European Communities and Certain Member States –
Measures Affecting Trade in Large Civil Aircraft:
Recourse to Article 21.5 of the DSU by the United States

(DS316)

EXECUTIVE SUMMARY
OF THE SECOND WRITTEN SUBMISSION OF THE UNITED STATES

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I. INTRODUCTION

1. The European Union's ("EU") first written submission provides a spirited defense of . . . doing nothing.

2. More specifically, the EU asserts that, after panel and Appellate Body findings that Airbus received WTO-inconsistent subsidized financing worth billions of euros, with tens of billions of dollars of adverse effects to U.S. interests, the EU could come into compliance by doing essentially nothing. The EU goes even further to argue that the only meaningful acts it did take with regard to large civil aircraft subsidies, grants of €3.5 billion in *new* subsidies for the A350 XWB, were immune from review by this compliance panel. In any event, these new subsidies only brought the EU further from compliance with its WTO obligations.

3. This was not what the original Panel and the Appellate Body called for when they found that the EU had conferred subsidies inconsistent with Article 5 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), and consequently had an obligation under Article 7.8 of the SCM Agreement to withdraw the subsidies or take appropriate steps to remove their adverse effects. The Appellate Body has found that compliance with this obligation "will usually involve some action by the respondent Member. This affirmative action would be directed at effecting the withdrawal of the subsidy or the removal of the adverse effects." The reverse is also true: "A Member would normally not be able to abstain from taking any action on the assumption that the subsidy will expire or that the adverse effects of the subsidy will dissipate on their own."

4. Yet that is exactly what the EU proposes. Its first written submission makes clear what the EU Notification[1] strongly implied – that the measures the EU has taken either are doing nothing, or are so small as to do nothing. (In fact, the EU essentially concedes that 12 of the LA/MSF-related measures listed in the EU Notification are meaningless, as its first written submission does not reference them.) In short, for purposes of Article 21.5 of the *Understanding Governing Rules and Procedures for the Settlement of Disputes* ("DSU"), the measures taken to comply either do not exist or, in the case of LA/MSF for the A350 XWB, exacerbate the WTO inconsistencies.

II. ANALYTIC FRAMEWORK

5. After adoption of the Panel and Appellate Body Reports in *EC – Large Civil Aircraft*, the EU had an obligation to comply with the Dispute Settlement Body ("DSB") recommendation to withdraw the subsidies or take appropriate steps to remove their adverse effects. The question before this panel, in considering a manner referred to it pursuant to Article 21.5 of the DSU, is whether the responding party's declared (or undeclared) measures taken to comply with the recommendations and rulings of the DSB exist or are themselves WTO-inconsistent. The recommendations and rulings of the DSB provide the measurement for judging compliance.

[1] Letter from the European Union to the United States (Dec. 1, 2011) ("EU Notification").

6. Article 21.5 instructs a panel to evaluate "the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings," which include the underlying panel and Appellate Body findings, in effect, taking them as a given. It is equally significant that Article 21.5 does not invite compliance panels to reopen or reconsider the DSB recommendations and rulings. Indeed, it is difficult to see how a compliance proceeding could function if the recommendations and rulings, which provide the basis for analyzing compliance, could be subject to challenge. Thus, the DSB recommendations and rulings, including as embodied in the panel and Appellate Body findings, are obviously important in identifying whether a measure taken to comply exists, and in evaluating whether any unchanged elements of a measure are consistent with the covered agreements. They can also play an important role in evaluating whether a revised measure is inconsistent with the covered agreements.

III. THE SCOPE OF THIS COMPLIANCE PROCEEDING

7. **Threat of serious prejudice claims.** The EU argues that the case presented in the U.S. first written submission "contains arguments regarding alleged *threats* of displacement and impedance," while "the United States' Article 21.5 Panel Request referred only to *actual*, rather than threatened, displacement and impedance of imports." Footnote 13 to Article 5(c) of the SCM Agreement explicitly provides that "'serious prejudice'…includes threat of serious prejudice." The U.S. panel request frames the U.S. claim in terms of "adverse effects" (which include threat of serious prejudice) and "subsidies . . . inconsistent with Articles 5(c), 6.3(a), 6.3(b), and 6.3(c)" (which include threat of serious prejudice). Thus, the U.S. panel request includes any claims of threat of serious prejudice embodied in the U.S. first written submission.

8. **LA/MSF for the A350 XWB.** The EU does not contest that LA/MSF for the A350 XWB has the same four core terms as all previous LA/MSF, or that LA/MSF for the A350 XWB has the effect of negating the EU's compliance with the DSB recommendations and rulings in this dispute, or that the legal instruments conferring A350 XWB LA/MSF were issued from June 2009 onward, and that disbursements occurred continually from 2009 to 2012. Rather, the EU invents and then subjects the U.S. claims to an "overarching measure" test that has no basis in the text of the DSU or previous panel or Appellate Body reports. The EU also raises several tangential issues regarding the nature, effects, and timing of LA/MSF for the A350 XWB, but these are either contrary to past Appellate Body reports or irrelevant to the issues before the Panel. Therefore, the EU has failed to undermine the U.S. demonstration that LA/MSF for the A350 XWB is properly in the scope of this proceeding because it satisfies the "close nexus" test.

9. **Prohibited subsidy claims.** The United States raised claims under Article 3.1(a) of the SCM Agreement against LA/MSF for the A380 during the original proceeding, but the Appellate Body ultimately did not resolve them. It is well established that a compliance panel may consider claims in this procedural posture. Therefore, the EU's argument that these claims fall outside the Panel's terms of reference should be rejected. The EU also argues that the U.S. claim against LA/MSF for the A380 under Article 3.1(b) falls outside of this compliance Panel's terms of reference. However, the United States could not have raised its Article 3.1(b) claim at the time of the original panel, so this closely related claim is within this Panel's terms of reference.

IV. The EU's WTO-Inconsistent Subsidies Have Not Expired, and Have Not Been Withdrawn.

A. Alleged Repayment on Subsidized Terms or "Termination" of Agreements Did Not Cause the Subsidies to Expire.

10. Financing confers a subsidy if the repayment terms are more favorable than the recipient could have obtained on the market. Individual payments may be lower or they may be structured in a way that makes them better for the recipient than a commercial financier would have allowed. Therefore, the recipient's payments in accordance with the terms of subsidized financing package are the heart of the subsidy. They do not remove the subsidy, as the EU alleges, because the benefit, in the form of what the recipient would have paid for commercial financing but did not pay to the government, remains with the recipient.

B. The EU Arguments Regarding Amortization Do Not Properly Measure the Lives of the Subsidies in Question, and Do Not Prove that They have Expired.

11. Faced with its obligation to withdraw billions of euros in subsidized financing or remove their adverse effects in the form of billions of dollars in lost sales and displacement in markets around the world, the EU responds that it has no obligation to do anything, because amortization has already taken care of the problem. That is wrong.

12. It is wrong because the Appellate Body has not, as the EU argues, found that the life of LA/MSF or the various equity subsidies is determined through amortization. And, it is wrong because the life of a subsidy creating a new product must be measured by the life of the product it creates, and not by accounting conventions or projections as to the period that the product is likely to remain competitive in the market. In other words, nothing that the EU has stated demonstrates in any way that the relevant subsidies at issue have expired or been repaid in any way.

C. The Transactions Identified in the EU First Written Submission Did Not "Extract" or "Extinguish" Prior Subsidies or Result in their Expiration.

13. **The Dasa and CASA transactions.** The original Panel found that the Dasa and CASA transactions did not extract or extinguish prior subsidies, and the Appellate Body upheld that finding. That should end the inquiry; the EU had a chance but failed to make its case, and is accordingly precluded from raising the issue again in an Article 21.5 proceeding. In any event, if the Panel decides to revisit this question, the EU's arguments regarding the Dasa and CASA transactions fail at this stage for the same reason they failed before the original Panel and the Appellate Body – the EU has not satisfied any of the elements of the test for establishing the extraction of subsidies from Airbus. It has not shown that the cash transfers actually "extracted" anything of value from EADS in the first place. It has also failed to show that the cash involved was actually related to the value of past subsidies, rather than some other element in the value of EADS. Thus, even if the Panel were to find that the Dasa and CASA transactions were properly

before it, the EU has not met its burden of proof for the proposition that the Dasa and CASA transactions reduced or eliminated the benefit from past subsidies to Airbus.

14. **The Aérospatiale-Matra merger, the creation of EADS, and acquisition of BAE shares.** The EU's arguments on extinction fail for the most basic reasons – they rely on an incorrect legal test, and the facts at issue do not satisfy the correct test. Identifying the legal test to be used in this compliance proceeding requires, among other things, a careful look at the Appellate Body findings in *EC – Large Civil Aircraft*. First, the Appellate Body reversed the original Panel's finding that partial privatizations and private-to-private transactions would not extinguish subsidies. Second, Members of the Division agreed that an assessment of whether a transaction extinguished subsidies required "a fact-intensive inquiry" into whether it was at fair market value and arm's length, involved a transfer in ownership and control, and "whether a prior subsidy could be deemed to have come to an end." Third, they could not agree on what other criteria were necessary, and took the unusual step of issuing separate views. The EU, however, does not base its argument on a careful analysis of the Appellate Body report, and instead proceeds as if there were a consensus, ignoring the serious concerns raised by two of the three Members. A proper approach, which the United States applied in its first written submission, would address the concerns of *all* of the Appellate Body Members, before reaching a conclusion as to subsidy extinction. Such an analysis demonstrates that the transactions cited by the EU did not extinguish or withdraw prior subsidies.

D. The Appellate Body's Findings in *EC – Large Civil Aircraft* Preclude Treatment of the Removal of the Financial Contribution, or the Expiration of Subsidies Alleged by the EU as Withdrawing the Subsidies.

15. The Appellate Body found that the role of the LA/MSF, capital, and regional subsidies in creating the A300, A310, A320, A330, A340, and A380 established a genuine and substantial causal link between the subsidies and the lost sales and displacement experienced by Boeing between 2001 and 2006. The Appellate Body also found that the expiration of subsidies prior to the reference period would not necessarily preclude a finding that they had adverse effects during that time. The Appellate Body made explicit findings that the extractions alleged by the EU did not affect the value of past subsidies, but made no findings with regard to other transactions or events. In short, the possibility that subsidies had expired did not prevent the original Panel and the Appellate Body from finding those subsidies inconsistent with Article 5 of the SCM Agreement due to their continuing adverse effects. Thus, as a compliance matter, the alleged expiration of those same subsidies did not "withdraw" them or otherwise excuse the EU from the Article 7.8 obligation triggered by its earlier violations of Article 5.

E. The EU Fails to Rebut the U.S. *Prima Facie* Case that LA/MSF for the A350 XWB is a subsidy.

16. The U.S. first written submission demonstrated that the grantors of LA/MSF for the A350 XWB agreed that such financing was necessary precisely because capital markets were unwilling to provide it. The EU attempts to rebut this evidence only by arguing that the United States has not provided sufficient evidence to sustain a *prima facie* case. Its arguments fail, however,

because the EU provides no credible evidence that such financing is available from commercial financiers. The documents the EU provided in response to the Panel's request under Article 13 of the DSU confirm that LA/MSF for the A350 XWB was on better-than-market terms, as demonstrated in economic analyses performed by NERA and included in the U.S. second written submission. The EU explicitly concedes that LA/MSF for the A350 XWB was a financial contribution, so there is no dispute on that point.

17. The EU does not dispute that the EU member States granted LA/MSF for the A350 XWB because capital markets were unwilling to provide it. Specifically, the United States presented UK and French government statements describing this financing as being "'designed to address the unwillingness of capital markets to fund projects'" like Airbus's launch of the A350, and "'necessary to supplement market financial support'." The United States also presented a German media report confirming the same point about A350 XWB LA/MSF from all four Airbus governments.

V. GRANTS OF LA/MSF FOR THE A380 AND A350 XWB ARE PROHIBITED SUBSIDIES.

18. As the U.S. first written submission demonstrated, LA/MSF for both the A380 and the A350 XWB are contingent in fact upon anticipated export performance. The design, structure, and operation of the subsidies themselves, which led to high levels of export sales, support this conclusion. The U.S. first written submission also demonstrated that the Airbus governments granted LA/MSF for the A380 and the A350 XWB in anticipation that Airbus would manufacture aircraft components domestically, using domestic (rather than imported) goods and labor, and that such components would be used to construct the aircraft. The United States demonstrated that the grant of A380 and A350 XWB LA/MSF was made contingent upon such anticipated use of domestic goods, making them prohibited under Article 3.1(b) of the SCM Agreement.

19. The EU failed to rebut the U.S. *prima facie* demonstration of inconsistency with Articles 3.1(a) and 3.1(b). First, the United States demonstrates that none of the EU's attempted jurisdictional challenges regarding the A380 has any merit, in light of the unique procedural posture and procedural history of the U.S. claims involved. Second, the United States reaffirms its original presentation of the Appellate Body's interpretation of the standard for *de facto* export contingency, as well as its demonstration that A380 and A350 XWB LA/MSF meet that standard. Third, the United States demonstrates that the EU's brief comments on import substitution are contradicted by prior Appellate Body reports, fail to engage with the U.S. claims under Article 3.1(b), and fail to undermine the United States' *prima facie* case.

VI. THE UNITED STATES HAS DEMONSTRATED THAT THE EU HAS NOT TAKEN APPROPRIATE STEPS TO REMOVE THE ADVERSE EFFECTS OF ITS SUBSIDIES, AND THE EU HAS FAILED TO REBUT THE U.S. CASE.

A. Introduction

20. The Panel's assessment of the EU's claim of compliance with the recommendations and rulings of the DSB should be straightforward. The original Panel found, and the Appellate Body affirmed, that the EU gave Airbus billions of euros in subsidized financing – the largest amount of subsidized financing in the history of the WTO and the GATT 1947 – resulting in tens of billions of dollars of adverse effects to the U.S. LCA industry. The DSB adopted these findings. As with the subsidy findings, the EU response to the adverse effects findings against it was to do nothing that would resolve the dispute. Where it did take action, it was to provide yet another round of LA/MSF, this time to enable Airbus to launch and bring to market the A350 XWB in a manner that would have been impossible otherwise. This is manifestly inappropriate. Under Article 7.8 of the SCM Agreement, the EU needed to take action to remedy the situation. Because it has not done so, the Panel should find that the EU has failed to comply.

21. With its first written submission, the EU confirmed that it relies overwhelmingly on inaction in asserting that it has taken appropriate steps to remove the adverse effects. In the face of the DSB's rulings and recommendations, the EU attempts to justify its inaction by citing two factors: (1) withdrawal of prior subsidies, and (2) the passage of time. Neither supports the EU's claim of compliance. The United States has demonstrated that the EU has not withdrawn the subsidies. The United States also demonstrates that the passage of time has not invalidated the underlying findings or eliminated the causal link between the subsidies and adverse effects, notwithstanding the EU's baseless assertions regarding Airbus's current financial situation, changes in conditions of competition, and technological advances. As found by the original Panel and the Appellate Body, Airbus's entire product line, the technologies applied on those products, and indeed Airbus's financial condition are genuine and substantially related to the LA/MSF subsidies. Nothing has happened since the reference period to undermine that conclusion. Therefore, the EU has failed to comply with Article 7.8 of the SCM Agreement and with the rulings and recommendation of the DSB.

B. The Analytical Framework Advocated by the EU is Deeply Flawed.

22. ***The starting point in a compliance proceeding is the recommendations and rulings of the DSB. This is not a "new" case.*** The EU seeks to treat this compliance proceeding as a new, entirely independent dispute. It argues that the United States must show present adverse effects, presently caused, independent from and without any regard to the EU's past conduct or to the past measures and adverse effects at issue in the original dispute. The EU also contends that the Panel should not look to any facts that pre-date December 1, 2011, as they are not "relevant to the showing that the United States must make in these compliance proceedings." For its part, the EU considers itself free to ignore and/or re-litigate the original Panel and Appellate Body findings, adopted by the DSB, that the EU gave billions of euros in subsidized financing to create a line of Airbus aircraft that causes billions of dollars in adverse effects to the interests of the

United States. The EU is mistaken in each respect. The approach urged by the EU would require a prevailing Member to obtain new findings in a new dispute without regard to the recommendations and rulings adopted by the DSB in the original dispute. The EU approach is fundamentally at odds with the nature of a proceeding under Article 21.5 of the DSU. The starting point must be the DSB's recommendations and rulings.

23. In this case, the Appellate Body concurred with the original Panel's conclusion that under the most likely counterfactual scenario in the absence of the subsidies, "Airbus would not have existed . . . and there would be no Airbus aircraft on the market. None of the sales that the subsidized Airbus made would have occurred." At a minimum, absent the subsidies, Airbus would be a "'much weaker LCA manufacturer,'" and would have had "'at best a more limited offering of LCA models.'" The original Panel and the Appellate Body made clear findings as to the product effects of LA/MSF, which enabled Airbus to develop and bring to market each of its models of LCA as and when it did. The original Panel and the Appellate Body recognized that the primary effects of LA/MSF to a given Airbus model was to cause that model to be launched when and as it was and to thereby inject supply into the market that would not exist otherwise. The presence of such subsidized aircraft enabled and continues to enable Airbus to capture sales and market share at the expense of the U.S. industry.

24. ***The EU has not fulfilled the mandate of Article 7.8 of the SCM Agreement and the requirement to "take appropriate steps to remove adverse effects."*** The United States demonstrates again the continued validity of the underlying findings – including the causal link – in the current market situation, the absence of any meaningful action by the EU to address the situation, and the unabated, continuing present adverse effects in the form of significant lost sales and displacement and impedance, and threat thereof. None of the EU's asserted compliance steps did anything to address, let alone remove, LA/MSF's adverse effects. In fact, the sole notable action that the EU did undertake was to compound the adverse effects by giving yet another round of LA/MSF to the A350 XWB.

C. Conditions of Competition and Product Markets

25. In its first written submission, the EU largely does not dispute the conditions of competition found by the original Panel and the Appellate Body and cited by the United States. The notable exception is that the EU for the first time asserts the existence of *seven* wholly separate product markets, four of which are purportedly monopoly markets with no competition. This is contrary to adopted Appellate Body findings, in which the Appellate Body agreed with the EU's prior position that LCA could properly be divided into three appropriate product markets – single aisle, twin aisle, and very large aircraft. The EU's approach in this compliance proceeding does not bear any resemblance to real patterns of competition involving large civil aircraft.

D. The EU Has Failed to Rebut the U.S. Demonstration that EU Subsidies to Airbus Continue to Cause Present Adverse Effects.

26. In its first written submission, the United States demonstrated a causal link based on the findings of the original Panel and the Appellate Body, the absence of any meaningful action by the EU to address the situation, and the fact that lost sales and lost market share have continued unabated. The U.S. demonstration that LA/MSF continues to cause adverse effects is based on three principal points. *First*, the original Panel and the Appellate Body found that LA/MSF had "product effects," enabling Airbus to supply the market with aircraft that it would not otherwise have had when and as it did, and these aircraft took sales and market share from the U.S. industry. *Second*, none of the EU's asserted compliance steps did anything to address, let alone remove, the product effects of LA/MSF. In fact, the sole notable action that the EU did undertake was to compound the product effects of LA/MSF by giving yet another round of it to the A350 XWB. *Third*, the pattern of lost sales and lost market share has persisted from the original reference period up through the present, despite the EU's claims of compliance.

27. The EU's first written submission confirms that it has not taken meaningful compliance steps to remove the adverse effects that LA/MSF causes. Its submission is devoid of reference to EU action that could remove or even mitigate the effects of LA/MSF that continue to so severely distort competition in the LCA industry. Unable to rely on real compliance action, the EU tries to rebut the U.S. causation demonstration in four ways: (1) the supposed withdrawal, through expiration or extraction, of LA/MSF to all Airbus LCA from the A300 through the A340 (it argues the same for the A380 LA/MSF, although its arguments betray a lack of confidence that it has withdrawn LA/MSF to the A380); (2) subsequent investment by Airbus and its suppliers in the A320 and A330; (3) Airbus's supposed ability to launch the A380 in the absence of LA/MSF; and (4) Airbus's supposed ability to launch the A350 XWB in the absence of LA/MSF. All of these arguments fail.

28. Indeed, as is clear from its argument, the EU concedes that it did nothing to break the causal relationship between the LA/MSF and other subsidies and serious prejudice to the United States. Rather, it argues that conditions have changed such that an entirely new assessment of causation must take place. But the causal mechanism identified by the original Panel and confirmed by the Appellate Body still operates, including through LA/MSF to the A350 XWB. The EU's portrayal of the causal nexus as non-existent is incorrect, as the evidence confirms.

E. The EU has Failed to Rebut the U.S. Demonstration of Significant Lost Sales.

29. The United States continues to experience significant lost sales. In its first written submission, the United States documented over one thousand lost sales, together worth tens of billions of dollars of lost revenues for the U.S. LCA industry. This pattern has continued unabated from the original reference period through the end of the RPT, December 1, 2011, and on to the date of referral of this matter to the compliance Panel. Since that time the United States has also lost significant sales campaigns involving Hong Kong Airlines and Norwegian Air Shuttle, as demonstrated in the first written submission, and also three additional sales campaigns that have occurred since the filing of the U.S. first written submission.

30. This consistent pattern of continuing significant lost sales reflects the absence of any meaningful action by the EU to remove the adverse effects of the WTO-inconsistent subsidies at issue in this dispute. Indeed, the EU does not claim to have taken any steps on its own initiative to remove adverse effects in the form of lost sales. Rather, the EU points to the "delivery" of Airbus aircraft and Airbus's termination of the A340 program as compliance "steps". These arguments are misplaced. The EU itself had an obligation itself to take appropriate steps to remove the adverse effects, and is not entitled to rely on Airbus's independent business decisions to satisfy this obligation. In any event, Airbus's completion of deliveries and the termination of the A340 program have not removed the adverse effects caused by LA/MSF.

31. Given the persistence of lost sales and the absence of meaningful compliance action, the EU has nothing to offer in rebuttal beyond erroneous arguments regarding purported "non-attribution factors." For example, the EU argues that Airbus's first sale to an airline customer generates a "strong disposition" to buy Airbus aircraft in the future and that this disposition is a "non-attribution factor," without explaining how Airbus could have offered any of the LCA it sold to that customer without LA/MSF. In addition, according to the EU, if an airline customer purchases an Original A350, this is another "non-attribution factor" with respect to subsequent A350 orders. These are not valid "non-attribution factors." They in no way alter the fact that Airbus obtained these sales with aircraft that it would have been unable to offer in the absence of the LA/MSF and other subsidies. The EU's so-called non-attribution factors are *themselves* the effects of LA/MSF, as any incumbency advantages that Airbus enjoys by virtue of previously obtained sales are the direct result of earlier LA/MSF.

F. The EU has Failed to Rebut the U.S. Demonstration of Displacement, Impedance, and Threat Thereof in the EU Market and Certain Third Country Markets.

32. The U.S. LCA industry continues to suffer adverse effects in the form of displacement, impedance, and/or the threat thereof within the meaning of Article 6.3(a) and (b) of the SCM Agreement. The U.S. first written submission demonstrated that such adverse effects are presently occurring in the EU market and 11 third-country markets. These adverse effects have continued during the first half of 2012, and the continued existence of displacement and impedance underscores the EU's failure to take any meaningful steps to remove the adverse effects at issue in this dispute.

33. In its second written submission, the United States presents updated data demonstrating displacement, impedance, and/or threat thereof in the EU market and 11 third-country markets continuing through the date of referral of the matter to the compliance Panel and to the present. These data supplement the data tables in the U.S. first written submission for the time period 2001-2011, with the inclusion of additional market activity in the first half of 2012. Data for the first half of 2012 generally reinforce the conclusions drawn from the data in the U.S. first written submission.

34. The use by the United States of pre-December 2011 market data as evidence to demonstrate continuing displacement and impedance in no way implies that WTO remedies are "retroactive," as the EU erroneously suggests. Rather, the data relied on by United States serve

as evidence of present market displacement and impedance, as they demonstrate long-term market trends, and confirm that the U.S. LCA industry continues to suffer displacement and impedance during the 2001-2012 time period as a result of LA/MSF. The EU does not dispute the accuracy of the data underlying the U.S. demonstration of presently continuing market displacement and impedance. Separately, many of the EU's arguments are contradicted by points the United States made in its first written submission.

35. The remaining so-called "non-attribution factor" suggested by the EU – "Boeing's high market share" – is also an argument without merit. Nothing in the text of the SCM Agreement indicates that a WTO Member may not bring a claim for adverse effects resulting from WTO-inconsistent subsidies in markets where its industry enjoys a high market share.

36. This leaves the market data presented by the United States in its first written submission and updated in the second written submission. The data, viewed in the context of LA/MSF's product effects, demonstrate that displacement and impedance continue as a result of the EU's failure to take appropriate steps to remove the adverse effects of LA/MSF and other subsidies to Airbus. The EU contends that such data are insufficient and that independent narratives detailing evidence of lost sales campaigns are necessary to support these claims. To the contrary, such a requirement would effectively subordinate or convert displacement and impedance claims into lost sales claims, even though these explicitly are two separate and independent forms of serious prejudice under Article 6.3 of the SCM Agreement. Furthermore, in the original proceeding, the DSB adopted findings of displacement in China and Korea notwithstanding the lack of any specific findings of lost sales involving Chinese or Korean airline customers. There is simply no basis for the EU to challenge U.S. displacement and impedance claims because they may be unaccompanied by corresponding lost sales claims. And finally, there is no dispute between the parties about the underlying data.

37. In any event, the United States *has also* demonstrated particular lost sales in the EU single-aisle, twin-aisle, and very large aircraft markets (those of easyJet, Air Berlin/NIKI, Czech Airlines, Norwegian Air Shuttle, Iberia Airlines, Air France – KLM, and British Airways); the Australian single-aisle and very large aircraft markets (Qantas and Qantas Airlines/Jetstar Airways); the Korean twin-aisle and very large aircraft markets (Korean Air and Asiana Airlines); the Singaporean twin-aisle and very large aircraft markets (Singapore Airlines); and the United Arab Emirates very large aircraft market (Emirates).

VII. CONCLUSION

38. The EU first written submission does not change the key facts of this compliance dispute: LA/MSF and other subsidies have not been withdrawn; additional LA/MSF has been provided to the A350 XWB on the same core terms and conditions as all prior LA/MSF to Airbus, including on better-than-commercial terms; Airbus still supplies the market with a product line that it would not have without LA/MSF, and that product line is now even more competitive with the market entry of the A350 XWB; and, consequently, Boeing continues to lose sales and market share worth many billions of dollars.