

THE WTO BOEING VS. AIRBUS CASE:

Implications For WTO Subsidy Rules and for the Future of Commercial Aircraft Competition

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What I'll Cover

- Findings We “Know” About
- Implications If Confirmed
- Other Issues

Findings We “Know” About

- At least some RBF launch aid transactions were subsidies.
- Some RBF subsidies, including a portion of the RBF provided to help launch the A-380, were export-contingent (hence prohibited) subsidies.
- Not all subsidies bestowed have been subsequently extinguished, either through amortization or through changes in ownership.

Findings We “Know” About (cont.)

- Launch aid is not a single measure.
- Some of the challenged subsidies are currently causing adverse effects to the United States within a single LCA market.
 - Panel based this ruling on the like product/subsidized product classification presented by the complainant (1 like product).
 - Panel used a fairly loose standard with regard to evaluating the later marketplace effects of old R&D subsidies cumulatively.

Implications If Confirmed

- Confirmed (DSB-adopted) findings of prohibited subsidization would be very hard to deal with.
 - Little time (“without delay”)
 - Little flexibility (“withdrawn”)
 - Disgorgement?
- A-350-related RBF transactions would be imperiled as well.
- Further out, what the EU governments can do to defray Airbus’ self-funding burden for future aircraft models would be reduced.

Implications If Confirmed (cont.)

- Premise of a single like product could create an interesting scenario on appeal if panel examining U.S. subsidies has premise of multiple like products.
- Loose approach to cumulatively analyzing diverse R&D subsidies could, if also applied by other panel, increase the likelihood of certain non-prohibited U.S. subsidies being found actionable.

Other Issues

- Tanker Competition
 - USAF seems to think irrelevant
 - DSU Art. 23 and ASCM Art. 32.1
- ASCM Reform Talks
 - Generally
 - Standard for *de facto* export-contingency
- Japanese Aerospace Subsidies