Boeing vs Bombardier Trade Dispute: How Anti-Dumping Law Reshaped the Global Aircraft Market

A legal analysis of the Boeing-Bombardier dispute, WTO trade remedy law, anti-dumping rules, subsidies, and the Airbus CSeries acquisition. Air Travel

By **AryanGupta** — July 5, 2026 — Updated: July 5, 2026 — COMPETITION LAW No Comments

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Boeing v. Bombardier Trade Dispute: Market Foreclosure Through Trade Remedy Law

In April 2017, The Boeing Company (Boeing) filed a 1,039-page petition with the United States Department of Commerce (DoC) and the United States International Trade Commission (USITC), alleging that Bombardier Inc. (Bombardier) had sold 75 CS100 aircraft to Delta Air Lines (Delta) at approximately USD 19.6 million per unit, some 41% below Boeing's stated production cost of USD 33.2 million, and had received over USD 2.5 billion in unlawful government subsidies.

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By then, the damage was irreversible: Bombardier had already transferred a 50.01% controlling stake in the CSeries program to Airbus for one Canadian dollar.

This case is not a trade dispute that went wrong. It is a study in how trade remedy law can be deployed as a mechanism of market foreclosure.

I. The Market and Legal Framework

Commercial Aviation Market Structure

The barriers to entry are extraordinary, involving decades of engineering development and multi-billion-dollar capital cycles.

In this market, a flagship carrier order carries competitive significance well beyond its transaction value. Losing one to a newer entrant can feel existential to an incumbent.

Trade Remedy Legal Framework

The legal framework invoked was the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) and the Agreement on Subsidies and Countervailing Measures 1995 (the SCM Agreement).

Under the Anti-Dumping Agreement, three cumulative elements must be proven:

- The existence of dumping.
- Material injury to a domestic industry.
- A causal nexus between the two.

Injury analysis must be directed at the domestic industry producing the like product, defined under Article 2.6 of the Anti-Dumping Agreement as a product identical or closely resembling the imported product.

This requirement proved dispositive against Boeing.

Delta Air Lines' Aircraft Requirement

Delta had specifically sought aircraft in the 100 to 125-seat range to replace its aging MD-88 and MD-90 fleet.

Boeing was invited to compete.

modernity, or delivery timeline.

Boeing did not submit a formal proposal for any new-production aircraft.

Key Legal Elements at a Glance

Legal Requirement	Description
Dumping	The existence of dumping must be established.
Material Injury	Domestic industry must have suffered material injury.
Causal Nexus	A direct link between dumping and injury must be proven.
Like Product	A domestic product must be identical to or closely resemble the imported product under Article 2.6.

II. The Proceedings and Their Consequences

Preliminary Countervailing and Anti-Dumping Duties

In September 2017, the DoC issued a preliminary countervailing duty of 219.63%, immediately requiring cash deposits at that rate on all CSeries aircraft entering United States.

Under AFA, where a respondent declines to submit confidential cost data, the DoC may substitute the petitioner's own allegations as the factual basis for the determination.

The combined preliminary rate exceeded 300%, rendering the CS100 commercially non-viable before any final adjudication.

Airbus's Acquisition of the CSeries Programme

On 16 October 2017, Bombardier announced that Airbus would acquire a 50.01% controlling stake in the CSeries Aircraft Limited Partnership for no monetary consideration.

Airbus already operated a final assembly facility in Mobile, Alabama; routing US-bound aircraft through Mobile repositioned the program as domestically manufactured, rendering import duties inapplicable.

This restructuring was executed before the tariffs had been confirmed and before the USITC had delivered its final ruling.

Final Decisions by the DoC and USITC

In December 2017, the DoC confirmed a combined duty of 292.65%, framing it as an affirmation of "America First" trade policy.

On 26 January 2018, the USITC unanimously voided every duty.

In March 2018, Boeing confirmed it would not appeal, offering no explanation.

Timeline of Major Events

September 2017	DoC imposed a preliminary countervailing duty of 219.63%.
October 2017	A preliminary anti-dumping duty of 79.82% was imposed.
16 October 2017	Bombardier announced Airbus would acquire a 50.01% stake in the CSeries program.
December 2017	DoC confirmed a combined duty of 292.65%.
26 January 2018	USITC unanimously voided every duty.
March 2018	Boeing confirmed it would not appeal.

Key Outcomes

- Boeing alleged unlawful subsidies and below-cost aircraft sales.
- Combined preliminary duties exceeded 300%.
- Bombardier transferred control of the CSeries program to Airbus before the final ruling.
- USITC unanimously found no material injury to Boeing.
- All duties were ultimately voided.
- Boeing chose not to appeal the USITC decision.

III. Five Structural Failures

1. A Methodology That Amplifies the Petitioner's Own Allegations

The DoC's 79.82% dumping margin was derived from Boeing's petition figures via AFA, not from independent cost verification. The structural defect is not that Bombardier withheld data; it is that AFA permits a complainant to effectively determine its own penalty margin.

The DoC compounded this by applying the constructed value (CV) methodology, comparing an inflated early program per-unit cost against a discounted transaction price that anticipated future efficiencies. The Anti-Dumping Agreement designates CV as a last-resort fallback, not a primary tool. Applying CV here produced a margin that reflected Boeing's litigation strategy rather than Bombardier's actual commercial conduct.

Issue	Observation
Dumping Margin	Derived from Boeing's petition figures through AFA rather than independent verification.
Method Used	Constructed Value (CV) methodology.
Key Concern	A CV was used as a primary tool instead of a last-resort fallback.
Result	The calculated margin reflected litigation strategy rather than actual commercial conduct.

2. Injury Analysis Untethered from Competitive Reality

routes and missions from the 110-seat CS100. The DoC's theory of injury was speculative future encroachment: that the CSeries, once established, would gradually compete with Boeing's narrowbody family.

Article 3.7 of the Anti-Dumping Agreement requires any threat of injury to be clearly foreseen and imminent, not merely possible. The USITC unanimously rejected this theory, finding no causal mechanism by which Bombardier's pricing could have injured a manufacturer of larger jets that had not submitted a competing bid.

- No genuine competitive overlap existed between the aircraft.
- The DoC relied on speculative future competition.
- Article 3.7 requires a clearly foreseen and imminent threat of injury.
- The USITC unanimously found no causal link between Bombardier's pricing and any injury to Boeing.

3. Subsidy Enforcement Applied Asymmetrically

Boeing's countervailing duty petition invoked the SCM Agreement's level playing field principle against Bombardier's approximately USD 2.5 billion in public support from Canada, Quebec, and the United Kingdom. Aviation Industry

The argument collapses when examined against Boeing's own public financing record. The WTO found in United States—Measures Affecting Trade in Large Civil Aircraft (Second Complaint) (DS487) that Boeing's Washington State tax incentive package, valued at approximately USD 8.7 billion, constitutes prohibited specific subsidies under the SCM Agreement.

Boeing has also received decades of indirect support through NASA aeronautic research contracts and defense procurement with direct commercial application.

Entity	Public Support Referenced	Observation
Bombardier	Approximately USD 2.5 billion	Support from Canada, Quebec, and the United Kingdom.
Boeing	Approximately USD 8.7 billion	Washington State tax incentive package found by the WTO to constitute prohibited specific subsidies under the SCM Agreement.
Boeing	Additional indirect support	NASA research contracts and defense procurement with commercial application.

4. The Process as the Instrument of Harm

Defending a full two-agency anti-dumping investigation requires specialized counsel, extensive disclosure of confidential commercial data, and months of active participation in proceedings.

The most commercially damaging consequence, provisional duties imposed between preliminary and final determinations, cannot be undone retroactively regardless of outcome.

Boeing filed its petition on the same day it ran full-page national newspaper advertisements featuring the US president at a Boeing facility, framing a lega proceeding as an act of economic patriotism.

- Extensive legal costs and confidential disclosures were required.
- Provisional duties caused immediate commercial consequences.
- The petition was accompanied by public political messaging.
- Boeing did not appeal after its unanimous defeat.

5. Political Framing of a Purportedly Neutral Adjudication

Trade remedy law derives its international legitimacy from factually grounded, rules-based adjudication insulated from political direction.

The DoC's December 2017 final determination, which characterized its 292% combined duty as an affirmation of "America First" trade policy, was not the language of legal adjudication.

The institutional contrast is instructive: the DoC is an executive agency serving at the president's pleasure, while the USITC is an independent bipartisan commission whose four sitting commissioners had been appointed by two prior administrations of opposing parties.

Their unanimous rejection of every DoC finding is not explicable by methodological difference. The gap between a 292% duty recommendation and a finding of zero injury is evidence that the two agencies were engaged in fundamentally different tasks: one conducting trade policy and the other conducting trade law.

Institution	Role	Observation
DoC	Executive agency	Characterized its determination as supporting

	commission	DoC finding.
Outcome	292% duty recommendation vs. zero injury finding	Illustrates the divergence between trade policy and trade law.

IV. Conclusion

The Boeing-Bombardier dispute exposes a structural failure at the intersection of trade remedy law and competition policy.

Three reform implications follow.

1. The AFA mechanism, as designed, permits a petitioner to determine its own effective penalty margin through the respondent's strategic non-cooperation; this circularity is incompatible with neutral adjudication.
2. The absence of any liability mechanism for petitioners who initiate meritless proceedings and then decline to appeal their unanimous defeats creates a system in which deploying anti-dumping law as a competitive weapon carries no meaningful legal cost.
3. The political framing of DoC determinations as expressions of executive trade philosophy corrodes the treaty legitimacy of US trade remedy administration and creates precedent for broader erosion of the rules-based trade order.

Reform Area	**Structural Concern**
AFA Mechanism	Allows petitioners to influence the effec[illegible] penalty margin.

	appeals.
Political Influence	Political framing undermines confidence in rules-based trade remedy administration.

Bombardier did not lose the Series program in a competition for aircraft orders. It lost it as a consequence of nine months of legal proceedings that ended with a unanimous verdict in its favor.

Until an anti-dumping law develops a deterrent against its own strategic abuse, it remains available as a weapon of competitive exclusion, administered under the cover of fair trade rhetoric. **Endnotes:**

1. https://www.bloomberg.com/news/articles/2017-04-27/boeing-asks-u-s-government-to-probe-bombardier-dumping
2. https://www.usitc.gov/publications/701_731/pub4750.pdf
3. https://www.airbus.com/en/newsroom/press-releases/2017-10-airbus-and-bombardier-announce-c-series-partnership
4. https://airinsight.com/the-meaningless-game-of-list-prices/
5. https://www.wto.org/english/docs_e/legal_e/19-adp.pdf
6. https://www.wto.org/english/docs_e/legal_e/24-scm.pdf
7. https://leehamnews.com/2017/08/08/delta-asks-commerce-redefine-scope-boeing-bombardier-case/
8. https://www.airbus.com/en/about-us/our-worldwide-presence/airbus-in-americas/airbus-in-the-united-states/commercial-aircraft-in-the-us
9. https://cscb.ca/en/article/boeing-will-not-appeal-tariff-ruling-bombardiers favour
10. https://www.boeing.com/commercial

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