

## **WTO Gives Airbus a Mixed Win Trade Group Undercuts Past Decision Finding Improper Subsidies; 'Big Win' for EU**

By JOHN W. MILLER

**BRUSSELS** —The World Trade Organization on Wednesday overturned parts of a ruling issued last July that European Union governments improperly gave Airbus over \$20 billion in low-interest loans to develop six passenger-jet models.

However, the appellate court decision left both sides claiming victory, increasing the likelihood of a negotiated settlement, said trade court observers. The EU must next disclose how it plans to meet the court's requirements.



U.S. officials and Boeing Co. executives said the WTO supported some of their claims against Airbus and its parent company, European Aeronautic Defence & Space Co. The WTO found that European countries gave Airbus subsidies, which U.S. trade representative Ron Kirk on Wednesday claimed amounted to \$18 billion.

"The European Union now, within six months, has to bring its measures into compliance," Mr. Kirk said. "Whatever route it chooses, we will be scrutinizing that carefully."

But the key claim that Airbus received prohibited export subsidies "has been dismissed in its entirety," said EU trade commissioner Karel De Gucht. "A number of claims, relating to R&D and infrastructure among others, were either rejected or only partially accepted," he said.

Despite the possibility of trade sanctions from the latest decision, EU and U.S. officials predicted that the final result will be a negotiated settlement. Last September, the WTO

separately ruled Boeing had received as much as \$6 billion in improper government aid from the U.S. Department of Defense and the National Aeronautics and Space Administration. A WTO appeals court will rule on that case later this year.

"It would be a political disaster if the WTO comes out more strongly for one side or the other," says Michael Coursey, an international trade lawyer for Washington-based Kelley Drye & Warren LLP. "It's getting nudged toward a draw."

The WTO's appellate ruling means the EU must "**take appropriate steps** to remove the adverse effects or...withdraw" the subsidies, which included portions of aid for the six Airbus models, as well as cash injections from the French government to help pay for leased land near Hamburg, and other measures.

It is unclear how much is involved what exactly is meant by withdrawal. "If the U.S. pushes for repayment, it could create a precedent for Boeing having to return its subsidies, too," says Simon Lester, director of worldtradelaw.net, a Washington-based consultancy. "So it's now up to the EU to propose how it will comply," he said. Options include restructuring loans, changing interest rates and conditions, and cancelling some loan programs.

The European Commission said it "will closely study the report" before it responds.

The EU won one major battle, arguing successfully that **launch aid was not an illegal export subsidy** for the A380 double-deck airliner, a key victory according to legal experts. The appellate court "reversed the Panel's findings that the financing provided by Germany, Spain and the U.K. to develop the A380 was contingent upon anticipated exportation," the WTO said in a summary of the findings.

Airbus Chief Executive Tom Enders called the verdict a "huge win for Europe." He added, "it is good to see that the WTO has fully green lighted the public-private partnership instruments with France, Germany, Spain and the U.K. We now can and will continue this kind of partnership on future development programs".

A 1992 deal between U.S. and EU governments gave both trans-Atlantic partners the legal freedom to support their aircraft makers. To the consternation of the U.S. and Boeing, Airbus then proceeded to take over so much market share that they accused the Europeans of cheating.

In 2004, the U.S. filed a case, focusing on what it said were \$20 billion **in improper loans from EU governments, granted at below-market interest rates** with a particular sweetener: If an airplane didn't make money, Airbus didn't have to repay the loan.

The EU hit back with a case against the U.S., charging that Boeing received billions in tax exemptions from U.S. states, as well as grants tied to defense research from the U.S. federal government.

**In the end, officials on both sides concede, the aim is to lay down rules that will work for China, Brazil and other emerging economies aiming to develop passenger aircraft industries.**

**"What's been laid down here are clear rules of engagement" for public and private involvement, said Ted Austell, a Boeing vice president. "Other countries will take clear counsel from this decision."**

**The appeals panel concluded, "after five years of panel proceedings and almost ten months of appellate review, there are a number of issues that remain unresolved in this dispute. Some may consider that this is not an entirely satisfactory outcome."**