

## **W.T.O. Ruling on Airbus Subsidies Upheld on Appeal**

By NICOLA CLARK

A World Trade Organization appeals panel on Wednesday upheld a ruling that Boeing lost market share to its European rival, Airbus, as a result of **billions of dollars in low-cost government loans**, according to European and American officials.

But the panel rejected claims by the United States that state financing for the Airbus A380 superjumbo jet was automatically prohibited under global trade rules, the officials said.

Appeals judges at the trade body, which is based in Geneva, concurred with the initial finding that loans extended to Airbus over the course of four decades did constitute unfair subsidies that had caused Boeing to lose aircraft sales.

But the **ruling also appeared to upend what the Americans had considered one of the most crucial parts of the landmark case: namely, that the loans — known as launch aid — that Airbus received from Germany, Spain and Britain for the twin-deck A380 jets were expressly prohibited because governments expected a significant export market for the planes when they granted the support.**

The W.T.O. defines two broad categories of subsidies: those that are “prohibited” and those that are “actionable” — that is, subject to legal challenge or to countervailing measures like punitive tariffs. Prohibited subsidies are those that are specifically designed to promote exports or to encourage production using domestically made components.

Under W.T.O. rules, any **prohibited subsidy must be withdrawn within 90 days** of the adoption of a dispute panel’s findings.

**Actionable subsidies are not prohibited automatically, but they can be challenged if the complaining country shows that the subsidy caused material injury — a loss of jobs, profit or production capacity — or “adverse effects” to its industry, like a loss of export market share or sales.**

**The appellate ruling on Wednesday did not find European launch aid loans for the A380 to be prohibited. But it did find many of them to be actionable, which will require European**

**governments to propose some form of remedy in the coming months to offset the benefit of any outstanding subsidies, trade lawyers said.**

**Proving that the loans were **export subsidies** was seen as critical to the United States and Boeing, which have sought to thwart European plans to finance Airbus's coming wide-body jet, the A350-XWB, using the same type of financing mechanism. The A350 is expected to enter commercial service in 2013 and is seen as the biggest challenger to Boeing's 787 Dreamliner, scheduled to be delivered to its first customers this year.**

**Dating to 2005, the United States complaint against the European Union forms the first part of the most complex and voluminous case ever to have been brought before the global trade body. The original ruling last year ran more than 1,000 pages, and the appellate body's report is more than 600 pages.**

**A separate 850-page ruling by the W.T.O. in April found that Boeing had received at least \$5.3 billion in improper United States government subsidies to develop the 787 and other jet models, giving it an unfair advantage over Airbus. That ruling has also been appealed.**

**Both sides were quick to claim victory on Wednesday.**

**"The U.S. central claim that Airbus received prohibited export subsidies has been dismissed in its entirety," Karel De Gucht, the European trade commissioner, said in a statement. "I am particularly pleased with this important result."**

**European officials pointed to the appellate panel's finding that the initial panel erred in its interpretation, saying that the United States had failed to demonstrate that European governments had granted loans to the A380 program specifically because they expected the planes to be sold overseas.**

**The United States trade representative, Ron Kirk, asserted that the ruling affirmed Washington's contention that European government loans — which he said totaled \$18 billion over 40 years — had been used to support the development of every Airbus model ever produced and helped Airbus vault past Boeing in 2003 to become the world's largest plane maker.**

**"These subsidies have greatly harmed the United States, causing Boeing to lose sales and market share in key markets throughout the world," Mr. Kirk said in a statement.**

**Timothy Reif, general counsel for the trade representative, conceded that the ruling had “wiped the slate clean” on the issue of whether launch aid constituted an export subsidy and suggested that issue could now be relitigated.**

**But he emphasized that the “real fight” going forward would be over financing for the A350-XWB and whether “the Europeans decide notwithstanding this very clear decision that they want to continue to provide launch aid to this aircraft.”**

**The W.T.O. appeals judges upheld the initial panel’s finding that without launch aid, Airbus would not have been able to develop any of the major aircraft models that it did, when it did.**

**The appeals panel also found that in the absence of the subsidies, Airbus would have a smaller share of the large civil aircraft market.**

**The judges also found that several Airbus jet programs, including the A380, had received a specific benefit because they were provided at below-market rate of return.**

**Mr. De Gucht acknowledged that the trade body had found that some past subsidies hurt Boeing. He insisted, however, that the economic impact of those subsidies was “very limited.”**

**The United States has argued that all loans ruled as noncompliant by the W.T.O. should be either repaid or refinanced on ordinary commercial terms.**

**On Wednesday, Mr. De Gucht did not specifically address the issue of possible remedies, but he said Brussels would now study the report “to determine the next steps in this dispute.”**

**Rainer Ohler, an Airbus spokesman, said he saw “no significant consequences for Airbus or the European support system from today’s decision,” adding that the W.T.O.’s findings were “likely to require only limited changes in European policies and practices.”**

**Under the current terms of the government loans, Airbus makes repayments as its planes are delivered to customers. Airbus has delivered 43 of 244 orders for the A380. The vast majority of those sales have been to non-European customers.**