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ESTADOS UNIDOS - MEDIDAS QUE AFECTAN AL COMERCIO DE GRANDES AERONAVES CIVILES

Solicitud de celebración de consultas presentada
por las Comunidades Europeas

Addendum

La siguiente comunicación, de fecha 27 de junio de 2005, de la Delegación de las Comunidades Europeas a la delegación de los Estados Unidos y al Presidente del Órgano de Solución de Diferencias, se distribuye de conformidad con el párrafo 4 del artículo 4 del ESD.

Las Comunidades Europeas se remiten a la declaración pronunciada por los Estados Unidos en la reunión del Órgano de Solución de Diferencias ("OSD") de 13 de junio en relación con la solicitud de establecimiento de un grupo especial presentada por las Comunidades Europeas en el asunto mencionado *supra*, declaración en la que afirmaron que 13 de los 28 programas de subvenciones citados en la solicitud de establecimiento de un grupo especial no se habían enumerado en la solicitud de celebración de consultas de 6 de octubre de 2004 (distribuida con la signature WT/DS/317/1, el 12 de octubre de 2004) y no pueden ser objeto del procedimiento de un grupo especial.

Las Comunidades Europeas no pueden estar de acuerdo con esta aseveración pero están dispuestas a celebrar consultas sobre las cuestiones planteadas en el presente procedimiento con el fin de aclararlas y, si es posible, resolverlas, lo cual se entiende sin perjuicio de la posición jurídica de las Comunidades Europeas y de los derechos que les correspondan.

Por consiguiente, las Comunidades Europeas solicitan por la presente la celebración de consultas con los Estados Unidos de conformidad con el párrafo 1 del artículo 4, el párrafo 1 del artículo 7 y el artículo 30 del *Acuerdo sobre Subvenciones y Medidas Compensatorias* ("Acuerdo SMC"), el párrafo 1 del artículo XXIII del Acuerdo General sobre Aranceles Aduaneros y Comercio de 1994 ("GATT de 1994") y el artículo 4 del Entendimiento relativo a las normas y procedimientos por los que se rige la solución de diferencias ("ESD"). Estas consultas serán una continuación de las celebradas el 5 de noviembre de 2004 de conformidad con la solicitud de celebración de consultas de 6 de octubre de 2004.

Las medidas objeto de la presente solicitud son subvenciones prohibidas y recurribles otorgadas a los productores estadounidenses de grandes aeronaves civiles¹ ("rama de producción LCA de los Estados Unidos"), y en particular a Boeing Company y McDonnell Douglas Corporation, antes de su fusión con Boeing, incluidas las leyes, los reglamentos y los instrumentos legales conexos, así como las modificaciones de los mismos. Entre las medidas figuran actualmente las siguientes:

1. SUBVENCIONES LOCALES Y ESTATALES

Los Estados de los Estados Unidos y las autoridades de las localidades donde se sitúan las instalaciones de producción y de sede de la rama de producción LCA de los Estados Unidos transfieren de diversas formas recursos económicos a dicha rama de producción. Entre esos Estados y autoridades locales se encuentran, pero no exclusivamente, los de Washington, Kansas e Illinois.

Estos recursos económicos transferidos a la rama de producción LCA de los Estados Unidos incluyen numerosos incentivos financieros y otras ventajas hechos efectivos, por ejemplo, mediante ventajas fiscales, financiación mediante emisión de bonos, exenciones de tasas, acuerdos de arrendamiento, asistencia para el traslado de la sede de la empresa, financiación de la investigación, medidas relativas a la infraestructura y otros beneficios.

2. SUBVENCIONES DE LA NASA

La Administración Nacional de Aeronáutica Espacial ("NASA") transfiere recursos económicos a la rama de producción LCA de los Estados Unidos, entre otras, de las siguientes formas:

i) permitiendo que la rama de producción LCA de los Estados Unidos participe en programas de investigación, realizando pagos a dicha rama de producción en el marco de esos programas o permitiéndole que explote los resultados de éstos, por medios entre los que se incluyen, pero no exclusivamente, el abandono o la renuncia de derechos de patente valiosos, la concesión de datos sobre derechos exclusivos limitados ("LERD"), o, el acceso exclusivo o anticipado a datos, secretos comerciales y otros conocimientos resultantes de la investigación financiada por el Gobierno. A continuación figuran ejemplos de esos programas de la NASA:

- 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;

¹ De conformidad con el *Acuerdo entre las Comunidades Europeas y el Gobierno de los Estados Unidos de América relativo a la aplicación del Acuerdo GATT sobre el comercio de aeronaves civiles al comercio de grandes aeronaves civiles de 1992*, las grandes aeronaves civiles incluyen todas las aeronaves, tal como se definen en el artículo 1 del Acuerdo sobre el comercio de aeronaves civiles, excepto los motores tal como se definen en el punto 1. b) del artículo 1, que estén destinadas al transporte de pasajeros y de carga, y tengan 100 o más plazas para pasajeros o su equivalencia en configuración para carga. Boeing produce o comercializa los siguientes grupos de grandes aeronaves civiles: 717, 737, 747, 757, 767, 777 y 787.

- Research & Technology Base Program;
 - Advanced Composites Technology Program";
 - Vehicle Systems Program;
 - Materials and Structures Systems Technology Program;
 - Aircraft Energy Efficiency Program, including Composite Primary Aircraft Structures, Transport Aircraft Systems Technology, and Advanced Composite Structures Technology Programs;
- ii) destinando gastos de la NASA de ayuda institucional y de personal a actividades de investigación y desarrollo de la rama de producción LCA de los Estados Unidos;
- iii) mediante investigación y desarrollo independientes, y reembolsos de ofertas y propuestas de la NASA;
- iv) a través de la utilización por la rama de producción LCA de los Estados Unidos de instalaciones de investigación, prueba y evaluación que son de propiedad del Gobierno de los Estados Unidos, incluidos los túneles aerodinámicos de la NASA, en particular el centro de investigación Langley;
- v) mediante contratos de compra de la NASA.

3. SUBVENCIONES DEL DEPARTAMENTO DE DEFENSA

El Departamento de Defensa ("DOD") transfiere recursos económicos a la rama de producción LCA de los Estados Unidos, entre otras, de las siguientes formas:

- i) permitiendo que dicha rama de producción participe en la investigación financiada por el DOD, realizando pagos a esa rama de producción o permitiendo que explote los resultados de esa investigación, por medios entre los que se incluyen, pero no exclusivamente, el abandono o la renuncia de derechos de patente valiosos y la concesión de acceso exclusivo o anticipado a datos, secretos comerciales y otros conocimientos resultantes de la investigación financiada por el Gobierno, por ejemplo, mediante:
- Programas de investigación, desarrollo, prueba y evaluación;
 - Investigación y desarrollo independientes, y reembolsos de ofertas y propuestas;
- ii) la utilización por la rama de producción LCA de los Estados Unidos de instalaciones de investigación, prueba y evaluación que son de propiedad del Gobierno de los Estados Unidos, incluidas las Major Range Test Facility Bases;
- iii) contratos de compra, incluidos los de adquisición de productos de la rama de producción LCA de los Estados Unidos por una remuneración superior a la adecuada, entre los que se incluyen, en particular, pero no exclusivamente, el contrato de la US Air Force con la Boeing para la adquisición de determinadas piezas de repuesto para sus aeronaves equipadas con el Airborne Warning and Control System (AWACS), el Boeing KC-767A Tanker Program (contrato de arrendamiento), el National Polar-orbiting Operational Environmental Satellite

System-Conical Microwave Imager Sensor, Boeing, el C-22 Replacement Program (C-40), Boeing, el KC-135 Programmed Depot Maintenance, Boeing/Pemco, el C-40 Lease and Purchase Program, Boeing, el programa de modernización y actualización de la aviónica de los C-130, el contrato C-17 H22 (Boeing BC-17X) y el contrato de la US Navy con Boeing para la producción y el mantenimiento de 108 aeronaves civiles B-737 y su conversión en detectores de submarinos de largo alcance Multi-Mission Aircraft.

También preocupa a las CE la legislación aún pendiente de aprobación, en particular el proyecto de modificación (Section 817 - Prohibition on Procurement from Beneficiaries of Foreign Subsidies) del proyecto de ley FY06 Defense Authorisation (HR 1815) (Enmienda Hunter).

4. SUBVENCIONES DEL DEPARTAMENTO DE COMERCIO

El Departamento de Comercio de los Estados Unidos ("DOC") transfiere recursos económicos a la rama de producción LCA de los Estados Unidos, entre otras cosas, permitiendo que dicha rama de producción participe en el Advanced Technology Program del National Institute of Standards & Technology (Instituto Nacional de Normas y Tecnología) ("NIST"), realizanso pagos a la rama de producción LCA de los Estados Unidos en el marco de ese programa de investigación o permitiéndole que explote los resultados de dicho programa, por medios entre los que se incluyen, pero no exclusivamente, el abandono o la renuncia de derechos de patente valiosos y la concesión de acceso exclusivo o anticipado a datos, secretos comerciales y otros conocimientos resultantes de la investigación financiada por el Gobierno.

5. SUBVENCIONES DEL DEPARTAMENTO DE TRABAJO

El Departamento de Trabajo de los Estados Unidos transfiere recursos económicos a la rama de producción LCA de los Estados Unidos a través, entre otras cosas, de la Aerospace Industry Initiative, un elemento de la High Growth Training Initiative del Presidente, al conceder al Edmonds Community College del Estado de Washington fondos para la capacitación de trabajadores de la industria aeroespacial.

6. SUBVENCIONES FISCALES FEDERALES

El Gobierno de los Estados Unidos transfiere recursos económicos a la rama de producción LCA de los Estados Unidos a través del sistema fiscal federal, y en particular a través de las siguientes medidas fiscales:

Los artículos 921-927 del Internal Revenue Code (antes de su derogación) y medidas conexas por las que se establece un trato fiscal especial para las "empresas de ventas en el extranjero" ("EVE"), incluida su aplicación a casos concretos; la FSC Repeal and Extraterritorial Income Exclusion Act de 2000, Pub. L. N° 106-519, incluida su aplicación a casos concretos; y la American Jobs Creation Act de 2004, Pub. L. N° 108-357, incluida su aplicación a casos concretos.

Las Comunidades Europeas consideran que estas medidas son incompatibles con las obligaciones de los Estados Unidos en virtud de las disposiciones siguientes:

- 1) los apartados a) y b) del párrafo 1 y el párrafo 2 del artículo 3 del *Acuerdo SMC*;
- 2) los apartados a) y c) del artículo 5 del *Acuerdo SMC*;
- 3) los apartados a), b) y c) del párrafo 3 del artículo 6 del *Acuerdo SMC*;

4) el párrafo 4 del artículo III del GATT de 1994.

Las Comunidades Europeas consideran que las medidas mencionadas *supra* son incompatibles con estas disposiciones en sí mismas y en su aplicación.

Estas medidas son subvenciones porque en cada caso hay una contribución financiera del Gobierno de los Estados Unidos, de los gobiernos estatales o de los gobiernos locales y se confiere un beneficio en el sentido de los apartados a) y b) del párrafo 1 del artículo 1 del *Acuerdo SMC*. Cada una de ellas es específica para la rama de producción LCA de los Estados Unidos en el sentido del artículo 2 del *Acuerdo SMC*.

Las subvenciones enumeradas *supra* están supeditadas *de jure* o *de facto* a la exportación, y están supeditadas al empleo de productos nacionales con preferencia a los importados. La utilización de estas medidas causa efectos desfavorables, *en particular*, un perjuicio grave o una amenaza de perjuicio grave, a los intereses de las Comunidades Europeas y un daño importante o una amenaza de daño importante a la rama de producción de grandes aeronaves civiles de las Comunidades Europeas:

- las medidas tienen por efecto una significativa subvaloración de precios de los productos subvencionados de la rama de producción LCA de los Estados Unidos en comparación con el precio de los productos LCA de las Comunidades Europeas, o una amenaza de tal subvaloración de precios en violación del apartado c) del artículo 5 y del apartado c) del párrafo 3 del artículo 6 del *Acuerdo SMC*;
- las medidas tienen por efecto una significativa reducción de los precios o contención de la subida de los precios en los mercados de productos LCA o una amenaza de reducción de los precios y contención de la subida de los precios en violación del apartado c) del artículo 5 y del apartado c) del párrafo 3 del artículo 6 del *Acuerdo SMC*;
- las medidas tienen por efecto una pérdida de ventas significativa en los mercados de productos LCA o una amenaza de pérdida de ventas significativa en violación del apartado c) del artículo 5 y del apartado c) del párrafo 3 del artículo 6 del *Acuerdo SMC*;
- las medidas tienen por efecto desplazar u obstaculizar las exportaciones de productos LCA de las Comunidades Europeas en el mercado estadounidense o una amenaza de desplazarlas u obstaculizarlas en violación del apartado c) del artículo 5 y del apartado a) del párrafo 3 del artículo 6 del *Acuerdo SMC*;
- las medidas tienen por efecto desplazar u obstaculizar las exportaciones de productos LCA de las Comunidades Europeas en los mercados de terceros países o una amenaza de desplazarlas u obstaculizarlas en violación del apartado c) del artículo 5 y del apartado b) del párrafo 3 del artículo 6 del *Acuerdo SMC*;
- las medidas tienen por efecto un daño importante a la rama de producción de grandes aeronaves civiles de las Comunidades Europeas o una amenaza de daño importante en violación del apartado a) del artículo 5 del *Acuerdo SMC*;
- la Enmienda Hunter sería también incompatible con, entre otras disposiciones, el artículo 23 del ESD y el artículo 32 del *Acuerdo SMC*.

El párrafo 2 del artículo 4 y el párrafo 2 del artículo 7 del *Acuerdo SMC*, considerados conjuntamente, exigen que en las solicitudes de celebración de consultas figure una relación de las pruebas de que se disponga respecto de: 1) la existencia y naturaleza de las subvenciones de que se trate y 2) los efectos desfavorables para los intereses de las Comunidades Europeas. Las pruebas de que se dispone se enumeran en el anexo a la presente carta, que combina las pruebas que ya figuraban en la carta del 6 de octubre de 2004 y pruebas adicionales que se han obtenido desde entonces sobre la existencia y naturaleza de las subvenciones.

Las Comunidades Europeas se reservan el derecho de solicitar a los Estados Unidos que presenten más información y documentos respecto de las medidas en cuestión y de sus efectos para los intereses de las Comunidades Europeas. Las Comunidades Europeas se reservan también el derecho de plantear medidas y alegaciones adicionales en el marco de otras disposiciones de la OMC.

Las autoridades de las Comunidades Europeas quedan a la espera de recibir en su debido momento una respuesta de los Estados Unidos a esta solicitud. Las Comunidades Europeas están dispuestas a considerar con los Estados Unidos fechas que sean mutuamente convenientes para celebrar consultas en Ginebra.

ANEXO

RELACIÓN DE LAS PRUEBAS DE QUE SE DISPONE

Las pruebas que figuran a continuación son las pruebas de que disponen actualmente las Comunidades Europeas respecto de la existencia y naturaleza de las subvenciones objeto de esta diferencia, y los efectos desfavorables que causan a los intereses de las Comunidades Europeas. Están apoyadas también por documentos comerciales confidenciales internos de Airbus que se reseñan *infra*. Las Comunidades Europeas se reservan el derecho de complementar o modificar esta lista en el futuro, según proceda.

a) Existencia y naturaleza de las subvenciones

Las pruebas de que disponen actualmente las Comunidades Europeas comprenden los documentos siguientes. En la solicitud de celebración de consultas presentada por las Comunidades Europeas se describe más detalladamente la naturaleza de estas subvenciones.

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Action Washington, available at http://dir.cted.wa.gov/portal/alias_ActionWA/lang_en/tabID_63/DesktopDefault.aspx

State of Washington, House and Senate Floor Debates, HB 2294, 10-11 June 2003

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&MIId=115&wversion=Staging>

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35 Ill. Comp. Stat. §§ 10/5 *et seq.*

35 Ill. Comp. Stat. §§ 5/211 *et seq.*

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35 Ill. Comp. Stat. § 200/18-165

Ordinance of the County of Cook, Illinois, Approving Execution of a Tax Reimbursement Payment Agreement with the Boeing Company (2001)

Ordinance of the City of Chicago, Illinois, Approving Execution of a Tax Reimbursement Payment Agreement with the Boeing Company (2001)

The Boeing Company - Corporate Headquarters Relocation Grant Application (10 December 2001), prepared for the Illinois Department of Commerce and Community Affairs

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Las Comunidades Europeas disponen de abundantes pruebas de que las subvenciones concedidas a la rama de producción LCA de los Estados Unidos han causado y continúan causando efectos desfavorables por la significativa contención de la subida de los precios o la reducción de los

precios de las grandes aeronaves civiles a nivel mundial, la significativa subvaloración de precios y la significativa pérdida de ventas de la rama de producción comunitaria en el mercado de grandes aeronaves civiles.

Las pruebas de que se disponen incluyen las siguientes:

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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