

The Airbus-Boeing Dispute: Implications of the WTO Boeing Decision

The trade dispute over aircraft subsidies between the United States and the European Union has gained new momentum. On September 15, the World Trade Organisation's Dispute Settlement Body released a confidential interim report on the Boeing case (DS 353) to the parties involved. The WTO panel found that Boeing had received illegal US government and state subsidies. French Transport Minister D. Bussereau said in a statement that the preliminary ruling "condemns the massive subsidies received by Boeing". In October 2004, the EU had filed a suit against the USA – on the same day the USA had requested the initiation of WTO dispute settlement proceedings against the EU for subsidies granted to Airbus. The Airbus decision of June 2010 and the Boeing interim report mark a turning point where the EU and the USA have to decide whether to continue the costly trade battle for years or to reach an agreement and to focus on the changing market environment.

The transatlantic aircraft dispute is a result of the United States' long-standing scepticism concerning Airbus, the European aviation consortium founded in 1970 by France, Germany, Spain and the UK. Government support for aircraft manufacturers first emerged as a contentious issue in 1988 when Airbus was beginning to eat into Boeing's market with its A320 single-aisle jet – the sort of aircraft which accounts for almost three quarters of planes sold. Subsequent proceedings at the WTO's predecessor GATT (General Agreement on Tariffs and Trade) resulted in a bilateral agreement in 1992. Until 2004, the Agreement on Trade in Large Civil Aircraft (TLCA) regulated the permitted levels of support for the American and European producers of wide-body civil aircraft. Direct government support was fixed to a maximum of 33% of total development costs, and loans had to be provided with an interest rate covering at least the government's loan costs. Production subsidies were prohibited. Indirect state aid was limited to a maximum of 3% of the commercial aircraft industry's annual turnover, or to a maximum of 4% of each company's turnover in civil aviation. A precise definition of indirect aid, however, was never supplied.

In 2004, the USA unilaterally withdrew from the TLCA and filed a suit at the WTO – right at the time when Airbus launched the A380 and A350 projects and Boeing was about to lose its leading position in the market for aeroplanes with more than 100 seats. The battle for this market is not surprising, as global airline traffic is expected to more than double by 2028, leading to a demand for up to 25,000 passenger and freighter aircraft representing a market value of \$3.1 trillion. Once the USA realised that its expectations of stabilising market shares with the TLCA had been off base, the American withdrawal from the agreement did not come unexpectedly. In both cases, the parties claim violations of the WTO Agreement on Subsidies and Countervailing Measures (SCM) and of the GATT 1994.

The first case was decided in June 2010. The WTO published the final panel report on the Airbus case against the EU and the governments of France, Germany, Spain, and the UK (DS 316). Their Reimbursable Launch Aid programme (RLA) constitutes the most contentious issue. RLA is repayable, low-interest rate loans granted by the Airbus consortium states, covering up to one third of the development costs of a new aircraft model. In the past decade, these loans were structured according to the provisions of the TLCA. Still, the USA contested them and the WTO found that the British, German and Spanish RLA was export contingent and therefore prohibited. In contrast, the launch aid granted by the French authorities did not violate WTO law. Therefore, the European Commission argues that the decision constitutes only a minor issue which could be resolved by just changing

the wording of the contested launch aid contracts. The EU concludes that launch aid is generally permitted while the United States opposes this view.

The WTO panel found, moreover, that certain infrastructure measures, corporate restructuring measures and some research grants constituted specific subsidies for Airbus. The panel dismissed claims by the USA that loans by the European Investment Bank (EIB) were specific subsidies. As an effect of the specific subsidies, the panel found a displacement of imports into the EU, a displacement of exports to third country markets, lost sales and “serious prejudice” (Art. 5(c) SCM). However, the panel concluded that the USA had not established that the effect of the specific subsidies was significant price undercutting, significant price suppression or price depression. In addition, the panel concluded that the EU measures did not cause “material injury” to the US domestic industry. Still, this ruling contains room for interpretation, and both the USA and the EU claimed victory. Nevertheless, both parties appealed to the WTO Appellate Body, which will review the legal interpretations within the next months.

The interim report in the Boeing case (DS 353) was distributed in mid-September to the parties involved. It remains confidential until all parties have had the chance to respond, and the final ruling will only be published in the first half of 2011. The EU claimed in its initial filing that Boeing received \$23.7 billion in illegal subsidies from state, local and federal sources. According to persons familiar with the preliminary ruling, the WTO decided that some funding provided by the Department of Defense and the National Aeronautics and Space Administration (NASA) constituted actionable subsidies. About a quarter of the \$10.4 billion in NASA-directed research contracts were subsidies violating WTO rules. Also, parts of \$4 billion in tax breaks from the states of Kansas, Washington and Illinois constituted illegal subsidies. Overall, the WTO found specific subsidies that distorted competition worth at least \$5 billion – causing even greater adverse effects for Airbus. This amount includes \$2.2 billion in tax benefits which were already subject to an earlier transatlantic WTO dispute (Foreign Sales Corporations, DS 108). Not included in the amount are the \$2.4 billion Department of Defense research contracts of which parts have been ruled actionable subsidies. Also, tax breaks – which have been granted for a 20-year period of production by Washington State – have only been taken into consideration up to the amount of current savings for Boeing. Europe claimed victory in this case, but a final and detailed assessment of the ruling will only be possible after the final panel report has been published.

Given the importance of the cases, it seems very likely that the final ruling will be appealed – just as the Airbus decision was. Hence, this transatlantic dispute could last for another 2-3 years. Already now, both cases are the most expensive disputes in WTO history and have developed into a political battle. If the EU or USA were to levy countervailing import duties (as the WTO allows when subsidies persist), it could spark a disastrous trade war. The WTO decision may also affect the competition between Airbus and Boeing to supply 179 new Air Force tankers. Airbus initially won the \$35 billion tender in 2008, but the decision was overturned after a complaint by Boeing. The WTO ruling on the Boeing case might come too late to influence the way the contract is awarded in November, but American politicians are aware of the report. Senator R. Shelby, for example, said the preliminary ruling “clearly states that Boeing was involved in practices prohibited by the WTO”.

With both sides faulted for violating WTO rules, the Boeing report increases the likelihood of a negotiated settlement – although only after the tanker decision and the American election in November. Given new, state-financed competitors from China, Russia and Japan, as well as Embraer and Bombardier entering the market for large civil aircraft, an international agreement seems to be the most desirable solution.

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