

## **Bombardier Spared Tariffs After ITC Finds Boeing Not Harmed**

By **Alex Lawson**

*Law360, New York (January 26, 2018, 4:12 PM EST)* -- The Trump administration will not move ahead with hefty tariffs on Bombardier Inc.'s C-Series commercial jets after the U.S. International Trade Commission unanimously ruled that the Canadian planes, though unfairly subsidized and sold at below-market prices, were not threatening U.S. producer Boeing.

The U.S. Department of Commerce had prescribed a 79.82 percent anti-dumping duty and 212.39 percent countervailing duty on the Bombardier jets, but those tariffs could only take effect if the commissioners found an affirmative injury. They instead did not perceive a threat to U.S. production, handing a win to Bombardier in the high-stakes trade battle.

"Today's decision is a victory for innovation, competition and the rule of law," the company said in a statement. "It is also a victory for U.S. airlines and the U.S. traveling public. The C Series is the most innovative and efficient new aircraft in a generation. Its development and production represent thousands of jobs in the United States, Canada and the United Kingdom."

The case carried big implications for the commercial airline industry as Bombardier looks to make inroads in the U.S. market with its CS-100, a transcontinental jet that generally seats between 100 and 110 passengers, serving a specific segment of the market that Boeing has neglected.

For its part, Boeing said it was "disappointed" that the ITC did not recognize the harm that it had suffered from the unfair trade practices uncovered by the Commerce Department last month.

"Those violations have harmed the U.S. aerospace industry, and we are feeling the effects of those unfair business practices in the market every day," the company said in a statement following the vote.

With its 4-0 decision on the books, the ITC has effectively closed the case, but Boeing said it would consider its legal options — likely a challenge at the U.S. Court of International Trade — when the commission releases its reasoning for the vote in the coming weeks.

The ITC vote comes after a testy hearing last month during which the companies butted heads over the looming tariffs. Also joining the fray was Delta Air Lines Inc., which agreed to buy between 75 and 125 of Bombardier's CS-100 aircraft for about \$19 million apiece, rankling Boeing.

"Delta is pleased by the ITC's ruling rejecting Boeing's anticompetitive attempt to deny U.S. airlines and

the U.S. traveling public access to the state-of-the-art 110-seat CS100 aircraft when Boeing offers no viable alternative,” the airline said.

The case also played out against the backdrop of the somewhat fraught North American Free Trade Agreement negotiations among the United States, Canada and Mexico, with the latest round in Montreal slated to wrap up in the coming days.

Boeing is represented by Robert T. Novick, Patrick J. McLain and Stephanie Hartmann of WilmerHale.

Bombardier Inc. is represented by Shara L. Aranoff, Peter Lichtenbaum and James M. Smith of Covington & Burling LLP.

The case is 100- to 150-Seat Large Civil Aircraft from Canada, Inv. Numbers 701-TA-578 and 731-TA-1368, in the U.S. International Trade Commission.

--Editing by Dipti Coorg.