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ÉTATS-UNIS – MESURES AFFECTANT LE COMMERCE DES AÉRONEFS CIVILS GROS PORTEURS

Demande de consultations présentée par les Communautés européennes

Addendum

La communication ci-après, datée du 27 juin 2005 et adressée par la délégation des Communautés européennes à la délégation des États-Unis et au Président de l'Organe de règlement des différends, est distribuée conformément à l'article 4:4 du Mémoire d'accord sur le règlement des différends.

Les Communautés européennes se réfèrent à la déclaration faite par les États-Unis à la réunion de l'Organe de règlement des différends ("ORD") du 13 juin concernant la demande d'établissement d'un groupe spécial présentée par les Communautés européennes dans l'affaire mentionnée ci-dessus, dans laquelle ceux-ci ont affirmé que 13 des 28 programmes de subventionnement mentionnés dans la demande d'établissement d'un groupe spécial n'étaient pas cités dans la demande de consultations du 6 octobre 2004 (distribuée sous la cote WT/DS/317/1 le 12 octobre 2004) et ne pouvaient être visés par la procédure de groupe spécial.

Les Communautés européennes ne peuvent approuver cette affirmation mais sont prêtes à poursuivre les consultations sur les questions soulevées dans la présente procédure afin de les clarifier et, si possible, de les résoudre, étant entendu que cela est sans préjudice de la position juridique et des droits des Communautés européennes.

En conséquence, les Communautés européennes demandent l'ouverture de consultations avec les États-Unis conformément aux articles 4.1, 7.1 et 30 de l'*Accord sur les subventions et les mesures compensatoires* ("Accord SMC"), à l'article XXIII:1 de l'Accord général sur les tarifs douaniers et le commerce de 1994 ("GATT de 1994") et à l'article 4 du Mémoire d'accord sur les règles et procédures régissant le règlement des différends ("Mémoire d'accord"). Ces consultations seront la continuation de celles qui ont eu lieu le 5 novembre 2004 à la suite de la demande de consultations présentée le 6 octobre 2004.

Les mesures qui font l'objet de la présente demande sont les subventions prohibées et les subventions pouvant donner lieu à une action accordées aux constructeurs d'aéronefs civils gros porteurs¹ des États-Unis ("branche de production LCA des États-Unis") et, en particulier, la société

¹ En vertu de l'*Accord de 1992 entre les Communautés européennes et le gouvernement des États-Unis d'Amérique concernant l'application au commerce des aéronefs civils de grande capacité de l'Accord du GATT relatif au commerce des aéronefs civils*, les aéronefs civils de grande capacité ("LCA") comprennent tous les

Boeing et McDonnell Douglas Corporation avant sa fusion avec Boeing, y compris la législation, la réglementation, les instruments législatifs et les modifications y relatives connexes. Les mesures visées sont actuellement les suivantes:

1. SUBVENTIONS DES ÉTATS ET SUBVENTIONS LOCALES

Les États des États-Unis et les autorités des localités où sont situés des installations de production et des services administratifs de la branche de production LCA des États-Unis transfèrent de diverses manières des ressources économiques à la branche de production LCA des États-Unis. Ces États et autorités locales comprennent, mais non exclusivement, ceux des États de Washington, du Kansas et de l'Illinois.

Ces ressources économiques transférées à la branche de production LCA des États-Unis comprennent de nombreuses incitations financières et autres avantages sous forme, par exemple, d'allègements fiscaux, de financement d'obligations, d'exemption de taxes, de location par crédit-bail, d'assistance à la relocalisation du siège de l'entreprise, de financement de la recherche, de mesures d'infrastructure et d'autres avantages.

2. SUBVENTIONS DE LA NASA

La National Aeronautics and Space Administration ("NASA") transfère des ressources économiques à la branche de production LCA des États-Unis, entre autres:

- i) en autorisant la branche de production LCA des États-Unis à participer aux programmes de recherche, en effectuant des versements à la branche de production LCA des États-Unis dans le cadre de ces programmes ou en permettant à la branche de production LCA des États-Unis d'exploiter les résultats de ces programmes, par des moyens comprenant mais pas exclusivement l'abandon de droits de brevet de valeur ou la renonciation à de tels droits, l'octroi d'un accès aux données visées par des droits exclusifs limités ("LERD") ou d'un accès autrement exclusif ou anticipé à des données, secrets commerciaux et autres connaissances résultant de recherches financées par les pouvoirs publics. Des exemples de tels programmes de la NASA sont cités ci-dessous:

- High Speed Research Program;
- Advanced Subsonic Technology Program;
- Aviation Safety Program/Aviation Safety & Security Program/Aviation Security & Safety Program;
- Quiet Aircraft Technology Program;
- High Performance Computing and Communications Program;
- Research & Technology Base Program;
- Advanced Composites Technology Program;
- Vehicle Systems Program;
- Materials and Structures Systems Technology Program;

aéronefs tels qu'ils sont définis à l'article premier de l'Accord du GATT relatif au commerce des aéronefs civils, à l'exception des moteurs tels que définis à l'article 1.1 b) dudit accord, qui sont conçus pour le transport de passagers ou de fret et ont une capacité de 100 sièges ou plus ou son équivalent en configuration cargo. Boeing produit ou commercialise les familles suivantes de LCA: 717, 737, 747, 757, 767, 777 et 787.

- Aircraft Energy Efficiency Program, including Composite Primary Aircraft Structures, Transport Aircraft Systems Technology, and Advanced Composite Structures Technology Programs;
- ii) par le biais des dépenses de personnel et dépenses de soutien institutionnel consacrées à la R-D dans la branche de production LCA des États-Unis;
- iii) par le biais d'une recherche-développement indépendante et de remboursements pour les offres et propositions;
- iv) par le biais de l'utilisation par la branche de production LCA des États-Unis des installations de recherche, d'essai et d'évaluation appartenant aux pouvoirs publics des États-Unis, y compris les souffleries de la NASA, en particulier le Centre de recherche Langley;
- v) par le biais des marchés publics conclus par la NASA.

3. SUBVENTIONS DU DÉPARTEMENT DE LA DÉFENSE

Le Département de la défense ("DOD") transfère des ressources économiques à la branche de production LCA des États-Unis, entre autres:

- i) en autorisant la branche de production LCA des États-Unis à participer à des recherches financées par le DOD, en effectuant des versements à la branche de production LCA des États-Unis pour ces recherches ou en permettant à la branche de production LCA des États-Unis d'exploiter les résultats de ces recherches, par des moyens comprenant mais pas exclusivement l'abandon de droits de brevet de valeur ou la renonciation à de tels droits et l'octroi d'un accès exclusif ou anticipé à des données, secrets commerciaux et autres connaissances résultant de recherches financées par les pouvoirs publics par le biais, par exemple:
- de programmes de recherche, de développement, d'essai et d'évaluation;
 - d'une recherche-développement indépendante et de remboursements pour les offres et propositions;
- ii) par le biais de l'utilisation par la branche de production LCA des États-Unis des installations d'essai et d'évaluation appartenant aux pouvoirs publics des États-Unis, y compris les Major Range Test Facility Bases;
- iii) par le biais de marchés publics, y compris ceux qui concernent l'achat de produits à la branche de production LCA des États-Unis moyennant une rémunération plus qu'adéquate, y compris en particulier mais non exclusivement le contrat conclu par l'US Air Force avec la société Boeing pour l'achat de certaines pièces de rechange pour ses avions équipés du Système de surveillance et d'alerte aéroporté (AWACS), le Boeing KC-767A Tanker Program (contrat de location), le National Polar-orbiting Operational Environmental Satellite System-Conical Microwave Imager Sensor, Boeing, le C-22 Replacement Program (C-40), Boeing, le KC-135 Programmed Depot Maintenance, Boeing/Pemco, le C-40 Lease and Purchase Program, Boeing, le programme de modernisation et d'amélioration de l'avionique C-130, le contrat C-17 H22 (Boeing BC-17X) et le contrat conclu par l'US Navy avec Boeing pour la production et la maintenance de 108 B-737 civils et leur conversion en chasseurs de sous-marins à longue portée Multi-Mission Aircraft.

Les CE sont aussi préoccupées par une législation en préparation, en particulier un projet de modification (Section 817 – Prohibition on Procurement from Beneficiaries of Foreign Subsidies) de la FY06 Defense Autorisation bill (HR 1815) (Amendement Hunter).

4. SUBVENTIONS DU DÉPARTEMENT DU COMMERCE

Le Département du commerce ("DOC") transfère des ressources économiques à la branche de production LCA des États-Unis, entre autres, en autorisant la branche de production LCA des États-Unis à participer à l'Advanced Technology Program de l'Institut national des normes et de la technologie ("NIST"), en effectuant des versements à la branche de production LCA des États-Unis dans le cadre de ce programme de recherche ou en permettant à la branche de production LCA des États-Unis d'exploiter les résultats de ce programme par des moyens comprenant mais pas exclusivement l'abandon de droits de brevet de valeur ou la renonciation à de tels droits et l'octroi d'un accès exclusif ou anticipé à des données, secrets commerciaux et autres connaissances résultant de recherches financées par les pouvoirs publics.

5. SUBVENTIONS DU DÉPARTEMENT DU TRAVAIL

Le Département du travail des États-Unis transfère des ressources économiques à la branche de production LCA des États-Unis dans le cadre, entre autres, de l'Aerospace Industry Initiative, qui fait partie de la High Growth Training Initiative du Président, en accordant à l'Edmonds Community College (État de Washington) des fonds pour la formation de travailleurs de l'industrie aérospatiale.

6. SUBVENTIONS FISCALES FÉDÉRALES

Les pouvoirs publics des États-Unis transfèrent des ressources économiques à la branche de production LCA des États-Unis par le biais du système fiscal fédéral, et en particulier au moyen des mesures fiscales suivantes:

Articles 921 à 927 de l'Internal Revenue Code (avant abrogation) et mesures connexes établissant un traitement fiscal spécial pour les "sociétés de ventes à l'étranger" ("FSC"), y compris différentes applications; la FSC Repeal and Extraterritorial Income Exclusion Act de 2000, Pub. L. No. 106-519, y compris différentes applications; et la American Jobs Creation Act de 2004, Pub. L. No. 108-357, y compris différentes applications.

Les Communautés européennes considèrent que les mesures ci-dessus sont incompatibles avec les obligations des États-Unis au titre des dispositions suivantes:

- 1) article 3.1 a) et b) et 3.2 de l'*Accord SMC*;
- 2) article 5 a) et c) de l'*Accord SMC*;
- 3) article 6.3 a), b) et c) de l'*Accord SMC*;
- 4) article III:4 du GATT de 1994.

Les Communautés européennes estiment que les mesures mentionnées ci-dessus sont incompatibles avec ces dispositions en tant que telles et telles qu'appliquées.

Ces mesures sont des subventions parce que, dans chaque cas, il y a une contribution financière des pouvoirs publics des États-Unis, des pouvoirs publics d'États ou de pouvoirs publics locaux, et un avantage est ainsi conféré au sens de l'article 1.1 a) et b) de l'*Accord SMC*. Chacune d'elles est spécifique à la branche de production LCA des États-Unis au sens de l'article 2 de l'*Accord SMC*.

Les subventions énumérées ci-dessus sont *de jure* ou *de facto* subordonnées à l'exportation et subordonnées à l'utilisation de produits nationaux de préférence à des produits importés. L'utilisation de ces mesures cause des effets défavorables, *en particulier*, un préjudice grave ou une menace de préjudice grave aux intérêts des Communautés européennes et un dommage important ou une menace de dommage important à la branche de production LCA des Communautés européennes:

- les mesures se traduisent par une sous-cotation notable du prix des produits subventionnés de la branche de production LCA des États-Unis par rapport au prix des produits LCA des Communautés européennes, ou menacent d'avoir un tel effet, en violation des articles 5 c) et 6.3 c) de l'*Accord SMC*;
- les mesures ont pour effet de déprimer les prix et d'empêcher des hausses de prix dans une mesure notable sur les marchés des produits LCA, ou menacent d'avoir un tel effet, en violation des articles 5 c) et 6.3 c) de l'*Accord SMC*;
- les mesures ont pour effet de faire perdre des ventes dans une mesure notable sur les marchés des produits LCA, ou menacent d'avoir un tel effet, en violation des articles 5 c) et 6.3 c) de l'*Accord SMC*;
- les mesures ont pour effet de détourner les exportations de produits LCA des Communautés européennes du marché des États-Unis ou d'entraver ces exportations, ou menacent d'avoir un tel effet, en violation des articles 5 c) et 6.3 a) de l'*Accord SMC*;
- les mesures ont pour effet de détourner des marchés de pays tiers les exportations de produits LCA des Communautés européennes ou d'entraver ces exportations, ou menacent d'avoir un tel effet, en violation des articles 5 c) et 6.3 b) de l'*Accord SMC*;
- les mesures ont pour effet de causer un dommage important à la branche de production LCA des Communautés européennes ou menacent d'avoir un tel effet, en violation de l'article 5 a) de l'*Accord SMC*;
- l'Amendement Hunter serait aussi incompatible, entre autres, avec l'article 23 du Mémorandum d'accord et l'article 32 de l'*Accord SMC*.

Ensemble, les articles 4.2 et 7.2 de l'*Accord SMC* exigent que les demandes de consultations comportent un exposé des éléments de preuve disponibles au sujet 1) de l'existence et de la nature des subventions en question et 2) des effets défavorables pour les intérêts des Communautés européennes. Les éléments de preuve disponibles sont énumérés dans l'annexe de la présente lettre. Ils combinent les éléments de preuve disponibles qui figuraient déjà dans la lettre du 6 octobre 2004 et des éléments de preuve additionnels qui sont devenus disponibles depuis lors sur l'existence et la nature des subventions.

Les Communautés européennes se réservent le droit de demander aux États-Unis de fournir d'autres renseignements et documents concernant les mesures en question et leur effet sur les intérêts

des Communautés européennes. Elles se réservent aussi le droit de traiter de mesures et allégations additionnelles au titre d'autres dispositions de l'OMC.

Les autorités des Communautés européennes attendent la réponse des États-Unis à la présente demande. Les Communautés européennes sont prêtes à envisager avec les États-Unis des dates mutuellement acceptables pour la tenue des consultations à Genève.

ANNEXE

EXPOSÉ DES ÉLÉMENTS DE PREUVE DISPONIBLES

Les éléments de preuve indiqués ci-dessous sont les éléments de preuve dont les Communautés européennes disposent à ce stade au sujet de l'existence et de la nature des subventions qui font l'objet du présent différend et des effets défavorables qu'elles causent aux intérêts des Communautés européennes. Ils sont aussi étayés par des documents internes d'Airbus contenant des renseignements commerciaux confidentiels qui sont résumés ci-après. Les Communautés européennes se réservent le droit de compléter ou de modifier cette liste à l'avenir, si nécessaire.

a) Existence et nature du subventionnement

Les éléments de preuve dont disposent actuellement les Communautés européennes incluent les documents ci-après. La demande de consultations présentée par les Communautés européennes décrit plus en détail la nature de ces subventions.

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Executive Message Video, 20 June 2003, available at <http://dir.cted.wa.gov/DesktopModules/Documents/DocumentsView.aspx?tabID=0&alias=ActionWA&lang=en&ItemID=177&MI=115&wversion=Staging>

Washington State and the Boeing Company: Working Together for the Boeing 7E7 Dreamliner, Continuing Support and Collaborative Actions, September Presentation, Greenville, SC (September 2003)

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b) Préjudice grave causé aux intérêts des Communautés européennes

Les Communautés européennes ont un très grand nombre d'éléments de preuve montrant que les subventions accordées à la branche de production LCA des États-Unis ont causé et continuent de causer des effets défavorables par suite d'un empêchement notable des hausses de prix et d'une dépression notable des prix des LCA partout dans le monde, et d'une sous-cotation notable des prix et de pertes de ventes notables subies par la branche de production communautaire sur le marché des LCA.

Les éléments de preuve disponibles incluent les documents suivants:

Information regarding Airbus products, including at <http://www.airbus.com/en/aircraftfamilies/> and <http://www.boeing.com/commercial/flash.html>, and related links and company information

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