

WHAT THE WTO HELD

Since the WTO released to the parties its 2010 ruling on European government subsidies to Airbus on March 23, Airbus has been spinning its substance. Most critically, through press releases and the like, Airbus has repeatedly said:

1. 70 percent of the US claims were rejected.
2. The European reimbursable loan mechanism, otherwise known as “launch aid,” is a legal and WTO-compliant source of aircraft development funding. Past loans were found by the WTO Panel to contain a certain element of subsidy.
3. Support provided to Airbus under this or other mechanisms caused no material injury to any US interest.
4. Possible future funding for the A350 is not affected in any way by the report.
5. The Panel refused the US request for remedies as legally inappropriate.

What the WTO in fact said, however, is now abundantly clear from the just-published report:

- “[A]ll of the challenged [Launch Aid] contracts may be characterized as unsecured loans granted to Airbus on back-loaded and success-dependent repayment terms, at below-market interest rates,” Para 7.525, and “[e]ach . . . involves a unique transfer of funds at below-market interest rates to one particular company, Airbus.” Para 7.497.
- “[W]e conclude that the United States has established that ... **each** of the challenged [Launch Aid] measures constitutes a **specific subsidy**.” Para 8.1.
- “[T]he [EC] and the governments of France, Germany, Spain, and the United Kingdom have, through the use of specific subsidies, caused **serious prejudice** to the United States’ interests” Para 7.2025.
- Moreover, “German, Spanish and UK A380 contracts amount to **prohibited export subsidies** within the meaning of Article 3.1(a) and footnote 4 of the SCM Agreement” Para 7.689.
- “[Launch Aid] transfers risk from Airbus to the governments.” Para 7.1898.
- Had Airbus “launch[ed] these aircraft relying on only market financing, the increase in the level of debt Airbus would have accumulated over the years would have been **massive**.” Para 7.1948.

- “[T]he [EC]’s calculations [of the subsidies] vastly underestimate their magnitude.” Para 7.1971.*
- “[T]he [EC]’s calculation greatly understates the amount of the benefit associated with the specific subsidies we have found were provided in respect of Airbus LCA, which in our estimation is substantial and significant.” Para 7.1972.
- “It follows that even in the unlikely event that Airbus would have been able to enter the LCA market as a non-subsidized competitor, we are confident that it would not have achieved the market presence it did ...” Para 7.1984.
- “Airbus’ market share is directly attributable to its ability to sell and deliver in the [EC], and relevant third country markets, LCA which it would not have available but for the subsidies ...”. Para 7.1985.
- “Had Airbus successfully entered the LCA industry without subsidies, it would be a much different, and we believe a much weaker LCA manufacturer... [T]he United States’ LCA industry, at a minimum, . . . would have had a larger market share . . .” Para 7.1993.
- **“[T]aking into account the nature of the prohibited subsidies we have found in this dispute, we recommend that the subsidizing Member ... withdraw [them] without delay and specify that this be done within 90 days.”** Para 8.6.

As to Airbus’ claims regarding A350 funding -- The WTO has now found that every instance of Launch Aid ever given to Airbus violated the requirements of the Subsidies Agreement. Airbus cannot now replicate those same past patterns without again violating the agreement. And the USTR has been clear: It will vigorously enforce against A350 Launch Aid. EADS’s own shareholder materials recognize this incontrovertible reality as well, warning shareholders that:

This ruling “may limit access by EADS to risk-sharing-funds for large projects (...) [and] may theoretically cause the [EC] and the involved governments to analyse possibilities for a change in the commercial terms of funds already advanced to EADS. (...) [N]o assurances can be given that government financing will continue to be made available in the future, in part as a result of the proceedings mentioned above.”

* See Para 7.1878 for a comprehensive survey of the “five types of measures” the panel held were **all** illegal specific subsidies that caused adverse effects to U.S. interests: Launch Aid; Infrastructure; R&D funding; Government share transfers; and Equity infusions.