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# Boeing, Bombardier, and the Government of Canada Engage in Escalating Dispute Over Alleged Dumping and Future Purchases of Fighter Jets

## Antitrust and Trade Regulation and Transportation Legal Update

Trade disputes between the U.S. and Canada over softwood lumber and dairy concentrates have made headlines, as relations between these trading partners have grown increasingly contentious. The newest front in those disputes may have a significant impact on aerospace trade between the two countries.

Bombardier, the Canadian aerospace manufacturer headquartered in Montreal, Quebec, recently began production and sales of its C Series aircraft. The C Series consists of two different single-aisle jets with passenger capacities of between 100-150 persons. The smaller C Series aircraft directly competes with the Embraer E-195-E2, while the larger aircraft competes with variants of the Boeing 737 and Airbus A320. As of early 2017, Bombardier has announced 150 confirmed orders for the C Series aircraft by Air Canada and Delta Airlines.

The C Series has become a flashpoint for competition between Bombardier and Boeing. The two companies were engaged in a high-profile competition for orders from United Airlines in early 2016, with

United ultimately selecting Boeing's product after reportedly being offered steep discounts. Delta's recent order of C Series aircraft, however, prompted a more aggressive response from Boeing, which filed an antidumping petition with the U.S. International Trade Commission (ITC) in late April 2017. The petition accused Bombardier of using "supply-creating and illegal government subsidies" to offer an "absurdly low" price of \$19.6 million USD per aircraft, despite an alleged \$33.2 million production cost per aircraft. Bombardier has been the recipient of high-profile support from the governments of Quebec and Canada — most notably, a [\\$1.5 billion USD investment from Quebec's largest public pension fund](#) in 2015 along with more than \$1 billion invested from Ottawa. [Bombardier released a statement](#) in its defense stating it "structures its commercial dealings to ensure compliance with the laws and regulations of the jurisdictions in which we operate" and noting that it employs 7,000 American workers and spends \$3 billion in the United States annually.

On Friday, June 9 the [ITC voted to continue its investigation of Bombardier](#), determining that there is "a reasonable indication that a U.S. industry is threatened with material injury by reason of imports" of the C Series aircraft at "less than fair value." The ITC anticipates releasing a preliminary countervailing duty determination in July and a preliminary antidumping duty determination in October. The ITC's determinations may result in the U.S. Department of Commerce issuing orders pursuant to Title VII of the Tariff Act of 1930.

The potential consequences of the Boeing-Bombardier dispute goes beyond passenger aircraft sales. Canada anticipates acquiring up to 88 fighter jets in the immediate future. In March, the country notified the U.S. of its interest in acquiring 18 Boeing F/A-18 Super Hornet fighter jets to complement its existing fighter jets while transitioning to a larger permanent fleet. This deal has a potential value of more than \$1.7 billion USD. However, in response to Boeing's antidumping petition, [Canada's Minister of Foreign Affairs](#) announced the government would review "current military procurement that relates to Boeing." And, in a report released last week, Canada stated it was "continuing to explore the potential acquisition" of supplemental aircraft.

The possibility that Boeing's position may undermine its efforts to capture Canadian military contracts is heightened given the potential that the

North American Free Trade Agreement (NAFTA) could be renegotiated and the impending implementation of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. Brussels has already ratified the agreement, which received Royal Assent in Canada on May 16, and is scheduled for ratification and implementation there by July 1 (coinciding with Canada Day). CETA will eliminate 98 percent of tariffs in place between Canada and the European single market and will ease the ability of European companies to bid on Canadian government contracts. These changes may benefit the European consortium that manufactures the Eurofighter Typhoon (a direct competitor with Boeing's F/A-18 Hornet) at a time when the long-term future of NAFTA's free-trade provisions are uncertain.

Lane Powell's Antitrust and Trade Regulation and Transportation practice groups will monitor the ITC's actions on this dispute as they occur and provide an update on significant developments.