

Washington Trade Daily

Volume 20, Number 99

Thursday, May 19, 2011

Trade Reports International Group

Mixed Ruling on Airbus

Geneva – The World Trade Organization’s highest court for trade disputes – the Appellate Body – yesterday issued a mixed ruling in the long-running case over the legality of European subsidies for aircraft manufacturer Airbus (WTD, 4/15/11).

The Appellate Body reversed several findings of an earlier dispute settlement panel in favor of Boeing last year. In its over 600-page report, the AB’s three member bench dismissed the panel’s findings that the aid to Airbus “granted under the German, Spanish, and UK A380 contracts” amounted to a prohibited export subsidy under WTO rules. It also turned down the US’ export subsidy challenge on other models, ruling that Brussels is not required to withdraw such subsidies without delay.

The AB, however, concurred with the panel that the launch aid loans received by Airbus from the four EU member-states conferred a distinct financial benefit because the interest charged on these loans was well below what lenders in the market would have charged during those periods.

The Appellate Body said the EU and the US must negotiate what ought to be the appropriate rate of return for launch aid and member-state financing programs to determine the magnitude of remedies. It argued that Airbus continued to receive subsidies over the years and upheld the panel’s decision to include actionable subsidies prior to January 1, 1995.

Serious Prejudice

The Appellate Body concurred with the panel’s findings that launch aid/member state financing received by Airbus caused “serious prejudice” in three particular cases. The AB cited French, German, and Spanish launch aid for A300, A310, A320, A330/340, and A380 projects, French launch aid for the A330-200 project, the French and Spanish launch aid for the A340-500/600 project, and UK launch aid for A320, A330-A340, and A380 projects.

In similar vein, the AB said the capital-injection by the French government to Aerospatiale in 1987, 1988, and 1994, Credit Lyonnais’s contribution to Aerospatiale in 1992, the German government’s assistance to Deutsche Airbus and the infrastructure measures caused serious prejudice to Boeing.

The AB, however, rejected the panel’s findings on equity infusion in Dassault Aviation, infrastructure measures in Toulouse and Hamburg and research and technology development grants as actionable subsidies.

Large Markets

It also cut down the panel’s findings of displacement suffered by Boeing due to Airbus’ actionable subsidies to three large civil aircraft markets – the European Union, Australia and China. The AB rejected the panel’s finding that the LCA markets in Brazil, Mexico, Singapore, Taipei and India also witnessed displacement. But it upheld the panel’s finding of the lost sales that included sales campaigns by Airbus in seven cases. It turned down the US challenge against the panel’s finding that it had failed to establish the existence of a launch aid/member-state finance program, said EU officials.

However, the AB concurred with the panel’s findings that without launch aid and other subsidy programs Airbus would not have had a large share of the market in the LCA market and would not have been able to secure all the sales lost by Boeing to Airbus.

“We realize that, after five years of panel proceedings and almost ten months of appellate review, there are a number of issues that remain unresolved in this dispute,” said the AB’s three-member bench comprising David Unterhalter, Lilia R Bautista, and Peter Van den Bossche.

“Some may consider that this is not an entirely satisfactory outcome,” the AB concluded.



Both the United States and the European Union simultaneously claimed victory.

US Trade Representative Ambassador Ron Kirk said “the WTO Appellate Body has confirmed without a doubt that Airbus received massive subsidies for more than 40 years and that these subsidies have greatly harmed the United States, including causing Boeing to lose sales and market share in key markets throughout the world.”

US trade officials briefing reporters yesterday said the decision confirmed that Airbus received some \$18 billion in subsidies that were inconsistent with the EU’s WTO commitments and harmed the US industry.

At the same time, European Union Trade Commissioner Karel de Gucht said he is “particularly pleased with this important result” as “the US central claim that Airbus received prohibited export subsidies has been dismissed in its entirety.”

EU officials told reporters that there are no “quantifiable” remedy findings suggested by the AB, arguing that the number of findings against the EU’s actionable subsidies that conferred benefit are much lower than what was suggested in the panel. But they admitted that the magnitude of the subsidies granted before 1995 and afterwards have to be calculated based on the AB’s findings.

US officials were quick to point out that the ruling still requires Brussels to either withdraw the subsidies or remove the adverse effects they create.

USTR Fact Sheet

Following is a USTR fact sheet on the case:

In findings announced on May 18, 2011, the World Trade Organization (WTO) Appellate Body found in favor of the United States in the European Union's appeal of a WTO Panel's findings that launch aid and other subsidies provided by European countries to Airbus over the last four decades caused adverse effects to the interests of U.S. businesses and workers.

Here are key findings confirmed by the WTO Appellate Body:

Launch Aid – \$15 billion

The Appellate Body confirmed the panel's findings that European governments have provided Airbus approximately 15 billion dollars (face value) in launch aid – subsidizing every model of aircraft ever produced by Airbus in the last 40 years. This preferential financing permitted Airbus to introduce new models by offsetting the enormous costs and extremely high risks that characterize the development of large civil aircraft.

The Appellate Body confirmed the Panel's findings that the launch aid enabled Airbus to launch and bring to market each of its models of aircraft when and as it did.

Other Subsidies - \$3 billion

The Appellate Body confirmed that Germany and Spain provided massive infrastructure and infrastructure-related grants between 1989 and 2001, including the creation of land in Hamburg to allow Airbus to expand production facilities and extending an airport runway in Bremen.

The Appellate Body confirmed that France and Germany provided more than a billion dollars of equity infusions to Airbus between 1987 and 1998.

Adverse Effects for the U.S. Aircraft Industry

The Appellate Body confirmed that all of these subsidies caused adverse effects to the interests of the United States, in the form of significant market share losses for Boeing in the European Union and in other countries, including China and Korea. The Appellate Body also confirmed that the subsidies caused significant lost sales involving hundreds of aircraft to easyJet, Air Berlin, Czech Airlines, Air Asia, Iberia, South African Airways, Thai Airways International, Singapore Airlines, Emirates Airlines, and Qantas.

The Appellate Body confirmed the Panel's findings that over a 40-year period the European launch aid enabled Airbus to launch and bring to market each of its models of aircraft when and as it did and that the subsidies resulted in Boeing's lost market share and significant lost sales of Boeing aircraft.

New Syria Sanctions

The White House yesterday announced the imposition of sanctions against Syrian President Bashar al-Assad and six other senior officials in what it called an effort to increase pressure on the government of Syria to end its use of violence against its people and begin transitioning to a democratic system that protects the rights of the Syrian people (WTD, 5/2/11).

At the same time, the Treasury Department announced the designation of 10 individuals and entities under an earlier White House order targeting Syrian officials and others responsible for human rights abuses, including repression against the Syrian people, as well as a set of companies tied to Syrian corruption. The United States continues to strongly condemn the Syrian government's use of violence and intimidation against its people and urges President al-Assad and his regime to answer the calls of the Syrian people for a more representative government and embark upon the path of meaningful democratic reform, Treasury said.

"The actions the Administration has taken today send an unequivocal message to President Assad, the Syrian leadership, and regime insiders that they will be held accountable for the ongoing violence and repression in Syria," said Acting Under Secretary for Terrorism and Financial Intelligence David S. Cohen. "President al-Assad and his regime must immediately end the use of violence, answer the calls of the Syrian people for a more representative government, and embark upon the path of meaningful democratic reform."

In addition, the Commerce Department's Bureau of Industry and Security suspended certain licenses for the export and reexport to Syria of US origin parts and components needed for the overhaul/refurbishment of certain long-range, high capacity commercial aircraft not currently in service.

SMEs And Green Growth

Big Sky, Montana – For small and medium sized businesses, the best thing that Asia-Pacific Economic Cooperation governments – including the United States – can do to help spur entrepreneurship is to start eliminating barriers that thwart their growth (WTD, 5/18/11).

In opening remarks to an afternoon-long Asia-Pacific Economic Cooperation small and medium-size enterprises forum on enhancing competitiveness through green growth, Commerce Secretary Gary Locke said key objectives during this year's APEC 2011 meeting include strengthening economic integration in the region by removing barriers to trade and investment, creating an open and transparent business environment and establishing a regulatory framework that expands opportunities across the board for companies of all sizes.

APEC members need to ask themselves if they are pursuing policies that unleash innovation and enable entrepreneurs, Mr. Locke continued.

The Commerce Secretary cited recommendations from a recent US International Trade Commission study –

- reduce excessive transportation costs and customs clearance delays;
- make it easier for them to protect their own intellectual property;
- ease procedures for taking advantage of preferential tariff rates and other aspects of trade agreements; and
- provide easier access to financing and trade information.

Mr. Locke credited the APEC member countries for valuing the power of thriving small businesses – especially when it comes to spurring clean growth technologies and services. That is another theme of this week's meetings among public and private sector participants from the region.

Over half the world's wealth is created in the 21 APEC economies. Some 44 percent of global trade is among APEC members. Last year, total US-APEC trade was \$2 trillion – a staggering 25 percent increase over 2009.

APEC Food Safety Pact

Big Sky, Montana – The 21 members of the Asia-Pacific Economic Cooperation forum signed a memorandum of understanding with the World Bank yesterday to provide more capacity building funds to the poorer nations of the region to boost their own food safety and systems (WTD, 5/18/11).

Opening the signing ceremony here, Deputy US Trade Representative Demetrios Marantis pointed out that the APEC region encompasses nearly half of the world's food production. APEC, he said, represents a "critical nexus between the quality of the regulatory environment ... and the openness to trade and investment and ultimately with the vibrancy of economic growth and quality of life in the region."

The APEC subcommittee on standards and conformance's food safety cooperation forum and the World Bank will work together on training programs to improve food safety standards and practices in the region, as well as to facilitate trade.

Australia and China cochair the effort this year. Also participating was Grocery Manufacturers Association President Pam Bailey, whose organization is leading in the APEC public/private sector Partnership Training Institute Network.

US Food and Drug Commissioner Margaret Hamburg said her agency intends to step up its own training efforts with food-producing countries in the region. Congress, she noted, has given FDA a mandate in recent years to better assure the safety of US food imports. But relying only on regulators is not enough. FDA will do its own travel abroad as well as work cooperatively with international organizations and the private sector to help bring up safety standards for producers as well as along the supply chain.

Underway in the year-old initiative are 30 food safety projects in the region, commented Deputy Director General of China's Import-Export Food Safety Bureau Lin Wei. They focus on achieving better food safety standards and harmonization among the nations' individual standards.

Determination on TPP

New Zealand Minister of Foreign Affairs Murray McCully – currently visiting Washington – said yesterday he has heard only “positive, quite determined” from US government officials and lawmakers about the ongoing TransPacific Partnership negotiations (WTD, 5/17/11).

Speaking to a program sponsored by the Center for Strategic and International Studies, Mr. McCully said the TPP holds out the promise of a single Pacific market.

Hurdles to getting the TPP done are largely political – as is true of all trade agreements, he said. But all participants so far appeared determined to produce the highest-standard trade pact possible, even though it means making tough political choices.

A sign of that determination to take on political issues is the fact that Japan – although it has delayed plans to join the TPP in the wake of the massive earthquake and tsunami – is still moving ahead with some of the highly-political issues like agricultural reform required to join the TPP, he said.

Trade ministers meet today in Big Sky, Montana, on the sidelines of the Asia Pacific Economic Cooperation forum meeting to assess the status of the ongoing negotiations.

Loui for Ex-Im Bank

President Obama yesterday announced his intention to nominate Patricia M. Loui to be a member of the US Export-Import Bank.

Ms. Loui is the founder and chair of OmniTrak Group Inc., an international marketing and research consultancy focused on Hawaii and Asia. Formerly president of the East West Center Association, Ms. Loui previously served as vice president of marketing, planning, and development at

the Bank of Hawaii and as a United Nations Development Program and UNESCO development planner in Asia.

Around the Globe

- European Union countries have agreed to impose a visa ban and asset freeze on Syrian President Bashar al-Assad, accused by dissidents of killing more than 1,000 people in recent weeks, the EU Observer reported (see related story in this issue). All 27 EU ambassadors in the Political and Security Committee – a high-level EU forum for dealing with international crises – on Tuesday evening endorsed a list of 10 more names, including the president himself, to be added to a previous sanctions register of 13 regime members.

The PSC also agreed a statement to be rubber-stamped by EU foreign ministers in Brussels on Monday threatening future financial sanctions. “The EU is determined to take further measures without delay should the Syrian leadership choose not to swiftly change its current path,” the draft communique says. The text mentions a block on new European Investment Bank lending to Syria, currently worth 1.3 billion. But the bank is legally obliged to honor existing contracts.

- Iran accused Washington of engaging in “psychological warfare” after the US Treasury added an Iranian state bank to its list of blacklisted companies, semi-official news agency ISNA reported on Wednesday (WTD, 5/18/11). The United States on Tuesday blacklisted Iran's Bank of Industry and Mine saying it was taking part in an increasingly sophisticated government campaign to evade international sanctions.

“Americans try to exaggerate by using media as a propaganda tool ... It is just psychological warfare and the media should not pay attention to such things,” Iran's Economy Minister Shamseddin Hosseini was quoted as saying by ISNA. “Since the victory of the 1979 Islamic revolution, all the US governments tried to impose their arrogant wills through various means, but they all failed,” he added.

The US Treasury said it labeled the Bank of Industry and Mine as a proliferator of weapons of mass destruction for handling transactions on behalf of two previously sanctioned institutions, Bank Mellat and Europaisch-Iranische Handelsbank. It was the 21st Iranian state bank added to the U.S. blacklist.

- The US ambassador to New Delhi said Tuesday that India needs to consider whether it is delivering on its side of the new close alliance with the US and do more to tackle graft and encourage foreign investment or the nation's economic expansion risks losing steam (WTD, 5/16/11). “India needs to be asking itself: Is it delivering on the global partnership?” Timothy Roemer said in an interview with *The Wall Street Journal* as he prepares to leave the post next month and return to the US. “The international business community that was pouring money and investment potential into India last year and the year before is now pausing and saying: ‘Where is India heading in terms of investment opportunities, the corruption challenge and inflation?’”

If this perception doesn't change, he added, India could see downward revisions of as much as two percentage points to estimates for growth this year, considering the impact of higher oil prices and high inflation. Earlier this month, C. Rangarajan, chairman of the Prime Minister's Economic Advisory Council, forecast Gross Domestic Product growth in the year ending March 31, 2012, of 8.5%, below the government's forecast of 9%, as a series of interest rate rises to combat high inflation crimps growth. A spokesman for the Prime Minister's Office had no immediate comment.

Foreign direct investment in India, after rising steadily for years, totaled \$18.4 billion from April 2010 to February, down 25% from a year earlier, according to Indian government data, amid a series of corruption scandals that have paralyzed the government and a lack of progress on economic reforms that would make the market more attractive for foreign firms.

Among the biggest frustrations for the U.S. was India's recent decision not to shortlist two US-made medium-range fighter jets in the global bid process for a contract estimated at about \$10

billion. Instead, India's defense ministry selected two European-made jets as finalists. "We're going to continue to have a strategic defense relationship with India – one deal won't make or break it but to not have one of the US companies make it to the final two or three is puzzling," Mr. Roemer said. He added, however, that he expected an announcement in the next few weeks that the US, as reported, would win a roughly \$4 billion contract for Boeing C-17 military transport aircraft, a deal that he said would support thousands of US jobs. A spokesman for the Indian Air Force confirmed the deal is expected to happen soon.

- Japan's economy must get back on a recovery track next year or it will suffer a further exodus in the manufacturing industry, the country's minister for Economy, Trade and Industry said Wednesday according to a Dow Jones news service report from Tokyo. The giant earthquake on March 11 and nuclear plant disaster have caused a breakdown in many of Japan's supply chains, caused power shortages and raised electricity rates, Minister Banri Kaieda said at a news conference.

"If this situation continues, there is a danger of Japanese manufacturers taking their facilities overseas," the minister said. His comments follow Tuesday's release of a new road map for stabilizing the stricken Fukushima Daiichi nuclear complex by plant operator Tokyo Electric Power Co., or Tepco.

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