

# WTO Lowers Boom on Boeing

By JOHN W. MILLER and DANIEL MICHAELS

**BRUSSELS—The World Trade Organization Monday ruled formally that U.S. federal and local governments gave billions of dollars in illegal subsidies to airplane maker Boeing Co.**

The finding is similar to that of an interim report released in September and marks the beginning of a complex end-game that will help determine the future of the \$1.7 trillion passenger aircraft market.

The WTO now has found that both Boeing and Airbus, a unit of European Aeronautic Defence & Space Co., received illegal aid. A negotiated settlement between the U.S. and European Union now seems almost certain, but it remains unclear how that process will play out.

In trade disputes, the WTO's only prescription is to eliminate subsidies still having an effect. It's up to the losing government to define its compliance in a proposal agreed to by the winner.

**The amounts involved are so massive, in the billions of dollars,** that returning the money to governments is unthinkable.

Meanwhile, both sides are preparing to ramp up claims of "economic harm." Under WTO law, subsidies are only illegal when they cost a trading rival business and sales. The country where the hurt company resides then has the right to retaliate with trade sanctions of an equal amount, giving each side an incentive to claim maximum harm.

"We expect at least 45 billion [dollars] as a realistic figure for retaliation," said Airbus spokeswoman Maggie Bergsma. "We expect the WTO to clearly show at the end that the grants given to Boeing have a bigger impact in market distortion than any loan to Airbus."

That figure "is a tortured reading and perhaps a misreading of how the process works," said Ted Austel, Boeing's vice president for international policy and government relations. Boeing insisted the report "rejected almost all of Europe's claims," but in reference to use the research and development claims said the report found \$2.6 billion in improper subsidies.

**The WTO found the U.S. Department of Defense and the National Aeronautics and Space Administration had provided illegal subsidies to Boeing between 1989 and 2004.**

**Besides the \$16 billion received from the Pentagon and NASA, Boeing received tax breaks from Kansas, Washington and Illinois, and billions in other aid.**

**Last year, in a serious blow to Airbus, the WTO issued a separate report saying that the EU had given billions of low-interest loans in launch aid.**

**Besides positioning for a settlement, the two sides have another reason to battle. They are competing for a U.S. Department of Defense tender for as many as 179 tanker airplanes for roughly \$30 billion.**

**After Airbus gained sales in the 1980s thanks to European government support, Boeing and Airbus in 1992 signed a compromise deal allowing each side to grant generous state aid. But in 2004, with Airbus gaining market share, the U.S. renounced the pact and filed suit against the EU at the WTO. The EU retaliated, filing a case against U.S. aid to Boeing.**

**Negotiations for a settlement could get tricky, because China, whose coffers are full of money which could be used for subsidies, is positioning itself to build a new generation of passenger airplanes. Brazil, Canada, India, Japan and Russia are also looking at entering the market.**

**Trade analysts said the Airbus-Boeing case could have a big influence on several areas of WTO case law, especially in refining the definition of subsidies. For example, it "could set a precedent for financing provided by banks where the state is now involved," said Vasiliki Avgoustidi, a Brussels-based trade lawyer with Berwin Leighton Paisner LLP.**

**U.S. and EU trade officials say talks have not yet begun, however. "You need two to tango, no? They don't seem to be interested in talks," said EU trade commissioner Karel De Gucht in an interview last week, speaking of the U.S. government.**

**Still, talks remain the only reasonable way out, according to most parties involved. "The WTO is all about diplomacy and politics," said Iain MacVay, a London-base lawyer for Steptoe Johnson LLP.**