

## ITC Says Delta's Bombardier Order Didn't Harm Boeing

By Kelly Knaub

*Law360 (February 15, 2018, 9:17 PM EST)* -- Several weeks after the U.S. International Trade Commission unanimously ruled that Bombardier's C Series commercial jets — though unfairly subsidized and sold at below-market prices — were not threatening U.S. producer Boeing, it issued an opinion Wednesday saying Boeing wasn't harmed when Delta ordered Canadian planes from Bombardier.

In a 194-page opinion detailing the rationale behind its decision not to impose tariffs on Bombardier Inc. jets, the ITC said it had determined that their import prices would not likely depress or suppress prices in the U.S. market or raise demand for more imports.

The commission also said it couldn't conclude that there would likely be more sales of Bombardier's 100- to 150-seat jets in the near future, or that Boeing and Bombardier would be competing against each other "head-to-head" in any sales campaigns that might take place.

"This finding necessarily limits the ability of subject imports to have adverse price effects," the ITC said.

The commission added that "Boeing lost no sales or revenues" as a result of Delta ordering Bombardier's jets.

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 in late January.

Bombardier CEO Alain Bellemare called the decision "a victory for innovation, competition and the rule of law" during an earnings call Thursday morning, according to a transcript of the call posted on Seeking Alpha, a crowd-sourced website for financial markets.

"The ITC correctly recognized that the 737 family of aircraft, with a deep backlog and record profits, is not under threat from our sale to Delta," Bellemare said. "The C Series serves a smaller aircraft market that Boeing abandoned years ago."

He added that the company is "moving full-speed ahead" to finalize its partnership with Airbus and looks forward to delivering the C Series to the U.S. market.

“We are pleased with the ITC’s decision, which gives Bombardier a resounding victory in this dispute,” Shara Aranoff, an attorney representing Bombardier, told Law360 via email on Thursday.

The case carried big implications for the commercial airline industry as Bombardier looks to make inroads in the U.S. market with its CS100, a transcontinental jet that generally seats between 100 and 110 passengers, serving a specific segment of the market that Boeing has neglected.

Boeing said in January it would consider its legal options — likely a challenge at the U.S. Court of International Trade — when the commission released its reasoning for the 4-0 vote.

On Thursday, Boeing spokesman Dan Curran said the company was reviewing the decision and declined to comment further.

The ITC vote came after a testy hearing in December 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 CS100 aircraft for about \$19 million apiece, rankling Boeing.

Delta said in a statement Thursday that the “decision makes clear that imports of the innovative CS100 will not harm Boeing because Boeing has no aircraft to offer in this size range,” adding that the airline “still intends to take as many deliveries as possible from the new Airbus/Bombardier facility in Mobile, Alabama, as soon as that facility is up and running.”

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.

Delta is represented by Yohai Baisburd and Daniel Morris of Dentons US 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.

--Additional reporting by Alex Lawson. Editing by Marygrace Murphy.