

DS522 -- FACT SHEET

On Friday, 14 December 2018, Brazil will file its First Written Submission before the World Trade Organization (“WTO”) in DS522: *Canada - Measures Concerning Trade in Commercial Aircraft*. This dispute involves Brazil's WTO challenge to Canada's massive and systemic support in the form of federal, provincial, and local subsidies to Bombardier, Canada's aircraft producer, for the development, launch, and survival of the C-Series aircraft (now, the Airbus A220). In its submission, Brazil demonstrates that an "integrated web" of 19 subsidy programs conferring over USD 4 billion in subsidies to Bombardier violated Canada's WTO obligations under Articles 5 and 6 of the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”). If found in violation, Canada will be required to withdraw the subsidies or remove the adverse effects to Brazil, with consequent impact on the C-Series/A220 aircraft program.

PROCEDURAL BACKGROUND

On 6 February 2017, Brazil informally notified Canada that it would be requesting formal WTO consultations on 8 February 2017 to discuss subsidies to its aircraft sector. The next day, Canada and Bombardier held a press conference to announce publicly over CAD 350 million in additional subsidies to Bombardier. On 8 February 2017, Brazil formally requested consultations with Canada, and on 10 March 2017, the parties held consultations in Geneva. Unfortunately, the parties did not reach a mutually satisfactory solution, and on 18 August 2017, Brazil requested the establishment of a WTO dispute settlement panel. The Panel was ultimately established on 29 September 2017.

In October 2017, under applicable information-gathering rules, the WTO appointed a facilitator to solicit information from the parties. Canada refused to participate in the information-gathering process and filed a request for a preliminary ruling to prevent the information-gathering and the dispute itself from going forward. Given the lack of cooperation, the facilitator issued a report on 4 April 2018 reporting to the Panel that no information was received from Canada. On 9 April 2018, the Panel rejected Canada's request for a preliminary ruling.

Given Canada's failure to cooperate in the previous information-gathering process, Brazil requested that the Panel request information from Canada regarding the subsidy programs and associated adverse effects. On 28 May 2018, under applicable provisions of the WTO's *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), the Panel asked Canada and Brazil for information necessary for resolving the dispute. On 21 August 2018, Canada and Brazil responded to the Panel's questions.

KEY FACTS UNDERLYING THE DISPUTE

Bombardier's Struggle in the Aerospace Industry

In the early 2000s, Bombardier considered expanding into the 90- to 135-seat small narrowbody jet market. However, beleaguered by debt and low investor confidence, Bombardier needed Canada's support to expand. Despite numerous and obvious risks, including Bombardier's poor performance at the time, the Government of Canada offered to provide Bombardier with CAD 350 million in "launch aid" for Bombardier's new C-Series jets. Quebec also offered CAD 118 million in launch aid to support the new C-Series program in exchange for Bombardier's commitment to locate the C-Series final assembly plant in Quebec.

In spite of commitments for significant government launch aid, Bombardier had to postpone the launch of the C-Series in 2006 because it could not obtain customers. Nevertheless, Canada significantly increased the depth and breadth of subsidies made available to Bombardier, enabling Bombardier to continue developing its plans for the C-Series. With renewed commitments from the federal, provincial, and local governments, Bombardier launched the C-Series program on 13 July 2008. The high-risk launch of the C-Series would not have been possible without the substantial, "integrated web" of government support at this critical time.

By mid-2015, Bombardier's C-Series program was years behind schedule, billions of dollars over budget, and far short of sales targets. Although Bombardier had obtained significant government subsidies to enable the launch of the C-Series, the program remained under severe threat of termination as Bombardier's financial position deteriorated rapidly. Bombardier's CEO even conceded that during this time, Bombardier was "on the brink of bankruptcy."

Again, ignoring market conditions and the severe financial situation of Bombardier, Quebec invested billions of dollars in the company, which enabled it to complete development and ramp up commercial production of the C-Series. These investments also gave Bombardier a financial cushion to aggressively market the C-Series to prospective airlines and secure sales by pricing far below costs. As a result of the massive subsidies to the C-Series, Bombardier fundamentally distorted the market for small narrowbody jets to the detriment of Brazil's aircraft manufacturer, Embraer.

Canada's Systemic Support of Bombardier Through WTO Inconsistent Subsidies

Bombardier's C-Series Program was created and sustained through comprehensive Canadian government support. As described above, the primary subsidies to Bombardier are for the launch and development of the C-Series in 2008 and for Bombardier to complete development and ramp up commercial production in 2015-16. Other subsidy programs complemented and supplemented these primary subsidies through the launch, development, and ramp up of C-Series production.

Primary subsidies for the development and launch of the C-Series include:

- Canada's provision of CAD 350 million in launch aid to Bombardier; and
- Quebec's provision of CAD 117 million in launch aid to Bombardier.

Other federal, provincial, and local subsidies that contributed to Bombardier's launch and development of the C-Series included hundreds of millions of dollars for the construction and operation of Bombardier's C-Series facility in Mirabel (Quebec), employment-related grants, tax subsidies, and R&D subsidies, including in the form of, for example, grants, in-kind or discounted services, access to equipment, intellectual property rights, and other contributions.

Despite the substantial amount of subsidies already provided, the costs of the C-Series escalated to over USD 5 billion, and Bombardier lacked the necessary liquidity to sustain the C-Series program (or even keep Bombardier from bankruptcy). Quebec came to the rescue again and provided the following primary subsidies that enabled Bombardier to complete development and ramp up commercial production of the C-Series:

- Quebec's provision, through Investissement Quebec, of USD 1 billion to Bombardier in exchange for a 49.5 per cent share in C-Series Aircraft Limited Partnership ("CSALP"); and
- Quebec's provision, through the Caisse de dépôt et placement du Quebec ("CDPQ"), of USD 1.5 billion to Bombardier in exchange for a convertible share investment in BT Holdco, a newly created holding company created to hold Bombardier's transportation business.

Other subsidies to address Bombardier's liquidity concerns and otherwise support Bombardier in completing development and ramping up production of the C-Series include CAD 120 million from Canada through amendments to the existing C-Series launch aid contribution agreements, at least CAD 252.5 million from Canada's Strategic Aerospace and Defence Initiative ("SADI"), and CAD 54 million from Canada's Technology Demonstration Program ("TDP").

Collectively, these subsidies from entities across all levels of the Canadian government provided a comprehensive and integrated web of support for Bombardier's C-Series aircraft.

Adverse Effects of Canada's Subsidies to Bombardier

Absent the significant support outlined above, Bombardier would not have launched the C-Series as and when it did and could not have offered (and continue to offer) prices below costs of production. Bombardier's pricing strategy, enabled by massive subsidies, fundamentally distorted the market for small narrowbody jets and threatens to continue causing adverse effects in the future.

One notable example of the effect of the subsidies to Bombardier involves the significant sales campaign for Delta. Due to massive government subsidization, Bombardier was able to make a significant sale to Delta involving 75 C-Series aircraft at discounts of 65 to 75 per cent below the

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aircraft list price. The price levels for this sale, as well as prices on sales to Air Canada and Air Baltic, were so low that Bombardier was forced to take a USD 500 million "onerous contract" charge on its financial statements. Bombardier's subsidy-enabled pricing has caused ripple effects in the aircraft market, with other airline CEOs expressing that they too want the same deal offered to Delta.

As detailed in Brazil's Submission, Canada's subsidies have caused serious prejudice to the interests of Brazil and threaten further serious prejudice in the future.