but also denied, as a factual matter, the existence of any link between the post-2006 aeronautics R&D subsidies and the production of the particular LCA, including the 737 MAX and 737NG. Indeed, in addition to characterizing such a link as even more "indirect" and "speculative" than that relating to the other untied subsidies[1269], the Panel found that these subsidies relate only to *future generations* of Boeing LCA.[1270] We note that, in its appellant's submission, the European Union maintains that the nexus to *future* LCA reveals a nexus with Boeing's research, development, production, and sale of *present* LCA "because the research and development for future generations of LCA is an investment expense that Boeing must finance through the cash flows it generates under each of Boeing's current families of LCA".[1271] However, we disagree that the Panel's statement that the subsidies relate to *future generations* of LCA is sufficient for finding the requisite link between the subsidies and production of the 737 MAX and 737NG. For these reasons, we find that neither Panel findings nor undisputed facts demonstrate that the post-2006 aeronautics R&D subsidies complemented and supplemented the effects of the tied tax subsidies on the prices of the 737 MAX and 737NG.

5.567. Having found no basis to conclude that the post-2006 aeronautics R&D subsidies cause adverse effects in the post-implementation period, we need not address the United States' conditional claim that the Panel erred in finding that these subsidies confer a benefit within the meaning of Article 1.1(b) of the SCM Agreement.[1272]

5.8.4 Overall conclusion regarding price effects

5.568. The Panel did not consider that, in order to find significant lost sales through a price causal mechanism, there must be no non-price factors that potentially contributed to Boeing having won those sales. Rather, the Panel's understanding of the legal standard properly reflected a weighing and balancing of price and non-price factors to reach a conclusion as to whether a sales campaign was particularly price-sensitive, such that the tied tax subsidies could be found to be a genuine and substantial cause of serious prejudice. Accordingly, we find that the Panel did not err in the interpretation of Articles 5, 6.3, and, as a consequence, Article 7.8 of the SCM Agreement, when identifying the applicable causation standard.

5.569. As regards the Panel's assessment of the relative significance of the amount of the tied tax subsidies, we consider that there was a basis for the Panel to assume that Boeing had been able to use the benefits of the subsidies arising from all its LCA sales to lower the prices in particularly price-sensitive sales campaigns in the single-aisle LCA market. In addition, the Panel was not required to establish that the per-aircraft amount of the subsidies available for these sales campaigns exceeds the differentials in the net prices of Airbus' and Boeing's competing aircraft for purposes of finding that the subsidies are a genuine and substantial cause of Airbus' loss of these sales, and, consequently, serious prejudice. We thus find that the Panel did not err under Articles 5 and 6.3 of the SCM Agreement, or acted inconsistently with Article 11 of the DSU, in its assessment of the relative significance of the amount of the tied tax subsidies.

a. We therefore uphold the Panel's finding, in paragraph 9.252 of the Panel Report, and as a consequence to the extent that this is reflected in paragraph 11.8.a, that the European Union had failed to establish that the tied tax subsidies cause serious prejudice, within the meaning of Articles 5(c) and 6.3 of the SCM Agreement, in the twin-aisle LCA market in the post-implementation period.

[1269] Panel Report, para. 9.91.
[1270] Panel Report, para. 9.289.
[1271] European Union's appellant's submission, para. 673.
[1272] United States' Notice of Other Appeal, para. 7; other appellant's submission, section III.A. This conditional claim consists of a challenge, under Article 1.1(b) of the SCM Agreement and Article 11 of the DSU, that the Panel erred in conducting its benefit analysis with regard to the post-2006 NASA procurement contracts and cooperative agreements, the post-2006 USDOD assistance instruments, and the FAA-Boeing CLEEN Agreement. The United States requests us to address this claim if we were to modify or reverse the Panel's findings that the post-2006 aeronautics R&D subsidies did not cause adverse effects. At the oral hearing, the United States clarified that the condition for such a claim would not be triggered in the event that we were to reverse the Panel's adverse effects findings, but were unable to complete the legal analysis, with respect to these subsidies.

b. We also uphold the Panel's findings, in paragraphs 9.407, 9.444, and 11.8.c-d of the Panel Report, that the European Union had established that the tied tax subsidies cause significant lost sales, within the meaning of Articles 5(c) and 6.3(c) of the SCM Agreement, in the single-aisle LCA market, with respect to the Fly Dubai 2014, Icelandair 2013, and Air Canada 2013 sales campaigns, in the post-implementation period, as well as a threat of impedance of imports of Airbus single-aisle LCA to the United States and exports of Airbus single-aisle LCA to the United Arab Emirates, within the meaning of Articles 5(c) and 6.3(a) and (b) of the SCM Agreement, in the post-implementation period.

5.570. By rejecting that untied subsidies may be found to have a genuine link to the production of relevant LCA as was accepted by the Appellate Body in the original proceedings, the Panel failed to apply the correct legal standard for assessing whether untied subsidies are a genuine cause of adverse effects under Articles 5 and 6.3 of the SCM Agreement. In particular, we do not consider that the legal standard for causation requires a showing that the untied subsidies actually altered Boeing's pricing of its LCA. Accordingly, we find that the Panel erred under Articles 5 and 6.3 of the SCM Agreement by requiring that the European Union demonstrate that the untied subsidies actually led to price reductions of Boeing LCA sales in order to establish that the subsidies caused adverse effects through the lowering of Boeing LCA prices.

a. We therefore reverse the Panel's findings, in paragraphs 9.277, 9.291, 9.472, and 9.476 of the Panel Report, and, as a consequence, to the extent that this is reflected in paragraphs 11.8.a and 11.8.e, that the European Union had failed to establish that the untied subsidies cause serious prejudice, within the meaning of Articles 5(c) and 6.3 of the SCM Agreement, in the post-implementation period through a price causal mechanism. Having reversed this finding, we do not address whether, in addition, the Panel acted inconsistently with Article 11 of the DSU.

b. We further find that we are unable to complete the legal analysis with regard to whether the untied subsidies cause adverse effects within the meaning of Articles 5 and 6.3 of the SCM Agreement.

5.9 Additional claims on appeal

5.571. We note that there are certain additional claims by the European Union, and conditional claims by the United States, that we do not address because we do not consider their disposition necessary for the resolution of this dispute.

5.572. First, the European Union claims that the Panel erred in the interpretation of Articles 5, 6.3, and 7.8 of the SCM Agreement in finding that "a subsidized product can only cause serious prejudice to another product if the two products in question compete in the same market"[1273], as it relates to the serious prejudice phenomena of significant price suppression, price depression, and lost sales. The European Union maintains that we should instead "interpret Article 6.3(c) to permit a finding of adverse effects in the form of 'significant price suppression, price depression or lost sales' where the subsidised product and the like product do not compete in the same market".[1274] The European Union states that, in requesting reversal of this Panel finding, it seeks to enable us, in completing the legal analysis, to find "significant lost sales in instances where the 787-8/9 and the A350XWB-900 competed for the sale, even though the Panel placed these competing products into two separate product markets".[1275]

5.573. We note that, although the Panel considered that Airbus and Boeing LCA tend to be offered in competition with each other in two product markets consisting of medium-sized and larger-sized twin-aisle aircraft, the Panel nevertheless noted that there is no bright-line distinction between these markets and that, depending on the circumstances, certain larger medium-sized aircraft could be found to exercise meaningful competitive constraints on smaller larger-sized aircraft.[1276] In any

[1273] European Union's appellant's submission, para. 470 (quoting Panel Report, para. 9.33, in turn referring to Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 1119).
[1274] European Union's appellant's submission, para. 470.
[1275] European Union's appellant's submission, para. 471.
[1276] Panel Report, paras. 9.43-9.44.

event, in light of our disposition of other claims on appeal, and, in particular, the fact that we are not called upon to consider the European Union's request for completion of the legal analysis regarding the twin-aisle LCA market, we need not consider any potential competitive relationship between the 787-8/9 and the A350XWB-900 LCA and, therefore, do not address the European Union's claim of error.

5.574. The European Union also claims that the Panel erred in the interpretation of Articles 5, 6.3, and 7.8 of the SCM Agreement in purportedly finding that aggregation and cumulation of subsidies are the only two approaches to the collective assessment of the adverse effects of multiple subsidies. The European Union adds that, although the occasion did not arise for the Panel to apply its interpretative finding in this case, the European Union nevertheless seeks reversal of the Panel's interpretation since it would be, in the European Union's view, "critical for the purposes of the Appellate Body's completion of the legal analysis".[1277] For instance, the European Union submits that it should be possible to follow a different approach to assessing collectively the effects of multiple subsidies by determining first that various subsidies are each a *genuine* cause of adverse effects, and then concluding that they are together a *substantial* cause of adverse effects.

5.575. The Appellate Body has previously found that "at least two approaches to a collective assessment of the effects of multiple subsidy measures may be used, namely, aggregation and cumulation."[1278] As this language suggests, the Appellate Body has not excluded the existence of other methods for the collective assessment of the effects of multiple subsidies. In any event, as we explained in section 5.8.3.2 above, we followed a cumulation approach in assessing whether the effects of the untied subsidies complement and supplement the price effects of the tied tax subsidies. We further note that we were unable to conclude that the untied subsidies were a genuine cause of adverse effects and such a showing would also have been required under the European Union's proposed approaches to the collective assessment of multiple subsidies. Therefore, in light of our disposition of other claims on appeal, we are not called upon to consider any such additional methods for the collective assessment of subsidies and, therefore, do not address the European Union's claim of error.

5.576. Finally, we note that the United States has presented four conditional claims challenging various findings of the Panel. Above we have explained that, in light of our disposition of other claims on appeal, the conditions for each of these claims have not been triggered.[1279] We therefore do not address the United States' conditional claims of error.

6 FINDINGS AND CONCLUSIONS

6.1. For the reasons set out in this Report, the Appellate Body makes the following findings and conclusions.

6.1 Terms of reference

6.2. The question of whether a claim falls within the scope of Article 21.5 proceedings is to be decided based on whether the claim has been resolved on the merits in the original proceedings and was thus covered by the recommendations and rulings of the DSB. A party's "fault" for the non-resolution of a claim, or the lack of such fault, is not determinative of whether a claim can be reasserted in compliance proceedings. Accordingly, we find that the Panel did not err in admitting the European Union's claims relating to the pre-2007 USDOD procurement contracts in these compliance proceedings.

a. We therefore uphold the Panel's finding, in paragraphs 7.131 and 11.5.a.ii of the Panel Report, that the European Union's claims relating to the pre-2007 USDOD procurement contracts were within its terms of reference.

[1277] European Union's appellant's submission, paras. 479-480.
[1278] Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 1290.
[1279] See paras. 5.119, 5.366, 5.551, and 5.567.

6.2 USDOD procurement contracts

6.3. We find that the Panel acted inconsistently with Article 11 of the DSU in its financial contribution analysis under Article 1.1(a)(1) of the SCM Agreement by not engaging sufficiently with the European Union's evidence and arguments, and by failing to provide reasoned and adequate explanations for its findings. Furthermore, we find that the Panel's benefit analysis suffers from the same shortcomings.

a. We therefore reverse the Panel's finding, in paragraphs 8.437.b and 11.7.c.i of the Panel Report, that, assuming *arguendo* the payments and access to USDOD facilities, equipment, and employees provided to Boeing through the pre-2007 and post-2006 USDOD procurement contracts were to involve financial contributions, the European Union has not established that they confer a benefit on Boeing within the meaning of Article 1.1(b) of the SCM Agreement. We also find that there are insufficient factual findings by the Panel or undisputed facts on the Panel record for us to complete the legal analysis in this respect.

6.3 FSC/ETI tax concessions

6.4. For revenue to be considered "foregone" under Article 1.1(a)(1)(ii) of the SCM Agreement, a government must relinquish an entitlement to raise revenue. Accordingly, establishing that such a financial contribution exists requires a determination that a government has relinquished an entitlement to raise revenue. This determination must focus on the conduct of a government, rather than on the use of tax concessions by the eligible taxpayers. We find that the Panel erred by focusing instead on whether Boeing *used* FSC/ETI tax concessions.

a. We therefore reverse the Panel's finding, in paragraphs 8.612 and 11.7.c.ii of the Panel Report, that the European Union had not established that, after the expiry of the implementation period, the United States grants or maintains subsidies to Boeing in the form of FSC/ETI tax concessions because the European Union had failed to demonstrate that those tax concessions involved a financial contribution within the meaning of Article 1.1(a)(1)(ii) of the SCM Agreement.

b. Furthermore, we have completed the legal analysis and find that, to the extent that Boeing remains entitled to FSC/ETI tax concessions in the post-implementation period, the United States has not ceased to provide a financial contribution and thus has not withdrawn FSC/ETI subsidies with respect to Boeing within the meaning of Article 7.8 of the SCM Agreement.

6.4 City of Wichita industrial revenue bonds

6.5. The length of time during which the subsidy programme has been in operation must be taken into account by panels in their assessment of specificity under Article 2.1(c) of the SCM Agreement. However, it does not follow from this that the entire period during which the programme has been in operation has necessarily to be chosen as the relevant time period in determining whether, under the second sentence of this provision, disproportionately large amounts of subsidy have been granted to certain enterprises. Accordingly, we find that the Panel did not err in its interpretation of Article 2.1(c) of the SCM Agreement in concluding that, in the specific circumstances of this case, the relevant time period over which to consider disproportionality was as from the end of the implementation period. With respect to the Panel's application of Article 2.1(c) of the SCM Agreement, we find that the Panel erred in finding that no disparity existed between the expected and actual distribution of the subsidy.

a. We therefore reverse the Panel's finding, in paragraphs 8.640 and 11.7.c.iii of the Panel Report, that the European Union has failed to establish that the tax abatements provided through IRBs issued by the City of Wichita involve specific subsidies within the meaning of Articles 1 and 2 of the SCM Agreement. We also find that there are insufficient factual findings by the Panel or undisputed facts on the Panel record for us to complete the legal analysis in this respect. Having reversed the Panel's finding, we do not consider it necessary to address whether, in addition, the Panel acted inconsistently with Article 11 of the DSU.

6.5 South Carolina economic development bonds

6.6. With regard to the European Union's claim that the Panel erred in its interpretation of the term "limited number" in the second sentence of Article 2.1(c) of the SCM Agreement, we observed that what constitutes a quantitatively limited group of enterprises must be determined on a case-by-case basis, taking into account the particular characteristics of the subsidy programme and the circumstances of the case. We disagree with the European Union that the Panel implicitly interpreted the term "limited number" as "one" or "fewer than three". Rather, the Panel considered that the European Union had not met its burden of proof as to whether the EDB subsidy has been used by only a "limited number" of certain enterprises. Accordingly, we find that the Panel did not err in its interpretation of the term "limited number" of certain enterprises in Article 2.1(c) of the SCM Agreement.

6.7. With regard to the European Union's claim that the Panel erred in its interpretation and application of the term "certain enterprises" in the second sentence of Article 2.1(c), we observed that the determination of whether a number of enterprises or industries constitute "certain enterprises" should be made in light of all relevant characteristics of the entities, including the nature and purpose of their activities in the markets in question and the context in which these activities are exercised. The Panel erred by taking into account three specific entities in its analysis under Article 2.1(c) without having established that they constitute "certain enterprises". However, the Panel's rejection of the European Union's claims does not hinge on its statement relating to the relevance of the three specific entities in its analysis of *de facto* specificity.

6.8. With regard to the European Union's claim that the Panel erred in its interpretation of the term "predominant use" in the second sentence of Article 2.1(c), we observed that this term refers primarily to the *incidence* or *frequency* with which the subsidy is used by certain enterprises. Furthermore, we found that evidence demonstrating the existence of "predominant use by certain enterprises" may also be pertinent for demonstrating the granting of "disproportionately large amounts of subsidy to certain enterprises". Accordingly, we find that, by excluding a category of evidence potentially relevant to the assessment of the existence of "predominant use by certain enterprises" and ultimately for determining *de facto* specificity, on the basis that this evidence was more relevant to the assessment of another factor under Article 2.1(c), second sentence, the Panel erred in its interpretation of these factors in Article 2.1(c).

a. We therefore reverse the Panel's finding, in paragraph 8.843 of the Panel Report, that the European Union has failed to establish that the subsidy provided by South Carolina through EDB proceeds is specific within the meaning of Article 2.1 of the SCM Agreement. We also find that there are insufficient factual findings by the Panel or undisputed facts on the Panel record for us to complete the legal analysis in this respect. Having reversed the Panel's finding, we do not consider it necessary to address whether, in addition, the Panel acted inconsistently with Article 11 of the DSU.

6.6 South Carolina MCIP job tax credits

6.9. A subsidy is specific under Article 2.2 of the SCM Agreement when access to it is either explicitly or implicitly limited to entities engaged in economic activities in the market that have their headquarters, branch offices, or manufacturing facilities in a "designated geographical region" within the jurisdiction of the granting authority, or that are otherwise established within such a region. In the present case, such limitation contained in Section 12-6-3360 of the South Carolina Income Tax Act is not made void by the fact that enterprises not currently located in an MCIP may become part of an MCIP in the future and then qualify for the subsidy. We find that the Panel erred in the application of Article 2.2 of the SCM Agreement in stating that the availability of the MCIP subsidy only to enterprises located within an MCIP "cannot be meaningfully considered to amount to a limitation under Article 2.2" of the SCM Agreement.

a. We therefore reverse the Panel's finding, in paragraphs 8.931 and 11.7.c.vii of the Panel Report, that the European Union has failed to establish that the subsidy provided through the additional corporate income tax credits is specific within the meaning of Article 2.2 of the SCM Agreement.

b. Furthermore, we complete the legal analysis and find that the subsidy provided to Boeing through the additional corporate income tax credits, pursuant to Section 12-6-3360 of the South Carolina Income Tax Act, is specific within the meaning of Article 2.2 of the SCM Agreement.

6.7 Continuing adverse effects

6.10. In assessing whether appropriate steps have been taken to remove the adverse effects of a subsidy within the meaning of Article 7.8 of the SCM Agreement, the time period for assessing the removal of adverse effects may include developments subsequent to the time of order, including through the point of delivery. Accordingly, we find that the Panel erred in its interpretation of Article 7.8 by excluding *ab initio*, from an inquiry into whether the United States had failed to take appropriate steps to remove the adverse effects of the subsidies, evidence relating to transactions for which the orders arose in the original reference period but for which deliveries remain outstanding in the post-implementation period.

a. We therefore reverse the Panel's interpretation of Article 7.8 of the SCM Agreement, in paragraphs 9.311 to 9.314 of the Panel Report, and its statement in paragraph 9.332 of the Panel Report, that reliance on the role of deliveries of aircraft in the post-implementation period as evidence of a continuation of serious prejudice would be inconsistent with Article 7.8. Having reversed this finding, we do not address whether, in addition, the Panel erred in the application of Article 7.8, or acted inconsistently with Article 11 of the DSU. However, because it is not clear whether the Panel's decision to exclude two additional sales campaigns as significant lost sales resulted from the above error, and because the European Union's request is based on a premise that we rejected, we decline to reverse the Panel's finding, in paragraph 9.407 of the Panel Report, insofar as it excludes the Fly Dubai 2008 and Delta Airlines 2011 sales campaigns.

b. We further find that the Panel did not err under Articles 5 and 6.3 of the SCM Agreement, or act inconsistently with Article 11 of the DSU, in separately finding that the European Union's arguments are unsupported by the evidence and/or in contradiction with the findings made in the original proceedings. We therefore uphold the Panel's finding, in paragraphs 9.332 and 11.8.b of the Panel Report, that the European Union had failed to establish that the original adverse effects of the pre-2007 aeronautics R&D subsidies continue into the post-implementation period as present serious prejudice in relation to the A330 and A350XWB, within the meaning of Articles 5(c) and 6.3 of the SCM Agreement.

6.8 Technology effects

6.11. We consider that the Panel was required to assess whether the acceleration effects of the pre-2007 aeronautics R&D subsidies had an impact, not only on the timing of the launch of the 787, but also on the timing of its first delivery. We are not persuaded that it was sufficient for the Panel to base its conclusion regarding the European Union's technology effects claims solely on its understanding of the original panel's findings. Given that the counterfactual inquiry in these compliance proceedings was different from the one at issue in the original proceedings, we would have expected an analysis from the Panel as to why a focus on post-launch acceleration effects was not warranted. By failing to assess in its counterfactual analysis whether the acceleration effects of the pre-2007 aeronautics R&D subsidies had an impact, not just on the launch of the 787, but also on the timing of first delivery of the 787, the Panel did not properly assess the counterfactual question as to whether there remain acceleration effects of the pre-2007 aeronautics R&D subsidies in the post-implementation period. Accordingly, we find that the Panel erred in the application of Articles 5 and 6.3 and, as a consequence, Article 7.8 of the SCM Agreement.

a. We therefore reverse the Panel's findings, in paragraphs 9.177, 9.186, and 9.355 of the Panel Report, that the European Union failed to demonstrate: (i) that the acceleration effects of the pre-2007 aeronautics R&D subsidies in relation to Boeing's technology development for the 787 have continued into the post-implementation period; (ii) the existence of original subsidy technology effects of the pre-2007 aeronautics R&D subsidies in relation to Boeing's technology development for the 787 in the post-implementation period; and (iii) the existence of spill-over technology effects of the pre-2007 aeronautics

R&D subsidies on the 787-9/10, the 777X, and the 737 MAX in the post-implementation period.

b. As a consequence, and to that extent, we also reverse the Panel's findings, in paragraphs 9.219-9.220, 9.372-9.373, 11.8.a, and 11.8.e of the Panel Report, with respect to the European Union's failure to establish that the pre-2007 aeronautics R&D subsidies are a genuine and substantial cause of any of the forms of serious prejudice alleged with respect to the A350XWB and the A320neo in the post-implementation period, through a technology causal mechanism. Having reversed these findings, we do not address the European Union's additional claims as to whether the Panel erred in the application of Articles 5, 6.3, and 7.8 of the SCM Agreement or acted inconsistently with Article 11 of the DSU.

c. We further find that we are unable to complete the legal analysis with regard to whether there remain acceleration effects of the pre-2007 aeronautics R&D subsidies in the post-implementation period.

6.9 Price effects

6.12. The Panel did not consider that, in order to find significant lost sales through a price causal mechanism, there must be no non-price factors that potentially contributed to Boeing having won those sales. Rather, the Panel's understanding of the legal standard properly reflected a weighing and balancing of price and non-price factors to reach a conclusion as to whether a sales campaign was particularly price-sensitive, such that the tied tax subsidies could be found to be a genuine and substantial cause of serious prejudice. Accordingly, we find that the Panel did not err in the interpretation of Articles 5, 6.3, and, as a consequence, Article 7.8 of the SCM Agreement, when identifying the applicable causation standard.

6.13. As regards the Panel's assessment of the relative significance of the amount of the tied tax subsidies, we consider that there was a basis for the Panel to assume that Boeing had been able to use the benefits of the subsidies arising from all its LCA sales to lower the prices in particularly price-sensitive sales campaigns in the single-aisle LCA market. In addition, the Panel was not required to establish that the per-aircraft amount of the subsidies available for these sales campaigns exceeds the differentials in the net prices of Airbus' and Boeing's competing aircraft for purposes of finding that the subsidies are a genuine and substantial cause of Airbus' loss of these sales, and, consequently, serious prejudice. We thus find that the Panel did not err under Articles 5 and 6.3 of the SCM Agreement, or acted inconsistently with Article 11 of the DSU, in its assessment of the relative significance of the amount of the tied tax subsidies.

a. We therefore uphold the Panel's finding, in paragraph 9.252 of the Panel Report, and as a consequence to the extent that this is reflected in paragraph 11.8.a, that the European Union had failed to establish that the tied tax subsidies cause serious prejudice, within the meaning of Articles 5(c) and 6.3 of the SCM Agreement, in the twin-aisle LCA market in the post-implementation period.

b. We also uphold the Panel's findings, in paragraphs 9.407, 9.444, and 11.8.c-d of the Panel Report, that the European Union had established that the tied tax subsidies cause significant lost sales, within the meaning of Articles 5(c) and 6.3(c) of the SCM Agreement, in the single-aisle LCA market, with respect to the Fly Dubai 2014, Icelandair 2013, and Air Canada 2013 sales campaigns, in the post-implementation period, as well as a threat of impedance of imports of Airbus single-aisle LCA to the United States and exports of Airbus single-aisle LCA to the United Arab Emirates, within the meaning of Articles 5(c) and 6.3(a)-(b) of the SCM Agreement, in the post-implementation period.

6.14. By rejecting that untied subsidies may be found to have a genuine link to the production of relevant LCA as was accepted by the Appellate Body in the original proceedings, the Panel failed to apply the correct legal standard for assessing whether the untied subsidies are a genuine cause of adverse effects under Articles 5 and 6.3 of the SCM Agreement. In particular, we do not consider that the legal standard for causation requires a showing that the untied subsidies actually altered Boeing's pricing of its LCA. Accordingly, we find that the Panel erred under Articles 5 and 6.3 of the SCM Agreement by requiring that the European Union demonstrate that the untied subsidies actually

led to price reductions of Boeing LCA sales in order to establish that the subsidies caused adverse effects through the lowering of Boeing LCA prices.

a. We therefore reverse the Panel's findings, in paragraphs 9.277, 9.291, 9.472, and 9.476 of the Panel Report, and as a consequence to the extent that this is reflected in paragraphs 11.8.a and 11.8.e of the Panel Report, that the European Union had failed to establish that the untied subsidies cause serious prejudice, within the meaning of Articles 5(c) and 6.3 of the SCM Agreement, in the post-implementation period through a price causal mechanism. Having reversed this finding, we do not address whether, in addition, the Panel acted inconsistently with Article 11 of the DSU.

b. We further find that we are unable to complete the legal analysis with regard to whether the untied subsidies cause adverse effects within the meaning of Articles 5 and 6.3 of the SCM Agreement.

6.10 Additional claims on appeal

6.15. The European Union claims that the Panel erred in the interpretation of Articles 5, 6.3, and 7.8 of the SCM Agreement in finding that a subsidized product can only cause serious prejudice to another product if the two products in question compete in the same market, insofar as that interpretation relates to serious prejudice in the form of significant price suppression, significant price depression, and significant lost sales. The European Union states that, in requesting reversal of this finding, it seeks to enable us, in completing the legal analysis, to find significant lost sales in instances where the 787-8/9 and the A350XWB-900 competed for the sale. In light of our disposition of other claims on appeal, and, in particular, the fact that we are not called upon to consider the European Union's request for completion of the legal analysis regarding the twin-aisle LCA market, we need not consider any potential competitive relationship between the 787-8/9 and the A350XWB-900 LCA and, therefore, do not address the European Union's claim of error.

6.16. The European Union also claims that the Panel erred in the interpretation of Articles 5, 6.3, and 7.8 of the SCM Agreement in purportedly finding that aggregation and cumulation of subsidies are the only two approaches to the collective assessment of the adverse effects of multiple subsidies. The European Union states that it seeks reversal of the Panel's interpretation since it would be critical for the Appellate Body's completion of the legal analysis. In these proceedings, we were unable to conclude that the untied subsidies were a genuine cause of adverse effects, and such a showing would also have been required under the European Union's proposed approaches to the collective assessment of multiple subsidies. Therefore, in light of our disposition of other claims on appeal, we are not called upon to consider any such additional methods for the collective assessment of subsidies and, therefore, do not address the European Union's claim of error.

6.17. Finally, we note that the United States has presented four conditional claims challenging various findings of the Panel. In light of our disposition of other claims on appeal, the conditions for these claims have not been triggered. We therefore do not address the United States' conditional claims of error.

6.11 Recommendation

6.18. The Appellate Body recommends that the DSB request the United States to bring its measures found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the SCM Agreement, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 15th day of March 2019 by:

Peter Van den Bossche
Presiding Member

Thomas Graham
Member

Shree Baboo Chekitan Servansing
Member