

Governmental Subventions to the Aircraft Industry:
A Long History of International Legal Disputes.

Brazil (Embraer) vs. Canada (Bombardier)

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P. 01-02

JANUARY NEWS on

Mexican Aviation

P. 03-04

Contributors

P. 05

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Pronunciation: 'che-l&m, is Latin for airspace or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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by Adriana Hernández.

In late December last year, the Council of Ministers of the Brazilian Foreign Trade Chamber (Camex), announced its decision to initiate a dispute settlement procedure against Canada before the World Trade Organization (WTO).¹ The trigger of such decision was the commercial deal in which Delta Air Lines agreed to buy at least seventy five CS100s jetliners to be delivered on spring 2018, from the Canadian manufacturer Bombardier. The official announcement was made on April 2016, followed by the press release regarding the agreement executed by the Canadian manufacturer and the Government of Quebec, in order for the latter to invest one billion dollars in the new organized limited partnership: C Series Aircraft Limited Partnership.²

One of the main particularities of this agreement is that the investment to be made by the Government of Quebec, shall be used completely for cash flow purposes of the new partnership. In addition, all the administrative and financial control, together with the manufacture process and related services and activities, shall remain in Quebec for a minimum period of twenty years.³ It must be argued that such scenario caused a huge impact in the aircraft industry, especially among the main aircraft manufacturers around the globe. The major effect of the Delta deal was for Bombardier to left out its direct competitor in the executive aircraft market: the Brazilian jet maker Embraer.

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The capital injection from Québec, may be considered for some analysts as a “governmental bailout”. It certainly raises some concerns about whether an investment it is an investment per se, or is just a disguise for governmental entities to provide financial support to an economically fragile entity, which may lead to illegal subventions pursuant to the applicable legal terms and framework of the WTO. If the rationale behind Quebec’s investment is to try to cover up, prohibited in any manner whatsoever, financial support, then the industry shall be facing a huge disruption in the market. As Paulo Cesar de Souza e Silva, Embraer’s president and CEO claimed: “this shows Bombardier aggressiveness and raises suspicions that Bombardier offered its CS100 for a price below cost. It is too hard to compete with the government of Canada⁴”

What is a subsidy? Are they even allowed?

The Agreement on Subsidies and Countervailing Measures from Attachment 1 of the WTO Agreement (SCM Agreement) addresses two different but at the same time related subjects: a) multilateral disciplines regulating the

1.- Brazil, Embraer Push Ahead On Bombardier WTO Dispute. December 19th, 2016. Available at: <http://aviationweek.com/awincommercial/brazil-embraer-push-ahead-bombardier-wto-dispute>

2.- Bombardier announces the signing of a definitive agreement with the Government of Québec for a \$1 billion US investment in the C Series Aircraft Limited Partnership. June 23th, 2016. Available at: <http://www.bombardier.com/en/media/newsList/details.binc-20160623-bombardier-announces-the-signing-of-a-definitive-a.bombardiercom.html>

3.- Bombardier Inc firms up deal with Quebec for \$1 billion investment in C Series. June 23th, 2016. Available at: <http://business.financialpost.com/news/transportation/bombardier-inc-firms-up-deal-with-quebec-for-1-billion-investment-in-c-series>

4.- Embraer Mulls WTO Claim Against Bombardier After Delta Jet Deal. May 16th, 2016. Available at: <https://www.bloomberg.com/news/articles/2016-05-16/embraer-mulls-wto-claim-against-bombardier-after-delta-jet-deal>

provision of subsidies and b) the use of countervailing measures to offset injury caused by subsidized imports. In general terms, pursuant to Article 1 of the SMC Agreement, a subsidy shall be deemed to exist if there is a financial contribution by a government or any public body within the territory of a member. In that sense, the SMC Agreement considers as financial contribution a direct or potential transfer of funds, a revenue due which is foregone or not collected, the provision of goods or services different to general infrastructure, the purchase of goods and the payment to a funding mechanism⁵

As it is provided by the Agreement, a member country, may use the dispute settlement procedure with the purpose to achieve the elimination of the subvention or its harmful effects. It is also considered that the affected country may initiate its own investigation and apply additional rights known as “countervailing measures”. As simple as it may seem, the mechanism to be followed, as provided by the SCM Agreement, it may take a long period of time and require several resources, including a panel of experts in order to first of all, evidence or try to prove the allegedly subventions and its effects, and thereafter to reach an agreement and determine, if applicable, any specific sanction.

Within the WTO history, several dispute settlements procedures have been initiated, starting on 1996 and continuing on 1997, 2001, 2004, 2005 and 2006. It shall not be a surprise, that besides Canada and Brazil, Europe, China and the United States are the main countries involved in this specific aircraft market disputes. As the SCM Agreement provides, the dispute settlement procedure can only be exercised by a member state, but the economic players who are actually being directly affected by the practice of granting/receiving subsidies/subventions are the aircraft manufacturers (Bombardier, Embraer, Airbus, Boeing, etc.). Nevertheless, it cannot be underestimated the power and influence that a specific country may have in order to support what it can be considered as a national industry.

Recent decisions. Is there any possible forecast?

The background referred to subsidies within the aircraft industry may seem as a back and forward game. As a first reference, on September 22, 2016, the WTO confirmed that the governments from Europe failed to remedy subsidies granted for a total of \$17 billion to Airbus, in addition to \$5 billion provided as illegal launch aid to the A350 aircraft. As a collateral effect, the United States were authorized to impose tariffs on European exports to mitigate such violations⁶ In contrast, in a remarkable similar case, the WTO recently ruled that Boeing illegally benefitted from state subsidies from Washington government related to the production of its 777 aircraft. According to BBC, it was determined that the company received billions of dollars in anticompetitive subsidies that shall be considered as unfair for its rival Airbus⁷.

Taking into consideration the precedent cases, along with the current international applicable legislation, it not possible to determine whether or not the Canadian government will be sanctioned by the WTO. Nevertheless, it can be said that there is a strong possibility for the Brazilian government, working side to side with Embraer, to raise their case. It certainly will not be a smooth debate or case, and it will be hard to consider that this new controversy will prevent other governments or manufacturers to be involved in this sort of “practices”. At the end of the day, the aircraft industry needs to evolve and adapt and try to face in the best possible way these legal and economic challenges.

5.- *Agreement on Subsidies and Countervailing Measures*. Available at: https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

6.- *Impact of Illegal European Subsidies On the U.S. Aerospace Industry*. Available at: <http://www.boeing.com/company/key-orgs/government-operations/wto.page>

7.- *WTO slated to hit Boeing with sanctions over billions in Washington state subsidies*. November 28th, 2016. Available at: <http://www.bizjournals.com/seattle/news/2016/11/28/boeing-wto-sanctions-airbus-777x-trade.html>

When future reach us: self-pilot airplanes?

In recent years, several aeronautic companies have been working to achieve more autonomy in their aircraft. Such is the case of BAE Systems which is testing a Handley Page Jetstream 31 allowed not just to follow one specific route, but to change it according to air traffic and the meteorological situation. This is possible because of the Traffic alert and Collision Avoidance System (TCAS) providing information of the speed, route, and position of other aircrafts in order to be able to avoid them if necessary.

www.enelaire.mx January 02, 2017.

Business Jet: Global Relaunch.

After eight years of loses, and with a market practically reduce to half, the executive aeronautic sector, or Business Jet, gets back on flight. The market of both Charter Jets and Private Jets, presents a global growth of 6,9% per year. North America, China, India, Singapore, Malaysia and the Persian Gulf, as long as the UE, continue in permanent growth. The world business jet sector handles more than 250 million dollars each year. It is expected that for 2020, the global growth of Business Jet reaches 33.800 million dollars. Its without of doubt a sector in permanent evolution that predicts a promising future, opening doors for the demand of specialized pilots. *www.hispaviacion.es January 09, 2017.*

Trump seen as ally in effort to corporatize ATC.

The chairman of the House Transportation and Infrastructure Committee says that supporters of a corporatization of the US air traffic control may have an ally in president Donald Trump. Bill Shuster, a supporter of a plan to strip ATC management away from the FAA, shows optimistic about Trump's promises of giving \$1 trillion for modernization of US infrastructure. The plan is to strip the FAA of its ATC function and placed ATC under management of an independent, not-for-profit corporation making more the organization more efficient by free ATC from the financial uncertainty and unpredictability of federal funding. *www.flightglobal.com January 09, 2017.*

Facial recognition will replace passports in Australia.

Australia plans to implement biometric facial, iris and fingerprint recognition in airports, allowing passengers to go through without showing a passport. The project is called the "Seamless Traveler" and aims to create a self-processing experience for up to 90 percent of travelers letting migration authorities to focus on high-risk passengers. The government organizations around the globe, nor the Australian ones are not immune to security hacks, so it would be rally dangerous if thieves stole not just identities, but iris scans and fingerprints. This measure raises privacy and security concerns.

www.engadget.com January 23, 2017.

Spike Aero To Fly Subsonic Prototype of SSBJ This Year.

Spike Aerospace expects to fly a subsonic prototype of its 18-passenger supersonic business jet (SSBJ) this summer. This scale prototype will demonstrate low-speed aerodynamic flight characteristics. Spike Aerospace expects to certify its low-boom, Mach 1.6 SSBJ by 2023. Target price of the S-512 is somewhere between \$60 million and \$80 million. *www.ainonline.com January 24, 2017.*

In this month extract was prepared by Miguel Ruelas, Carla Espinosa, Luis Salas, Juan R. Madero, Diana Aguilera and Selma Gonzalez.

Trump Administration Searching For A New Leader For NASA.

As Trump was being sworn in last Friday, Charles Bolden was tendering his resignation as the head of the space agency. He did not publicly reveal why he decided to leave the post. Bolden was selected by Former President Barack Obama to oversee the phase-out of the Shuttle program and ramp up commercial space operations. Trump has not released a list of any potential candidates for the job, but one person who has been mentioned for the post is Congressman Jim Bridenstine. He is a Lt. Commander in the Navy and former executive director of the Tulsa Air and Space Museum & Planetarium. www.aero-news.net January 25, 2017.

President Trump Nominates Heather Wilson As SecAF.

President Donald Trump has nominated Heather Wilson to be the next Secretary of the Air Force. Wilson is an Air Force Academy graduate who is currently president of the South Dakota School of Mines and Technology in Rapid City, SD, a position she has held since 2013. The Air Force Times reports that, if confirmed, she would be the first Air Force Academy graduate to serve as secretary. She graduated from the academy in 1982, part of only the third class to admit women. The statement from the Trump administration said that Wilson comes from a family of aviators, and is herself an instrument-rated private pilot. www.aero-news.net January 25, 2017.

Army Flies Hoverbike Prototype.

The U.S. Army Research Laboratory and industry partners demonstrated the flying capabilities of a unique rectangular-shaped quadcopter. Also, known as the hoverbike, the vehicle may one day make it possible for Soldiers on the battlefield to order resupply and then receive those supplies rapidly. While the current prototype is electric, researchers are looking at a hybrid propulsion system that may dramatically increase range. In addition to many other industry, government and academic partners, the JTARV project is teaming with the Office of Naval Research. www.aero-news.net January 25, 2017.

Drone ambulance arrives.

The American company Argodesign has designed a drone that could replace the ambulances in a few years. With the size of a car and four propellers, this vehicle could appear in minutes or seconds wherever it is needed. The ambulance flies by remote control or with the autopilot thanks to an integrated GPS. Company founder, Mark Rolston, believes that the price to build this design would not exceed one million dollars. The cabin has enough space for the gurney and the sanitary; even several ambulances could be controlled from the same computer, with the same technician. www.elpais.com January 25, 2017.

Mexican airlines, flying with oil and dollar pressure.

Mexican airlines have an adverse outlook on their profitability in 2017 in the face of rising oil prices and the impact on fuels, in addition to the dollar against the peso, according to specialists. Most of the costs in the airlines are denominated in dollars, mainly the expenses on fuel, maintenance, and lease of aircraft. One of the tools that airlines possess to fight the depreciation of the peso against the dollar is the increase in international routes to have higher dollarized revenues, agreed experts consulted. www.expansion.mx January 25, 2017.

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