

Financial Times (Nov. 29, 2016)

US ordered to halt illegal tax breaks For Boeing

Victory for European rival Airbus as WTO declares subsidy ‘prohibited’

The US has been ordered to withdraw illegal state tax breaks for Boeing within three months, giving rival Airbus the latest victory in a 12 year battle over government support for the world’s two biggest aircraft makers.

The World Trade Organisation has found that a tax break granted by the state of Washington to Boeing in 2013 to ensure the US company produced its newest long-range jet there amounted to a prohibited subsidy.

This is only the fifth time in the WTO’s history that it has defined a subsidy as “prohibited”.

“It is a red line you are not permitted to cross,” said Brendan McGivern, partner with White & Case, the law firm, in Geneva. “This is one of the few really clear no-go areas in WTO rules.”

The ruling comes as the pace of the long battle between Airbus and Boeing accelerates and the election of Donald Trump as the next US president raises questions over the potential for a trade war.

Two months ago the WTO found that the EU had failed to unwind billions of dollars in unlawful subsidies to Airbus. The ruling could allow the US to impose tariffs on European goods. However, the EU is appealing against the findings. Next year the WTO will also rule on the EU’s claim that the US has equally failed to withdraw billions in illegal support.

The row between the US and EU on behalf of their flagship aerospace companies has long been one of the most contentious battles in the global trade system and has cost both sides millions of dollars. The dispute reached a head in 2010 and 2011 when the WTO found that both companies had collected billions in unlawful assistance.

The EU, which brought the case against Washington's support in 2014 as a separate claim, hailed the latest decision as a significant victory. "The panel has found that the additional massive subsidies of \$5.7bn provided by Washington state to Boeing are strictly illegal," said Cecilia Malmström, EU trade commissioner. "We expect the US to respect the rules, uphold fair competition, and withdraw these subsidies without any delay."

The EU's claim covers subsidies that would have applied between 2024 and 2040 and which Airbus argues would have covered virtually the entire cost of developing Boeing's 777X twin aisle aircraft, due to enter service in 2020.

Boeing however dismissed the EU's sums as "laughable", saying the ruling affected only \$50m of support. The WTO had rejected six of the EU's seven challenges to tax incentives. "In rejecting virtually every claim made by the EU in this case, the WTO found today that Boeing has not received a penny of impermissible subsidies," said J. Michael Luttig, Boeing's general counsel. The US, meanwhile, has claimed that Airbus has received up to \$22bn in unlawful support over several decades.

Richard Aboulafia, aerospace analyst at Teal Group, said the WTO rulings were not expected to hit either company financially. "One of the flaws of the WTO complaints process is that aid can be reconfigured in different ways, and then the process has to start all over again," he said.

Tom Enders, Airbus chief executive, called on the US to sit down for talks on a new global settlement for government support in the face of a rising threat from China's heavily state subsidised aircraft industry. "The only way out of [the] ridiculous series of disputes initiated by the US is to agree on a set of globally applicable rules ... which would benefit both sides of the Atlantic. The duopoly is no longer the reference in the future. We need a global framework," he said.