, compares the “potential returns” on Launch Aid with the actual returns that the commercial market would demand for financing with similarly advantageous characteristics. It concludes that Launch Aid borrowing rates are substantially below the rates that commercial investors would demand for comparable project-specific and success-dependent loans.

24. ***The WTO has already found that Launch Aid-type financing confers a benefit.*** In the *Canada – Aircraft* subsidy dispute, the panel examined financing that was virtually identical to Launch Aid and concluded that the financing conferred a benefit on the recipient, and thus constituted a subsidy within the meaning of the SCM Agreement. For the same reasons that the *Canada – Aircraft* panel found that the financing at issue conferred a benefit on the recipient, the Launch Aid that the Airbus governments provide to Airbus confers a benefit on Airbus.

25. ***The Launch Aid Program Is Specific to Airbus.*** The Airbus governments conceived and maintain their Launch Aid program for the specific benefit of Airbus. They have used the program in a systematic and methodical way since its very inception to provide Airbus the means to develop a full family of LCA to compete against U.S. producers in the LCA market. The Launch Aid subsidies that Airbus has received have always been, and remain, specific to Airbus within the meaning of Article 2 of the SCM agreement.

3. Every Grant of Launch Aid That Airbus Has Received to Develop Its LCA Family Is a Specific Subsidy to Airbus

26. The Airbus governments have provided or committed to provide Launch Aid for every major model of the Airbus LCA family – the A300, A310, A320, A330, A340, A380, and A350 – and for the three major derivative models of its family, the A330-200, A340-500, and A340-600. In this section, the United States demonstrates that each grant of Launch Aid constitutes a specific subsidy within the meaning of Articles 1 and 2 of the SCM Agreement because it involves a financial contribution that confers a benefit on the recipient and is specific.

4. In 2006, the Airbus Governments “Reaffirmed Their Agreement to Support Airbus” in the Development of New Models of LCA

27. In spite of Airbus’s leading global position, the Airbus governments refuse to end their practice of supporting Airbus with grants of Launch Aid. To the contrary, they have already agreed to provide at least \$1,700,000,000 in Launch Aid for Airbus’s newest aircraft, the A350. Recent events suggest that the final amount of the aid will be double or even triple that amount. Publicly available information indicates that the aid is in fact Launch Aid, *i.e.*, back-loaded, success-dependent, preferential financing, just as has been provided since Airbus’s inception.

28. Airbus has been quite explicit in stating that it has launched the A350 to take orders that would otherwise go to the 787. It has also made clear that the A350 is intended to target the Boeing 777 as well as the 787. On May 23, 2005, for example, the project manager for the A350 boasted that “{w}e are positioning our program to be a 777-200ER killer.” As one industry analyst has observed, the A350 “will threaten the entire Boeing 777 product line, placing Boeing in the awkward predicament of having to figure out what to do at a time when the 787 program is entering production and plans are being made to design a successor to the 737.”

B. The Launch Aid that Airbus Has Received for the A380, the A340-500/600, and the A330-200 Are Prohibited Export Subsidies

29. In this section, the United States demonstrates that the Launch Aid that Airbus has received for the A380, the A340-500/600, and the A330-200 are prohibited export subsidies.

30. A finding of export contingency involves three elements: (1) the “granting” of a subsidy; (2) that is “tied to” (3) “actual or anticipated exportation or export earnings.”

1. The A380 Subsidies Are Prohibited Export Subsidies

31. The UK, French, German, and Spanish governments have each granted Launch Aid to their respective Airbus companies to support the development of the Airbus A380. In each case, the Launch Aid is a subsidy within the meaning of Article 1.1 of the SCM Agreement. Therefore, for each provision of A380 Launch Aid, the first element for demonstrating export contingency is met.

32. The second element for demonstrating export contingency is the existence of actual or

anticipated exportation or export earnings. The evidence surrounding the Airbus governments' decision to provide Launch Aid for the A380 demonstrates not only that the governments anticipated or expected that exportation or export earnings would result from the project, but also that the governments knew Airbus was developing the A380 *primarily* for the export market, and that export sales would be critical to the project's success.

33. First, in 1999-2000, at the time that the Airbus governments were discussing Launch Aid for the A380 with Airbus, Airbus was stating that it was developing the A380 primarily for the export market. Second, the four Launch Aid agreements between the Airbus governments and Airbus each anticipate a level of A380 sales that substantially exceeds the 247 aircraft with more than 400 seats that Airbus was predicting it would sell in Europe, thus demonstrating that the governments anticipated exports. Third, the four governments have specifically referenced the global nature of the A380 project and Airbus's export sales. Fourth, when Airbus was seeking the Launch Aid, it pointed to potential export earnings, and it stressed the importance of export sales to the project's success. Fifth, in addition to the fact that the A380 is an export-oriented project, Airbus itself is a highly export-oriented company.

34. The third and final element for demonstrating that a subsidy is contingent on export performance is that the subsidy must have been "tied to" anticipated or expected exportation or export earnings. The terms of the Launch Aid contracts themselves, as well as the evidence surrounding the grant of the Launch Aid, demonstrates such a tie. First, a key feature of Launch Aid is that the Airbus governments tie repayment of the aid to sales of the particular aircraft model that the Launch Aid is funding. If sales of the aircraft fail to meet expectations, repayment of the aid is forgiven or indefinitely postponed. However, Airbus has stated that total European demand for aircraft with more than 400 seats is only 247 aircraft. This necessarily implies that the Airbus governments tied the grant of the Launch Aid to Airbus making substantial numbers of export sales.

35. The facts surrounding the grant of the A380 Launch Aid are quite similar to the facts surrounding the grant contract that the *Australia – Leather* panel found contingent "in fact" upon export performance. On the other hand, the facts that led the *Australia – Leather* panel to conclude that the loan contract at issue in that dispute was not contingent "in fact" upon export performance are entirely absent from the A380 contracts.

2. The A340-500/600 and A330-200 Subsidies are Prohibited Export Subsidies

36. In this section, the United States demonstrates that the same types of facts that demonstrate export contingency for the A380 Launch Aid also demonstrate that the Launch Aid that the French and Spanish governments provided for the A340-500/600 and the Launch Aid the French government provided for the A330-200 is contingent upon export, and thus is prohibited under Articles 3.1(a) and 3.2 of the SCM Agreement.

C. The European Investment Bank Has Repeatedly Subsidized the Development of Airbus Large Civil Aircraft

37. The European Investment Bank (“EIB”) has provided significant financial support to Airbus for the development of its new models of large civil aircraft. The financial support has taken the form of loans – at least 11 to date – with a total principal value of approximately Euro 1,600,000,000. The EIB provides the loans for the development of specific models of Airbus LCA, usually as a supplement to the Launch Aid that the various Airbus governments provide for the same models. Each of the EIB loans is a subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement.

1. Factual Background on the European Investment Bank

38. The European Investment Bank, “the financing institution of the European Union, was created by the Treaty of Rome. The members of the EIB are the Member States of the European Union, who have all subscribed to the Bank’s capital.” The EIB describes itself as “the EU’s policy-driven Bank.” It has “close working relations with the other EU institutions, in particular the European Parliament, the European Council and the European Commission.” It provides financing in support of EU policy priorities. The projects it funds must “help achieve EU objectives such as making European industries and small businesses more competitive.” For all of these reasons, the EIB is a “public body” within the meaning of Article 1.1(a)(1) of the SCM Agreement.

2. The Loan That the EIB Provided to EADS in 2002 Is a Specific Subsidy Under Articles 1 and 2 SCM Agreement

39. In 2002, the EIB agreed to provide a Euro 700,000,000 “individual loan” to EADS for R&D related to the Airbus A380. The loan is a subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement.

40. First, the EIB is a public body, and the Euro 700,000,000 that it agreed to provide to EADS for the A380 – like all of the other EIB measures that the United States is challenging in this dispute – is in the form of a loan. Accordingly, it is a financial contribution within the meaning of Article 1.1(a)(i) of the SCM Agreement.

41. Second, the loan confers a benefit because it is on terms that are more favorable than those available in the market. The EIB readily admits that its entire purpose is to support the EU’s public policy objectives by providing loans on better terms than the recipients could otherwise obtain, if they could obtain the loans at all. The EIB effectuates this benefit by passing on the interest rate it pays on its own (AAA-rated) capital market borrowings to its non-AAA rated borrowers, and by lending the funds at cost. Thus, like the *Technology Partnerships Canada* (“TPC”) program at issue in the *Canada – Aircraft* dispute, the EIB “neither seeks nor earns a commercial rate of return” on the loans it provides. The *Canada – Aircraft* panel treated this factor as dispositive in determining the existence of a subsidy in that dispute. It is equally dispositive with respect to the EIB.

42. Furthermore, the information that the EC provided during the Annex V process confirms that the EIB loan for the A380 confers a benefit because the interest rate on the loan is below the risk-adjusted commercial borrowing rate that the market would have charged EADS in 2002 on an equivalent long-term loan. The loan is also specific within the meaning of Article 2 of the SCM Agreement. It is disproportionately large both in percentage and in absolute terms. Also, every “individual loan” that the EIB provides is entirely discretionary.

3. The Loans That the EIB Provided to Airbus Between 1988 and 1993 Are Specific Subsidies

43. The Euro 700,000,000 that the EIB agreed to provide for the A380 was not its first loan to an Airbus project. Since 1988, the bank has provided at least eleven additional loans for the development of specific Airbus models. In this section, the United States demonstrates that, like the Euro 700 million loan for the A380, each of these additional loans is a specific subsidy to Airbus within the meaning of Articles 1 and 2 of the SCM Agreement.

D. The German, French, UK, and Spanish Governments Have Subsidized Airbus Through the Provision of Infrastructure and Infrastructure-Related Grants

44. In addition to Launch Aid and EIB loans, the Airbus governments have provided massive subsidies to Airbus to develop, expand, and upgrade infrastructure and other facilities. These subsidies increased markedly in recent years in connection with the development of the Airbus A380. The subsidies at issue were granted by German authorities in Hamburg, Nordenham, and Bremen; by French authorities in Toulouse; by UK authorities in Broughton; and by Spanish authorities in numerous locations in Spain. In this section, the United States demonstrates that each of the measures is a specific subsidy to Airbus within the meaning of the SCM Agreement.

45. **Hamburg.** When Airbus launched the A380, it decided to establish one of its A380 assembly facilities at its Hamburg-Finkenwerder site. At the time that Airbus made this decision, however, its existing facilities in Hamburg were located on a peninsula, with the river Elbe and wetlands on three sides, leaving no space on which to build the A380 facility. Hamburg authorities solved this issue by transforming one of the wetlands – the internationally-protected “Mühlenberger Loch” – into an industrial site, at a cost of approximately Euro 751,000,000. The development of the Hamburg-Finkenwerder site and its provision to Airbus is a specific subsidy to Airbus because the Hamburg authorities created a site that the market would not have created, and because they have provided the site to Airbus for less than adequate remuneration. Hamburg also subsidized Airbus by sharing the costs to construct the A380 assembly facilities.

46. **Bremen.** Germany provided DM 50 million in infrastructure subsidies to Airbus in Bremen by agreeing to extend the main runway at Bremen airport to accommodate transport flights for Airbus wings manufactured in Bremen. The governing SPD in the Bremen Parliament has explicitly described the runway as a “Werksbahn” (or “company runway”) for Airbus. Airbus paid nothing for this benefit.

47. **Toulouse.** Airbus decided to establish its second A380 assembly facility at its Toulouse site. French authorities expended Euro 200,000,000 to transform agricultural land next to Airbus's Toulouse headquarters and the Blagnac airport into the "AéroConstellation" site – an aeronautics industrial park that French authorities described as a "tailor-made solution for the A380." The development of the AéroConstellation site and its provision to Airbus is a subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement. First, the French authorities sold a portion of the site to Airbus for less than adequate remuneration. Second, the authorities are leasing the general facilities on the site (the EIG facilities) to Airbus for less than adequate remuneration.

48. **Nordenham.** In June 2002, the parliament of the German land of Lower Saxony approved a Euro 6,000,000 grant to Airbus to help underwrite a Euro 49,000,000 expansion of Airbus's production facility in Nordenham. The purpose of the expansion was to accommodate the production of components for the A380. As a grant, the Euro 6,000,000 necessarily constitutes a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is also specific since it is an *ad hoc* grant exclusively to Airbus for the specific purpose of expanding its A380 component production facility.

49. **Broughton.** On September 24, 2000, the Welsh Assembly announced that it had agreed to provide a £19,500,000 grant package to BAE Systems in support of its A380 wing production work in Broughton. The package included £15,000,000 from the Welsh Development Agency for the "general infrastructure of a big site" and £4,900,000 for the "development of people." As a grant, the £19,500,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is also specific because, *inter alia*, it was an *ad hoc* grant to Airbus.

50. **La Rinconada.** In April 2001, the Spanish Ministry of Economics issued an order approving regional grants of Euro 2,200,000 to EADS-CASA at Sevilla and Euro 814,000 to EADS-CASA at La Rinconada, Sevilla. As grants, the Euro 2,200,000 and Euro 814,000 are subsidies within the meaning of Article 1.1 of the SCM Agreement. The grants are also specific under Article 2.2 of the SCM Agreement because eligibility for the subsidies is explicitly limited to certain designated geographical regions within the jurisdiction of the authority granting the subsidies (Spain).

51. **Illescas.** In March 2003, the Spanish Ministry of Economics approved a Euro 37,900,000 grant to Airbus España. The grant covered 15 percent of the total investment costs of an expansion of Airbus' parts and components production site in Illescas, in Toledo, Spain. As a grant, the Euro 37,900,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is specific for the same reasons that the La Rinconada grants are specific.

52. **La Rinconada.** In July 2003, the Spanish Ministry of Economics issued an order approving another regional grant, this time in the amount of Euro 43,100,000, to EADS-CASA at La Rinconada, in Sevilla. As a grant, the Euro 43,100,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is specific for the same reasons that the earlier La Rinconada grants were specific.

53. ***Puerto de Santa Maria.*** In July 2003, the Spanish Ministry of Economics issued an order approving a Euro 5,900,000 grant to EADS-CASA at Puerto de Santa Maria, in Cadiz. As a grant, the Euro 5,900,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is specific for the same reasons that the La Riconada grants were specific.

54. ***Puerto Real.*** In July 2003, the Spanish Ministry of Economics issued an order approving a Euro 13,100,000 grant to EADS/Airbus Espana's facility at Puerto Real, in Cadiz. As a grant, the Euro 13,100,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is specific for the same reasons that the earlier grants are specific.

55. ***Puerto de Santa Maria.*** In July 2001, the government of the Spanish region of Andalusia provided a Euro 8,600,000 grant to CASA for a new production and maintenance facility in El Puerto de Santa Maria, in Cadiz. As a grant, the Euro 8,600,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is specific because it was provided as part of an Andalusian government development plan for the Bahia de Cadiz, and thus was limited to a designated geographical region of the authority granting the subsidies.

56. ***Sevilla.*** In July 2002, the government of Andalusia authorized a grant of Euro 35,700,000 for an investment by EADS-CASA in Sevilla. The grant was 75 percent financed by the European Regional Development Fund and 25 percent financed by the Andalusian government. As a grant, the Euro 35,700,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is also specific within the meaning of Article 2 of the SCM Agreement. Subsidies under the European Regional Development fund are necessarily limited to "certain enterprises located within a designated geographical region within the jurisdiction of the granting authority," and thus are specific within the meaning of Article 2.2 of the SCM Agreement.

57. ***Puerto Real.*** In July 2003, the government of Andalusia authorized a further grant of Euro 17,500,000 for the expansion and modernization of Airbus's facilities in Puerto Real, in Cadiz. The European Regional Development Fund co-financed the grant. As a grant, the Euro 17,500,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is also specific within the meaning of Article 2 of the SCM Agreement because it was provided under a program that is limited to "certain enterprises located within a designated geographical region within the jurisdiction of the granting authority."

58. ***Illescas.*** In March 2004, the government of Castilla-La Mancha approved a Euro 7,600,000 grant to Airbus España for the expansion and modernization of Airbus' parts and components production site in Illescas, in Toledo. The European Regional Development Fund co-financed the grant. As a grant, the Euro 7,600,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is also specific within the meaning of Article 2 of the SCM Agreement because it was provided under a program that is limited to "certain enterprises located within a designated geographical region within the jurisdiction of the granting authority."

59. ***La Rinconada.*** In October 2004, the government of Andalusia authorized a grant of Euro 61,900,000 for an investment project by EADS-CASA in the municipalities of Sevilla and

La Rinconada, Sevilla. As a grant, the Euro 61,900,000 is a subsidy within the meaning of Article 1.1 of the SCM Agreement. The grant is also specific within the meaning of Article 2 of the SCM Agreement because it was provided under a program that was explicitly limited to “certain enterprises” within the meaning of Article 2.1 of the SCM Agreement.

E. The German Government Has Subsidized Airbus by Forgiving At Least DM 7.7 Billion of Deutsche Airbus’s Government Debt

60. Deutsche Airbus relied almost entirely on Launch Aid and other German government subsidies to underwrite its early participation in the Airbus project. By the late 1990s, the total accumulated debt that it owed to the German government amounted to at least DM 11,000,000,000 (in principal alone), including DM 9,400,000,000 related to A300/A310 and A330/A340 Launch Aid and other, smaller loans (“repayable grants”) that the government had provided to the company. In 1998, the German government allowed Deutsche Airbus to pay DM 1,735,000,000 to “settle” its DM 9,400,000,000 debt. The government forgave the remaining DM 7,700,000,000.

61. As the panel stated in *Korea – Shipbuilding*, debt forgiveness is “comparable to a cash grant, as funds that were previously provided as a loan, against interest, are now provided for free, given the removal of the repayment obligation.” Therefore, the German government’s forgiveness of Deutsche Airbus’s repayment obligations constitutes a financial contribution to Deutsche Airbus within the meaning of Article 1.1(a)(1)(i). It also confers a benefit on Deutsche Airbus. Debt forgiveness is comparable to a cash grant, and therefore confers a benefit – and thus constitutes a subsidy – for the same reasons. Finally, the debt forgiveness is specific because it was effectuated through an *ad hoc* agreement between the German government and Deutsche Airbus.

F. The German Government’s Transfer of Its Ownership Share in Deutsche Airbus to the Daimler Group Is a Specific Subsidy to Airbus

62. In 1989, the German government agreed to make an equity infusion into Deutsche Airbus by purchasing a 20 percent share of the company for DM 505,000,000 (Euro 258,000,000). Three years later, the German government agreed to give the shares to DASA, without compensation. In this section, the United States first demonstrates that the equity infusion is a subsidy because the German government’s decision to provide the DM 505,000,000 infusion to Deutsche Airbus was inconsistent with the usual investment practice of private investors in Germany. The United States then demonstrates that the 1992 share transfer is a subsidy because it was, in effect, a DM 505,000,000 (Euro 258,000,000) grant. The United States also demonstrates that both subsidies were specific to Airbus.

G. The Equity Infusions That the French Government Provided to Aérospatiale Are Specific Subsidies

63. In the late 1980s and in the 1990s, the French government made a series of equity infusions into the French Airbus company Aérospatiale. First, in 1987 and 1988, the French government made two infusions of FF 1,250,000,000, for a total of FF 2,500,000,000. Then, in

1992, the government injected another FF 1,400,000,000 into Aérospatiale through the state-controlled bank Credit Lyonnais. Two years later, in 1994, the French government provided another FF 2,000,000,000 infusion into Aérospatiale. Finally, in 1998, the French government transferred its 45.76 percent share in the capital of Dassault Aviation S.A. (“Dassault”) to Aérospatiale. The share transfer was worth approximately FF 5,280,000,000.

64. In this section, the United States discusses Aérospatiale’s financial condition and performance at the time of each of the equity infusions and demonstrates that each of the decisions to invest in the company was inconsistent with the usual investment practice of private investors. Therefore, each equity infusion was a subsidy within the meaning of the SCM Agreement. The United States also demonstrates that each infusion was specific to Airbus.

H. The Research and Development Funding That the European Commission and the Member States Provide to Airbus Are Specific Subsidies

65. The European Commission and the Airbus governments also subsidize Airbus by helping to fund its research and development efforts. The subsidies primarily take the form of straight cash grants, although in some cases they have taken the form of non-commercial loans. The primary vehicles for the subsidies at the European Commission level are the so-called EC Framework Programs, which the EC has maintained for many years. At the member State level, and at the sub-national level, the vehicles are dedicated programs that the governments have established for the specific purpose of funding aeronautics research.

1. The R&D Funding That the European Commission Provides to Airbus Under the EC “Framework Programs” Are Specific Subsidies

66. For many years, the EC has provided grants to Airbus under the so-called EC Framework Programs to assist the company in funding its research and development efforts. The EC provides the grants to research consortia that Airbus leads or in which it is a key participant. Each grant is for an individual, discrete research project focusing on a particular aeronautics technology or production process. A primary goal of the grants is to “improv{e} the competitiveness of the European aeronautical industries”

67. The EC has confirmed that all of the funding that the EC provides to Airbus under the Framework Programs takes the form of grants. Article 1.1(a)(1)(i) of the SCM Agreement includes grants among the types of “direct transfers of funds” that constitute financial contributions within the meaning of the SCM Agreement.

68. Grants confer benefits because, as the panel stated in *United States – Cotton*, they “place the recipient in a better position than the recipient otherwise would have been in the marketplace.” Therefore, since EC Framework Program funding takes the form of grants, it necessarily confers benefits – and thus constitutes subsidies – under Article 1.1 of the SCM Agreement. In addition, the subsidies are specific to Airbus and/or the aeronautics industry because each Framework Program has a sub-budget that is specific to the aeronautics industry, and because research proposals must be aeronautics-related.

2. The R&D Funding That German Federal Authorities Provide to Airbus Under Their Research and Development Programs Are Specific Subsidies

69. For many years, the German Federal Government and the sub-federal (“Länder”) governments of Hamburg, Bremen, and Bavaria have provided grants to Airbus to help fund its civil aeronautics research and development efforts. The Federal government has provided at least Euro 695,000,000 – including Euro 217,000,000 since 1995 under a series of Aeronautics Research Programs (“Luftfahrtforschungsprogramme” or “Lufo” 1, 2, and 3). The Länder governments have provided tens of millions of euros of additional funds.

70. The EC concedes that all of the civil aeronautics R&D funding that the German Federal and sub-federal governments provide to Airbus takes the form of grants. Therefore, for the same reasons that the EC framework grants are subsidies, the German Federal and sub-federal grants are subsidies. The subsidies are specific because Germany disburses the subsidies pursuant to programs that are dedicated specifically to aeronautics.

3. The R&D Funding That French Authorities Provide to Airbus Under Their Research and Development Program Are Specific Subsidies

71. Between 1986 and 2005, the French Government budgeted over Euro 1.2 billion in grants to the aeronautics industry for civil aeronautics research and development (“recherche amount de l’aéronautique”). Based on public information, DPAC budgeted Euro 391,000,000 from 1986 to 1993, and Euro 809,000,000 from 1994 to 2005. During the Annex V process, the EC conceded that Airbus received a substantial amount of the DPAC funding from 1994 to 2005, although it refused to provide any information regarding the 1986 to 1993 time period.

72. The EC confirms that all of the R&D funding that French authorities provide to Airbus takes the form of grants. Therefore, for the same reasons that the EC framework grants are subsidies, the French government’s grants are subsidies. The subsidies are specific because France provides the grants pursuant to a budget that is dedicated to “aeronautic construction,” and the government limits access to the grants to aeronautics manufacturing companies.

4. The R&D Funding That UK Authorities Provide to Airbus Under Their Research and Development Programs Are Specific Subsidies

73. For many years, the UK Department of Trade and Industry (“DTI”) has provided aeronautics-related research and development grants to Airbus research consortia that Airbus leads or in which it is a key participant. Since 1992, DTI has agreed to provide tens of millions of pounds in grants to Airbus research consortia under the CARAD program (subsequently renamed the Aeronautics Research Programme (“ARP”)). In addition, in 2004, the UK replaced the CARAD program with the so-called “Technology Program” (“TP”). DTI has committed additional millions of pounds to Airbus under the TP program.

74. The EC concedes that all of the funding the DTI has agreed to provide to Airbus research consortia under CARAD/ARP and TP has taken the form of grants. Therefore, the UK’s grants under CARAD/ARP and TP are subsidies for the same reasons that the EC framework grants are

subsidies. In addition, the subsidies are specific because CARAD/ARP grants are limited to entities carrying out research in aeronautics technologies and TP grants are awarded through calls for proposals that are limited to aeronautics-related technologies.

5. The R&D Funding That Spanish Authorities Provide to Airbus Under Their Research and Development Program Are Specific Subsidies

75. Like the German, French, and UK governments, the Spanish Government provides funding to Airbus to help underwrite Airbus's R&D efforts. The funding takes the form of loans with better than commercial terms. The Spanish government disburses the funding through two programs, the Plan Tecnológico Aeronáutico ("PTA"), and the Programa de Fomento de Innovación Técnica ("PROFIT"). Airbus received the PTA loans between 1993 and 2003, and the PROFIT loans between 2000 and 2007.

76. Article 1.1(a)(i) of the SCM Agreement includes loans among the types of "direct transfers of funds" that constitute financial contributions within the meaning of the SCM Agreement. Thus, the loans are financial contributions under the SCM Agreement. In addition, they confer benefits on Airbus because Spain provides the loans on better than commercial terms. Thus, the loans are subsidies within the meaning of Article 1.1 of the SCM Agreement. In addition, they are specific because the government explicitly limited access to funding under the programs to aeronautics companies involved in the manufacturing, design, supply and maintenance of aircraft and aircraft parts, and to engineering services companies and research institutions and universities developing specific technologies with aeronautics use.

I. The Subsidies Have Caused Adverse Effects to the Interests of the United States

77. Since Airbus delivered its first LCA in 1974, two U.S. producers (Lockheed and McDonnell Douglas) have been driven from the market, and in 2003 Airbus displaced Boeing as the world's largest LCA producer. By 2005, Airbus's share of the world market had increased to 57 percent while Boeing's fell to 43 percent – a drop of 25 percentage points over the last decade and 19 percentage points in the last five years. Further, the subsidization of Airbus jeopardizes the durability of any recent improvement in Boeing's competitive situation. Indeed, the Airbus governments have recently "reaffirmed their agreement to support Airbus."

78. The provision of these subsidies to Airbus by the EC and the Airbus governments is inconsistent with Article 5 because, as demonstrated in this section, they have caused both injury to the U.S. domestic LCA industry within the meaning of Article 5(a) and serious prejudice to the interests of the United States within the meaning of Article 5(c).

1. Conditions of Competition in the LCA Market

79. Boeing and Airbus are the world's only remaining LCA producers. Both companies compete head to head for virtually every LCA sale in the world in a largely "zero sum" competition – a win for one producer is almost always a loss for the other. Competition between Boeing and Airbus is driven by the performance characteristics of their aircraft and the price (net

of all concessions) at which they offer their respective LCA.

80. Boeing and Airbus develop, produce, and market families of aircraft to supply demand for LCA that operate efficiently over a variety of different routes. The long-term viability of an LCA producer depends on continued innovation and periodic launches of new aircraft. Yet to do so, the producer must incur enormous up-front designing, engineering, and testing costs over a period of years before a single aircraft can be delivered to a customer. For an LCA manufacturer, decisions with respect to product launches drive its subsequent pricing and production decisions.

2. The Airbus LCA Family Is the “Product Under Consideration” and Boeing’s LCA Production Is the Corresponding “Like Product”

81. “As early as 1973, Airbus Industrie proposed the development over time of five related aircraft types.” The EC and the Airbus governments have subsidized, and Airbus has developed, a family of aircraft in order to compete against the family of aircraft offered by Boeing. Airbus’s business strategy has, accordingly, focused heavily on its integrated family. Because subsidies are provided to Airbus for the development of an LCA family, and because subsidies for the development of each major Airbus LCA model benefit the production and marketing of its full LCA family, the “subsidized product” is the Airbus LCA family as a whole.

82. Just as the “subsidized product” in this dispute is the Airbus LCA family, the “like product” produced in the United States is the Boeing LCA family. The Boeing and Airbus LCA families, however, have “characteristics closely resembling” one another within the meaning of footnote 46 to the SCM Agreement. This is unsurprising, given that Airbus has purposely developed its LCA family to compete directly with the Boeing LCA family.

3. Subsidized Imports of Airbus LCA Have Caused Injury Within the Meaning of Article 5(a)

83. Since 2001, Airbus has significantly increased its share of the LCA market relative to total U.S. demand. Airbus increased its share of U.S. LCA deliveries from 30 percent in 2001 to 48 percent in 2005. Measured by value (at list prices), Airbus’s share of the U.S. market increased from 28 percent in 2001 to 53 percent in 2005, or by 25 percentage points over the period. By any measure, this increase in the relative volume of LCA imports is significant, even after taking into account the overall decline in U.S. demand during the period. For example, if Boeing had simply been able to maintain its 2001 share of the U.S. LCA market by value, its LCA sales in the United States would have been 54 percent greater in 2005 than they were.

84. A significant share of the Airbus LCA delivered in the U.S. market during the 2001-2005 period were sold to customers new to Airbus, including both start-up airlines and previous Boeing customers. In each case, Boeing was a strong competitor for the initial order. Although the actual price that each airline paid to Airbus, taking into account all concessions on the sale, is not available to the United States, publicly available information indicates that Airbus price undercutting played a key role in winning these customers. Boeing also lost the most significant campaigns that did occur in the U.S. market during this period on the basis of price undercutting

by Airbus.

85. The pricing pressures of these campaigns has had a direct and measurable impact on the prices Boeing has been able to obtain for those sales that it has made in the U.S. market. Indexed pricing data for 2001-2005 provided as BCI by Boeing shows that the average price for B737s fell during this period. In addition, while the price of each LCA is contractually agreed at the time of a firm order, Boeing had to reduce prices on undelivered aircraft for certain major customers because of downward trends in market pricing under pressure from Airbus. Pricing trends for B747 and B777 sales in the U.S. market were similar. Finally, one would ordinarily expect that in the absence of price suppression, producers would over time increase prices generally in line with increases in their costs. Both Airbus and Boeing typically include price escalation clauses in their sales contracts to reflect cost increases from the year of order to the year of delivery. However, Boeing has been unable to maintain its U.S. pricing for its LCA in line with cost increases.

86. These data demonstrate that Boeing has experienced price depression (actual price decreases) and price suppression (price increases lower than what would be expected) for its U.S. LCA sales. Given the evidence of aggressive Airbus pricing in U.S. sales campaigns, the price depression and price suppression are attributable to subsidized imports.

87. Data provided by Boeing relating to the factors enumerated in Article 15.4 of the SCM Agreement show a steep decline in the financial results of Boeing's LCA business over the past five years. This decline has occurred despite deep cuts in costs and steady gains in productivity.

88. Airbus's gains in its share of the U.S. market have come at the expense of Boeing, thus linking the subsidized imports to the significant adverse impact on Boeing's LCA production and sales figures. Moreover, the decline in Boeing's prices is a function of the pricing of subsidized imports from Airbus. The deterioration in the other relevant indicators of the economic health of Boeing's LCA operations follows directly from this loss of market share and loss of revenue. Any injury resulting from the decline in total demand – a factor that affected both Airbus and Boeing – is distinguishable from injury resulting from loss of market share to Airbus. As Airbus recognized, "For our competitor, the effects of loss of market share and the contraction of the market itself are cumulative." No other factors have caused the material injury to Boeing.

89. Material injury is defined to include a threat of material injury. The evidence also shows that a threat of material injury is "clearly foreseen and imminent."

4. The Subsidies Have Caused Serious Prejudice to the Interests of the United States

90. Adverse effects from subsidies also include "serious prejudice to the interests of another Member" as provided in Article 5(c). Article 6.3 further provides that serious prejudice "may arise in any case where one or several" particular market effects of the subsidy are demonstrated. Several of the effects of the subsidies described in Article 6.3 apply in this dispute.

a. *Subsidized Airbus LCA Have Displaced or Impeded Imports of U.S.-Produced LCA in the EC Market*

91. Airbus increased its share of the EC LCA market by 9 percentage points from 2001 to 2005 measured by volume. By value, Airbus increased its share by 12 percentage points over the period. The growth in Airbus's market share – and concomitant decline in Boeing's share – demonstrates that Airbus LCA have displaced Boeing LCA in the EC market.

92. A significant portion of the shift in EC market share is attributable to two particular campaigns – easyJet and Air Berlin. Both airlines were Boeing customers looking to expand their fleets, the competitions were directly between Boeing and Airbus, and the wins for Airbus were losses for (and significant displacements of) Boeing. Other lost sales campaigns have resulted in additional displacement of Boeing LCA in the EC market.

b. *Subsidized Airbus LCA Have Displaced or Impeded Exports of U.S.-Produced LCA in Third-Country Markets*

93. From 2001 to 2005 Airbus has increased its share in markets other than the United States and the EC by a 20 percentage points (measured by volume) or 19 percentage points (measured by value). In the two largest third-country markets in the 2001-2005 period, Airbus gained 24 percentage points of market share at Boeing's expense in China and 18 percentage points in Australia. Other significant markets where Airbus significantly increased market share include Singapore, Korea, Brazil, Chinese Taipei, Mexico, and India. Large new orders in third-country markets, most evidently India, threaten further displacement of Boeing exports to these markets for years to come.

c. *Subsidized Airbus LCA Have Undercut Prices and Taken Sales of Boeing LCA*

94. That Airbus uses price undercutting to increase its share of the LCA market is well recognized in the industry. Airbus admits that retaining its targeted market share is more important to it than profitability, stating that “one percent in profitability matters more than one percent in market share, provided it remains at an average 50 percent market share.”

95. A number of significant sales campaigns can be identified, based on available information, in which the customer was in the market for new aircraft, invited Boeing and Airbus to bid against one another, chose the Airbus LCA over an equally qualified Boeing LCA, and did so because of the Airbus price. For example, easyJet officials remarked that “it surprised all of us to see just how aggressive Airbus was in the final round of sealed bids.” Public data from easyJet indicates a purchase price of \$19.36 million per aircraft in 2001 U.S. dollars, a discount of 56 percent off the \$44 million list price. Taking into account additional guarantees and services to be provided by Airbus, easy Jet concluded that “the offer received from Airbus . . . was significantly better value than the offer received from Boeing.” Other major identifiable lost sales campaigns included Air Berlin/NIKI, AirAsia, Iberia Airlines, South African Airways, Thai Airways International, Singapore Airlines, Emirates Airlines, Qantas, and Czech Airlines.

96. Prices of A380 aircraft sold by Airbus in competition with Boeing were so low, in fact, that the impact of recently announced delivery delays has turned them into loss-making contracts. EADS has announced publicly that “A380 loss making contracts” would result in a Euro 600,000,000 reduction in its 2006 pre-tax earnings.

97. When the evidence shows – as it does here – that Airbus has not only taken numerous large sales from Boeing, several of them worth billions of dollars, but also that it has done so primarily by offering a lower price than Boeing, that evidence demonstrates not only “significant ... lost sales,” but also the existence of “significant price undercutting” within the meaning of Article 6.3(c). In the course of a sales campaign, each customer engages in a detailed and painstaking review of every contractual term, including the value of proposed concessions contingent on future events (such as residual value guarantees). When the evidence establishes that, in a particular LCA transaction, a customer concludes that Airbus, all other things being equal, offered a lower price than Boeing, this constitutes *prima facie* evidence of price undercutting within the meaning of Article 6.5 and, therefore, of Article 6.3(c).

d. Boeing Has Experienced Price Suppression and Price Depression for Its LCA Sales in the World Market

98. In the context of this case, the world market is the appropriate market for measuring the price effects of the Airbus subsidies. Boeing provided as BCI the indexed annual prices of all actual, worldwide Boeing LCA orders for the period 2001-2005 for the B737, B767, B747, and B777. These figures show negative trends in Boeing’s prices for each aircraft type over the period. Post-order price adjustments further demonstrate the price depressing effects of Airbus’s pricing practices. Airbus LCA was the only competition and Airbus was engaged in widespread and aggressive price undercutting during the period. Thus, the evidence demonstrates significant price depression and price suppression in the world LCA market.

e. Subsidies Cause These Adverse Market Effects

99. The provision of Launch Aid by the Airbus governments distorts the fundamentals of competition among LCA producers by shifting the enormous costs and risks of aircraft development from the producer to the governments – as a French Senate report puts it, “a sort of insurance policy for the company against industrial risk.” The report of Dr. Gary Dorman presents an economic model of the business case for a typical aircraft program and shows how the success-dependant, back-loaded, and below-market aspects of Launch Aid fundamentally change the economics of an LCA launch decision. Thus, “Launch Aid commits European governments to absorbing much of any possible losses, so even if Airbus is risk averse, it has little incentive not to adopt a risky, aggressive strategy.” The Airbus governments thus enable Airbus to launch aircraft at an otherwise unsustainable scale and pace, if it could have launched them at all. Thus, they expand the range of the Airbus product family against which U.S. producers must compete and lower the price at which Airbus is able to offer those products.

100. While Launch Aid has been the primary tool that the EC and the Airbus governments have used to subsidize the Airbus LCA family, the other subsidies also shift the costs of LCA development to the governments as part of the same broad strategy. Because the volume and

price effects of the various subsidies Airbus has received to develop and market its LCA family “manifest themselves collectively,” it is permissible – as the panel stated in *United States – Cotton Subsidies*, to “treat them as a ‘subsidy’ and group them and their effects together.”

101. Subsidies have facilitated and accelerated the introduction of every major Airbus model, precisely as the EC and the Airbus governments designed them to do. For example, the British government concluded that the development of the A380 “would not have been possible if it had not been for the commitment of the British Government,” and the French government found it “doubtful that the enterprise would be in a position to find outside financing” for the A380.

102. Further, each new aircraft model that Airbus has added to its LCA family has targeted U.S. LCA models. Airbus claims that its aircraft models were designed to “attack” or “kill” competitive U.S. products or “really hurt” a U.S. competitor. That the EC and the Airbus governments provide subsidies to help Airbus take actions *intended* to cause adverse effects to the U.S. LCA industry is strong corroborating evidence that those adverse effects, which have in fact occurred, are caused by the subsidies. Indeed, Airbus and the Airbus governments have, through their own admissions, confirmed each major element of the U.S. adverse effects case.