Subsidies, Retaliation, and the Limits of WTO Dispute Settlement: The Boeing–Airbus Dispute

Avery Blaskie

A case study of European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (WTO DS316)

Executive Summary

From 2004 to 2021, the United States and the European Union fought the longest and most expensive dispute in the history of the World Trade Organization (WTO). The United States argued that European governments had given Airbus billions of dollars in below-market "launch aid" loans, allowing it to take sales and market share from Boeing. The WTO agreed. It found that the loans were illegal subsidies under the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and in 2019 it authorized the United States to impose tariffs on up to **$7.5 billion** of European goods each year, the largest retaliation award in WTO history.

The EU, however, won a parallel case against U.S. support for Boeing and received authority to retaliate against about **$4.0 billion** of American goods. With both sides holding tariff weapons and neither willing to fully comply, the governments agreed in June 2021 to suspend all tariffs for five years.

This report finds that the case significantly clarified international subsidy law but also exposed the limits of WTO dispute settlement. Legal victory did not produce compliance. The dispute was ultimately resolved through diplomacy, and the costs of retaliation fell largely on unrelated industries such as wine, cheese and spirits.

1. Introduction

Governments have long supported industries they consider strategically important. International trade law tries to draw a line between legitimate support and subsidies that unfairly distort competition between countries. Few industries test that line as sharply as commercial aviation, where two firms, Boeing and Airbus, divide nearly the entire global market for large passenger jets.

This report examines *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (WTO dispute DS316), commonly known as the Airbus case. It addresses three questions:

1. Why did the WTO find European support for Airbus to be illegal, and what legal principles did it establish?
2. What economic forces explain why governments subsidize aircraft manufacturers, and who bore the costs of the resulting trade conflict?
3. What does the outcome reveal about the effectiveness of the WTO in resolving disputes between major economies?

The report draws on the WTO's official dispute records, the U.S. Trade Representative's announcement of the 2021 settlement, and published commentary on the case. Section 2 provides background on the industry.

Section 3 traces the dispute's procedural history. Sections 4 and 5 analyze the legal and economic issues, and Section 6 evaluates the outcome and its implications.

2. Background

2.1 The large civil aircraft industry

The market for large civil aircraft (LCA), passenger jets with 100 or more seats, is a **duopoly**. Boeing, headquartered in the United States, and Airbus, headquartered in Europe, are the only two firms that produce them at scale. Developing a new aircraft model costs billions of dollars and can take a decade, and a manufacturer typically needs to sell hundreds of planes before it earns a return. Because each order from a major airline can be worth billions, sales campaigns are fiercely contested and highly sensitive to price.

2.2 The rise of Airbus and launch aid

Airbus was formed in 1970 as a consortium of French and German aerospace companies, later joined by Spanish and British partners. At the time, American firms dominated the market. European governments viewed an independent aircraft industry as important for jobs, technology and national prestige, and they financed much of Airbus's development.

The main tool was **launch aid**, which the WTO proceedings called Launch Aid/Member State Financing (LA/MSF). Under LA/MSF, the governments of France, Germany, Spain and the United Kingdom lent Airbus money to develop each new model, from the original A300 to the double-decker A380. These loans had three unusual features. They carried interest rates below what commercial lenders would charge. They were repaid through a levy on each aircraft delivered, so if a model sold poorly, governments absorbed the loss. And repayments were concentrated late in each program's life, shifting risk from Airbus to taxpayers. Airbus also benefited from government-funded infrastructure, equity infusions, debt forgiveness, and research grants.

2.3 The 1992 Agreement and the road to litigation

The United States and the European Communities first tried to manage the conflict through negotiation. In 1992, they signed a bilateral **Agreement on Trade in Large Civil Aircraft**, which capped direct government development support at 33 percent of a program's cost and limited indirect support.

The agreement held for over a decade, but the market shifted. By the early 2000s, Airbus had overtaken Boeing in annual deliveries and announced plans for new government-supported programs. In October 2004, the United States withdrew from the 1992 Agreement and filed a complaint at the WTO. The EU responded months later with its own complaint against U.S. support for Boeing.

3. The Dispute

The United States brought its complaint against the European Communities and four member states: France, Germany, Spain and the United Kingdom. Australia, Brazil, Canada, China, Japan and Korea participated as third parties. The case passed through an original proceeding, two compliance proceedings, and an arbitration to set the level of retaliation, spanning nearly 17 years.

Table 1. Key events in the Airbus dispute (DS316) and its resolution

Date	Event	Result
June 15, 2021	U.S.–EU Cooperative Framework for Large Civil Aircraft	All retaliatory tariffs suspended for five years
Oct. 26, 2020	WTO authorizes EU retaliation in the parallel Boeing case (DS353)	EU may target about $4.0 billion per year of U.S. goods
Dec. 2, 2019	Second compliance panel report	EU still not in compliance; EU appeal left undecided
Oct. 18, 2019	U.S. tariffs take effect	10% on European aircraft; 25% on goods such as wine, cheese and whisky
Oct. 2, 2019	Arbitrator sets level of retaliation	U.S. may target up to $7.5 billion per year of EU goods
May 15, 2018	First compliance Appellate Body report	EU failed to remove adverse effects; A350XWB loans are subsidies
Sept. 22, 2016	First compliance panel report	EU not in compliance
Dec. 1, 2011	EU reports that it has complied	U.S. disputes this and requests retaliation
June 1, 2011	WTO adopts rulings	EU must remove adverse effects or withdraw subsidies
May 18, 2011	Appellate Body report	Launch aid caused serious prejudice; export subsidy finding reversed
June 30, 2010	Panel report	Launch aid loans are specific subsidies
Oct. 6, 2004	U.S. requests consultations	U.S. exits the 1992 Agreement

Source: WTO dispute pages for DS316 and DS353; Office of the U.S. Trade Representative.

4. Legal Analysis

4.1 The legal framework

The SCM Agreement divides subsidies into two categories. **Prohibited subsidies**, those contingent on exports or on the use of domestic over imported goods, are illegal in themselves. **Actionable subsidies** are legal unless the complaining country proves they cause "adverse effects" to its interests. To prove an actionable subsidy, the United States had to show a financial contribution by a government, a benefit to the recipient, specificity to a particular firm or industry, and adverse effects, such as "serious prejudice" to U.S. trade.

4.2 Were the loans subsidies?

The central question was whether launch aid conferred a **benefit** on Airbus. Under WTO precedent, a loan confers a benefit if its terms are better than the borrower could obtain on the commercial market. Because no private lender had ever offered unsecured, success-dependent loans for an aircraft launch, there was no direct market comparison. The panel therefore built a benchmark: Airbus's general corporate borrowing rate plus a premium for the risk that a new aircraft program would fail. Measured against this benchmark, every launch aid loan was below market. The Appellate Body upheld this approach, and it also found that each loan was **specific** because it was negotiated solely with Airbus.

4.3 Were they prohibited export subsidies?

The panel initially found that three A380 loans were prohibited export subsidies, since the governments knew most A380s would be sold abroad. The Appellate Body reversed this finding. It reasoned that if the expectation of exports were enough, nearly any subsidy to an export-oriented company would be prohibited.

Instead, it held that a subsidy is export-contingent only if it is **"geared to induce"** the recipient to export more, relative to domestic sales, than it would without the subsidy. This narrower standard has become one of the case's most important legal contributions.

4.4 Did the subsidies harm the United States?

The EU argued that subsidies granted before the WTO was created in 1995 could not be challenged. The Appellate Body rejected this, holding that the relevant question is whether a country is causing harmful effects *today*, regardless of when the subsidy was granted.

To assess harm, the WTO compared the actual market with a hypothetical one in which launch aid never existed. It concluded that without launch aid, Airbus could not have brought its aircraft to market on the same timeline, and possibly not at all. The subsidies therefore caused **significant lost sales** to Boeing in campaigns involving airlines such as easyJet, Emirates, Qantas and Singapore Airlines, and **displaced** Boeing aircraft from certain markets, including the EU. The EU's argument that later privatization transactions had "extinguished" the subsidies was accepted in principle but not proven on the facts.

4.5 Compliance and retaliation

WTO rules required the EU to either withdraw the subsidies or remove their adverse effects. The EU argued that most of the loans had reached the end of their expected lives and no longer existed. In 2018, the Appellate Body agreed that expired subsidies need not be withdrawn, but held that the EU still had to address their **continuing effects** on the market, which it had not done. It also found that new launch aid for the Airbus A350XWB was itself a subsidy.

Because the EU had not complied, an arbitrator set the level of U.S. retaliation in 2019. Under the SCM Agreement, countermeasures must be "commensurate with the degree and nature of the adverse effects." Based on the value of Boeing's lost sales and market impedance, the arbitrator authorized up to **$7,496.6 million** per year.

5. Economic Analysis

5.1 Why governments subsidize aircraft makers

The aircraft industry has three features that make it unusually attractive for government support. First, it has enormous **fixed costs**: billions must be spent on design and testing before a single plane is sold. Second, it has steep **learning curves**, meaning the cost of building each aircraft falls as a manufacturer gains experience. Third, these **economies of scale** mean the world market can support only a few producers.

In markets like this, economic theory suggests that a subsidy can change the outcome of competition. Under **strategic trade theory**, associated with economists James Brander and Barbara Spencer, a government subsidy can make its domestic firm's commitment to enter a market credible, discouraging foreign rivals and shifting profits toward the home country. Airbus is often cited as the clearest real-world example: without government support, Boeing might have retained a near-monopoly on large passenger jets.

5.2 Who gained and who paid

The effects of the subsidies were mixed. Competition between two subsidized manufacturers likely produced more aircraft models and lower prices than a single-producer market would have, which benefited airlines and, ultimately, travelers. European workers and suppliers gained from a domestic aerospace

industry. The costs fell on European taxpayers, who absorbed the risk of failed programs like the A380, and on Boeing, which lost sales it would otherwise have won.

5.3 The cost of retaliation

Once the dispute escalated to tariffs, the costs spread well beyond aviation. WTO rules allow retaliation against *any* goods from the offending country, not just the industry in dispute. As a result, the 25 percent U.S. tariffs imposed in October 2019 fell on European products such as French wine, Italian cheese, Spanish olives and Scotch whisky. The EU's retaliation targeted American goods ranging from agricultural products to spirits. Farmers, winemakers and importers who had nothing to do with aircraft became casualties of the conflict.

This pattern reflects a broader lesson about trade wars. Retaliatory tariffs are designed to create political pressure by imposing costs on visible, often politically sensitive industries. They act as a tax on consumers in the retaliating country and as a penalty on exporters in the targeted country, while doing little to help the industry originally harmed.

6. Outcomes and Implications

6.1 The mirror case against Boeing

In the parallel dispute *United States – Measures Affecting Trade in Large Civil Aircraft* (DS353), the EU challenged U.S. support for Boeing, including a Washington State tax break for aircraft manufacturers and aeronautics research funding from NASA and the Department of Defense. The WTO found that several of these measures were also illegal subsidies that harmed Airbus, and in October 2020 it authorized the EU to retaliate against about $4.0 billion of U.S. goods per year.

The result was a stalemate in which **both sides lost**. Each had been found to unlawfully subsidize its own manufacturer, and each held the right to impose tariffs on the other. In 2020, Washington State repealed its tax break and the EU amended the A350XWB loans from France and Spain to reflect market rates, but neither government accepted that the other had fully complied.

6.2 The 2021 truce

On June 15, 2021, the U.S. and EU announced a **Cooperative Framework for Large Civil Aircraft**. Both sides suspended their retaliatory tariffs for five years and agreed to work toward common rules on financing, research support, and transparency. Notably, they also committed to jointly address non-market practices by third countries, a reference widely understood to mean China's state-backed aircraft maker, COMAC. The dispute that began as a transatlantic rivalry ended partly as an alliance against a new competitor.

6.3 Significance and critiques

The case made important contributions to international trade law. It produced the WTO's most detailed guidance on how to measure a subsidy's benefit, when a subsidy counts as an export subsidy, and what a country must do to comply with an adverse ruling. Its $7.5 billion award remains the largest in WTO history.

However, the case also drew substantial criticism:

- **Litigation did not change behavior.** Both governments continued to support their manufacturers throughout the 17-year dispute, and the final resolution came through negotiation rather than compliance.

- **The analysis was speculative.** Determining what the aircraft market would look like if Airbus had never received launch aid required the WTO to imagine an alternative history of the industry. Some commentators argue this made precise findings of lost sales unreliable.
- **The export subsidy standard is hard to prove.** The Appellate Body's "geared to induce" test, while logical, sets a high bar that may allow large, export-focused subsidies to escape the strictest rules.
- **The appeal was never decided.** The EU's final appeal in December 2019 reached the Appellate Body just as it lost its quorum, after the United States blocked the appointment of new members. The case therefore illustrates the broader crisis in WTO dispute settlement.

7. Conclusion

The Boeing–Airbus dispute shows both the strengths and the limits of the international trading system. On the legal side, the WTO carefully applied the SCM Agreement to a highly complex industry. It confirmed that below-market government loans to Airbus were illegal subsidies that cost Boeing sales, clarified when a subsidy becomes a prohibited export subsidy, and established that decades-old subsidies can be challenged for their present effects.

On the practical side, however, legal victory did not produce compliance. Because both the United States and the EU were found to have subsidized their aircraft makers, each side held leverage over the other, and the dispute ended in a negotiated truce rather than a final judgment. The costs of the conflict fell heavily on unrelated industries caught in the crossfire of retaliatory tariffs.

The case's most lasting lesson may be that rules alone cannot resolve disputes over industries that governments view as strategically vital. As new competitors such as China's COMAC enter the aircraft market, and as governments expand support for industries like semiconductors and clean energy, the questions raised by this dispute about where legitimate support ends and unfair subsidy begins will only become more important.

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