December 13, 2017

+1 202 663 6000 (t)
+1 202 663 6363 (f)
wilmerhale.com

ITC Inv. Nos. 701-TA-578 and 731-TA-1368
Total Number of Pages: 452
Final Investigations

NON-CONFIDENTIAL VERSION
Proprietary Information Has Been Deleted from Pages 2-3, 5-6, 9-15, 17, 21-41, 43-45, 47-52, 54-57, 59-68, 70-71, 74, 82-93, 96-113; Exhibit List 1, 3; and in Exhibits 2-3, 13, 17, 42, 44, 55

BY HAND DELIVERY AND EDIS

The Honorable Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E Street, S.W.
Room 112A
Washington, DC 20436

Re: ***100- To 150-Seat Large Civil Aircraft From Canada*: Non-Confidential Version of Petitioner's Pre-Hearing Brief**

Dear Secretary Barton:

On behalf of The Boeing Company ("Boeing"), we hereby submit the original and two copies of the non-confidential version of Boeing's December 12, 2017 Pre-Hearing Brief in the above-referenced investigations.

Pursuant to 19 C.F.R. § 201.6, Boeing requests confidential treatment for the business proprietary information contained in brackets on the pages and in the exhibits listed above. This information includes (i) business or trade secrets concerning the nature of a product or production process; (ii) data on production costs; (iii) terms of sale; (iv) prices of individual sales, likely sales, or other offers; (v) names of particular customers and information about sales campaigns; (vi) commercially sensitive financial, revenue, and profit information; (vii) information received from other parties pursuant to the administrative protective order ("APO"); and (viii) other commercially sensitive business information that is not otherwise publicly available. Disclosure of this information would cause substantial harm to the competitive position of Boeing and other companies providing the information, and would be likely to impair the Commission's ability to obtain such information in the future as is necessary to perform its statutory functions.

The requisite certification is enclosed in accordance with 19 C.F.R. §§ 201.6(b) and 207.3(a). Copies of this submission are being served in accordance with the attached certificate of service. Please contact us if you have any questions regarding this submission.

Respectfully submitted,

Robert T. Novick
Patrick J. McLain
Stephanie E. Hartmann
William Desmond
Counsel to The Boeing Company

PUBLIC CERTIFICATE OF SERVICE
100- To 150-Seat Large Civil Aircraft from Canada
Inv. Nos. 701-TA-578 & 731-TA-1368 (Final)

I, Patrick J. McLain of Wilmer Cutler Pickering Hale and Dorr LLP, hereby certify that a copy of this submission was served via hand delivery this 13th day of November 2017:

Shara Aranoff, Esq.
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

Matthew J. Clark, Esq.
Arent Fox LLP
1717 K Street, NW
Washington, DC 20006-5344

Yohai Baisburd, Esq.
Dentons US LLP
1900 K Street, NW
Washington, DC 20006-1102

Daniel L. Porter, Esq.
Curtis, Mallet-Prevost, Colt & Mosle LLP
1717 Pennsylvania Avenue, NW
Washington, DC 20006

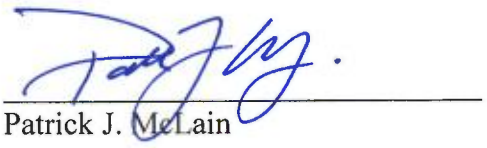
H. Deen Kaplan, Esq.
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004

Richard L.A. Weiner, Esq.
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Sibylle Zitko, Esq.
European Union
2175 K Street, NW
Washington, DC 20037-1831

Eric C. Emerson, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, DC 20036

Thomas J. Trendl, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, DC 20036



Patrick J. McLain

CERTIFICATION

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

I, Patrick J. McLain, counsel to The Boeing Company, certify that (1) I have read the enclosed submission dated December 12, 2017, and (2) the information in this submission is accurate and complete to the best of my knowledge.

In accordance with section 201.6(b) of the Commission's rules, I also hereby certify that, to the best of my knowledge, information substantially identical to that for which business proprietary treatment has been requested is not available to the general public.

I certify that the foregoing statements are true and accurate. I am aware that the information contained above may be subject to verification or corroboration (as appropriate) by the U.S. International Trade Commission. I am also aware that U.S. Law (including, but not limited to 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government.

Patrick J. McLain

Subscribed and sworn to before me on December 12, 2017.

Notary Public LYNNE A. GUSTIN

LYNNE A. GUSTIN
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 31, 2022

My Commission Expires: _____

LYNNE A. GUSTIN NOTARY PUBLIC EXP. 7-31-22 DISTRICT OF COLUMBIA

NON-CONFIDENTIAL VERSION

Proprietary Information Deleted From Pages 2-3, 5-6, 9-15, 17, 21-41, 43-45, 47-52, 54-57, 59-68, 70-71, 74, 82-93, 96-113; Exhibit List 1, 3; and in Exhibits 2-3, 13, 17, 42, 44, 55

BEFORE THE

UNITED STATES INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF

100- TO 150-SEAT LARGE CIVIL AIRCRAFT FROM CANADA

ITC Inv. Nos. 701-TA-578 and 731-TA-1368 (Final)

PREHEARING BRIEF OF PETITIONER THE BOEING COMPANY

Robert T. Novick
Patrick J. McLain
Stephanie E. Hartmann
William Desmond
WILMER CUTLER PICKERING
HALE & DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006

Counsel to The Boeing Company

December 13, 2017

TABLE OF CONTENTS

I. INTRODUCTION

In its preliminary determination, the Commission unanimously confirmed that the domestic industry faces a threat of imminent material injury from Bombardier Inc.'s ("Bombardier") dumping of massively subsidized C Series airplanes in the U.S. market for 100- to 150-seat large civil aircraft ("LCA").[1] That threat has been indisputable from the inception of this case. Subsidies created the C Series program, they bailed the program out when Bombardier was on the verge of bankruptcy, and they have enabled Bombardier to offer the C Series to marquee U.S. customers at unprecedented prices, first at United Airlines ("United") in 2015 and then at Delta Air Lines, Inc. ("Delta") in 2016. And by offering cut-rate prices to Delta, Bombardier finally captured a leading U.S. airline customer. In doing so, Bombardier locked in a commanding share of the U.S. market for the imminent future, took years' worth of demand out of play, signaled acceptance to the broader U.S. market, and severely depressed the prices that The Boeing Company ("Boeing") can obtain for the domestic like product—the 737-700 and 737 MAX 7.

Even after winning 75-125 orders from Delta, Bombardier still desperately needs additional orders to sustain its rapidly growing production capacity in Mirabel, Quebec, and it is pursuing those orders in the U.S. market, which is both the world's largest and considered by Bombardier to be "an extension of its home market in Canada."[2] The Commission aptly summarized the nature of this threat when it found that, "{b}ecause its future production is already falling short of projected capacity in the imminent future, Bombardier has the incentive

---

[1] *See 100- to 150-Seat Large Civil Aircraft from Canada; Determinations*, 82 Fed. Reg. 27,524 (Int'l Trade Comm'n) (June 15, 2017); *100-to 150-Seat Large Civil Aircraft from Canada*, Inv. Nos. 701-TA-578 and 731-TA-1368 (Preliminary), USITC Pub. 4702 (June 2017) ("Preliminary Determination, USITC Pub. 4702") at 36.

[2] Preliminary Determination, USITC Pub. 4702 at 29-30.

to aggressively seek additional orders in the U.S. market in the imminent future."[3] The Commission thus acknowledged that, "{f}aced with low-priced subject import competition, Boeing will be forced to either cut its own prices to win sales or lose sales and market share to Bombardier."[4]

Developments since the Commission's preliminary determination only confirm its findings. The Staff Report, questionnaire responses, and other recent evidence demonstrate—even more concretely than before—that significant C Series imports and U.S. market share gains are imminent,[5] that Bombardier is targeting additional U.S. sales to fill its mounting excess capacity,[6] and that the domestic industry continues to suffer from aggressive C Series pricing.[7] Bombardier is currently "in talks with several potential U.S. customers for the C Series," including JetBlue.[8] Meanwhile, [

[3] Preliminary Determination, USITC Pub. 4702 at 29.

[4] Preliminary Determination, USITC Pub. 4702 at 35.

[5] *See infra* Sections V, VI, and VIII.B.

[6] *See infra* Section VIII.B.3-5.

[7] *See infra* Section VIII.C-D.

[8] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017) ("Bombardier is already in talks with several potential U.S. customers for the C Series, CEO Alain Bellemare said Friday in Montreal. In addition to the deal with Delta, JetBlue Airways Corp. is another possible customer, Bregier said earlier this week."), attached as Exhibit 1.

[9] *See* Affidavit of [ ], attached as Exhibit 2.

].[10] These developments make clear both the profound injury to the domestic industry that is unfolding right now and the threat of further, irreparable injury that will occur absent antidumping and countervailing duty orders.

Moreover, the C Series threat has intensified with Bombardier's announcement that it is joining forces with Airbus—perhaps the world's largest recipient of illegal government subsidies, which the United States has been fighting at the World Trade Organization ("WTO") for over a decade. When the Airbus-Bombardier partnership closes in 2018, the domestic industry will face an Airbus-controlled C Series program backed by the resources of five "home" governments: Canada, France, Germany, Spain, and the United Kingdom. And as the WTO has repeatedly confirmed, Airbus knows well how to use illegal government subsidies to take sales and customers from Boeing.[11]

Even setting aside these recent developments, on each and every material point supporting an affirmative threat determination, the evidence has only grown stronger in the time since the Commission's preliminary determination—in many cases, as a result of Bombardier's own words and actions:

Direct Competition Between the C Series and the Domestic Like Product in the 100- to 150-Seat Market

- At the Staff Conference, Bombardier repeatedly claimed that there is no 100- to 150-seat market.[12] Bombardier also tried to obscure both the competition in that market

[10] Purchaser Views, Declaration of [ ], paras. 2-4, attached as Exhibit 3.

[11] *See* Petition at 7 n.19.

[12] Revised and Corrected Transcript of May 18, 2017 Preliminary Staff Conference ("5/18 Staff Conference Tr."), at 161 (Mitchell) ("there is no break in demand at any particular seat count . . .The C Series is a uniquely modern, high performance and efficient option for airlines with passenger counts in the lower part of the single aisle size range."); 5/18 Staff Conference Tr. at 250 (Mitchell) ("So to suggest that a market exists or doesn't exist at 150 seats as a firm position is, in my experience, completely artificial."); 5/18 Staff Conference Tr. at 184 (Aranoff) ("the 737-700 and Mac {sic} 7 fails this test because 150 seats, two class configuration, and 2900 nautical miles of range are entirely arbitrary dividing lines within the family of 737 products.").

between Boeing's 737-700 and MAX 7 and the C Series,[13] and the clear dividing lines separating the 737-700 and MAX 7 from larger U.S. LCA models.[14]

- ***But after the Staff Conference,*** Bombardier and Airbus confirmed that the 100- to 150-seat LCA market is, in fact, a distinct market and that the CS100 and CS300 compete in that market with Boeing's domestic like product and Airbus' A319. In fact, in describing their new partnership, the companies have declared that they intend the C Series to dominate this market and complement Airbus' larger single-aisle aircraft—such as the A320—that do *not* compete with the C Series.[15] In its materials announcing the Airbus partnership, Bombardier explicitly referenced the "100-150 seat segment"[16] and described the C Series as "expand{ing} Airbus' offering across the 100-150 seat segment."[17]

The C Series Gains Critical Commercial Momentum from U.S. Market Sales

- In the preliminary investigation, Bombardier and Delta insisted that commercial momentum is unimportant as a condition of competition in this industry, does not exist at all, or favors Boeing rather than Bombardier.[18]

---

[13] 5/18 Staff Conference Tr., at 14 (Lichtenbaum) ("Boeing doesn't even make a product that competes with the aircraft Bombardier offered in the sales campaigns that Boeing complains about."); 5/18 Staff Conference Tr. at 162-63 (Mitchell) ("The 737 family competes with the AA320 {sic} Neo family from Airbus not with the 'C Series.").

[14] 5/18 Staff Conference Tr. at 15 (Lichtenbaum) ("The like product should be the 737 family of aircraft, which represent a continuum of sizes, ranges, operating costs, and other features. There is no clear dividing line at 150 seats or elsewhere."); *id.* at 185 (Aranoff) ("{T}here's nothing magical about 150 seats."); 5/18 Staff Conference Tr. at 184 (Aranoff) ("Bombardier urges the Commission to define the domestic like product as all single-aisle LCAs with the ability to hold at least a hundred seats.").

[15] *See* Airbus Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017), attached as Exhibit 4; Benjamin Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017) (Airbus CEO Thomas Enders citing the five-year order drought for the A319 and stating "That was the last time we sold the plane . . . That tells you something about the competition between the A319 and the C Series."), attached as Exhibit 5.

[16] *See* Bombardier Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017), attached as Exhibit 6.

[17] Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slide 5 (Oct. 16, 2017), attached as Exhibit 7.

[18] 5/18 Staff Conference Tr. at 179-80 (May) ("In fact, it's not even a term we use at Delta or that I think others generally use in the airline industry."); *100- to 150-Seat Large Civil Aircraft from Canada*, Inv. Nos. 701-TA-578 & 731-TA-1368 (Preliminary), "Respondent Bombardier Inc.'s Post-Conference Brief" (May 23, 2017) ("Bombardier 5/23 Post-Conference Brief"), at 28 ("The importer/purchaser questionnaires, however, provide no real support for Boeing's claim {that commercial momentum is an important aspect of competition in the market for single-aisle aircraft}, as not one purchaser identified commercial momentum as an important factor."); *id.* ("In any event, to the extent that 'commercial momentum' exists in the market for single-aisle aircraft, it favors Boeing, not Bombardier.").

- ***But after the preliminary investigation,*** Bombardier and Airbus repeatedly boasted that their new joint venture "will unlock the full potential of the C series . . . in terms of commercial momentum."[19]

Adverse Price Transmission and Volume Effects from the Delta "Lighthouse" Sale

- At the Staff Conference, Bombardier denied that the market could even know the extremely low pricing it gave Delta, much less that this pricing would depress Boeing's prices in the U.S. market.[20]

- ***But after the Staff Conference,*** it is indisputable that Bombardier's low pricing to Delta has pervaded the U.S. market and stimulated customer demand for more low-priced subject imports and corresponding price cuts from the U.S. industry. The Commission confirmed that "Boeing was able to estimate [ ] Delta's price per aircraft on its purchase of CS100s from Bombardier using public information, as were other market participants."[21] [

].[22] [

].[23] And U.S. airlines JetBlue and Spirit Airlines

---

[19] Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slide 6 (Oct. 16, 2017), attached as Exhibit 7. *See also* Bombardier Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017) ("The world class sales, marketing and support networks that Airbus brings into the venture are expected to strengthen and accelerate the C Series' commercial momentum."), attached as Exhibit 6; Airbus Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017) (same), attached as Exhibit 4; Airbus Conference Call (FD Wire), "Airbus SE and Bombardier C Series Announce C Series Partnership Call – Final," at 2 (Oct. 17, 2017) (Enders) (stating that the partnership "will unlock the full potential of the C Series, this partnership, in terms of commercial momentum and profitability."), attached as Exhibit 8.

[20] 5/18 Staff Conference Tr. at 283 (Lichtenbaum) ("Prices are opaque and whatever impact there is highly speculative. The Delta sale was an initial major U.S. customer for a unique airline. There's no reason to assume that other airlines are going to get that price. Even if they knew the Delta price, they wouldn't expect to get the same price.").

[21] Preliminary Determination, USITC Pub. 4702 at 28 (citing Confidential Report ("CR")/"Public Report ("PR") at Table VII-5).

[22] *See* Affidavit of [ ], attached as Exhibit 2.

[23] *See* Purchaser Views, Declaration of [ ], paras. 2-4, attached as Exhibit 3.

have made clear their interest in ordering the C Series at subsidized and dumped prices.[24]

Imminent Increases in C Series Production, Production Capacity, and Subject Imports

- At the Staff Conference, Bombardier asserted that a rapid ramp up in deliveries would be impossible[25] and that "it won't be able to ramp up imports any time soon,"[26] despite confessing that it is "forced to achieve" a massive ramp up in production and production capacity because of the economics of the C Series program.[27]

- ***But after the Staff Conference,*** the Commission confirmed that excess capacity will drive Bombardier "to aggressively seek additional orders in the U.S. market in the imminent future."[28] Delta confirmed that these massively subsidized and dumped C Series aircraft will begin to enter the United States in just a few months if AD/CVD orders are not imposed.[29] Bombardier confirmed that [ ].[30] Airbus confirmed that the U.S. market is the primary target for additional C Series orders.[31] And

---

[24] *See* JetBlue Letter to the Commission (Sept. 24, 2017); Spirit Airlines Letter to the Commission (Aug. 8, 2017). *See also* Ted Reed, *Spirit CEO Hails Aircraft Maker Competition, Will Look at Bombardier CS-100*, TheStreet (Oct. 25, 2016) (Petition Exhibit 8); Ben Mutzabaugh, *Spirit wants to shake its reputation for late flights*, USA Today (June 22, 2016) (Petition Exhibit 9).

[25] 5/18 Staff Conference Tr. at 188 (Aranoff) ("A rapid ramp up in deliveries would not be possible in the short run because, as Mr. Mullot noted, Bombardier is still working its way along a production learning curve.").

[26] 5/18 Staff Conference Tr. at 17 (Lichtenbaum) ("And since Bombardier's still under a production learning curve and aircraft have long lead items, it won't be able to ramp up imports any time soon. . . .The threat Boeing imagines is both more speculative and more distant than anything the Commission has ever considered to be real and imminent.").

[27] Preliminary Determination, USITC Pub. 4702 at 29 ("When asked at the conference if it is 'important that Bombardier adhere to this {production ramp up} schedule to make this program a financial success,' a Bombardier official responded 'it is very important' and 'we are forced to achieve that rate.'").

[28] In the preliminary investigation, the Commission found that, "{b}ecause its future production is already falling short of projected capacity in the imminent future, Bombardier has the incentive to aggressively seek additional orders in the U.S. market in the imminent future." Preliminary Determination, USITC Pub. 4702 at 29.

[29] Delta confirmed in July 2017 that "we do not intend to slow down any of the deliveries that we have planned for the C Series. We'll be taking our first this coming spring and we look forward to taking that aircraft." Event Brief of Q2 2017 Delta Air Lines Inc. Earnings Call - Final, Fair Disclosure Wire, at 17 (July 13, 2017) (Edward Bastian, CEO), attached as Exhibit 9. After Bombardier and Airbus announced a plan to perform C Series work in Mobile, Alabama that, in their view, would avoid AD/CVD duties, Delta reportedly expressed a willingness to "wait as long as two years" on deliveries to avoid paying fair value for the C Series. *See* Susan Carey & Doug Cameron, *Delta Expects to Buy U.S.-Built CSeries Jets*, Wall Street Journal (Oct. 18, 2017), attached as Exhibit 10. If AD/CVD Orders are not imposed, Delta's rationale for deferring deliveries disappears.

[30] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Questions II-3a, II-11a.

[31] Jacob Serebrin, *Bombardier, Airbus deal won't take anything away from Quebec, CEOs say*, Montreal Gazette (Oct. 20, 2017) (Airbus CEO Thomas Enders described the United States as "the single largest market, 30, 40 per cent, pick your number, of the C Series potential is in the United States of America."), attached as Exhibit 11.

immediately after the Airbus partnership announcement, Bombardier was "already in talks with several potential U.S. customers for the C Series," including JetBlue.[32]

Using the Airbus Playbook

- At the Staff Conference, Bombardier disputed the comparison Boeing had made between the subsidy-created C Series program and the subsidy-created Airbus LCA programs that have profoundly harmed Boeing, asserting that "{f}undamentally, Bombardier is not Airbus with its multi-country ecosystem, large home market, and defense customers to help it grow large and do so quickly." [33]

- ***But after the Staff Conference,*** Bombardier and its subsidizing governments agreed to give away a majority stake in the C Series program to Airbus for one dollar, while proclaiming that the deal is a "SOLUTION to address the trade case."[34] Now, the C Series is poised to become an Airbus LCA program, and Airbus has announced its intent to price the C Series even "more aggressively" than Bombardier already has and use its massive marketing prowess to gain what Airbus anticipates will be "a market share that is greatly superior to what the analysts expect now."[35]

The C Series Impact on the Domestic Industry

- At the Staff Conference, Bombardier asserted that the 737-700 and 737 MAX 7 compete only with Airbus' A319ceo and A319neo, not with the C Series, such that the C Series could not have any injurious impact on the domestic like product and the domestic industry.[36]

- ***But after the Staff Conference,*** Airbus CEO Thomas Enders, in announcing his company's rationale for acquiring control over the C Series program, confirmed the injurious effect the C Series has already had on the domestic like product when he acknowledged that the A319neo (Airbus' re-engined counterpart to the 737 MAX 7)

---

[32] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017) ("Bombardier is already in talks with several potential U.S. customers for the C Series, CEO Alain Bellemare said Friday in Montreal. In addition to the deal with Delta, JetBlue Airways Corp. is another possible customer, Bregier said earlier this week."), attached as Exhibit 1; Preliminary Determination, USITC Pub. 4702 at 29 (finding that "Bombardier is likely to focus its sales efforts on U.S. airlines due to the U.S. market's size, Bombardier's familiarity with the market, and the likelihood that U.S. airlines will seek to purchase larger volumes of 100- to 150-seat LCA in the imminent future."); *id.* at 30 (finding that Bombardier "considers the United States to be an extension of its home market in Canada.").

[33] 5/18 Staff Conference Tr. at 189 (Aranoff).

[34] *See* Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slide 6 (Oct. 16, 2017), attached as Exhibit 7.

[35] *See* Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017), attached as Exhibit 1.

[36] 5/18 Staff Conference Tr. at 162-63 (Mitchell).

had not obtained "a new airline customer . . . in five years, since Bombardier's aircraft emerged as a serious rival. '**That was the last time we sold the plane**,' he said. '**That tells you something about the competition between the A319 and the C Series.**'"[37] Like the A319neo, the 737 MAX 7 has also been suffering through a drought of significant airline orders since the time when, according to Mr. Enders, the C Series "emerged as a serious rival."[38] And as with the A319, the MAX 7's order drought is the result of aggressive competition from the C Series.

The C Series' Historically High Rate of Subsidization

- At the preliminary Staff Conference and in post-conference briefing, Bombardier asserted that "there is nothing wrong with" government support for aerospace companies[39] and denied that the C Series is subsidized.[40]

- ***But after the Staff Conference,*** the U.S. Department of Commerce (the "Department") confirmed that—from its launch in 2008 through the massive bailouts it received as it teetered on the edge of bankruptcy in 2015—the C Series program has benefitted from over $1.5 billion in unlawful, supply-creating subsidies.[41] The Department's 219.63% preliminary subsidy rate for the C Series is the second-highest subsidy rate it has ever calculated for a product from a market economy country.

Egregious C Series Dumping

- At the Staff Conference, Bombardier and Delta attempted to distract from the severity of the dumping evident in their watershed deal for 75-125 C Series aircraft by

---

[37] Benjamin Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017) (emphasis added), attached as Exhibit 5.

[38] There have been no significant orders for the 737 MAX 7 since 2013. *See* Section VIII.D.1.

[39] 5/18 Staff Conference Tr. at 219-20 (Lichtenbaum) ("{T}here is a role for government support of the aerospace industry. There has been forever. There will be. And there's nothing wrong with that.").

[40] 5/18 Staff Conference Tr. at 220 (Lichtenbaum) ("And, you know, we've looked at those investments that Quebec made in the 'C Series' LP and that the Caisse made in the transportation business. And we believe that there's strong grounds to believe those are not subsidies as they've been defined by international rules."); Bombardier 5/23 Post-Conference Brief, at 41 ("the equity infusions are not even 'subsidies' . . . .").

[41] *See 100- to 150-Seat Large Civil Aircraft From Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 82 Fed. Reg. 45,807 (Int'l Trade Admin. Oct. 2, 2017), and accompanying Issues and Decision Memorandum at 14-33.

pointing to differences in accounting rules[42] and asserting that Boeing's estimate of the price "is way off."[43]

- ***But after the Staff Conference,*** [ ]. Moreover, Bombardier flatly refused to cooperate with the Department's antidumping investigation, preferring to incur a preliminary total adverse-facts-available dumping margin of 79.82% rather than reveal the true extent of its dumping in the U.S. market.[44]

These facts—many of which Bombardier and Airbus have admitted—confirm the Commission's preliminary injury finding and paint an unmistakable picture of the threat Boeing faces: Bombardier is succeeding in dominating the 100- to 150-seat market, resulting in devastating injury to the domestic industry. For years, Bombardier has been openly mimicking Airbus's proven strategy of using massive unlawful subsidies to create a new aircraft program, which it can then use, together with aggressive pricing, to muscle its way into the U.S. market. And now it is joining forces with Airbus to market the C Series even "more aggressively" in the U.S. market.[45] Bombardier brought the C Series into production despite billions of dollars in cost overruns that would have sunk an unsubsidized producer.[46] Bombardier used subsidy-enabled dumped pricing to buy Delta's seal of approval and a commanding share of the U.S. market. And now Bombardier is leveraging both the Delta deal and the Airbus partnership

---

[42] 5/18 Staff Conference Tr. at 216 (Aranoff) (claimed that "there's a difference in accounting rules between the rules that Boeing operates under and the rules that Bombardier is operating under, and that actually has an effect on the accounting. . .").

[43] In response to a question at the first staff conference, in which Bombardier was asked whether it had offered the C Series to Delta at below cost (as shown by Boeing's calculations of Delta's purchase of the C Series), Bombardier stated that the "price that has been quoted is way off, and we'll leave it at that." 5/18 Staff Conference Tr. at 215-16 (Mitchell).

[44] *See 100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 47,697 (Int'l Trade Admin. Oct. 13, 2017), and accompanying Issues and Decision Memorandum, at 6-7.

[45] *See* Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017), attached as Exhibit 1.

[46] *See* Petition at 10-12.

announcement to accelerate the C Series' commercial momentum and make inroads with other U.S. airlines.

Unless AD/CVD orders are imposed, the domestic industry will either be cemented as an also-ran in the 100- to 150-seat LCA market or forced out of the market altogether. To some extent, these investigations have provided temporary relief as U.S. customers wait to see whether they will be able to buy new aircraft on Bombardier's subsidized and dumped terms, or will have to pay fair prices that include antidumping and countervailing duties. Only an affirmative finding by this Commission can ensure that the domestic industry will have a viable future and that Bombardier, Airbus, and their subsidizing governments will be forced to compete in the U.S. market on a level playing field.

A. Bombardier's Conduct Has Already Harmed Boeing by Putting Enormous Pressure on Its Sales of the Domestic Like Product, and That Pressure Is Only Increasing

Bombardier has already substantially harmed Boeing through the sale and marketing of its massively subsidized and dumped C Series aircraft. If left unremedied, Bombardier's actions will result in material injury to the U.S. 100- to 150-seat LCA industry. This is not surprising. Injuring the domestic industry has been inherent to Bombardier's strategy.

Enabled by mammoth government subsidies that were indispensable in creating, sustaining, and propelling the C Series in the marketplace, Bombardier embarked on a plan to penetrate the U.S. market, the world's most important source of 100- to 150-seat LCA sales. At United, Bombardier competed head-to-head with Boeing and, by offering its CS100 at extraordinarily low prices, forced Boeing to drop its 737-700 price [

] to retain

United's business.[47] That alone was enough to cause other U.S. customers to realize that Bombardier had dragged prices for the domestic like product to a new low: [

].[48]

Then, at Delta, Bombardier priced even more aggressively to assure itself of a crucial order from a leading U.S. airline. According to publicly available data, Bombardier sold Delta CS100s at **$19.6 million**—$13 million less than a conservative estimate of the airplane's lifetime average cost of production, and so low that Bombardier was forced to record a $492 million onerous contract provision in a public securities filing.[49] A Boeing executive has described the impact of Bombardier's aggressive pricing on the domestic like product as follows:

> Prior to the Delta sale, the C Series program was in serious trouble in part because it lacked a marquee customer. The Delta sale solved that problem, validating the C Series program as a whole, and establishing Bombardier's credentials as a legitimate competitor to Boeing and Airbus. However, **by offering such extremely low pricing to win the Delta sale, on top of the depressed pricing it forced Boeing to offer in the United sale, Bombardier has significantly depressed prices for the 737-700 and 737 MAX 7 in the U.S. market**.
>
> U.S. airlines are highly sophisticated customers and tough negotiators. [
>
>]. Most other large U.S. airlines compete with Delta on domestic routes where passenger traffic is highly sensitive to ticket prices, and to compete in this environment, they will do everything they can to

[47] Affidavit of [ ], paras. 8-9 (Petition Exhibit 101).

[48] Affidavit of [ ], para. 10 (Petition Exhibit 101).

[49] *See* Petition at 117, 119; Affidavit of [ ] (Petition Exhibit 1).

> match Delta on aircraft acquisition costs. [
>
>]. **U.S. customers will therefore demand that both Bombardier and Boeing provide Aircraft pricing commensurate with the deal Delta received in April 2016**—*i.e.*, $19.6 million per Aircraft.[50]

Airbus and others echoed Boeing's assessment:

> While the cash-squeezed project was saved from a near-death experience with Delta's discounted order, Bombardier's rivals and others in the industry predict it will remain on the rack a while longer as others demand equal bargains.
>
> . . .
>
> Macquarie analyst Konark Gupta wrote Bombardier could have difficulty getting the CSeries to break even by 2020-21 if it keeps selling at such prices. Others say it has limited choice.
>
> "**I think they have got their work cut out trying to convince others to pay maybe $10-15 million more (than Delta)-why would they**?" said Airbus executive vice-president Chris Buckley.
>
> "The next big guy Bombardier talks to is going to say 'will you be taking a $500 million loss for me'?" an industry source said.[51]

Bombardier's assault on the U.S. market will continue, to the further detriment of the U.S. industry. Despite gaining a critical endorsement from Delta, the C Series program still needs a large volume of additional orders to sustain its production ramp-up in Mirabel.[52] Bombardier will seek those orders in the U.S. market.[53] And given its subsidization, its recent behavior, and customer expectations of Delta-style pricing, Bombardier will price the C Series at whatever level will win those orders, even if it means selling the airplanes at many millions of

---

[50] Affidavit of [ ], paras. 18-19 (Petition Exhibit 101) (emphasis added).

[51] Tim Hepher & Victoria Bryan, *Bombardier faces discount headache as CSeries sales take off*, Reuters (June 4, 2016) (Petition Exhibit 36) (emphasis added).

[52] *See Bombardier C Series: record orders in 2016 as both variants finally enter service*, CAPA Centre for Aviation, at 5 (Dec. 8, 2016) (Petition Exhibit 5).

[53] *See* Preliminary Determination, USITC Pub. 4702 at 29.

dollars below cost. This unfolding destruction of U.S. market pricing conditions could not come at a worse time for Boeing's vulnerable 737 MAX 7. The MAX 7 was developed at great cost to be Boeing's lone product offering in the 100- to 150-seat market segment for the foreseeable future, but now suffers incredible pricing pressure from the C Series, a prolonged order drought on the eve of its entry into service, and, if Bombardier's actions are allowed to continue, doubts about whether it has any future at all.

B. The C Series' Adverse Price Effects Are Intensifying

With subsidized and dumped C Series imports to Delta scheduled to start in a matter of months absent AD/CVD orders, other U.S. airlines face a number of strategic considerations driven by the dumped Delta pricing. Unless they act to reduce airplane costs, those airlines will soon be competing for passenger traffic at a marked disadvantage to Delta, which will be operating with extremely low-priced C Series aircraft. The airlines can address this disadvantage by ordering new aircraft at prices comparable to what Bombardier gave Delta—the sooner the better to minimize the duration of Delta's cost advantage. Under the circumstances, they will be able to command Delta-style C Series pricing because they know Bombardier desperately needs additional orders to fill its production line in Canada. Or they can leverage the availability of extremely low-priced C Series aircraft to pressure Boeing to either cut its prices or lose orders to Bombardier/Airbus.

While this investigation has slowed new C Series orders from U.S. airlines,[54] it has not mitigated the extreme pricing pressure arising from the United and Delta campaigns. This intensifying pressure is exemplified by [

[54] [ ] Questionnaire Response, Question II-12.

].[60] Accordingly, the C Series threat is [

].[61] As [ ] states, "[

].”[62]

Similar harm is unfolding [ ]. In an attached declaration, [

---

[55] *See* Affidavit of [ ], paras. 8-14, attached as Exhibit 2; Boeing U.S. Producers' Questionnaire Response (Final), Question II-12.

[56] *See* Affidavit of [ ], para. 9, attached as Exhibit 2; Boeing U.S. Producers' Questionnaire Response (Final), Question II-12.

[57] *See* Affidavit of [ ], paras. 5-8, 12, 14, attached as Exhibit 2.

[58] *See* Affidavit of [ ], paras. 7, 12-14, attached as Exhibit 2.

[59] *See* Affidavit of [ ], paras. 7, 12-14, attached as Exhibit 2.

[60] *See* Affidavit of [ ], paras. 7, 12, 14, attached as Exhibit 2; Boeing U.S. Producers' Questionnaire Response (Final), Question II-12.

[61] *See* Affidavit of [ ], paras. 8, 10, 12, 14, attached as Exhibit 2; Boeing U.S. Producers' Questionnaire Response (Final), Question II-12.

[62] *See* Affidavit of [ ], para. 12, attached as Exhibit 2.

].[63]

Thus, Bombardier's aggressive pricing of the C Series is striking directly at the heart of the domestic industry's business. But the harm is by no means limited to these instances, critical as they are. To the contrary, and as noted above, Bombardier is "in talks with several potential U.S. customers for the C Series."[64]

C. Airbus Support for the C Series Has Increased the Threat to the Domestic Like Product

Recent events have compounded the C Series threat. On October 16, 2017, Bombardier and Airbus announced that they were joining forces in a deal that would give Airbus a controlling stake in the C Series. At the preliminary staff conference, Bombardier discounted the Airbus analogy, protesting that Bombardier "is not Airbus with its multi-country ecosystem."[65] That will no longer be true for the C Series. If consummated—and if history is any guide—the deal will add French, German, and Spanish backing to the massive subsidies that Bombardier has already received from Canada and the United Kingdom.[66] As Airbus CEO Thomas Enders put

---

[63] Purchaser Views, Declaration of [ ], paras. 2-4, attached as Exhibit 3.

[64] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017), attached as Exhibit 1.

[65] 5/18 Staff Conference Tr. at 189 (Aranoff).

[66] *See* Letter from Airbus CEO Thomas Enders, "Welcome Canada to Airbus' world of partnership" (Oct. 2017), attached as Exhibit 12.

it, "Canada is now set to become the fifth 'home country' in the Airbus family—the first outside of Europe."[67] This backing will allow Bombardier to continue to offer cut-rate pricing, significantly boosting C Series sales in the U.S. market and further securing its dominant position.

Airbus CEO Thomas Enders predicts that Airbus will have a major effect on C Series orders: "I think we will sell many more of these planes, I think we will sell thousands . . . . We know how to sell single-aisle aircraft."[68] Airbus Chief Operating Officer Fabrice Bregier is even more bullish, promising that Airbus will sell the C Series "more aggressively" [69]—a striking statement, given the irrationally low pricing that Bombardier already extended to Delta. Bregier declared that:

> "{W}e will have a market share that is greatly superior to what the analysts expect now . . . . If we are jumping into this battle, it's not to sell a few hundred planes and to stop there."[70]

These additional C Series sales and gains in market share would come on top of an existing order book that allowed Bombardier to boast that the "CSeries {d}ominates the 100- to 149-{s}eat {c}ategory" even before it secured an order for up to 125 C Series aircraft from Delta.[71]

In addition, when Bombardier and Airbus announced their partnership, they also announced that a second C Series "final assembly line" would be established in Mobile,

---

[67] *See id.*

[68] Jacob Serebrin, *Bombardier, Airbus deal won't take anything away from Quebec, CEOs say*, Montreal Gazette (Oct. 20, 2017), attached as Exhibit 11.

[69] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017), attached as Exhibit 1.

[70] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017), attached as Exhibit 1.

[71] Yan Lapointe, Manager, Investor Relations, Bombardier, "Investor Presentation," at slide 27 (Nov. 2015) (Petition Exhibit 48).

Alabama at some undefined point in the future.[72] As discussed below in Section VII, the purported Mobile production plans should have no bearing on the Commission's analysis. This is a transparent scheme to circumvent any antidumping and countervailing duty orders that may result from this investigation. There is no other business rationale for such a second line.[73] And there is no evidence of any legal obligation on Bombardier, Airbus, or CSALP to produce in Mobile (and certainly no detailed plans of how and when this would happen).

Accordingly, if no antidumping or countervailing duty orders are imposed, the supposed Mobile production plans for the C Series will evaporate overnight. More fundamentally, even if such production were ever to occur, it would be an effect of the petition and the associated prospect of antidumping and countervailing duty orders—something the law requires this Commission to ignore in its injury analysis.[74] Finally, whether it ever occurs or not, the supposed Mobile production plans would fail as a circumvention scheme, because they would require the importation of subject merchandise, as Boeing has explained to the Department of Commerce.[75] This is yet another reason that the plans will never actually materialize.

D. The C Series Is Targeted Specifically at the U.S. Market, Which Is Essential to the Program's Success

Bombardier's prime target for the C Series is the U.S. market, as it always has been. Bombardier considers the U.S. market so critical that it treats it as part of its "home market"

---

[72] *See* Airbus Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017), attached as Exhibit 4.

[73] Bombardier and the C Series Aircraft Limited Partnership ("CSALP") do not have enough orders for the C Series to sustain full production at the existing C Series assembly line in Mirabel, Québec for any appreciable period of time. Building a second line would increase the program's expenses and reduce its efficiency. Affidavit of [ ], attached as Exhibit 13.

[74] *See* 19 U.S.C. § 1677(7)(I); *see also infra*, Section VII.

[75] Preliminary Determination, USITC Pub. 4702 at 29.

along with Canada.[76] Airbus' Mr. Enders described the United States as "the single largest market," saying that "30, 40 per cent, pick your number, of the C Series potential is in the United States of America."[77] Bombardier is pursuing sales at JetBlue and "several" other U.S. customers,[78] while JetBlue and Spirit have made clear to the Commission their desire to have access to the C Series at absurdly low dumped and subsidized prices.[79]

Additional C Series orders in the U.S. market will come at the expense of the domestic like product, Boeing's 737-700 and 737 MAX 7. As the Canadian Government stated when it was considering an additional round of subsidies for the aircraft, the C Series "will compete directly with aircraft produced by Airbus and Boeing."[80] Specifically, the CS100 and CS300 compete with Boeing's 737-700, and its re-engined successor, the 737 MAX 7, as well as Airbus' European-built A319ceo and A319neo (which is a re-engined derivative of the A319ceo).[81] Indeed, Airbus' Mr. Enders has explicitly stated that the C Series has already stifled the A319neo's sales and commercial momentum:

---

[76] *See* Preliminary Determination, USITC Pub. 4702 at 30.

[77] Jacob Serebrin, *Bombardier, Airbus deal won't take anything away from Quebec, CEOs say*, Montreal Gazette (Oct. 20, 2017), attached as Exhibit 11.

[78] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017) ("Bombardier is already in talks with several potential U.S. customers for the C Series, CEO Alain Bellemare said Friday in Montreal. In addition to the deal with Delta, JetBlue Airways Corp. is another possible customer, Bregier said earlier this week."), attached as Exhibit 1.

[79] JetBlue Letter to the Commission (Sept. 24, 2017); Spirit Airlines Letter to the Commission (Aug. 8, 2017). *See also* Ted Reed, *Spirit CEO Hails Aircraft Maker Competition, Will Look at Bombardier CS-100*, TheStreet (Oct. 25, 2016) (Petition Exhibit 8); Ben Mutzabaugh, *Spirit wants to shake its reputation for late flights*, USA Today (June 22, 2016) (Petition Exhibit 9).

[80] John Knubley, Deputy Minister, "Advice to the Minister of Innovation, Science and Economic Development: Meeting with Bombardier, Inc." (Petition Exhibit 88) at frame 2.

[81] *See* Preliminary Determination, USITC Pub. 4702 at 6. The CS100 and CS300 do not, however, compete with larger single-aisle LCA, as Airbus confirmed when it recently stated that the C Series would complement, rather than compete with, Airbus' larger A320 and A321 aircraft in the contemplated joint venture. *See* Airbus Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017) ("Ranging from 100 to 150 seats, the C Series is highly complementary to Airbus' existing single aisle aircraft portfolio, which focuses on the higher end of the single aisle business (150-240 seats)."), attached as Exhibit 4.

> The European planemaker hasn't announced a new airline customer for the jet in five years, since Bombardier's aircraft emerged as a serious rival.
>
> "**That was the last time we sold the plane**," he said. "**That tells you something about the competition between the A319 and the C Series.**"[82]

The same competition exists between the 737 MAX 7 and the C Series, and the C Series is similarly responsible for the 737 MAX 7's failure to obtain a major airline order since 2013—" since Bombardier's aircraft emerged as a serious rival."[83]

* * * *

Boeing thrives on competition. As Boeing's Vice Chairman, Ray Conner, testified at the Staff Conference:

> We do love to compete. Competition is what makes us all better. What we want is competition that is fair. It is untenable for us to continue to compete against government subsidized competitors. Bombardier's subsidized competition has hurt us now and will hurt us for years to come but it doesn't have to be that way. {The Commission} can fix this before it is too late.[84]

Without duties, it is likely that the MAX 7, and the jobs it generates, will be eliminated. This is why it is imperative—for the domestic industry and for the U.S. manufacturing base as a whole—that the Commission make an affirmative threat of injury determination.

---

[82] Benjamin Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017) (emphasis added), attached as Exhibit 5.

[83] Benjamin Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017) (referring to statements by Airbus CEO Thomas Enders regarding the impact of the C Series on A319neo sales), attached as Exhibit 5.

[84] 5/18 Staff Conference Tr. at 25.

II. THE DOMESTIC LIKE PRODUCT IS BOEING'S 737-700 AND MAX 7

In the preliminary determination, the Commission defined the domestic like product to be "coextensive with in-scope LCA, and thus limited to the Boeing 737-700 and MAX 7."[85] The Commission should reach the same conclusion for purposes of its final determination, particularly in light of the Staff Report, questionnaire responses, and recent affirmations by Bombardier and Airbus that the 100- to 150-seat market is distinct and important.

Section 771(10) of the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[86] As the evidence demonstrates, the Boeing aircraft that are "like" or "most similar" to the subject merchandise are the 737-700 and the 737 MAX 7.

The domestic like product is properly defined as the 737-700 and the 737 MAX 7 because these are the two aircraft models produced in the United States that compete in the 100- to 150-seat market. Boeing alleged in the petition that governments, aircraft manufacturers, airlines, and industry experts all agree that the 100- to 150-seat market is a distinct market segment, and that Boeing's 737-700 and 737 MAX 7 compete with the subject merchandise in this market.[87] The voluminous record of independent evidence consistently and unequivocally confirms this reality: There is a recognized and distinct market for 100- to 150-seat single-aisle

---

[85] Preliminary Determination, USITC Pub. 4702 at 13 (defining the like product to be "coextensive with in-scope LCA, and thus limited to the Boeing 737-700 and MAX 7").

[86] 19 U.S.C. § 1677(10).

[87] Petition at 36-37.

LCA that includes the CS100, CS300, A319ceo, A319neo, and Boeing's 737-700 and 737 MAX 7.[88]

Statements by Airbus and Bombardier confirm the existence of clear dividing lines between U.S. 100- to 150-seat LCA and larger U.S. LCA. Despite having altered its own documents at the preliminary staff conference in a clumsy attempt to mislead the Commission,[89] Bombardier's own investor materials literally draw a line between Boeing and Airbus products within the same "family"—with the CS100, CS300, 737 MAX 7 and A319neo to the left of the dividing line and the 737 MAX 8, 737 MAX 9, A320neo, and A321neo to the right.[90] Bombardier thus acknowledges a lack of substitutability between small single-aisle LCA with 100- to 150-seats, and medium and large single-aisle LCA with more than 150 seats. This is consistent with Bombardier's own website, which touts the C Series airplanes as "{o}ptimized for the 100- to 150-seat market segment."[91]

Similarly, the press release that Airbus issued when it announced its proposed partnership with Bombardier describes the C Series as "{r}anging from 100 to 150 seats" and "highly complementary to Airbus' existing single aisle aircraft portfolio, which focuses on the higher end of the single-aisle business (150-240 seats)."[92] On an investor conference call on October 17

---

[88] Petition at 34 n.106, 41-43; *see also* Yan Lapointe, Manager, Investor Relations, Bombardier, "Investor Presentation," at slides 24-26 (Nov. 2015) (Petition Exhibit 48); Boeing Internal Presentation No. 2 [ ] (Petition Exhibit 96); *100- to 150-Seat Large Civil Aircraft from Canada*, Inv. Nos. 701-TA-578 & 731-TA-1368 (Preliminary), "Post-Conference Brief, Petitioner: The Boeing Company" (May 24, 2017) ("Boeing 5/24 Post-Conference Brief"), Exhibit 8 ("Nickelsburg Report"), paras. 32-33.

[89] *See* Boeing 5/24 Post-Conference Brief at 7-8.

[90] Yan Lapointe, Manager, Investor Relations, Bombardier, "Investor Presentation," at slide 25 (Nov. 2015) (Petition Exhibit 48) (separating Boeing's 737 MAX 7 and Airbus' A319neo from the larger variants within the same family).

[91] Bombardier website, "Aerospace – Commercial Aircraft," (Boeing 5/24 Post-Conference Brief, Exhibit 1).

[92] *See* Airbus Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017), attached as Exhibit 4.

discussing the proposed partnership with Bombardier, Airbus' CEO Thomas Enders said "to answer that question that came . . . yesterday, but what about the A319 and you're going directly against the A319 with the C Series? Well the answer is we haven't sold the Airbus A319s over the last five years. I think that answers that question."[93] Airbus thus also acknowledges that the 100- to 150-seat market segment is a discrete market and that its A319 competes directly with the C Series in this market, but its medium and large single-aisle aircraft (the A320 and A321) do not.[94]

Additional evidence on the record further supports the Commission's preliminary determination and validates the existence of the 100- to 150-seat market. Bombardier's website claims "{t}he C Series is the only single-aisle aircraft specifically designed to serve the 100- to 150-seat market."[95] Bombardier's Commercial Aircraft Market Forecast focuses extensively on "the 100- to 150-seat segment" and states "{s}ingle-aisle aircraft in the 100- to 150-seat segment will be critical to the growth of hub-and-spoke networks as well as the establishing of competitive but profitable point-to-point short-to-medium haul routes."[96] A presentation Bombardier prepared for the investor call announcing the proposed partnership with Airbus specifically describes the C Series as "expand{ing} Airbus' offering across the 100-150 seat segment."[97] [ ] further corroborated a clear dividing line between in-scope LCA and larger

[93] Airbus Conference Call (FD Wire), "Airbus SE and Bombardier Inc. Announce C Series Partnership Call – Final," at 3 (Oct. 17, 2017), attached as Exhibit 8.

[94] *See* Karen Walker, *Airbus & Bombardier to partner on CSeries; build aircraft in Alabama*, Air Transport World (Oct. 16, 2017), attached as Exhibit 14.

[95] *See* Bombardier website, "Commercial Aircraft – C Series, CRJ Series and Q Series – Bombardier" (accessed Dec. 6, 2017), attached as Exhibit 15.

[96] *See Insight from Bombardier: Five key trends affecting commercial aviation for the next 20 years*, FlightGlobal (Sept. 12, 2017), attached as Exhibit 16.

[97] Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slide 5 (Oct. 16, 2017), attached as Exhibit 7.

aircraft in its questionnaire response, [

].[98]

The Staff Report explains that: "100- to 150-seat LCA production is highly capital intensive, where low-volume/high-value products require billions of dollars to develop and produce, and can be expected to last approximately twenty-five years. Because of the high capital costs and risks, producers often are only able to offer a limited number of product choices."[99] Moreover, "{i}n order to meet demand and maximize returns on investment, producers must develop aircraft that allow for a variety of preferences and meet the needs of the market years in advance."[100] Accordingly, discrete markets, involving only a few aircraft models, have developed to serve clusters of customer demand. Aircraft manufacturers do not make airplanes tailored to any one particular airline's unique mission goals, but instead develop airplanes that will best serve a wide range of airline customers in these established market segments. When Boeing designs a new model of aircraft, it identifies the particular market segment it wants to target and then designs the new model to accommodate the number of seats that it believes will be most competitive in that particular segment. Boeing's models in the 100- to 150-seat market are the 737-700 and 737 MAX 7.

Three key areas distinguish the 100- to 150-seat LCA, such as the 737 MAX 7, from larger U.S. single-aisle LCA, such as the MAX 8, 9, and 10: range; performance; and profitability. First, the 737 MAX 7 has greater range than the 737 MAX 8, 9, or 10. This greater

---

[98] [ ]. In this context, [ ].

[99] Staff Report at II-1-II-2.

[100] Staff Report at II-4.

range capability allows the 737 MAX 7 to reach more destinations in [

].[101] Second, the 737 MAX 7 has greater performance capabilities at challenging airports. In particular, the 737 MAX 7 can serve certain "high/hot" airports and has greater range operating out of constrained airfields, such as [ ], which allows it to fly certain routes than the 8, 9, and 10 cannot, as discussed in greater detail below.[102] Finally, as detailed below, the 737 MAX 7 is "right sized" for certain routes, meaning it has greater profitability on these routes than the 737 MAX 8, 9 and 10, given current passenger demand.[103] This is just some of the evidence that confirms what Bombardier and Airbus have already conceded: that there are clear dividing lines that separate the 737-700 and 737 MAX 7 from larger U.S. LCA. The full range of evidence is discussed below.

The Commission's "domestic like product" determination is a factual issue that the Commission resolves by weighing six factors relating to the products in question: (i) physical characteristics and uses; (ii) interchangeability, (iii) common manufacturing facilities, production processes, and production employees; (iv) channels of distribution; (v) customer and producer perception; and, where appropriate, (vi) price.[104] No single factor is dispositive, and the

[101] Boeing Internal Presentation, [ ], at slides 7-11, attached as Exhibit 17.

[102] *See* Boeing Internal Presentation, [ ], at slide 2, attached as Exhibit 17; Nickelsburg Report, paras. 23-24 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[103] Boeing Internal Presentation, [ ], at slide 2, attached as Exhibit 17; *see also Insight from Bombardier: Five key trends affecting commercial aviation for the next 20 years*, FlightGlobal (Sept. 12, 2017) ("Over the next 20 years, more right-sized aircraft will serve more intra-regional routes . . . In mature markets, like the U.S. and Europe, 100- to 150-seat aircraft services can help relieve stress on infrastructure and return service to abandoned routes. Airlines can introduce point-to-point service between underserved Tier 2 and Tier 3 airports at competitive fares levels, with high yields."), attached as Exhibit 16.

[104] *Cleo Inc. v. United States*, 30 C.I.T. 1380, 1384 (Ct. Int'l Trade 2006), *aff'd*, 501 F.3d 1291 (Fed. Cir. 2007).

Commission is permitted to consider other relevant factors.[105] An analysis of these six factors confirms that the Commission's preliminary definition of the domestic like product is correct.

A. Physical Characteristics and Uses

The six models of aircraft in today's 100- to 150-seat LCA market are very similar in physical characteristics, as noted in the Staff Report.[106] In fact, [

].[107] In addition to being similar in size, the six models of aircraft in the 100- to 150-seat LCA market all have similar payload capacity and range capabilities, as detailed in the petition.[108] The FAA-issued aircraft type certificates for the Boeing 737 and Bombardier C Series jets bear out these important capacity constraints.[109] The similarities in their physical characteristics result in aircraft capable of carrying between 100 and 150 passengers and their luggage on routes in excess of 2,900 nautical miles. Significant variations in several characteristics clearly differentiate these 100- to 150-seat LCA from larger single-aisle aircraft, most importantly differences in number of seats and range.

Seating capacity is derived primarily from the size of an aircraft and is the most differentiating physical characteristic of an aircraft. As the Commission has already found, the smaller size of the 737-700 and 737 MAX 7 results in lower standard two-class seat counts (126

---

[105] *Id.* at 1384 & n.5.

[106] *See* Staff Report at I-15, Table I-1.

[107] Boeing Internal Presentation No. 1, at 30-33 [ ] (Petition Exhibit 93).

[108] *See* Petition at 39–40.

[109] Department of Transportation, Federal Aviation Administration, Type Certificate Data Sheet No. A16WE, Revision No. 58, at 24–25, 33 (Mar. 8, 2017) (showing different maximum number of passengers and takeoff weights for Boeing 737-700 and 737-800 aircraft) (Boeing 5/24 Post-Conference Brief, Exhibit 39); Department of Transportation, Federal Aviation Administration, Type Certificate No. T00008NY, Revision No. 1, at 4-5, 8-10, 16 (Dec. 13, 2016) (showing the same limitations for C Series aircraft), attached as Exhibit 18.

seats and 138 seats, respectively) compared to other domestically produced single-class LCA.[110] Those seating capacity differences have critical implications for airline operating economics, as the Commission recognized: "All parties agree that seat count is a critical characteristic of single-aisle LCA because airlines seek to minimize empty seats by using LCA that are no larger than necessary on particular routes."[111]

Indeed, in terms of end uses, airlines purchase particular models of single-aisle LCA to meet specific mission requirements that are part of their overall fleet profile.[112] Medium and large single-aisle LCA are not optimized to meet the same mission needs as small single-aisle LCA, and vice-versa. Small single-aisle LCA tend to be utilized more heavily for newly created or less dense/lower demand flight routes than medium or large single-aisle LCA, to minimize unused passenger capacity.[113] For Boeing's LCA, the differences in the sizes and seating capacities of its models of single-aisle LCA play out in the real world in terms of the average number of passengers and seating configurations on actual flights. Historically, there has been [

], according to internal Boeing analysis.[114] Thus, Boeing's 737-700 and MAX 7 are, by virtue of size and seating capacity, suited for uses in airline fleets that are different from larger domestic LCA, as the Commission correctly found:

---

[110] Preliminary Determination, USITC Pub. 4702 at 8.

[111] Preliminary Determination, USITC Pub. 4702 at 8. *See also* Staff Report at I-29 ("{T}he number of seats in an aircraft is tailored to a specific route in order to maximize profits . . . .").

[112] *See, e.g.*, [

].

[113] *See* Nickelsburg Report, paras. 17-21 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[114] *See* Nickelsburg Report, para. 30 (Boeing 5/24 Post-Conference Brief Exhibit 8); Boeing Internal Presentation (Boeing 5/24 Post-Conference Brief Exhibit ER-30).

"the relatively lower seat counts of 100- and 150-seat LCA as compared to other single-aisle LCA would generally limit their use to routes with relatively lower demand per flight."[115]

The U.S. Importers'/Purchasers' Questionnaire responses provide further evidence that 100- to 150-seat LCA differ from larger single-aisle LCA in their physical characteristics due to size and seating capacity, as well as range. For example, [

].[117] Similarly, [

].[118] A majority of responding U.S. importers/purchasers consider that the 737-700 and MAX 7 are only "somewhat" or are "not at all" comparable to the 737-800/-8, 737-900/-9, and -10 in terms of physical characteristics and end uses.[119]

B. Interchangeability

The Commission has previously found that, although products may share characteristics and uses, practical interchangeability is limited where certain key physical differences cause

---

[115] Preliminary Determination, USITC Pub. 4702 at 9.

[116] [ ].

[117] [ ].

[118] [ ].

[119] In particular, five out of nine U.S. importers/purchasers reported that the 737-700/-7 is only "somewhat" comparable to the 737-800/-8 in terms of physical characteristics and uses. Six out of eight U.S. importers/purchasers reported that the 737-700/-7 is only "somewhat" or "not at all" comparable to the 737-900/-9, and four out of seven reported the same for the -10. *See* Staff Report, Table I-2.

each product to be favored for specific applications.[120] In the preliminary determination, the Commission recognized that economic constraints limit interchangeability among LCA in different markets.[121] The record evidence confirms that the interchangeability of 100- to 150-seat LCA and larger single-aisle LCA is greatly limited by differences in physical characteristics and the economics of operating aircraft.

First, differences in physical characteristics significantly constrain interchangeability between small single-aisle LCA (*i.e.*, the 737-700 and 737 MAX 7) and medium and large single-aisle LCA (*i.e.*, the 737-800, 737 MAX 8, 737-900, 737 MAX 9, 737 MAX 10). As previously mentioned, small single-aisle LCA are uniquely capable of servicing certain "high/hot" airports,[122] whereas medium and large single-aisle LCA are not suitable for certain U.S. airports due a combination of runway length, elevation, temperature, humidity, and other environmental conditions.[123] Examples of high/hot airports include [ ].[124] Other airports are performance-constrained, meaning that aircraft taking off from those airports have reduced range, due to a combination of short runway length, obstacles to be cleared, and noise requirements.[125] Examples of performance-constrained airports include [ ].[126] As a result, airlines do not have the practical ability to use small single-aisle LCA and medium or large

---

[120] *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Final), USITC Pub. 4577 (Nov. 2015) at 8.

[121] *See* Preliminary Determination, USITC Pub. 4702 at 10-11.

[122] Boeing Internal Presentation, [ ] (2016) (Boeing 5/24 Post-Conference Brief, Exhibit 9); Nickelsburg Report, paras. 23-24 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[123] *See* Nickelsburg Report, paras. 23-24 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[124] *See* Nickelsburg Report, para. 24 ([ ]) (Boeing 5/24 Post-Conference Brief Exhibit 8).

[125] *See* Nickelsburg Report, para. 24 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[126] Boeing Internal Analysis, [ ] (2017), at slides 2, 5-6, attached as Exhibit 17.

single-aisle LCA interchangeably on certain routes. For example, [

].[127]

Second, airlines seek to optimize the use of different aircraft models in order to maximize profits.[128] Most airlines seek to use a combination of small and medium/large single-aisle LCA to operate efficiently based on projected passenger demand.[129] The different segments of the single-aisle LCA market play distinct roles in matching customer demand, and most airlines could not operate efficiently with a fleet consisting only of small single-aisle LCA or large single-aisle LCA (*e.g.*, only MAX 10s).[130] Bombardier and [ ] concur in this assessment. In a press release touting an industry award given to the C Series, Bombardier states that:

> {T}he C Series family represents the fusion of performance and technology. The result is aircraft that deliver unmatched performance and economics in the 100- to 150-seat market segment and an 18 per cent lower cost per passenger, making them the ideal candidates to complement larger single-aisle aircraft. Airlines can now operate routes that were previously not profitable or even possible. An improvement in range in excess of 20 per

---

[127] Boeing Internal Analysis, [ ] (2017), at slides 2, 5 attached as Exhibit 17.

[128] *See* Preliminary Determination, USITC Pub. 4702 at 10 ("{A}irlines allocate planes to specific routes based on anticipated seat demand, seeking to minimize empty seats by utilizing planes no larger than necessary to accommodate seat demand."); Staff Report at I-26; *see also* Nickelsburg Report, paras. 16-21.

[129] *See* Preliminary Determination, USITC Pub. 4702 at 10-11; Staff Report at I-25. As noted in the Staff Report, several airline customers reported that they frequently use larger aircraft on the same routes as 100- to 150-seat LCA. *See* Staff Report at II-30. This reflects the fact that passenger demand on a particular route can fluctuate significantly, based on the time of year and even the time of day the route is flown. *See* Nickelsburg Report, para. 54 (Boeing 5/24 Post-Conference Brief Exhibit 8). However, it does not indicate that 100- to 150-seat LCA are suited to the same missions as other LCA.

[130] For example, United's conversion of its 65 737-700 orders to [

].

> cent out of hot-and-high airports such as Denver, Mexico City or Lhasa has been confirmed.[131]

Similarly, in its questionnaire response, [

].[132] Boeing's own internal analysis shows that its 100- to 150-seat LCA are used more heavily for shorter, more frequent flights than its larger single-aisle LCA[133] and that approximately [

].[134]

The Commission found in the preliminary determination that:

> {T}here are economic limitations on the interchangeability of 100- to 150-seat LCA and larger single aisle LCA on the same routes; that is, flights between the same airports, at the same time of day, day of the week, and season. As discussed above, airlines allocate planes to specific routes based on anticipated seat demand, seeking to minimize empty seats by utilizing planes no larger than necessary to accommodate seat demand. For this reason, airlines would avoid using 100- to 150-seat LCA on routes where seat demand exceeds their limited seating capacity. Conversely, airlines would avoid using a larger single-aisle LCA on routes with seat demand commensurate with a 100- to 150-seat LCA because doing so might result in empty seats, higher costs per seat, and lower profits.[135]

As the Commission correctly found, it is economically infeasible to use larger single-aisle LCA on flights appropriate for an aircraft the size of a 737-700 or MAX 7, because unfilled seats represent lost revenue and larger single-aisle LCA are more costly to operate.[136] Three of

---

[131] *See* Bombardier Press Release, "Advanced Aerodynamics, Technology and Materials Earn Bombardier C Series Aircraft Aviation Industry Honours" (Mar. 3, 2017), attached as Exhibit 19 (emphasis added).

[132] [ ].

[133] *See* Boeing Internal Analysis, [ ] (Boeing 5/24 Post-Conference Brief Exhibit 10).

[134] *See* Boeing Internal Analysis, [ ] (2017), at slide 3, attached as Exhibit 17.

[135] Preliminary Determination, USITC Pub. 4702 at 10.

[136] *See* Preliminary Determination, USITC Pub. 4702 at 10; Nickelsburg Report, paras. 17-21 (Boeing 5/24 Post-Conference Brief Exhibit 8).

the main drivers of operating cost increase with the size of aircraft: pilot & flight crew costs; landing & navigation fees; and fuel. As stated in the Staff Report, pilot costs tend to be higher for larger aircraft.[137] Flight crew costs similarly increase with aircraft size, due to an FAA-mandated additional flight attendant for passenger-carrying aircraft with over 150 seats.[138] Landing and navigation fees are higher for larger aircraft, because they are calculated in part based on maximum take-off weight ("MTOW").[139] Larger aircraft also generally have higher fuel costs compared to smaller aircraft, even when flown with the same number of passengers, because of the higher MTOW of larger aircraft.[140] Thus, airlines constantly adjust the aircraft they use to fly particular routes (depending on the season, day of week, and time of day) in order to capture as much passenger demand as possible while maximizing revenue and minimizing operating costs.

Some examples of routes that are "right-sized" for 100- to 150-seat LCA, and the U.S. airlines that serve those routes, are:

[

[137] Staff Report at I-26 n.74; *see also* Nickelsburg Report, paras. 19-20 (Boeing 5/24 Post-Conference Brief Exhibit 8); Dennis Schaal, *The U.S. Airline Pilots Who Barely Make Minimum Wage*, Skift (Aug. 28, 2013) (Boeing 5/24 Post-Conference Brief Exhibit ER-29). "Scope clauses" in U.S. pilot contracts also largely prevent major airlines' contracted regional carriers from operating aircraft with more than 76 seats or a MTOW of 86,000 pounds, which limits the interchangeability of regional jets and single-aisle LCA. *See* Jon Hemmerdinger, *Bombardier confident 'scope clauses' will not change*, FlightGlobal (Sept. 25, 2017), attached as Exhibit 20.

[138] 14 C.F.R. § 121.391(a)(4).

[139] *See* [ ].

[140] *See* [ ].

].[141]

The U.S. Importers'/Purchasers' Questionnaire Responses further demonstrate that customers do not view the 737 MAX 8, 737 MAX 9, and 737 MAX 10 as interchangeable with the 737 MAX 7 on routes with passenger demand for 100- to 150- seat LCA. Seven out of the nine respondents who reported familiarity with Boeing's 737 aircraft stated that the 737-700/-7 is only somewhat comparable to the 737-800/-8 in terms of interchangeability, and eight out of nine agreed the 737-700/-7 is only somewhat comparable to the 737-900/-9.[142] [

].[143]

The U.S. Producers' Questionnaire Responses also confirm that the 737-700 and 737 MAX 7 are the most interchangeable with subject merchandise. [

---

[141] *See* Boeing Internal Analysis, [ ] (2017), at slide 4, attached as Exhibit 17.

[142] *See* Staff Report, Table I-2. Six out of seven U.S. importers/purchasers who reported familiarity with the -10 reported that the 737-700/-7 is only "somewhat" or "not at all" comparable to the -10 in terms of interchangeability. *See id.*

[143] [ ]. [ ] "reported that while 200- to 300- seat aircraft are not generally substitutable for 100- to 150-seat LCA, other larger single-aisle aircraft (such as a Boeing 737-800) can be substituted for a 100- to 150-seat LCA (such as an Airbus A319) when the larger aircraft takes over a route with high demand and reduces the number of trip frequencies." *See* Staff Report at II-28. This shows that 100- to 150-seat LCA serve different missions from larger LCA. As Professor Nickelsburg explained, "small narrow-body aircraft—that is, 100- to 150-seat LCA—are designed to serve short to medium-range routes where the demand for air travel is low, or short to medium-range routes that require frequent flights due to high, but time-sensitive, demand for air travel." Nickelsburg Report, para. 10 (Boeing 5/24 Post-Conference Brief Exhibit 8). Professor Nickelsburg also explained that "{i}n routes with high, but time-sensitive demand, it is important for an airline to offer multiple flights with convenient flight times to maintain its market share. This is because on these routes the airline's frequency share (the share of flight frequency in a given route) is an important driver of passenger demand. In such routes, it would not be profitable for an airline to consolidate multiple flights served by the 737-700 and, instead, employ a larger aircraft." *Id.*, para. 19.

].[144]

Each of these data points confirms that there is a clear dividing line between the 737-700 and 737 MAX 7 on the one hand, and larger 737 variants on the other.

C. Channels of Distribution

All newly-manufactured LCA are sold directly to end users, or sold to aircraft leasing companies that serve airline carriers. Because these common distribution channels cover such a diverse array of aircraft—*i.e.*, from a 747-8 jumbo jet to the 737-700—it is not a meaningful factor for the like product analysis.

D. Customer and Producer Perceptions

Industry analysts and market participants widely view small single-aisle LCA (*i.e.*, 100- to 150-seat LCA) as serving a distinct market segment from medium and large single-aisle LCA and from regional jets.[145] As discussed above and in the Petition,[146] market participants, industry commentators, and governmental bodies have repeatedly isolated the 100- to 150-seat market as distinct from larger single-aisle LCA.[147] Bombardier's website expressly recognizes the 100- to 150-seat market as a distinct market segment,[148] and its marketing materials and investor

---

[144] [ ].

[145] The industry recognizes regional jets as distinct from single-aisle LCA. When the European Commission investigated the UK launch aid to the C Series in 2009, it embraced the view that commercial aircraft in the 100- to 150-seat range are a distinct market segment from regional jets. European Commission, State aid N 654/2008 – United Kingdom, Large R&D aid to Bombardier, C(2009)4541 final, para. 194 (June 17, 2009) (Petition Exhibit 22).

[146] Petition at 34 n.106, 36-37, 41-43.

[147] Petition at 41-43.

[148] Bombardier website, "Aerospace – Commercial Aircraft," (Boeing 5/24 Post-Conference Brief, Exhibit 1).

presentations repeatedly describe competition in this market to include the CS100, CS300, 737 MAX 7 and A319neo but not larger single-aisle LCA.[149] Recently, Bombardier and Airbus have declared that they intend the C Series to dominate the 100- to 150-seat market and complement Airbus' larger single-aisle aircraft—such as the A320—that do *not* compete with the C Series.[150] In its materials announcing the Airbus partnership, Bombardier explicitly referenced the "100-150 seat segment"[151] and described the C Series as "expand{ing} Airbus' offering across the 100-150 seat segment."[152]

The U.S. Importers'/Purchasers' Questionnaire responses provide further evidence that customer perceptions differ for 100- to 150-seat LCA as compared to larger single-aisle LCA. For example, [

].[153] As noted in the Staff Report, [

[149] Petition at 34 n.106, 41-43; Boeing 5/24 Post-Conference Brief at 7-8.

[150] *See* Airbus Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017), attached as Exhibit 4; Benjamin Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017) (Airbus CEO Thomas Enders citing the five-year order drought for the A319 and stating "That was the last time we sold the plane . . . That tells you something about the competition between the A319 and the C Series."), attached as Exhibit 5.

[151] *See* Bombardier Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017), attached as Exhibit 6.

[152] Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slide 5 (Oct. 16, 2017), attached as Exhibit 7.

[153] [ ].

].[154] Approximately half of U.S. importers/purchasers reported that Boeing's 737-700/-7 are only "somewhat" or "not at all" comparable to Boeing's larger 737 aircraft in terms of customer perceptions.[155] Even if the Commission finds consumer perceptions are mixed, it can, and previously has, found that a dividing line exists between products of varying size, even where there is not a consensus in the industry establishing that bright line.[156] The Court of International Trade has also upheld determinations that relied on the mixed nature of consumer perception to support a narrower like-product definition.[157]

E. Manufacturing Facilities, Production Processes, and Employees

The Staff Report correctly explains that aircraft production, including the production of single-aisle LCA, is extremely capital-intensive.[158] For that reason, producers seek to achieve economies of scale through common manufacturing facilities and employees, but the economies of scale are limited by the specific requirements of producing 100- to 150-seat LCA and other models. According to the Staff Report, "{w}hile economies of scale can be achieved through producing multiple aircraft models at the same facility with the same employees, there are still

---

[154] *See* Staff Report at I-30. [

].

[155] In particular, three out of eight U.S. importers/purchasers reported that the 737-700/-7 is only "somewhat" or "not at all" comparable to the 737-800/-8, and four out of eight reported that the 737-700/-7 is only "somewhat" or "not at all" comparable to the 737-900/-9 and -10. *See* Staff Report, Table I-2.

[156] *Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 9-10 (Feb. 2009) (limiting domestic like product to small graphic electrodes and not including large electrodes, despite lack of industry standards establishing specific diameter distinction)

[157] *Changzhou Trina Solar Energy Co. v. U.S. Int'l Trade Comm'n*, 100 F. Supp. 3d 1314, 1324 (Ct. Int'l Trade 2015) (concluding "disagreement among consumers and purchasers as to the substitutability . . . lends support to the ITC's determination" to exclude thin-film products from the domestic like product).

[158] *See* Staff Report at I-17.

unique production tools required in the assembly of each individual model variant . . ."[159] Thus, because of certain design differences, the 737-700 and 737 MAX 7 require specialized tooling and equipment that are distinct from those used to produce larger single-aisle LCA at Boeing's facility in Renton, Washington, as stipulated by the FAA type certificate for each aircraft. Examples of such specialized tooling include: [

].[160] To account for these differences, Boeing must cross-train its production workers in order for them to work on assembly of different single-aisle LCA.

The specialized tooling and production processes for small single-aisle LCA compared to medium and large single-aisle LCA also have a significant impact on production. According to the Staff Report, "{m}anufacturing differences between different LCA models produced on {} shared lines include modifications to the fuselage, wiring lengths, and landing gear requirements, which have ramifications throughout the entire supply chain."[161] For example, Boeing reported in its questionnaire response that [

].[162] The Staff Report also explains that "switching between aircraft models during manufacturing, even within the same family of aircraft, may disrupt and cause inefficiencies within the production system."[163]

---

[159] Staff Report at I-17.

[160] *See* Boeing 5/24 Post-Conference Brief at Appendix A-7.

[161] Staff Report at I-18.

[162] [ ].

[163] Staff Report at I-18.

Furthermore, different models of single-aisle LCA have different learning curves, and, as explained in the Staff Report, [

].[164] As a result, Boeing is only able to move down the learning curve, and thereby reduce costs, by producing long runs of the same model of single-aisle LCA.

Differences across production processes for single-aisle LCA are [

], as shown by the questionnaire responses of [

]. [ ] indicated that it [

].[165] As noted above, the Staff Report explains that it is highly cost effective to manufacture different types of planes at common facilities due to the scale economies in aircraft manufacturing.[166] This standard industry practice does not speak to similarities in the resulting products or support a finding of a single like product across segments of the single-aisle LCA market.

In sum, shared production facilities do not negate the clear dividing lines indicated by the other factors in the Commission's test,[167] particularly since, at Boeing, some of the tooling used to manufacture the 737-700 is unique to that product. In *Small Diameter Graphite Electrodes From China*, the Commission excluded large diameter graphite electrodes (LDGEs) from the domestic like product, even though LDGEs and small diameter graphite electrodes (SDGEs)

---

[164] *See* Staff Report at I-17.

[165] [ ].

[166] *See* Staff Report at I-17.

[167] *See General Motors Corp. v. United States*, 827 F. Supp. 774, 789–90 (Ct. Int'l Trade 1993) (rejecting argument "that because planning, parts production, and administrative costs are shared" between operations that the Commission should consider impact to other product lines not included in the like product).

were manufactured by "the same basic production processes" and sometimes produced "on the same equipment using the same employees."[168] The Commission should reach the same conclusion here, where significant differences in characteristics and uses provide a clear line separating in-scope LCA from larger single-aisle aircraft.

F. Price

In the preliminary phase, the Commission found that differences in size and complexity result in larger single-aisle LCA being priced higher than in-scope LCA. Specifically, the Commission found that there is no overlap in Boeing's list prices for its 100- to 150-seat LCA and larger single-aisle LCA.[169] The Staff Report also notes that Boeing's list prices for the 737-700 and 737 MAX 7 range from $82.4 million to $92.2 million, while the list prices for other single-aisle LCA range from $98.1 million to $119.2 million.[170] Boeing believes that list prices are an appropriate measure for the like product analysis as actual purchase prices are affected by a number of other market factors, including volume and timing of orders. Boeing nevertheless recognizes that list prices are routinely discounted in this industry. However, even accounting for this discounting, actual prices show a roughly [ ] price gap between historical pricing for 100- to 150-seat LCA and other Boeing single-aisle LCA on a year-by-year basis.[171] In this industry, a [ ] price gap represents [ ].

The U.S. Importers'/Purchasers' Questionnaire responses confirm that Boeing's 100- to 150-seat LCA, *i.e.*, the 737-700 and MAX 7, are not comparable to Boeing's larger single-aisle

---

[168] *Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Preliminary), USITC Pub. 3985 at 8-9 (Mar. 2008); *Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 8-9 (Feb. 2009).

[169] *See* Preliminary Determination, USITC Pub. 4702 at 12 (citing List Price Module (Boeing 5/24 Post-Conference Brief Exhibit 12)).

[170] *See* Staff Report at I-32.

[171] *See* Analysis of Historical Pricing Data (Boeing 5/24 Post-Conference Brief Exhibit 13).

LCA in terms of price. All of the U.S. importers/purchasers that reported familiarity with Boeing's pricing stated that the 737-700/-7 are only "somewhat" or are "not at all" comparable to the 737-800/-8, 737-900/-9, and -10 on price.[172] Moreover, [

]. Thus, this factor supports the Commission finding, once again, that the domestic like product consists of only 100- to 150-seat LCA.

In sum, in the preliminary determination the Commission defined the domestic like product to be coextensive with in-scope 100- to 150-seat LCA, and thus limited to the Boeing 737-700 and MAX 7. That determination was correct and the Commission should find the same in its final determination.

---

[172] *See* Staff Report, Table I-2.

[173] [
].

[174] [ ].

[175] [

].

III. BOEING IS THE ONLY MEMBER OF THE DOMESTIC INDUSTRY

In the preliminary investigation, the Commission defined the domestic industry as "the only domestic producer of 100- to 150-seat LCA: Boeing."[176] It should do so again. As the Staff Report states, "Boeing is the sole U.S. producer of 100- to 150-seat LCA."[177]

In its questionnaire response, Airbus [

]178 C Series Aircraft Limited Partnership ("CSALP") [

].[180] In any event, the statute defines the domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production,"[181] not foreign companies that may or may not begin production in the

---

[176] Preliminary Determination, USITC Pub. 4702 at 13.

[177] Staff Report at I-4.

[178] [ ]. The Staff Report states that "{b}ased on projected delivery data, {Airbus' Alabama} facility will begin producing A319 aircraft in 2019." Staff Report at I-16-I-17. However, [

].

[179] [ ].

[180] *Cf.* [ ].

[181] 19 U.S.C. § 1677(4)(A).

United States [ ] in the future.[182] Accordingly, the Commission should once again find that the domestic industry is limited to a single domestic producer: Boeing.

IV. THE UNIQUE CONDITIONS OF COMPETITION IN THIS INDUSTRY ARE CRITICAL TO THE COMMISSION'S ANALYSIS OF THREAT OF MATERIAL INJURY

A. Demand Conditions

1. The U.S. Market is Critical to the C Series' Commercial Success

The Staff Report explains that "demand for 100- to 150-seat LCA depends on demand by airline and airplane leasing companies for 100- to 150-seat LCA, which in turn is driven by passenger air travel demand."[183] The U.S. market is critical to Bombardier for three main reasons: (1) it is the largest air travel market in the world; (2) it has unique characteristics

---

[182] [ ] are not sufficient for either to be considered a member of the domestic industry during the period of investigation. *See Large Power Transformers from Korea*, Inv. No. 731-TA-1189 (Preliminary), USITC Pub. 4256 at 7 & n.29 (Sept. 2011) ("As noted above, an affiliate of HHI, Hyundai Power USA, is building a new production facility in the United States, which it expects to complete in November 2011. Because this plant is not yet operational, Hyundai Power USA was not a domestic producer during the period of investigation, and it is unnecessary to consider whether it should be excluded from the domestic industry as a related party.").

[183] Staff Report at II-16. As the Staff Report notes, Boeing provided demand projections in its post-conference brief. *See id.* (citing Boeing 5/24 Post-Conference Brief at Appendix. A-15-16). Boeing has updated its projections based on its 2017-2036 Current Market Outlook, published on June 20, 2017. This includes an updated 20-year demand forecast of 29,500 units for all single-aisle LCA (compared to 28,000 units in the prior projection), and an updated forecast that the U.S. market will account for [ ] of global demand for 100- to 150-seat LCA (compared to [ ] in the prior projection). In addition, Boeing's prior projection inadvertently used an incorrect figure of [ ] to calculate global 20-year demand for 100- to 150-seat LCA; the correct figure is [ ]. Revised projections are as follows: (A) Global 20-year demand, all single-aisle LCA: 29,500 units; (B) Global 20-year demand volume for 100- to 150-seat LCA ([ ] of 29,500 units): [ ] units; (C) U.S. market 20-year demand volume for 100- to 150-seat LCA (based on U.S. market demand accounting for an estimated [ ] of global demand): [ ] units; (D) U.S. market one-year demand volume for 100- to 150-seat LCA ([ ] units/20 years): [ ] units; (E) Global 20-year demand value for 100- to 150-seat LCA (assuming [ ] million per aircraft): [ ] billion; (F) Global one-year demand value for 100- to 150-seat LCA ([ ] billion/20 years): [ ] billion; (G) U.S. 20-year demand value for 100- to 150-seat LCA (based on U.S. market demand accounting for an estimated [ ] of [ ] billion global demand): [ ] billion; (H) U.S. one-year demand value for 100- to 150-seat LCA ([ ] billion/20 years): [ ] billion; (I) One-year Boeing U.S. 100- to 150-seat LCA sales revenue, assuming [ ] delivery market share based on 10-year average in period preceding subject imports (Fair Trade Scenario): [ ] billion; (J) One-year Boeing U.S. 100- to 150-seat LCA sales revenue, assuming [ ] delivery market share, 50% C Series market share, and [ ] A319 market share (Unfair Trade Scenario, excluding additional harm from price depression): [ ] million; (K) Boeing lost U.S. sales revenue from unfair trade each year: [ ] million; (L) Boeing lost U.S. sales revenue from C Series unfair trade every 5 years: [ ] billion.

driving demand for 100- to 150-seat LCA; and (3) large orders from U.S. airlines can build "commercial momentum" for the C Series by showing confidence in the viability of the program. The United States is so important to Bombardier that it treats Canada and the United States combined as its "home market" of North America.[184] According to Bombardier's own marketing materials, "100- to 150-seat renewal will be driven by North America and Europe," projecting 1,900 deliveries in North America from 2014-2034.[185] Industry analysts also consider that "the C Series cannot survive unless it generates big sales in the U.S."[186]

First, as the largest and most important market for 100- to 150-seat LCA, the United States is the most likely source of the large orders that make or break an aircraft program. Airbus itself recognizes the importance of the U.S. market for 100- to 150-seat LCA and for the C Series in particular. Airbus CEO Thomas Enders has confirmed that it is "a very good move to bring this aircraft {the C Series} to the US because the US is the single largest market for this segment."[187] U.S. customer airlines and leasing companies are among the largest in the world.[188] The top three airlines in the world by annual revenue are U.S. carriers American Airlines, Delta Air Lines, and United Airlines, and their domestic U.S. revenues account for 71%, 71%, and

---

[184] *See* Preliminary Determination, USITC Pub. 4702 at 29-30.

[185] *See* Bombardier presentation by Rob Dewar, Vice President C Series, C Series Program Update, at slide 4 (Apr. 2016) (Petition Exhibit 108).

[186] Loren Thompson, *Boeing Thinks Airbus Is Making A Big Mistake With Bombardier Partnership*, Forbes (Oct. 24, 2017), attached as Exhibit 21.

[187] *Airbus to acquire majority stake in C Series*, AeroTime (Oct. 17, 2017) at 3, attached as Exhibit 22; Karen Walker, *Airbus & Bombardier to partner on CSeries; build aircraft in Alabama*, Air Transport World (Oct. 16, 2017), attached as Exhibit 14.

[188] *See* FlightGlobal, World Airline Rankings 2016 (showing American Airlines, Delta Air Lines, and United Continental were the top three airlines in the world by revenue in 2015 (Boeing 5/24 Post-Conference Brief Exhibit 14); FlightGlobal, Top 50 lessors by fleet size (showing GE Commercial Aviation Services as the world's largest lessor by fleet size in 2016) (Boeing 5/24 Post-Conference Brief Exhibit 15); *see also* 5/18 Staff Conference Tr. at 34 (Nickelsburg).

61% of their respective overall revenues.[189] Large low-cost carriers such as Southwest Airlines, Frontier Airlines, JetBlue, and Spirit Airlines also predominantly serve domestic passengers.[190]

The United States also has the world's largest air travel industry and is estimated to remain the largest until at least 2030.[191] In 2016, U.S. airlines served about 719 million domestic passengers, an increase of 14% from 2004.[192] The Staff Report explains that "{p}assenger air travel is largely affected by growth in gross domestic product (GDP), consumer confidence, and disposable income."[193] Boeing generally estimates that [

].[194]

U.S. passenger demand for travel on routes served by 100- to 150-seat LCA is highly sensitive to price,[195] which drives Boeing's customers to seek aircraft pricing that will enable them to compete effectively for passenger fares in terms of pricing.[196] The questionnaire data reflect this. Seven out of nine airlines who responded to the Purchaser Questionnaire indicated that price was "very important" in their purchasing decisions.[197] [

---

[189] Boeing 5/24 Post-Conference Brief Exhibits ER-70, ER-71, and ER-72 (10-Ks for fiscal year ending Dec. 31, 2016 for all 3 airlines).

[190] Nickelsburg Report, para. 95 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[191] "New IATA Passenger Forecast Reveals Fast-Growing Markets of the Future," IATA (Oct. 16, 2014), attached as Exhibit 23.

[192] "2016 Annual and December U.S. Airline Traffic Data," Bureau of Transportation Statistics (Mar. 16, 2017), attached as Exhibit 24.

[193] Staff Report at II-16.

[194] *See* Staff Report at II-17.

[195] *See* Scott McCartney, *The Comfortable New Planes Airlines Think You Don't Want*, Wall Street Journal (Sept. 7, 2017) ("The two airlines currently flying the C Series – Swiss and Air Baltic – say most coach passengers won't pay higher fares for comfy cabins. For a small fare difference, they'll still pick less-comfortable airplanes. Airlines say cost is the No. 1 factor when evaluating new airplanes. 'Passengers get into anything that flies if the ticket is cheap,' says Martin Gauss, chief executive of Air Baltic, based in Riga, Latvia."), attached as Exhibit 25.

[196] Nickelsburg Report, paras. 53, 77 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[197] Staff Report at II-32, Table II-5.

].[198] Moreover, [

].[200] Thus, U.S. airline customers are highly responsive to Bombardier's aggressive pricing of the C Series.

Second, the size and transcontinental range capabilities (*i.e.*, range over 2,900 nautical miles) of 100- to 150-seat LCA, such as the C Series, make them uniquely suited for the U.S. market.[201]

Third, large orders from major U.S. customers are key for the C Series program. As the Staff Report notes, "{t}he U.S. 100- to 150-seat LCA market is characterized by . . . a concentrated and relatively small number of purchasers . . . ."[202] The Staff Report also explains that "{w}ith only a few potential 100- to 150-seat LCA customers worldwide, annual deliveries are relatively low and sales are concentrated in few transactions with a few customers placing

---

[198] [ ].

[199] Purchaser Views, Declaration of [ ], para. 3, attached as Exhibit 3.

[200] Purchaser Views, Declaration of [ ], para. 4, attached as Exhibit 3.

[201] *See* Nickelsburg Report, paras. 15, 96 (Boeing 5/24 Post-Conference Brief Exhibit 8). The longest nonstop flight in the contiguous 48 states is from Seattle (SEA) to Miami (MIA) on American Airlines at 2,724 miles in 2013, which is equivalent to 2,367 nautical miles. *See* 2016 T-100 Domestic Segment Data (Boeing 5/24 Post-Conference Brief Exhibit ER-76).

[202] Staff Report at II-1; *see also id.* at II-5 ("In general, the 100- to 150-seat LCA market has a high degree of customer concentration, as the industry consists of a relatively small number of buyers.").

very large orders . . . running into the billions of dollars."[203] All major U.S. carriers fly 100- to 150-seat LCA in their fleets, generally placing orders for new aircraft in blocks of over 50 units to take advantage of volume discounts.[204] With sales concentrated in a few transactions with only a few customers, even a single sale can have significant, immediate, and lasting impact. In short, the U.S. market is the make-or-break market for a 100- to 150-seat LCA program.

Demand for 100- to 150-seat LCA is also affected by the age of in-service fleets and the development cycles of new models. Airlines have some flexibility as to when they place large orders for new aircraft (and may delay such purchases by extending the useful life of in-service aircraft or purchasing smaller numbers of used aircraft as a stop gap).[205] Airlines' willingness to purchase new aircraft tends to increase when pricing conditions are perceived to be favorable and uncertainty about in-service performance and the viability of a new aircraft program declines.[206] Demand for new 100- to 150-seat LCA was low during the POI because of the large number of units in service, relatively young average fleet age, and the unsettled nature of the market, with three new models launched in the past five years.[207] Boeing expects that U.S. demand for 100-

---

[203] Staff Report at II-5.

[204] Boeing 5/24 Post-Conference Brief at 16; Nickelsburg Report, para. 50 (Boeing 5/24 Post-Conference Brief Exhibit 8); 5/18 Staff Conference Tr. at 36 (Nickelsburg).

[205] *See, e.g.*, [

].

[206] *See* Staff Report at II-31 ("The factors rated as 'very important' {in their purchasing decisions} by at least six responding firms were availability, lifetime operating costs (seat and trip), maintenance costs, payment terms, performance, price, reduced fuel requirements, and seat capacity.").

[207] *See also* Nicolas van Praet & Josh O'Kane, *Top-level change loosens grip of Bombardier founding family*, The Globe and Mail (May 11, 2017) ("Bombardier said it remains on track to ship 30 to 35 C series planes by the end of the year. Asked on a conference call why they haven't seen C Series orders pick up despite exceptional early performance for the airliner, Mr. Bellemare said it was a matter of timing in a soft market: 'There's nothing more to it. It's really related to customer readiness to move forward with the orders.'"), attached as Exhibit 26.

to 150-seat LCA will increase in the imminent future, because U.S. airlines' fleets of 100- to 150-seat LCA are aging and will require replacement in the very near future.[208] Thus, the critical U.S. market is entering a fleet replacement cycle that will attract large volumes of low-priced subject imports.

2. Price Transmission and Commercial Momentum are Two Fundamental Conditions of Competition in the 100- to 150-Seat Market

In the preliminary investigation, Bombardier and Delta disputed the existence of two conditions of demand: price transmission and commercial momentum. Subsequent events—including Bombardier's and Airbus' own statements—confirm these effects are real and play a key role in demand for 100- to 150-seat LCA.

First, the market for 100- to 150-seat LCA is characterized by price transmission effects. As the Commission found in the preliminary determination, "the 100- to 150-seat LCA market is subject to some degree of price transmission effects, whereby the small number of sophisticated purchasers in the market are able to ascertain the prices at which their competitors acquire 100- to 150-seat LCA based on well-publicized sales campaigns."[209] This means that customers are easily able to obtain past pricing information, by interpreting news reports, financial statements, and other business intelligence reports. Once discerning the most-recent price paid for an airplane in a particular market segment, airline customers seek prices commensurate with those obtained by their competitors and compete that pricing against similar airplanes offered by rival

---

[208] *See* 5/18 Staff Conference Tr. at 35-36 (Nickelsburg), 74 (Conner) ("I would just add that in the U.S. there is going to be a huge replacement cycle that will occur over the next few years and the opportunity is now . . ."). The average age of in-service 100- to 150-seat LCA in the United States is between 7.9 and 18.2 years, depending on the airline. *See* Nickelsburg Report, para. 49, Table 4 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[209] Preliminary Determination, USITC Pub. 4702 at 27; *see also* Nickelsburg Report, paras. 71-75 (Boeing 5/24 Post-Conference Brief Exhibit 8).

manufacturers.[210] The same holds true when the market learns of low prices recently offered by manufacturers, even where those offers do not materialize into sales. As a result, even a single sale at unfair prices will have significant, immediate, and lasting effects on the domestic industry.

The evidence on the record demonstrates the existence of price transmission in particular sales campaigns. In the 2015-2016 sales campaign at United, [

].[211] Subsequently, as a Boeing executive states, the [

]:[212]

[

].[213]

Moreover, after Bombardier sold the CS100 (and conversion rights and options for the CS300) to Delta at even more aggressive prices than it offered at United, Boeing was able to estimate those

---

[210] Nickelsburg Report, paras. 77-78 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[211] [

].

[212] Affidavit of [ ], para. 10 (Petition Exhibit 101).

[213] Affidavit of [ ], para. 10 (Petition Exhibit 101).

prices [ ] based only on publicly reported information and financial disclosures.[214]

A Boeing executive has described the impact of Bombardier's aggressive pricing on the domestic like product:

> Prior to the Delta sale, the C Series program was in serious trouble in part because it lacked a marquee customer. The Delta sale solved that problem, validating the C Series program as a whole, and establishing Bombardier's credentials as a legitimate competitor to Boeing and Airbus. However, **by offering such extremely low pricing to win the Delta sale, on top of the depressed pricing it forced Boeing to offer in the United sale, Bombardier has significantly depressed prices for the 737-700 and 737 MAX 7 in the U.S. market**.
>
> U.S. airlines are highly sophisticated customers and tough negotiators. [
>
>]. Most other large U.S. airlines compete with Delta on domestic routes where passenger traffic is highly sensitive to ticket prices, and to compete in this environment, they will do everything they can to match Delta on aircraft acquisition costs. [
>
>]. **U.S. customers will therefore demand that both Bombardier and Boeing provide Aircraft pricing commensurate with the deal Delta received in April 2016**—i.e., $19.6 million per Aircraft.[215]

Airbus and other industry sources concur with Boeing's assessment:

> While the cash-squeezed project was saved from a near-death experience with Delta's discounted order, Bombardier's rivals and others in the industry predict it will remain on the rack a while longer as others demand equal bargains.
>
> . . . .

[214] *See* Preliminary Determination, USITC Pub. 4702 at 28 (citing CR/PR at Table VII-5); Petition at 116-119.

[215] Affidavit of [ ], paras. 18-19 (Petition Exhibit 101) (emphasis added).

> Macquarie analyst Konark Gupta wrote Bombardier could have difficulty getting the CSeries to break even by 2020-21 if it keeps selling at such prices. Others say it has limited choice.
>
> "**I think they have got their work cut out trying to convince others to pay maybe $10-15 million more {than Delta} - why would they**?" said Airbus executive vice-president Chris Buckley.
>
> "The next big guy Bombardier talks to is going to say 'will you be taking a $500 million loss for me'?" an industry source said.[216]

The U.S. importers/purchasers questionnaire data confirm the existence of price transmission, and specifically that other U.S. airlines are also aware of the Delta price. [

] reported that:

[

].[217]

[ ] stated that:

[

].[218]

---

[216] Tim Hepher & Victoria Bryan, *Bombardier faces discount headache as CSeries sales take off*, Reuters (June 4, 2016) (Petition Exhibit 36) (emphasis added).

[217] [
].

[218] [
].

[

].[223]

[

[219] [ ].

[220] [ ].

[221] [
].

[222] [
].

[223] [ ].

[224] [ ].

].[225]

U.S. customers demand commensurate pricing in order to compete on passenger fares. Indeed, [

].[226] As a result, Boeing must either dramatically reduce its prices or lose sales.[227] The existence of price transmission effects is also [

] or through public and/or informal, private communication of price information.[228]

Second, sales of 100- to 150-seat LCA are subject to both positive and negative feedback cycles known as commercial momentum.[229] As stated in the Staff Report, "{a}nother condition of competition cited by Boeing and Respondents is that advance orders drive a virtuous cycle where they validate the program in the marketplace and increase the likelihood of future orders."[230] Booked orders tend to lead to more booked orders; similarly, a lost sale often leads to

---

[225] [ ].

[226] *See* [ ]; Affidavit of [ ], attached as Exhibit 2; Purchaser Views, Declaration of [ ], paras. 2-4, attached as Exhibit 3.

[227] *See* Affidavit of [ ], paras. 8-14, attached as Exhibit 2; Affidavit of [ ], paras. 8-10, 18-20 (Petition Exhibit 101).

[228] *See* [ ]. *See also* Affidavit of [ ], para. 11 ([ ]), attached as Exhibit 2.

[229] Nickelsburg Report, paras. 87-92, 97 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[230] Staff Report at II-4.

more lost sales.[231] This is due to the fact that airlines prefer models of 100- to 150-seat LCA that are favored by other airlines, particularly large, well-respected ones, because there are economic advantages to ordering the most popular models in the market.[232] Such models tend to have higher residual values, are easier to finance, have a broad base of available pilots, are more likely to offer superior lifetime support costs, are supported by numerous third-party repair and part suppliers, and are less likely to have production terminated prematurely.[233] Additionally, airlines have a tendency to fill incremental needs with the same models of aircraft already in their fleets.[234]

In the Commission's preliminary investigation, Bombardier and Delta argued that commercial momentum is not an important condition of competition in this industry, that it does not exist at all, or that, even if it did, it favored Boeing.[235] Those were not credible arguments at the time, and have only weakened over the course of this investigation. Aircraft analyst, Darryl Jenkins, noted that the C Series has given Delta a "competitive advantage," and believes that U.S. airlines will look more closely at the C Series once the planes are in Delta's hands.[236,237]

Furthermore, despite attempting to minimize its importance in the preliminary hearing, Bombardier itself has since confirmed the importance of commercial momentum. For example,

---

[231] Nickelsburg Report, para. 87 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[232] Nickelsburg Report, para. 88 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[233] Nickelsburg Report, para. 88 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[234] *See* [ ].

[235] *See, e.g.*, Bombardier Post-Conference Brief at 28; 5/18 Staff Conference Tr. at 178-180 (May) ("Delta's so-called 'commercial momentum' does not drive our purchasing decisions. In fact, it's not even a term we use at Delta or that I think others generally use in the airline industry.").

[236] Paige Ellis, *Three Reasons Why Boeing May Actually Fear Bombardier*, Business News Network (Sept. 22, 2017), attached as Exhibit 27.

[237] *See also Airbus lifts pressure but Bombardier still faces challenges*, The National (Oct. 30, 2017), attached as Exhibit 28; Allison Lampert & Tim Hepher, *Exclusive: Canada pushed for Airbus deal as Bombardier courted China*, Reuters (Oct. 25, 2017), attached as Exhibit 29.

prior to the announcement of the JV with Airbus, Bombardier President Fred Cromer noted that "{a}s the momentum continues to build up following the successful first year in service of the C Series aircraft, we are pleased that airlines around the world are demonstrating growing interest as they witness the C Series performance and hear about the overwhelming positive feedback from passengers and our launch operators."[238] Similarly, in promotional materials released to tout their JV with Airbus, Bombardier proclaimed that the Delta and Air Canada orders have given the C Series additional commercial momentum, only this time enhanced by Airbus' influence:[239]

[238] Press Release, Bombardier, "Bombardier Continues to Build Momentum with Successful Paris Air Show" (June 22, 2017), attached as Exhibit 30. *See also* Scott McCartney, *The Comfortable New Planes Airlines Think You Don't Want*, Wall Street Journal (Sept. 7, 2017) (stating that according to Fred Cromer, president of Bombardier's commercial aircraft unit, the "number and intensity" of conversations about interest in the C Series has increased in recent months since the planes are now in service and have demonstrated to be economical and reliable), attached as Exhibit 25.

[239] Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slide 9 (Oct. 16, 2017) (red oval added), attached as Exhibit 7; *see also id.*, at slide 6 (stating that the proposed partnership "{a}ccelerates and strengthens the C Series COMMERCIAL MOMENTUM through Airbus' SALES, MARKETING and GLOBAL NETWORK") (highlighting added).

[

].[240] Bombardier stated that the mere announcement of the Airbus JV generated commercial momentum for the C Series. According to Alain Bellemare of Bombardier, within hours of issuing the press release, "I have received very positive calls and messages from a number of airlines and stakeholders. So we are very excited about the *commercial momentum* this partnership will generate."[241] Indeed, concurrent with the Airbus partnership announcement, Bombardier was "already in talks with several potential U.S. customers for the C Series," including JetBlue.[242]

Airbus similarly confirmed the existence and importance of commercial momentum. For example, Airbus has acknowledged that "{d}eveloping and accelerating C Series commercial momentum" was a key part of its rationale in going for the JV with Bombardier.[243] Airbus CEO Thomas Enders and CFO Harald Wilhelm also highlighted the *tapping into the commercial momentum of the C Series* as a primary motivating factor for engaging in the partnership in an investor call on October 17, 2017.[244]

---

[240] *See* [ ].

[241] Bombardier Conference Call (FD Wire), "Bombardier Inc. and Airbus SE Announce Partnership on the C Series Aircraft Program – Final" (Oct. 16, 2017) at 2 (Bellemare) (emphasis added), attached as Exhibit 31.

[242] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017) ("Bombardier is already in talks with several potential U.S. customers for the C Series, CEO Alain Bellemare said Friday in Montreal. In addition to the deal with Delta, JetBlue Airways Corp. is another possible customer, Bregier said earlier this week."), attached as Exhibit 1. *See also* Preliminary Determination, USITC Pub. 4702 at 29 (finding that "Bombardier is likely to focus its sales efforts on U.S. airlines due to the U.S. market's size, Bombardier's familiarity with the market, and the likelihood that U.S. airlines will seek to purchase larger volumes of 100- to 150-seat LCA in the imminent future."); *id.* at 30 (finding that Bombardier "considers the United States to be an extension of its home market in Canada.").

[243] Airbus Presentation, "Airbus & Bombardier, C Series, A Winning Partnership," at slides 6 & 9 (Oct. 17, 2017), attached as Exhibit 32.

[244] Airbus Conference Call (FD Wire), "Airbus SE and Bombardier Inc Announce C Series Partnership, Call – Final" (Oct. 17, 2017), attached as Exhibit 8. As Mr. Enders explained, the partnership "will unlock the full potential of the C Series, this partnership, in terms of **commercial momentum** and profitability." *Id.* at 2 (emphasis added). He added that the single-aisle market is the "largest and fastest growing market segment within the

Furthermore, the U.S. Importers'/Purchasers' Questionnaires also confirm the existence of commercial momentum as a condition of competition in this industry. [

]247 Thus, there can be no question that commercial momentum exists as a demand condition in the 100- to 150-seat LCA market.248

---

commercial aircraft field," and support from Airbus will help bring the C Series to market more efficiently, and he sees "no reason why the C Series should not capture the major chunk of that 6,000 aircraft {market} going forward." *Id.* He also added, "on the commercial side, so to say, a combined customer relationship and Airbus' proven sales expertise will help the C Series gain traction and strengthen **its commercial momentum.** From what I've seen so far… there {are} plenty of customers out there, who are convinced that {the} C Series is a great aircraft, but they've been hesitant to engage and to buy these aircraft simply because they were not sure about the future of the program and about the future of the shareholder in the program." *Id.* at 3 (emphasis added). Mr. Enders went on to say that "{o}n the industrial side, **the expected increase in commercial momentum** combined with our global procurement and scale will, for sure, help reduce current C Series production costs to a highly competitive level…" *Id.* (emphasis added). Mr. Wilhelm went on to add that "Tom explained already before that we expect to generate significant longer-term upsides in this joint venture **from an accelerated commercial momentum** and from production cost savings in the C Series, as we were able to demonstrate on our A320 family." *Id.* at 4 (emphasis added). Mr. Enders pointed out that "I think everybody can see that there is clearly potential to create **new commercial momentum** in the segment that is anticipated to represent more than 6,000 aircraft over the next 20 years" and "Bombardier does need a partner **to build the commercial momentum.**" *Id.* at 4-5 (emphasis added).

245 [
].

246 [
].

247 [ ].

248 Government officials have also noted the importance of commercial momentum, and the anticipation that Airbus will help bring further momentum to the C Series. For example, Quebec Economy Minister Dominique Anglade noted that Airbus would bring its "selling firepower" to the C Series, thereby boosting confidence in the program and completely changing the game for sales. *See* Sandrine Rastello, *Quebec Touts Airbus Sales Power, Jobs Saved in C Series Deal*, Bloomberg Politics (Oct. 17, 2017), attached as Exhibit 33.

B. Supply Conditions

There are only three producers of in-scope 100- to 150-seats LCA globally, Airbus, Boeing, and Bombardier.[249] Boeing produces the 737-700 and is developing the 737-MAX-7. Bombardier produces the CS100 and CS300. Airbus produces the A319ceo and neo. With the consummation of the proposed transaction between Airbus and Bombardier, Airbus will control the marketing and sales of four of the six models in the 100- to 150-seat market.[250]

The Staff Report states: "100- to 150-seat LCA production is highly capital intensive, where low-volume/high-value products require billions of dollars to develop and produce."[251] These costs are concentrated in the early stages of an aircraft program's development, years before the first delivery and before any guarantee of commercial success of a particular aircraft.[252] This means that cost overruns and weak commercial performance can rapidly weaken a producer's financial condition and threaten its ability to engage in development of a new aircraft program, or even remain in business. As stated in the Staff Report, "{t}he need to fund and maintain program development efforts rely on advance orders from customers."[253] Unsubsidized producers rely on the cash flow of pre-delivery payments from firm orders, and on profits generated by current production, to fund production of its airplanes, improve its current offerings, and develop new models.[254] For Boeing, these pre-delivery payments are typically negotiated based on [

---

[249] Preliminary Determination, USITC Pub. 4702 at 23.

[250] That is, Airbus will control marketing and sales of the CS100, CS300, A319ceo, and A319neo.

[251] Staff Report at II-1; *see also* Preliminary Determination, USITC Pub. 4702 at 25.

[252] 5/18 Staff Conference Tr. at 36 (Nickelsburg).

[253] Staff Report at II-4.

[254] *See* Boeing U.S. Producers' Questionnaire Response (Final), Question II-11i.

].[255] Producers must secure sufficient orders during the design and development phases of an aircraft, when costs are highest, to generate a steady stream of pre-delivery payments and to signal to the market that the aircraft program is viable.[256]

Production operations of 100- to 150-seat LCA are highly complex, and producers differ in how they organize production—*e.g.*, what activities are performed in-house or by suppliers, and the scope and complexity of activities that occur at the final assembly site. Indeed, there is no fixed definition of "final assembly" in this industry. For example, Boeing fabricates the 737-700 and 737 MAX 7 wings (from sheets of aluminum to a fully stuffed, sealed functional, and tested wing) at its final assembly facility in Renton, WA. Similarly, although Boeing receives fuselages from Spirit Aerosystems in Kansas, those fuselages are delivered to Boeing's Renton facility as empty shells.[257] To make the fuselages functional, Boeing installs the wiring, systems (including the avionics and flight deck), and interiors at its final assembly facility. In contrast, Airbus' experiences in Alabama[258] and China[259] show that "final assembly" operations outside of a producer's home territory can be a shadow of home-market facilities. At both facilities, Airbus joins fully-equipped aircraft sections, such as the wings and fuselage, that arrive from Airbus'

---

[255] *See* Boeing U.S. Producers' Questionnaire Response (Final), Question II-11i.

[256] 5/18 Staff Conference Tr. at 36-7 (Nickelsburg). *See* Q2 2016 Bombardier Inc. Earnings Call, Fair Disclosure Wire (Aug. 5, 2016), at 5-6 (quoting Bombardier's CFO as stating: "we relaunched the C Series {with} marquee orders that re-energized the program filling delivery slots in the steep part of the production learning curve . . . These orders created significant value for Bombardier by filling the skyline at a critical time and they generated the sales momentum that we are now experiencing") (Petition Exhibit 11).

[257] Dominic Gates, *Boeing retools Renton plant with automation for 737's big ramp-up*, The Seattle Times (Apr. 18, 2015), attached as Exhibit 34.

[258] Airbus, Press Release, "Airbus Launches Ship Carrying First Components for A320 Family Production in the U.S." (May 29, 2015) ("The major component assemblies (MCAs) consist of the wings produced in the UK, the rear fuselage section produced in Germany including the tail cone (produced in Spain), and the forward fuselage section, including the cockpit produced in France, all of which contain parts from all over the world. The horizontal (from Spain) and vertical (from Germany) stabilisers are also on board."), attached as Exhibit 35.

[259] Graham Rapier, *Here's the Chinese factory where Airbus assemblies its most popular plane*, Business Insider (Aug. 26, 2015), (noting that "{s}egments for final assembly arrive in China on a specially designed Airbus known as 'Beluga'"), attached as Exhibit 36.

production facilities in Europe pre-installed with wiring, systems, and interiors.[260] The same is true of the wings, arriving at the "final" assembly facility already wired and sealed. Airbus simply attaches those service-ready wings, produced in the United Kingdom, to the fuselage, produced in the EU, and hangs the engine assemblies, produced in France.[261] This approach splits aircraft assembly operations between upstream facilities and the "final" assembly site and is less labor-intensive than the assembly operations that occur at Boeing's final assembly facility in Renton.[262] As a result, Airbus' final assembly operation in Mobile is responsible for only a small fraction of the value of the finished aircraft, reportedly about 5% for A320 aircraft.[263]

Regardless of how a producer organizes its fabrication and assembly operations, all aircraft are made to order, and there is no intentional production of airplanes to sit as inventory awaiting a sale. The primary constraint on production and production capacity is the number of orders or sales. If existing and anticipated orders are sufficient to increase the production rate, a producer will do so, whether through a faster through-put on its existing production infrastructure or by establishing a new production line. While a producer may go up or down in rate as market forces dictate, it is extremely costly and inefficient to fluctuate production rate.

---

[260] *See* Binyamin Appelbaum & Christopher Payne, *A Look Inside Airbus's Epic Assembly Line*, The New York Times (May 3, 2017) ("Loaded upon them are the titanic parts of flying machines: tails, already painted; wings, already functional; the fuselage, in two segments, front and rear. . . . What happens in Mobile doesn't resemble manufacturing so much as the assembly of a particularly large and tremendously complicated piece of Ikea furniture."), attached as Exhibit 37; Airbus website, "How is an aircraft built? – Final assembly and tests," ("The completed, joined fuselage is lifted into a position where the two wings are mated and engine pylons and landing gear fitted."), attached as Exhibit 38.

[261] Airbus website, "How is an aircraft built? – Final assembly and tests," attached as Exhibit 38.

[262] *See* Dominic Gates, *Airbus takes Boeing fight to U.S. soil*, The Seattle Times (Jan. 15, 2008) ("Airbus' plan calls for A330 pieces to arrive in big, partially completed sections with many systems pre-installed in Europe likely making the Mobile production line less labor-intensive than Boeing's 767 assembly operation . . . ."), attached as Exhibit 39.

[263] *See* Daniel Michaels, Jon Ostrower & David Pearson, *Airbus's New Push: Made in the U.S.A.*, Wall Street Journal (July 2, 2012), attached as Exhibit 40; *Europe's Airbus to build planes in Alabama by 2016*, Agence France Presse (July 4, 2012), attached as Exhibit 41.

Producers only increase their production rate if they are confident it can be sustained for an extended period; conversely, producers will only decrease the production rate after they have exhausted their sales efforts.[264] For a producer in the early stages of a new aircraft program, however, it is absolutely necessary to secure orders to fill production slots according to its early production plan, or else the economics of the program collapse. Bombardier confirmed this fact during the preliminary investigation, "{w}hen asked at the conference if it is 'important that Bombardier adhere to {its} {production ramp up} schedule to make this program a financial success,' a Bombardier executive responded 'it is very important' and 'we are forced to achieve that rate.'"[265] Bombardier must achieve its production goals for the C Series program to capture the savings achieved by coming down the learning curve as quickly as planned and achieve the economies of scale necessary for the program to be financially viable.[266]

The 100- to 150-seat LCA industry is also characterized by long lag times between orders and delivery, often two to five years.[267] This is a consequence of both complex production systems and purchaser preferences. Boeing testified at the Staff Conference that "{o}nce an order occurs . . . . your production system is being set at that time . . . {our} lead times are, when you talk about lead time, that's when we give notification to our supply base to start building this type of airplane."[268] Producers typically allow up to [ ] months to obtain components from suppliers,[269] and then require approximately [ ] to turn the

---

[264] *See* Boeing U.S. Producers' Questionnaire Response (Final), Question II-11f.

[265] Preliminary Determination, USITC Pub. 4702 at 24-25.

[266] *See* Nickelsburg Report, paras. 113-114 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[267] Both sides agree that the minimum lag time between order and delivery is [ ] months, and that the average lag time is [ ]. *See* Preliminary Determination, USITC Pub. 4702 at 25.

[268] 5/18 Staff Conference Tr. at 65 (Conner).

[269] *See* Boeing 5/24 Post-Conference Brief at 33.

components into a fully assembled 100- to 150-seat LCA.[270] As Mr. Conner testified at the Staff Conference, it "is right around a 2-year period so when you sell an airplane, that really starts the clock ticking in terms of when people start producing. So selling now, we would send a signal to our long lead suppliers, start using these unique parts for that MAX 7 airplane."[271] Similarly, Bombardier estimated at the Staff Conference that it takes "about 18 to 24 months from when you got an order minimum time before you would be able to assemble an aircraft."[272] This lag time between order and delivery means that producers carefully plan (and can project) their production rates several years in advance.[273]

Customers similarly plan their fleet replacement many years in advance.[274] Most major orders are the result of a sales campaign, which may begin with a Request for Information ("RFI"), followed several months later by a Request for Proposals ("RFP")[275] or may entail several months of informal negotiations, followed by placement of a firm order.[276] As described above, there is on average a two-year period between order and first delivery. Once deliveries begin, customers typically prefer to spread the delivery stream of a large order over several years, so that the process of integrating newly delivered aircraft into a fleet is gradual and,

---

[270] *See* Boeing 5/24 Post-Conference Brief at 33; Declaration of [ ], para. 5, attached as Exhibit 42.

[271] *See* 5/18 Staff Conference Tr. at 65 (Conner).

[272] *See* 5/18 Staff Conference Tr. at 265 (Aranoff).

[273] *See* [ ].

[274] *See* Nickelsburg Report, para. 54 (Boeing 5/24 Post-Conference Brief); Boeing 5/24 Post-Conference Brief Exhibit ER-39; [ ].

[275] *See* Staff Report at V-27 (describing [ ]).

[276] Boeing 5/24 Post-Conference Brief Exhibit ER-39.

therefore, manageable.[277] As [

].[278] Consequently the *average* lag time between order and delivery is at least [ ] years,[279] and it can take much longer for an airline to progress from the start of a sales campaign to the final deliveries of an order stream that complete a fleet replacement. For example, the Delta campaign began in [ ],[280] Delta placed C Series firm orders in April 2016, the first deliveries are scheduled for spring 2018,[281] and the delivery stream is scheduled to extend through [ ].[282] Thus, airlines planning to replace their fleets in the next five to ten years must begin sales campaigns in the very near future.[283]

Producers also manage their production and delivery schedules to enhance the chances of winning new orders.[284] This includes booking order volumes greater than delivery slot availability to provide a safety margin against deferred orders and other unanticipated

---

[277] *See* Declaration of [ ], para. 13, attached as Exhibit 42.

[278] [ ].

[279] *See* [ ]. This average lag time between order and delivery is not driven by the size of a producer's backlog. *Cf.* Staff Report at II-2.

[280] *See* Affidavit of [ ], para. 11 (Petition Exhibit 101).

[281] *See* Press Release, Bombardier, "Delta Air Lines and Bombardier Sign Largest C Series order for up to 125 Aircraft" (Apr. 28, 2016) (Petition Exhibit 63).

[282] *See* Staff Report at VII-11.

[283] For example, [ ] reported that it expects to replace [ ] percent of its existing fleet of 100- to 150-seat LCA in [ ]; [ ] reported that it expects to replace [ ]; and [ ] reported that it expects to replace [ ]. *See* Staff Report at II-19-II-20.

[284] *See* Boeing U.S. Producers' Questionnaire Response (Final), Question II-11e.

problems.[285] Producers also (a) [

], and (b) [

].[286] Thus, Boeing can, and regularly does, adjust its delivery schedule in response to customer demand.[287]

C. Substitutability

In the preliminary investigation, the Commission found that the subject merchandise and the domestic like product are moderately-to-highly substitutable and compete on price:

> "{T}here is a moderate to high degree of substitutability between subject imports and domestically produced 100- to 150-seat LCA."[288]
>
> "{P}rice is an important factor in purchasing decisions for 100- to 150-seat LCA, although non-price factors are also important . . . ."[289] Those non-price factors include lifetime operating costs, maintenance costs, seat capacity, availability/backlog, commonality with existing fleet, delivery terms, performance, and reduced fuel requirements.[290]

The Commission should make the same findings here, given the record evidence. Indeed, the Staff Report correctly states that "there is a moderate-to-high degree of substitutability

---

[285] *See* [ ] U.S. Producers' Questionnaire Response (Final), Question II-11d; Tim Hepher, *Airbus deliveries rose 8 percent, orders outpaced Boeing in 2016*, Reuters (Jan. 11, 2017) ("{Airbus COO – Customers John} Leahy dismissed concerns among some investors over mounting deferrals and cancellations of orders because planemakers typically 'overbook' to dampen the risk of airline failures."), attached as Exhibit 43.

[286] Boeing U.S. Producers' Questionnaire Response (Final), Question II-11e.

[287] The Staff Report states that "{i}n the short term, the domestic industry does not have the ability to respond to changes in demand with changes in the quantity of shipments of U.S.-produced 100- to 150-seat LCA, due to the long delivery times and high level of capacity utilization in the domestic aircraft market." Staff Report at II-7. However, in fact Boeing can respond to changes in customer demand in a relatively short amount of time without taking any steps to increase its production capacity, and Boeing can accommodate a customer request for near-term delivery slots that are [ ]. *See* Declaration of [ ], attached as Exhibit 42. Moreover, as stated in the Staff Report, "Boeing reported that it [ ] refused, declined, or been unable to supply 100- to 150-seat LCA since January 1, 2014. *See* Staff Report at II-10.

[288] Preliminary Determination, USITC Pub. 4702 at 26.

[289] Preliminary Determination, USITC Pub. 4702 at 26.

[290] Preliminary Determination, USITC Pub. 4702 at 26-27 (citing CR/PR at Table II-4).

between domestically-produced 100- to 150-seat LCA and Canadian-produced 100- to 150-seat LCA."[291]

Boeing, Bombardier, and Airbus all consider the CS100 and CS300 to be competitors with the other models in the 100- to 150-seat market. Boeing considers the CS100 and CS300 aircraft to be competitors to the Boeing 737-700 and 737 MAX 7. As Professor Nickelsburg discussed in his report, [

].[292]

Similarly, Bombardier's competitive analysis materials place the C Series and the 737 MAX 7 in the "100-150 seat aircraft market"[293] and compare the C Series and the 737 MAX 7 using the measures of cost per seat and cost per trip.[294] Airbus' CEO Thomas Enders has clearly identified the A319 and the C Series as direct competitors:

> The European planemaker hasn't announced a new airline customer for the jet in five years, since Bombardier's aircraft emerged as a serious rival.
>
> "**That was the last time we sold the plane**," he said. "**That tells you something about the competition between the A319 and the C Series.**"[295]

---

[291] Staff Report at II-31.

[292] Boeing Internal Presentation, [ ] (Boeing 5/24 Post-Conference Brief Exhibit ER-30).

[293] 2015 Investor Day Presentation, Bombardier, November 24, 2015 ("Bombardier Investor Day Presentation"), slide 60 (Petition Exhibit 33).

[294] Bombardier Investor Day Presentation, slide 56 (Petition Exhibit 33).

[295] Benjamin Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017) (emphasis added), attached as Exhibit 5.

In the preliminary phase of the investigations, Professor Nickelsburg explained that because the CS100, CS300, 737-700, and 737 MAX 7 are capable of serving the same mission needs and efficiency requirements of airlines, they effectively compete on price.[296] Airlines value non-price factors differently, but compare alternative aircraft models by monetizing non-price factors to derive a net present value (NPV) for each aircraft model.[297]

The Staff Report and U.S. Importers'/Purchasers' Questionnaire responses confirm these facts. According to the Staff Report, "{l}ifecycle costs, or the sum of all {} recurring and one-time costs over the full life span of a product, are an important factor in the purchase of 100- to 150-seat LCA."[298] [

[296] Nickelsburg Report, paras. 127-137 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[297] *See* Nickelsburg Report, para. 128 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[298] Staff Report at II-23.

[299] [ ].

[300] [ ].

[301] [ ].

[302] [ ].

].[303] Thus, [

] identified price as the single most important factor contributing to lifetime operating costs, and [ ] identified it as the second-most important factor.[304]

In addition, Boeing's internal NPV modeling of the most important factors contributing to lifetime operating costs confirms[305] that (i) the C Series and 737-700 and MAX 7 are highly substitutable, and (ii) when Bombardier decreases C Series prices, Boeing must decrease -700/MAX 7 prices to remain competitive. In the preliminary determination, the Commission found that "{d}ue to the complexity of 100- to 150-seat LCA and the numerous non-price factors that influence purchasing decisions . . . purchasers typically do not compare the up-front cost of acquiring competing aircraft but rather the NPV of competing offers from aircraft suppliers, which includes non-price factors such as fuel efficiency and maintenance costs."[306] Exhibit 44 shows Boeing's internal analysis of what an airline's NPV assessment comparing the CS300 and the 737 MAX 7 would look like.[307] This analysis takes both revenue and costs into account, based on the following factors: [

]. This analysis shows that, with revenue

---

[303] [
].

[304] The Staff Report notes that among the importer/purchasers that responded regarding the most critical factors contributing to lifecycle costs, 4 firms cited purchase price/initial acquisition, 2 firms cited financing costs, and 2 firms cited ownership costs. *See* Staff Report at II-23. Boeing considers that these factors are [ ] and account for [ ] of aircraft lifecycle costs. *See* Boeing U.S. Producers' Questionnaire Response (Final), Question IV-5b.

[305] Boeing provided estimates of how airlines value the most important factors that contribute to lifecycle costs in NPV calculations in its questionnaire response. *See* Boeing US Producers' Questionnaire at IV-5b.

[306] Preliminary Determination at 31.

[307] *See* Boeing Internal NPV Analysis (2017), attached as Exhibit 44.

assumptions based on [ ] for the two models, the 737 MAX 7 would be worth [ ] the CS300. Because the two models are [ ] in terms of NPV, if Bombardier drops the price of the CS300, Boeing has to drop its own prices to stay competitive.

Campaign-specific evidence also shows that Boeing's 737-700 and MAX 7 compete head to head with Bombardier's C Series models and are highly substitutable. Bombardier essentially admitted this point in the preliminary investigation when it stated that Boeing convinced United to order the 737-700 rather than the CS100—compelling evidence of substitutability and competition between products.[308] Indeed, Boeing demonstrated in the United campaign that the 737-700 could compete head-to-head with the CS100 *and win*, albeit at the cost of significantly depressed prices.[309] Thus, the evidence on the record supports a finding that Boeing's 737-700 and 737 MAX 7 are highly substitutable with the CS100 and the CS300.

V. THIS CASE EASILY SATISFIES THE IMMINENCE REQUIREMENT

The domestic industry is currently being harmed by the C Series and faces an imminent threat of material injury, regardless of whether the Commission assesses imminence under a 1-2 year timeframe or in light of the unique conditions of competition in the industry. The Commission has previously found that imminence depends on the conditions of competition in a given industry,[310] and no bright-line rule exists to determine whether injury is imminent.[311] In

---

[308] *See* Preliminary Determination, USITC Pub. 4702 at 32 n.226.

[309] Affidavit of Raymond L. Conner (Boeing 5/24 Post-Conference Brief Exhibit 44).

[310] *Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela*, USITC Inv. Nos. 731-TA-955, 960, and 963 (Preliminary) (Second Remand), USITC Pub. 3796, at 8-9 (Sept. 2005). *See also Frozen Concentrated Orange Juice from Brazil*, Inv. No. 731-TA-326 (Final), USITC Pub. 1970 at 18 & n.57, 25 & n.91 (Apr. 1987).

[311] *See Asociacion de Prod. De Salmon y Trucha de Chile AG v. USITC*, 180 F. Supp. 2d 1360, 1371 (Ct. Int'l Trade 2002) (internal citations omitted); *see also Goss Graphic System, Inc. v. United States*, 33 F. Supp. 2d 1082, 1103 (Ct. Int'l Trade 1998).

the preliminary investigation, the Commission found that Boeing and Bombardier plan their production of LCA years in advance based on order backlogs, and each producers' performance will be impacted significantly by orders received in the imminent future.[312] [

].[313]

When an airline chooses one producer's aircraft over another's, it has both an immediate and long-lasting impact on the losing producer. A lost order immediately deprives the losing producer of pre-delivery payments. As described above, pre-delivery payment revenues are necessary to fund development and production of a new model of aircraft. For Boeing, these payments are typically calculated based on [

].[314] The stream of pre-delivery payments begins immediately with a deposit at the signing of a purchase agreement, and payments ordinarily occur at regular intervals in the approximately [ ] preceding delivery of the aircraft.[315] If Bombardier is allowed to continue to sell airplanes at dumped and subsidized prices, Boeing will lose sales in the near future, which will directly impact Boeing's revenues immediately.

A lost sale also deprives the producer of much needed commercial momentum for the impacted product. The impacts of lost commercial momentum are all the more acute in this case, given the MAX 7's order drought. As described above, commercial momentum helps to validate an aircraft in the marketplace and enables the producer to secure further orders. Additional orders that Bombardier wins because of this commercial momentum effect will be orders lost by

---

[312] Preliminary Determination, USITC Pub. 4702 at 21.

[313] *See* [

].

[314] *See* Boeing U.S. Producers' Questionnaire Response (Final), Question II-11i.

[315] *See* Boeing U.S. Producers' Questionnaire Response (Final), Question II-11i.

Boeing. With each sale, inertia from momentum shift is heightened. That inertia is particularly harmful in the domestic market because, with only a handful of airline customers, Boeing will have limited opportunities to overcome it. Bombardier recognizes the significant value of the commercial momentum, repeatedly touting the commercial momentum created by the Delta sale, and with Bombardier and Airbus also stressing the additional momentum created by the proposed JV.

Unlike most industries before the Commission, the 100- to 150-seat LCA industry has long lead times between order and delivery. In most industries, products are sold with relatively short delivery schedules—typically, less than one year. In such industries, it would be difficult to project financial and production outcomes with much certainty beyond one or two years. In contrast, as the questionnaire responses show, the average lead time between order and delivery for 100- to 150-seat LCA is [ ] years.[316] Prices and costs associated with future deliveries can generally be calculated with a significant amount of precision, which allows the Commission to assess the likely state of the domestic industry over a longer than usual timeframe. Boeing's current-year financial results are largely dictated by orders placed 4-5 years ago.[317] And while those orders generate revenue through pre-delivery payments well in advance of deliveries, by the time the full impact of dumped and subsidized C Series imports is fully reflected in Boeing's financial data, it will be too late to provide meaningful relief. Accordingly, the Commission should recognize that lost orders and orders at depressed prices that have already occurred and will occur in the next 1-2 years will lock in harm to the domestic industry, even if some aspects of that harm might not be fully reflected in financial results for another 4-5 years.

---

[316] *See* [

].

[317] *See* Boeing 5/24 Post-Conference Brief at 22-23.

In any event, the record contains compelling evidence of an imminent threat of material injury even under an imminence timeframe of 1-2 years, as we explain further below. Confidential evidence confirms that the injurious price-depressing effects of Delta's C Series order have spread throughout the U.S. market to Boeing's immediate detriment. This price transmission will imminently and materially harm Boeing, because Boeing cannot charge fair market prices for its products, but instead must choose between selling at injurious prices or losing sales. Bombardier's dumped and subsidized sale to Delta set the ceiling other airline customers will be willing to pay for a comparable airplane in the 100- to 150-seat market segment. Subject C Series imports for Delta are coming in a matter of months.[318] If Delta is allowed to import the airplanes at that price, Boeing will never again be able to sell the 737-700 and MAX 7 at fair prices,[319] and the domestic industry will suffer irreparable material injury.[320]

VI. SUBJECT IMPORTS FROM CANADA WILL IMMINENTLY SATISFY THE NEGLIGIBILITY STANDARD

The Commission should find that subject imports are not negligible, as it did in the preliminary investigation.[321] As the Staff Report notes, subject imports will satisfy the negligibility standard by 2018.[322] Delta is scheduled to begin taking delivery of the 75 CS100s it ordered from Bombardier beginning in the spring of 2018.[323] In July, Delta confirmed its firm

[318] *See infra* Sections VI, VIII.B.2.

[319] *See infra* Section VIII.C.

[320] *See infra* Section VIII.D.

[321] Preliminary Determination, USITC Pub. 4702 at 15 (citing CR at IV-17; PR at IV-6).

[322] *See* Staff Report, Table IV-16.

[323] *See* Press Release, Bombardier, "Delta Air Lines and Bombardier Sign Largest C Series order for up to 125 Aircraft" (Apr. 28, 2016) (Petition Exhibit 63).

intention to take C Series deliveries as scheduled.[324] [

].[327] Given that [

],[328] the data show that subject C Series imports will account for [ ] of total 100- to 150-seat LCA imports in [ ]. Thus, the Commission should again find that subject imports from Canada are non-negligible for threat purposes because they will imminently exceed 3% of total imports of 100- to 150-seat LCA, which are currently zero.

VII. THE SUPPOSED PLANS OF AIRBUS AND BOMBARDIER TO PRODUCE THE C SERIES IN THE UNITED STATES ARE AN EFFECT OF THE PETITION AND AS SUCH SHOULD NOT FIGURE IN THE COMMISSION'S INJURY ANALYSIS

By statute, the Commission should discount any effects of the petition in its injury analysis. Airbus and Bombardier's putative plans to "produce" the C Series in the United States are precisely that. The only plausible justification for the putative U.S. production plans is to circumvent any antidumping and countervailing duties that may be imposed as a result of this investigation. Indeed, as explained below, Airbus, Bombardier, and Delta have openly discussed the circumvention rationale for the putative U.S. production plans. By the same token, if no

---

[324] *See* Event Brief of Q2 2017 Delta Air Lines Inc. Earnings Call – Final (FD Wire), at 17 (July 13, 2017) ("Well we can't comment on the dispute that's going on between Bombardier and Boeing. We'll let that play out. But what I can tell you is that we have no – we do not intend to slow down any of the deliveries that we have planned for the C Series. We'll be taking our first this coming spring and we look forward to taking that aircraft. And beyond that, I'll let – see how the dispute between those 2 parties comes together."), attached as Exhibit 9.

[325] [ ].

[326] Staff Report at IV-23 ("Bombardier [ ]).

[327] [ ].

[328] [ ].

antidumping or countervailing duty orders are imposed, then the putative U.S. production plans will immediately evaporate. Accordingly, it would be unlawful for the Commission to consider the putative U.S. production plans in its injury analysis.[329]

19 U.S.C. § 1677(7)(I) states:

> The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under part I or II of this subtitle is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

Interpreting this statutory provision, the Court of International Trade has stated:

> The Commission must also check whether the filing of the antidumping petition caused a post-petition change in any of the factors {*i.e.* volume of subject imports, the price effects of such imports, and the impact of such imports on domestic producers}, the theory being that filing can chill less-than-fair-value importing and hide injury. 19 U.S.C. § 1677(7)(I). If the Commission finds post-petition effects, it has discretion to discount the post-petition data in order to reach an accurate injury determination. *Id.*[330]

---

[329] Moreover, the announced plans to produce the C Series in Mobile are mere conjecture or supposition, as [ ] are also mere conjecture or supposition. *See* Staff Report at II-37. There is no evidence of any binding legal commitments, factory blueprints, or concrete timelines for the Mobile production facility. By statute, the Commission injury/threat determination must not be based on "mere conjecture or supposition." 19 U.S.C. § 1677(7)(F)(ii).

[330] *CP Kelco US, Inc. v. U.S.*, 24 F. Supp. 3d 1337, 1340 (Ct. Int'l Trade 2014), *aff'd*, 623 Fed. Appx. 1012 (Fed. Cir. 2015).

Thus, the Act requires the Commission to check whether the filing of the antidumping petition caused a post-petition change in any of the factors related to its injury determination, and if so then it should discount post-petition evidence as appropriate.

Accordingly, the Commission's practice is to disregard evidence that reflects the effects of the petition, as opposed to the normal functioning of the marketplace in the absence of the petition. For example, in *Small Diameter Graphite Electrodes from China*, the Commission attributed an increase in the prices of subject imports and their diminishing impact on domestic prices in 2008 to the filing of the petition in January 2008, and therefore the Commission accorded less weight to 2008 data.[331]

Similarly, in this case, the Commission should ignore the Airbus-Bombardier putative plans to produce the C Series in Mobile, Alabama.[332] Executives from Airbus, Bombardier, and Delta have all stated that the purpose of the putative Alabama C Series production facility would be to evade AD/CVD duties. For example:

- A Bombardier investor presentation announcing the Airbus partnership describes it as a "SOLUTION to address the trade case."[333]
- Airbus' Chief Operating Officer – Customers stated: "I think a lot of reports that that {*i.e.*, the potential for 300% tariffs imposed by the U.S. Government} forced them into our hands are probably true."[334]

---

[331] *Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 19 (Feb. 2009).

[332] *See* Karen Walker, *Airbus & Bombardier to partner on CSeries; build aircraft in Alabama*, Air Transport World (Oct. 16, 2017), attached as Exhibit 14; Sandrine Rastello, *Quebec Touts Airbus Sales Power, Jobs Saved in C Series Deal*, Bloomberg (Oct. 17, 2017), attached as Exhibit 33.

[333] Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slide 6 (Oct. 16, 2017), attached as Exhibit 7.

[334] *From war to partner: Airbus and the CSeries*, Leeham News (Oct. 18, 2017), attached as Exhibit 45.

- Delta has said it will take delivery from the Alabama facilities to attempt to avoid paying import duties from these investigations—even if that requires delaying delivery by two years.[335]

- In a call with investors and financial analysts, Bombardier's CEO boasted: "Aircraft produced at this facility {*i.e.*, Mobile} will not be subject to duties under the pending U.S. investigation."[336]

- In a call with investors and financial analysts, Bombardier's CFO stated that the partnership with Airbus "removes uncertainties related to the U.S. market access."[337]

Thus, Airbus, Bombardier, and Delta view the putative plans to produce the C Series in Alabama as a duty circumvention scheme.[338]

This is not surprising, because there is no plausible business justification for C Series production facilities anywhere other than Mirabel—except circumvention. As a Boeing affidavit explains:

> The C Series program does not need any additional production facilities or a second final assembly line. Other than as an attempt to avoid U.S. trade remedy duties, a C Series production facility in Mobile, Alabama is unnecessary and brings no added value to the program. It splits the production ramp up between two facilities, which increases overhead and startup costs of the program. It makes no economic sense to establish new facilities for the C Series in Alabama.
>
> . . . Existing C Series orders are insufficient to sustain production in Mirabel at {planned production rates} for any appreciable period of time, much less a second line in Alabama.

---

[335] Susan Carey & Doug Cameron, *Delta Expects to By U.S.-Built CSeries Jets*, Wall Street Journal (Oct. 18, 2017) ("Delta is prepared to wait as long as two years for the jets to ensure they are assembled in Mobile and don't attract tariffs, according to people involved in the negotiations."), attached as Exhibit 10.

[336] Benjamin D. Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017), attached as Exhibit 5.

[337] Bombardier Conference Call (FD Wire), "Bombardier Inc. and Airbus SE Announce Partnership on the C Series Aircraft Program – Final" (Oct. 16, 2017) at 3 (Di Bert), attached as Exhibit 31.

[338] Apparently, this is not the only circumvention scheme being developed. According to a recent Reuters report, "Aeromexico AEROMEX.MX has held preliminary talks to take some Bombardier BBDb.TO CSeries jets orders from Delta Air Lines Inc DAL.N, which owns a stake in the Mexican carrier, to avoid possible U.S. trade duties levied on the planes, two sources familiar with the matter said." Allison Lampert & Christine Murray, *Aeromexico eyes Delta's C Series jet order amid U.S. trade spat: sources*, Reuters (Dec. 4, 2017), attached as Exhibit 46.

> Bombardier has strong incentives to find new customers for the C Series program's excess capacity. Indeed, this is the C Series program's main challenge—and it explains why Bombardier is behaving so aggressively in the marketplace. Establishing additional C Series facilities in Alabama does nothing to address this challenge. A C Series facility in Alabama would also take years to complete and incur additional costs, including for facilities and logistics. It would be fraught with risk.
>
> Airbus and Bombardier have stated that they expect their joint venture to boost C Series sales. The economically rational thing to do with additional C Series orders would be to feed them into the existing production facilities in Mirabel, which lacks sufficient orders to sustain planned production rates—not to add another facility in Alabama.[339]

Indeed, [

].[340] Given the C Series program's need for additional orders to sustain its existing operations, and the risks of adding complexity to its operations during the production ramp-up, it makes no economic sense to invest in a second "final assembly" facility in Alabama. As discussed in Section VIII.B.3 and immediately below, Bombardier's Canadian production is not operating at capacity, and as the Commission preliminarily found, Bombardier is "far short of achieving the 'production ramp up' targets reflected in its projected capacity for the 2017-21 period."[341] Thus, dividing orders between two production facilities would significantly increase Bombardier's per-unit production costs as well as program risk.

---

[339] *See* Affidavit of [ ], at 1-2, attached as Exhibit 13.

[340] *See* [ ].

[341] Preliminary Determination, USITC Pub. 4702 at 29. Moreover, in recent earnings calls, Bombardier executives have reiterated that meeting its ambitious production goals relies on "hitting the expected production learning curve." Q1 2017 Bombardier Inc. Earnings Call, Fair Disclosure Wire (May 11, 2017), attached as Exhibit 47.

Because there is no rational economic justification for opening a second line in the United States, the putative plans to produce the C Series in the United States will never materialize, absent antidumping and countervailing duty orders. Given that circumvention is the motivation for the plans to produce the C Series in the United States, the Commission should disregard these plans in its injury analysis. This approach should be uncontroversial. Bombardier itself stated to the Department of Commerce that: "The Proposed Transaction Has Not Been Finalized and Determinations Based on It Would Be Speculative."[342] The governments of Canada and Quebec agreed with Bombardier in this regard.[343] Thus, even based on the respondents' own statements, it would be improper for the Commission to consider the putative U.S. production plans for the C Series in its injury analysis. But, even if Bombardier were to build a C Series factory in the United States, the Airbus/Bombardier/CSALP plans to circumvent the duties would fail, because the scope of the investigations covers the merchandise that would be imported to produce the C Series in the United States, as Boeing explained to the Department of Commerce.[344] For these reasons and those discussed above, the Commission should disregard these plans in its injury analysis.

VIII. THE DOMESTIC INDUSTRY IS THREATENED WITH IMMINENT MATERIAL INJURY

Section 771(7)(F) of the Tariff Act enumerates the factors that the Commission is to consider in determining whether the domestic industry is threatened with material injury by

---

[342] *See* Bombardier Brief, "Antidumping and Countervailing Investigations of 100- to 150-Seat Large Civil Aircraft from Canada: Brief on the Proposed Transaction" (Nov. 13, 2017) at 8; *cf.* 19 U.S.C. § 1677(7)(F)(ii).

[343] *See* Government of Canada Brief, "Government of Canada's Comments on Proposed Bombardier Transaction: 100- to 150-Seat Large Civil Aircraft from Canada" (Nov. 13, 2017) at 2-3; Government of Québec Brief, "100- to 150-Seat Large Civil Aircraft from Canada (C-122-860): "Comments of the Government of Québec In Response to the Department's Invitation to Submit Comments Regarding Proposed Transaction" (Nov. 13, 2017) at 2-4, attached as Exhibit 48.

[344] *See* Boeing Brief, "100- to 150-Seat Large Civil Aircraft from Canada: Brief on the Announced Airbus-Bombardier C Series Partnership" (Nov. 13, 2017), at 9-12.

reason of imports (or sales for importation) of the subject merchandise.[345] The Commission considers these factors "as a whole" in determining whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports (or sales for importation) would occur unless an order is issued.[346]

As Section 771(7)(F) makes clear, the Commission's threat of material injury determinations extend not only to situations involving imports that have already occurred, but also to situations where actual importation has not yet occurred. When Congress added the "sales for importation" language to the countervailing duty law in 1984, it explained that its intention in doing so was:

> to eliminate uncertainties about the authority of the Department of Commerce and the ITC to initiate countervailing duty cases and to render determinations *in situations where actual importation has not yet occurred but a sale for importation has been completed or is imminent*.[347]

Congress also stated that:

> The amendment is particularly important in cases involving large capital equipment, where loss of a single sale can cause immediate economic harm and where it may be impossible to offer meaningful relief if the investigation is not initiated until after importation takes place. In cases where injury or threat of injury

---

[345] 19 U.S.C. § 1677(7)(F)(i).

[346] 19 U.S.C. § 1677(7)(F)(ii). Our threat analysis is organized by the Commission's example of discussing the applicable statutory threat factors using the same volume/price/impact framework that applies to the material injury analysis. *See, e.g., Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan*, USITC Inv. Nos. 701-TA-534-538 and 73 1-TA-1274-1278 (Prelim), USITC Pub. 4547, at 22 n.107 (July 2015). Statutory threat factors (I), (II), (III), (V), and (VI) are discussed in the analysis of subject import volume. Statutory threat factor (IV) is discussed in the analysis of subject import price effects. Statutory factors (VIII) and (IX) are discussed in the analysis of impact.

[347] Trade Remedies Reform Act of 1984, H. Rep. 98-725, at 11 (emphasis added) (Boeing 5/24 Post Conference Brief Exhibit 2).

> from a subsidy may occur prior to actual importation, the investigation should not await such importation....[348]

Similarly, the legislative history to the "derivative product" factor in section 771(7)(F)(i)(VIII)[349] explains that the provision is particularly relevant to large capital cases such as this one:

> Dumped or subsidized foreign sales in the U.S. market may impede or threaten to impede the ability of U.S. producers to devote the necessary resources to important product innovations and next generation development because of the long lead times from product design to actual production, business uncertainties, lost marketing opportunities, and erosion of profitability caused by such unfair trade practices. *This is particularly relevant to industries producing big-ticket items, such as aircraft and heavy electrical equipment, where loss of a single sale may have a major impact on revenues and profits and thus the ability to proceed with research and development or production plans.*[350]

Finally, the statute's legislative history also emphasizes that the threat of material injury standard is intended to permit relief before actual injury occurs:

> The 'threat of material injury' standard is intended to permit import relief under the countervailing duty and antidumping laws *before actual injury occurs and should be administered in a manner so as to prevent actual injury from occurring.* Relief

---

[348] *Id.* As the Senate sponsor of the language explained when the amendment was being considered on the floor:

> Section 16, 17, and 18 (sales for importation, sales for delivery and irrevocable offers) are intended to clarify that likely sales (or irrevocable offers) . . . are, first, sufficient to proceed with a dumping or subsidy investigation, second, sufficient to find that goods are being dumped or subsidized, and third, sufficient to find injury or the threat thereof. These provisions are intended to resolve the analytical and procedural uncertainty which existed in the 1982 CVD rail car case involving Budd and Bombardier. In that case, there were offers for sale, lost domestic business, but no actual imports.

Congressional Record — Senate, at 25739 (Sept. 18, 1984) (Boeing 5/24 Post-Conference Brief Exhibit 16).

[349] *See* 19 U.S.C. § 1677(7)(F)(i)(VIII) ("the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product . . .").

[350] Omnibus Trade Act of 1987, S. Rep. 100-71, at 117 (1987) (emphasis added) (Boeing 5/24 Post-Conference Brief Exhibit 17).

> should not be delayed if sufficient evidence exists for concluding that the threat of injury is real and injury is imminent.[351]

For the reasons discussed below, the record evidence demonstrates that the subject imports threaten the domestic industry with material injury.

A. Nature of Subsidies

The first statutory factor for the Commission to consider in determining whether an industry is threatened with material injury is as follows:

> if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase.[352]

In this case, the "administering authority"—*i.e.*, the Department of Commerce—confirmed in its preliminary determination that the C Series is massively subsidized, calculating a preliminary subsidy rate of 219% *ad valorem*.[353] This is well in excess of the 5 percent threshold described by Article 6.1 of the SCM Agreement.

Moreover, the very nature of these subsidies is to create supply and stimulate exports, making the subsidized C Series imports exceedingly likely to cause material injury. The legislative history to section 771 (7)(F)(i)(I) of the Act explains that in implementing this provision, the Commission may consider "whether an adverse impact on a domestic industry is more likely to be associated with such a subsidy practice as opposed to what would be the case

---

[351] Trade Agreements Act of 1979, S. Rep. 96-249, at 89 (1979) (emphasis added) (Boeing 5/24 Post-Conference Brief Exhibit 18).

[352] 19 U.S.C. § 1677(7)(F)(i)(I).

[353] *See 100- to 150-Seat Large Civil Aircraft From Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 82 Fed. Reg. 45,807, 45,808 (Int'l Trade Admin. Oct. 2, 2017).

with another type of subsidy."[354] A subsidy that enables the very existence of a product—and its producer—is far more likely to have an adverse impact on a domestic industry than the typical subsidy that merely lowers a company's costs.

Bombardier obtained government subsidies at two critical points in the C Series' development: the launch aid that the Government of Canada ("GOC"), Government of Québec ("GOQ"), and Government of the United Kingdom ("GOUK") provided in 2009; and the equity infusion *Investissement Québec* ("IQ") provided in 2015.[355]

In 2009, Bombardier needed hundreds of millions of dollars to fund development of the C Series, but could not obtain commercial financing.[356] An official GOC evaluation concluded that launch aid played a key role in saving the C Series program:

> Had government funding not been available the timing of development of the CSeries aircraft would have been delayed and design compromises would have had to be made to reduce costs. According to {Bombardier}, this would have reduced the number of jobs, impacted the ability of Bombardier to deliver a technically competitive product and limited Bombardier's ability to meet the market window for the aircraft. *This would have jeopardized the viability of the development of the aircraft.*[357]

The European Commission reached the same conclusion in its review of GOUK launch aid in June 2009: "Bombardier considered different options and scenarios for carrying out the {C Series} project, including possible alternative ways of financing and locating it. However, it

---

[354] Trade Agreements Act of 1979, S. Rep. 96-249, at 89 (1979) (Boeing 5/24 Post-Conference Brief Exhibit 18).

[355] *See 100- to 150-Seat Large Civil Aircraft From Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 82 Fed. Reg. 45,807 (Int'l Trade Admin. Oct. 2, 2017), and accompanying Issues and Decision Memorandum at 14-20. The Department preliminarily found that the additional $1.5 billion equity infusion provided to Bombardier by *Caisse de Dépôt et Placement du Québec* in 2015 did not confer a benefit during the POI, *see id.* at 31-32, but Boeing disputes this finding.

[356] *See* Petition at 95-96.

[357] Innovation, Science and Economic Development Canada, Audit and Evaluation Branch, "Evaluation of the Bombardier CSeries Program," at 13 (Sept. 2013) (emphasis added) (Petition Exhibit 21).

is clear from the documents produced that Bombardier, without public funding of this project would have had to abandon it."[358] The European Commission concluded that "given the inability of the financial markets and industrial partners to make available financing to Bombardier . . . and taking account of the company's internal constraints, public funding {was} necessary to make the {C Series} project possible."[359]

Despite hundreds of millions of dollars in launch aid, however, Bombardier failed to make the C Series program a commercial success. By 2015, the C Series program was on the brink of failure, which threatened to bankrupt Bombardier as a whole.[360] GOQ's former Minister of the Economy, Jacques Daoust, described Bombardier's situation in October 2015 as follows: "Bombardier had three choices. It could have abandoned the product {the C Series}. It could have sold it lock, stock and barrel to another company. Or it finds partners who will ensure it stays in Quebec. That is what we decided. . . ."[361] The IQ equity infusion thus allowed Bombardier to avoid bankruptcy and continue to fund the development and production of the C Series. This was a second category of subsidies (*i.e.*, in addition to launch aid) without which the C Series program would not exist and the Delta sale would never have happened. Indeed, in April 2016, GOQ Premier Philippe Couillard acknowledged that the Delta sale "happened thanks to the {CDN} $1.3 billion {i.e., USD 1 billion} investment his government offered Bombardier

---

[358] European Commission, State aid N 654/2008 – United Kingdom, Large R&D aid to Bombardier, C(2009)4541 final, para. 170 (June 17, 2009) (Petition Exhibit 22); *see also id.*, paras. 135, 143, 174.

[359] *See* Petition at 95-96 (quoting European Commission, State aid N 654/2008 – United Kingdom, Large R&D aid to Bombardier, C(2009)4541 final, para. 135 (June 17, 2009) (Petition Exhibit 22)).

[360] *See* Bertrand Marotte, *Bombardier was on 'brink of bankruptcy,' CEO says*, The Globe and Mail (Nov. 12, 2016) (Petition Exhibit 25).

[361] Martin Patriquin, *The inside story behind the bungled Bombardier C Series*, Maclean's (Feb. 8, 2016) (Petition Exhibit 26).

last fall."[362] Delta CEO Ed Bastian similarly confirmed that government backing helped seal the Delta sale: "{w}e are thrilled that the Quebec government is an investor. It gave us a lot of confidence to be able to make the decision . . . we see that the government supports the business."[363] Thus, the nature of the subsidies at issue in this proceeding weighs in favor of an affirmative threat finding.

Furthermore, the subsidization of Bombardier is only likely to increase. In February 2017, the Canadian federal government committed to provide Bombardier with an additional CDN 372.5 million in launch aid.[364] If Airbus and Bombardier finalize their proposed JV, the C Series will be supported by a total of *five* governments with a track record of massively subsidizing domestic aircraft production, contrary to their international obligations.

B. *Volume*: Significant Subject Imports and Adverse Volume Effects Are Already Locked In and Likely To Worsen

In the preliminary investigation, the Commission found that "the volume and market share of subject imports will likely increase to significant levels in the imminent future,"[365] and that "Bombardier is likely to aggressively pursue additional sales in the U.S. market in the imminent future."[366] The Commission should make the same findings here.

1. *Lost Sales*: Bombardier's Sale to Delta Is an Injurious Sale for Importation

Bombardier has locked up Delta's demand for planes that could have been filled by Boeing's 737-700 and MAX 7. Specifically, Bombardier used subsidy-fueled, dumped prices to

---

[362] Paul Chiasson, *Quebec's investment made deal happen between Bombardier and Delta: Couillard*, Montreal Gazette (Apr. 28, 2016) (Petition Exhibit 43).

[363] *Id.*

[364] *See* Petition at 13.

[365] Preliminary Determination, USITC Pub. 4702 at 28.

[366] Preliminary Determination, USITC Pub. 4702 at 30.

sell Delta between 75-125 C Series aircraft, of which up to 90 could be CS300s. The price for the CS100 was an ultra-low **$19.6 million** according to Boeing's estimate,[367] [

].

Thus, Bombardier has captured Delta's substantial demand for 100- to 150-seat LCA for the foreseeable future. That is, once Delta has absorbed the 75 firm CS100s or CS300s, it can then exercise 50 options for CS100s or CS300s. Then when it needs additional airplanes of this size, it will have an installed fleet of 125 C Series aircraft and be strongly inclined to order additional C Series units. As Mr. Conner testified during the Staff Conference, "{t}he planes Delta ordered on that one day in April of {2016} are equivalent to years of future demand in the 100-150 seat market. You can't get that back."[369]

In addition to blocking Boeing from selling the domestic like product to Delta, Bombardier's capture of Delta also increased the likelihood that Boeing will lose additional U.S. sales, because it dramatically shifted commercial momentum in favor of the subject merchandise. And Delta now has options and firm pricing on the CS300. At a single stroke, the Delta sale gave the C Series a commanding U.S. market share lead and commercial momentum advantage over the domestic industry, as detailed below.

2. *Market Penetration:* Existing Orders Will Cause C Series Import Volumes To Surge and Dominate the U.S. Market

Even before the Delta sale, Bombardier boasted that, on a global basis, the "CSeries {d}ominates the 100- to 149-{s}eat {c}ategory."[370] That is now true for the U.S. market as well.

---

[367] *See* Petition at 117, 119; Affidavit of [ ] (Petition Exhibit 1).

[368] [ ].

[369] 5/18 Staff Conference Tr. at 24 (Conner).

[370] Yan Lapointe, Manager, Investor Relations, Bombardier, "Investor Presentation," at 27 (Nov. 2015) (Petition Exhibit 48).

Bombardier's sale of between 75 and 125 C Series aircraft has already locked in significant increases in subject import volumes and severe harm to the domestic industry's position in the U.S. market. In the preliminary investigation, the Commission found "it likely that subject import volume and market share will increase to significant levels in the imminent future, particularly given that [

].[371] The current record confirms this finding. Subject imports will increase substantially from [ ] in 2017 (and [ ]) to [ ] units in 2018; [ ] units in 2019; [ ] units in 2020; [ ] units in 2021; and [ ] units in 2022.[372] This subject import surge will dramatically increase the C Series' share of the U.S. market, at the expense of the domestic industry. Subject C Series imports will supply [ ]% of U.S. consumption in 2018 and [ ]% over the entire 2018-2022 period. In contrast, after supplying [ ] % of domestic demand during the 2007-2017 period, Boeing's market share is scheduled to drop to only [ ]% over the 2018-2022 period.

[371] Preliminary Determination, USITC Pub. 4702 at 29 (citing CR at VII-4, PR at VII-3-4).

[372] Staff Report at IV-24, Table IV-16.

U. S. Shipments and Market Shares, 2007-2022[373]

Bombardier's commanding market share lead is based only on the firm orders it has already secured. As discussed in detail below, absent AD/CVD Orders, Bombardier is highly likely to make additional C Series sales for importation to U.S. customers, given its need for additional orders to fill its skyline and the vital importance of the U.S. market. The partnership between Bombardier and Airbus will only increase Bombardier's ability to sell the C Series to U.S. customers.[374]

---

[373] *See* [

]. [

].

[374] *See* Jacob Serebrin, *Bombardier, Airbus deal won't take anything away from Quebec, CEOs say*, Montreal Gazette (Oct. 20, 2017) (Airbus' Mr. Enders described the United States as "the single largest market, 30, 40 per cent, pick your number, of the C Series potential is in the United States of America."), attached as Exhibit 11.

3. *Imminent, Substantial Increases in Production Capacity and Unused Production Capacity*: Bombardier Is Ramping Up Production and Production Capacity and Needs Substantial Additional Orders Immediately

In the preliminary investigation, the Commission found that, "{b}ecause its future production is already falling short of projected capacity in the imminent future, Bombardier has the incentive to aggressively seek additional orders in the U.S. market in the imminent future. When asked at the conference if it is 'important that Bombardier adhere to this {production ramp up} schedule to make this program a financial success,' a Bombardier official responded 'it is very important' and 'we are forced to achieve that rate.'"[375] The Commission also found that "Bombardier is likely to focus its sales efforts on U.S. airlines due to the U.S. market's size, Bombardier's familiarity with the market, and the likelihood that U.S. airlines will seek to purchase larger volumes of 100- to 150-seat LCA in the imminent future,"[376] and that Bombardier "considers the United States to be an extension of its home market in Canada."[377]

The record of the final investigation further reinforces the same conclusions. Bombardier is [

]. As confirmed in its questionnaire data, Bombardier [

], resulting in a [ ] 2016 levels:

[375] Preliminary Determination, USITC Pub. 4702 at 29.

[376] Preliminary Determination, USITC Pub. 4702 at 29.

[377] Preliminary Determination, USITC Pub. 4702 at 30.

Foreign Subject Production Capacity, 2016-2022[378]

Item	Year						
	Actual	Projections					
	2016	2017	2018	2019	2020	2021	2022
Subject merchandise production capacity (units of LCA)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Year-over-year change in production capacity		[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
% Change, 2016-2021						[ ]	

Thus, Bombardier is [ ] increasing production capacity. This increase in production capacity constitutes an "imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of subject merchandise into the United States."[379]

Bombardier's increasing production capacity reflects [

], notwithstanding [

][380] In 2015, Bombardier unveiled the following plan to ramp-up production capacity and production to 90-120 aircraft per year by 2020:

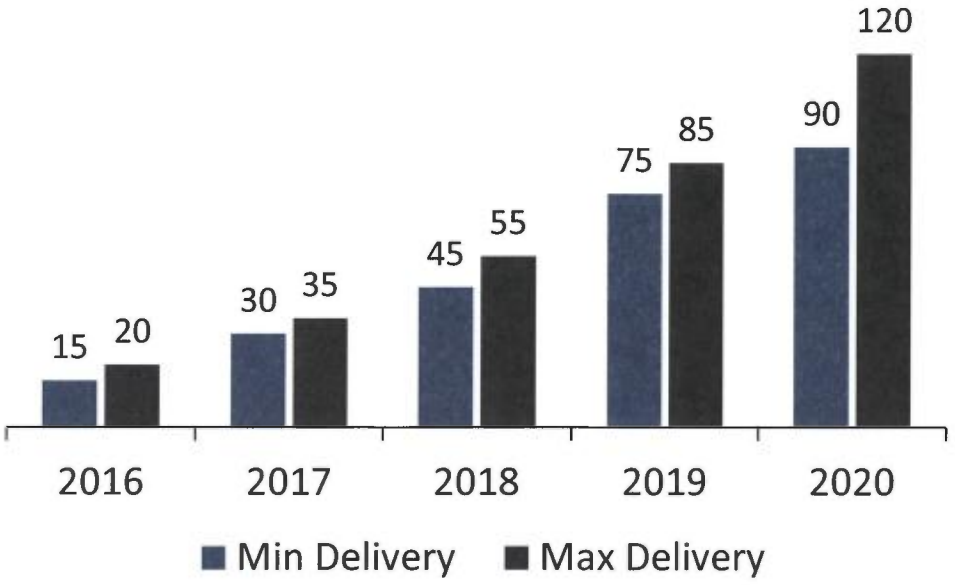
[378] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Questions II-3a, II-11a.

[379] 19 U.S.C. § 1677(7)(F)(i)(II).

[380] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Question II-11a ([ ]).

Public Version
Business Proprietary Information
Has Been Deleted

C Series Production Capacity Ramp-Up Plan for Mirabel, Quebec[381]



Now, despite reporting [ ], Bombardier currently projects that [

].[382]

Bombardier's increasing production capacity is creating substantial "existing unused production capacity . . . in the exporting country indicating the likelihood of substantially increased imports of subject merchandise into the United States."[383] Bombardier's questionnaire

---

[381] *See* Stephen Trimble, *Bombardier details five-year CSeries ramp-up*, Flight Global (2015) (Petition Exhibit 103); Petition at 66. *See also* Preliminary Determination, USITC Pub. 4702 at 29 ("When asked at the conference if it is 'important that Bombardier adhere to this {production ramp up} schedule to make this program a financial success,' a Bombardier official responded 'it is very important' and 'we are forced to achieve that rate.'"); Aaron Karp, *More than half of 2016 CSeries deliveries delayed by GTF ramp-up issue*, Air Transport World (Sept. 6, 2016) (Petition Exhibit 109) (quoting Fred Cromer, President of Bombardier Commercial Aircraft: "We are very confident in our production ramp-up plan, including our ability to meet our production goal of 90 to 120 aircraft per year by 2020.").

[382] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Questions II-3a, II-11a.

[383] *See* 19 U.S.C. § 1677(7)(F)(i)(II). In addition, projected unused production capacity is a "relevant economic factor{}," *see* 19 U.S.C. § 1677(7)(F)(i), as well as one of the "demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time)." *See* 19 U.S.C. § 1677(7)(F)(i)(IX).

data demonstrate that it currently has only enough orders to fill approximately [

], as shown in the table below.

C Series Production Capacity and Capacity Utilization, 2018-2022[384]
(in units of aircraft, unless otherwise noted)

	2018	2019	2020	2021	2022	Total 2018-2022
Projected Total Annual Production Capacity	[					]
Projected Production of Firm Orders (as reported)	[					]
Unfilled Production Slots Based on Reported Production Projections	[					]
Projected Capacity Utilization Based on Reported Production Projections	[					]

This excess production capacity means that Bombardier has an immediate need for large orders. Indeed, with [

]. And this is *before* considering firm orders that are at risk of cancellation or deferral. [

---

[384] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Question II-11a. The Staff Report states that Bombardier "projected that its total capacity would increase [ ], [ ] its production of 100- to 150-seat LCA would increase [ ] as it began producing more product in Alabama." Staff Report at II-12. This statement incorrectly assumes that Alabama is the reason Bombardier's projected production [ ]. To the contrary, [

]. Moreover, Bombardier's response to Question II-14 of the Foreign Producers' Questionnaire, *i.e.*, its skyline, demonstrates that Bombardier currently [ ] (as discussed in more detail below). *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Question II-14. Thus, [

].

].[385] This [

] means that C Series excess capacity is [

]. Given that Bombardier (like LCA producers generally) [ ],[386] and given that it [ ],[387] Bombardier must make significant additional sales in the immediate future[388] to fill its planned production capacity.

4. ***Export- and U.S.-Market Orientation*: Bombardier Is Export-Oriented and Targeting the U.S. Market**

Bombardier will target the U.S. market—which it considers to be an extension of its home market[389]—to sell aircraft resulting from its excess capacity. The C Series program is export-oriented by necessity, because the Canadian market is far too small to absorb the production volume required for the C Series program to survive.[390] As discussed above, the U.S. market is the largest and most important market for 100- to 150-seat LCA, with most large volume orders for 100- to 150-seat LCA historically coming from U.S. airlines.[391] It is therefore

---

[385] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Questions II-12g, II-12h.

[386] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Additional Response to Questions II-9a and II-11a ([ ]).

[387] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Question II-14.

[388] Bombardier has testified that it must give its suppliers 18 to 24 months lead time to manufacture components for the C Series. *See* 5/18 Staff Conference Tr. at 194 (Mullot).

[389] *See* 5/18 Staff Conference Tr. at 228 (Mitchell). *See also* Bombardier presentation by Rob Dewar, Vice President C Series, *C Series Program Update* (Apr. 2016), at slide 4 (Petition Exhibit 108).

[390] [ ] (Petition Exhibit 101); Canadian Government Document (Public), at Annex E10 (Petition Exhibit 88).

[391] *See* 5/18 Staff Conference Tr. at 105-106 (Nickelsburg).

no surprise that Bombardier's questionnaire data confirm that C Series sales are [ ] oriented towards exports, particularly towards the U.S. market:

C Series Projected Shipments, 2017-2022[392]
(in units of aircraft, unless otherwise noted)

		2017	2018	2019	2020	2021	2022	Total (2017-2022)	
Total shipments	[								]
Home market shipments	[								]
Total exports	[								]
As % of total shipments	[								]
Exports to U.S.	[								]
As % of total shipments	[								]
As % of total exports	[								]

As shown above, [ ] of Bombardier's projected shipments over the 2017-2022 period are for export. Based only on existing C Series orders, the U.S. market will account for [ ] of total shipments and [ ] of total exports during the period, as C Series exports to the U.S. market increase from zero to [ ] aircraft during this period. The Delta sale accounts "for the largest share" of C Series orders as of September 30, 2017.[393] In short, the U.S. market is already a critical source of sales for the export-oriented C Series program, and it will be the prime target for the additional sales Bombardier needs to absorb its excess production capacity.

5. *Likely Sales for Importation and Likely Lost Sales:* Absent Orders, the Domestic Industry Will Likely Lose Significant Sales to Bombardier, Resulting in Additional Subject Imports

In the preliminary investigation, the Commission found "it likely that Bombardier will secure additional orders for subject imports in the imminent future," given that "Bombardier has

[392] Staff Report at VII-10, Table VII-5.

[393] Staff Report at VII-11.

reported past, current, or likely sales discussions with [ ] U.S. airlines ([

]), including [ ] of the airlines with which Boeing has held sales discussions ([

]),” and that the Delta order may facilitate additional orders.[394]

Here, the record requires the same conclusion. Bombardier's significant, increasing excess capacity and its high degree of orientation towards the U.S. market will drive it to pursue additional U.S. orders, as discussed above, and Bombardier and Airbus have confirmed that they are targeting the U.S. market and intend to become even more aggressive on price. Given its demonstrated willingness to buy market share with extremely low prices,[395] Bombardier is *likely to win* the additional U.S. sales it is seeking, while the domestic industry is *likely to lose* them, despite competing vigorously for [ ] customer orders.[396] In particular, Bombardier reported “recent, current and likely future aircraft sales efforts” with [

[394] Preliminary Determination, USITC Pub. 4702 at 30.

[395] Bombardier President and CEO Alain Bellemare stated that Bombardier “will do what we have to do . . . to win a campaign. . . . So whatever we need to do, I mean to stimulate sales, we will do.” Q2 2015 Bombardier Inc. Earnings Call, Fair Disclosure Wire at 10 (July 30, 2015) (Boeing 5/24 Post-Conference Brief Exhibit 27).

[396] [

].

].[400]

Boeing and Bombardier
Sales Efforts and Competition for Future U.S. Customers[401]

[ ] are likely to occur in the imminent future.[402] Indeed, as part of the JV announcement, Bombardier CEO Alain Bellemare said that

[397] [

].

[398] [

].

[399] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Additional Response to Question II-13.

[400] *See* [ ].

[401] *See* [

].

[402] *See* [ ].

Bombardier "is already in talks with several potential U.S. customers for the C Series" and COO Fabrice Bregier said "{i}n addition to the deal with Delta, JetBlue Airways Corp. is another possible customer."[403]

Critically, Bombardier's sales efforts [

].[406]

In any U.S. sales campaign, Bombardier will be starting from a more advantageous position because of the "tremendous" commercial momentum it has as a result of the dumped and subsidized C Series sale to Delta,[407] and the recently announced proposed JV with Airbus.[408] Customers will demand pricing very similar to what Delta obtained for the CS100 and CS300,[409] Only Bombardier can meet such low pricing demands.[410] The subject merchandise is likely to

---

[403] *See* Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017), attached as Exhibit 1.

[404] *See* Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Question II-12.

[405] *See* [

].

[406] *See* [ ], paras. 9-14, attached as Exhibit 2.

[407] Q2 2016 Bombardier Inc. Earnings Call, Fair Disclosure Wire at 3, 12 (Aug. 5, 2016) (Petition Exhibit 11).

[408] *See, e.g.*, Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, Bombardier, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale," at slides 6 & 9 (Oct. 16, 2017), attached as Exhibit 7.

[409] 5/18 Staff Conference Tr. at 39 (Nickelsburg).

[410] *See* Petition at 52.

capture many, if not all, additional U.S. sales—likely at prices similar to what Delta received for the C Series,[411] resulting in significant lost sales, revenues, and profits for the domestic industry.

The threat of additional lost sales is, if anything, more potent than it was at the time of the Commission's preliminary determination, now that Airbus intends to take control of the C Series program and price the C Series even more aggressively.[412] Moreover, Bombardier and Airbus have stated their intention that the C Series capture 50% of the market.[413] Of course, that is not possible without a significant portion of those sales occurring in the most important market, the United States.

C. *Price*: The C Series Is Harming Prices for the Domestic Like Product Right Now and These Adverse Price Effects Will Only Intensify in the Imminent Future

In the preliminary investigation, the Commission found that:

> In light of Bombardier's low price strategy during the United and Delta campaigns, and the low price expectations created by the strategy, we find it likely that Bombardier will offer similarly low prices in the sales campaigns likely to take place in the imminent future, as a means of securing the sales it requires to achieve its production ramp up targets. In the face of low priced subject import competition, Boeing will likely be forced to either reduce its own prices to win sales, thereby causing a significant

---

[411] 5/18 Staff Conference Tr. at 30 (Conner); *id.* at 37 (Nickelsburg).

[412] An indicator of this threat is the increased investor confidence in Bombardier after the announced deal with Airbus. Jacquie McNish, *Bombardier's Stock Soars to Two-Year High*, MarketWatch (Oct. 17, 2017), attached as Exhibit 50. Airline analyst Darryl Jenkins has noted that the C Series has given Delta a "competitive advantage," and believes that U.S. airlines will look more closely at the C Series once the planes are in Delta's hands. Paige Ellis, *Three Reasons Why Boeing May Actually Fear Bombardier*, Business News Network (Sept. 22, 2017), attached as Exhibit 27. While Moody's downgraded Bombardier's credit rating in late October 2017, partly due to uncertainties surrounding Bombardier's C Series and Global 7000 business jet programmes, it noted that the Bombardier-Airbus deal "could invigorate interest in, and improve the long term prospects for" the C Series. Jon Hemmerdinger, *Bombardier Fires Back After Moody's Downgrade*, FlightGlobal (Oct. 25, 2017), attached as Exhibit 51.

[413] *See* Ross Marowits, *Bombardier expects C Series jets to capture half of global market*, Waterloo Region Record (Sept. 12, 2017), attached as Exhibit 52.

> depressing or suppressing effect on domestic prices, or else lose the sales.[414]

The current record confirms that C Series imports will cause the domestic industry to suffer adverse price effects. The subject merchandise and the domestic like product are moderately to highly substitutable,[415] and they compete on price.[416] Given the C Series' recent and ongoing adverse price effects on prices for the domestic like product, and Bombardier's compelling incentives to offer aggressive pricing to U.S. customers in upcoming sales campaigns, the subject merchandise is likely to continue significantly underselling and depressing the prices of the domestic like product in the imminent future.

1. Significant Price Underselling[417]

Bombardier has significantly undersold the domestic like product and is likely to continue doing so in the imminent future. In the preliminary determination, the Commission stated: "purchasers typically do not compare the up-front cost of acquiring competing aircraft but rather the NPV of competing offers from aircraft suppliers, which includes non-price factors such as fuel efficiency and maintenance costs."[418] Such NPV comparisons between the C Series and the 737-700 and MAX 7 confirm that the subject merchandise has significantly undersold the domestic like product and is likely to continue doing so in the imminent future.

---

[414] Preliminary Determination, USITC Pub. 4702 at 33.

[415] *See* Staff Report at II-31.

[416] *See* Staff Report at II-32 (showing that U.S. customers overwhelmingly consider price to be a very important factor in purchase decisions).

[417] The Commission has the authority to consider significant price underselling in determining whether a domestic industry is threatened with material injury, including significant price underselling that occurs prior to importation. See 19 U.S.C. § 1677(7)(F)(i).

[418] Preliminary Determination, USITC Pub. 4702 at 31.

In a sales campaign, price is the primary lever to influence customer purchasing decisions, both because price is indisputably important in its own right,[419] and because customers "monetize" other factors (such as fuel efficiency) in their NPV comparisons of competing models.[420] On an NPV basis, the evidence shows that the 737-700 is worth approximately [ ] the CS100,[421] and that the 737 MAX 7 is worth approximately [ ] the CS300.[422] This means that underselling occurs, *inter alia*, where the CS100 is priced [ ] the 737-700, and where the CS300 is priced [ ] the 737 MAX 7. The evidence shows that Bombardier has priced the C Series so low as to undersell the domestic like product on an NPV-adjusted basis and force Boeing to significantly lower its prices to remain competitive.

[

[419] *See* Staff Report at II-32.

[420] *See* Boeing Internal NPV Analysis (2017), attached as Exhibit 44; Staff Memo, Interviews and plant tour in Renton, Washington regarding 100- to 150-Seat Large Civil Aircraft from Canada: Investigation Nos. 701-TA-578 and 731-TA-1368 (Final) (Dec. 6, 2017), Attachment 2, Boeing's Presentation to ITC Representatives at slides 7, 22.

[421] Nickelsburg Report, para. 133 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[422] *See* Boeing Internal NPV Analysis (2017), attached as Exhibit 44.

[423] [ ].

[424] [ ].

]:

[

].[428]

[

][429]

Thus, the subject merchandise has already significantly undersold the domestic like product, and is likely to continue doing so. Indeed, this is confirmed by Bombardier's pricing [

---

[425] [ ].

[426] Affidavit of [ ], paras. 5-9 (Petition Exhibit 101).

[427] [ ].

[428] Affidavit of [ ], para. 8 (Petition Exhibit 101).

[429] Affidavit of [ ], para. 10 (Petition Exhibit 101).

]433

Bombardier is pricing in a manner contrary to what one would expect from a producer with a supposedly superior, more technologically advanced product. Bombardier's underselling has already had significant adverse effect on prices of both the 737-700 and 737 MAX 7, and Bombardier's underselling and the resulting adverse price effects will likely continue. This is unsurprising given the substitutability of the subject merchandise and the domestic like product and the importance of price in purchasing decisions.[434]

---

[430] [ ].

[431] [ ].

[432] Staff Report at V-28.

[433] *See* [ ].

[434] *See* discussion, *supra*, Section IV.C.

2. *Adverse Price Trends*: Subject Imports Are Depressing and Suppressing Prices for the Domestic Like Product, and These Adverse Price Effects Are Likely to Worsen

Bombardier's new pricing strategy is already depressing and suppressing prices for the domestic like product throughout the U.S. market, and these adverse price trends are likely to worsen.

First, Bombardier's [

]:

[

].[435]

Second, the C Series' adverse price effects intensified with the Delta sale. Bombardier sold Delta the CS100 for [

].[436] This represents a [

].[437]

Bombardier's pricing at Delta, combined with its pricing at United, will depress and suppress Boeing's 737-700 and 737 MAX 7 prices for the foreseeable future, notwithstanding Bombardier's and Delta's assertions that C Series pricing will rise significantly.[438] When

---

[435] Affidavit of [ ], para. 10 (Petition Exhibit 101).

[436] *See* [ ].

[437] *See* [

].

[438] 5/18 Staff Conference Tr. at 30-31 (Conner); Nickelsburg Report, para. 135 (Boeing 5/24 Post-Conference Brief Exhibit 8).

Bombardier slashed its prices to win the Delta sale, the C Series was close to entering service, such that the economic rationale for discounted "launch" pricing had long since fallen away.[439] Professor Nickelsburg has explained the pitfalls of such a pricing strategy:

- "A steep drop in prices seven or eight years after launch would not be consistent with normal industry practice. Rather, it suggests that the model is failing, because the rationale for launch pricing—the risk of buying unproven aircraft—is no longer present. Under normal market conditions, such low prices are unsustainable."[440]

- "In the years after launch, a producer may attempt to justify a price-cutting strategy to stimulate sales, and hence, initiate *commercial momentum*, which the producer hopes will then be followed by increased demand and price increases. History in this industry and economic theory show, however, that such a strategy is unlikely to succeed as planned, because the manufacturer cannot justify the lower prices based on launch risk. As a result, the lower price becomes fixed as the new normal market price for the aircraft and subsequent customers will tend to demand, and receive, pricing commensurate with the low prices that initiated the strategy."[441]

Professor Nickelsburg's views are confirmed by public customer statements about demand for Delta pricing,[442] Airbus' statements about pricing the C Series even more aggressively,[443] and confidential evidence on the record. For example, [

[439] *See* Nickelsburg Report, paras. 79-81 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[440] Nickelsburg Report, para. 81 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[441] Nickelsburg Report, para. 83 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[442] *See, e.g.*, Tim Hepher & Victoria Bryan, *Bombardier faces discount headache as CSeries sales take off*, Reuters (June 4, 2016) (Petition Exhibit 36).

[443] Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017) (according to Airbus Chief Operating Officer Fabrice Bregier, "{i}f we make it competitive, if we help to reduce its cost to sell it more aggressively, with the credibility that Airbus brings, we will have a market share that is greatly superior to what the analysts expect now"), attached as Exhibit 1.

[444] *See* Affidavit of [ ], para. 8 attached as Exhibit 2.

]:

[

].

[

].

[

].

[

].

[

].[445]

This, by itself, is an unquestionably material adverse price effect, but it is far from the full extent of the harm the domestic industry is facing. [

].[446] Thus, the evidence demonstrates that U.S. airlines evaluating offers for the 737-700 and 737 MAX 7 will take into account the likelihood that they will be competing against low-priced CS100s and CS300s operated by Delta. Buying a Boeing MAX 7 at fair prices would put those airlines at a severe disadvantage when they compete against Delta and its much lower capital cost structure for price-sensitive U.S. passengers. As a result, Boeing must drop MAX 7 prices substantially—far below levels it could ever justify on a commercial basis—just to have a chance at competing for new orders.

Third, Bombardier's entry into the U.S. market has caused and will continue to cause price suppression, or downward pressure hindering the ability of domestic producers to increase price to match rising costs. Boeing's [ ] include [

[445] *See* Affidavit of [ ], paras. 8-12, attached as Exhibit 2.

[446] Purchaser Views, Declaration of [ ], paras. 3-4, attached as Exhibit 3.

] rising production costs.[447]

The subsidization of Bombardier's C Series operations means it does not have the same economic pressures to keep its pricing in line with production costs, and indeed, as the Commerce Department preliminarily determined, Bombardier has sold the C Series into the U.S. market at a price far below the cost of production.[448] As a result, Bombardier's pricing will hinder Boeing's ability to adjust its own prices to reflect higher costs, and will force Boeing to try to compete at significantly depressed profit levels.

Bombardier argued in the preliminary investigation that the pricing for Delta's 2016 order of C Series aircraft was somehow exceptional and that future pricing will not be pegged to that heavily discounted sale. The record strongly refutes any such notion. As explained by Professor Nickelsburg, "industry participants, including potential buyers of the aircraft, will typically discover previously negotiated prices, as well as other contract provisions previously agreed upon, and use that information during the negotiation process."[449] For this reason, Ray Conner of Boeing stated that "after a manufacturer lowers its price to a certain level, it is virtually impossible to raise it back up again."[450] Competing airlines will demand comparable pricing so as not to disadvantage themselves in the market for passenger air travel.[451]

Consistent with this testimony at the Staff Conference, [

]. In particular, responding U.S. airlines indicated that [

---

[447] Boeing U.S. Producers' Questionnaire Response (Final), Question II-11i.

[448] *See 100- to 150-Seat Large Civil Aircraft From Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 47,697 (Int'l Trade Admin. Oct. 12, 2017).

[449] *See* Nickelsburg Report, paras. 71-74 (Boeing 5/24 Post-Conference Brief Exhibit 8).

[450] 5/18 Staff Conference Tr. at 39 (Conner).

[451] 5/18 Staff Conference Tr. at 30 (Conner).

].[452] For example, [

] stated in its questionnaire response that [

].[453] [

].[454] Further, [

].[455] The responding airlines made no exception for launch pricing, and neither should the Commission. For example, [

].[456] Thus, there is no evidence suggesting that the sale to Delta will not impact pricing in future sales campaign with marquee U.S. customers.

D. *Adverse Impact*: The Subject Merchandise Is Causing an Adverse Impact That Will Imminently Constitute Material Injury to the Vulnerable Domestic Industry

1. *Vulnerability*: The Domestic Industry Is Vulnerable to Material Injury by Reason of Subject C Series Sales for Importation, Likely Sales for Importation, and Imports

The domestic industry's vulnerability is evident from its production and financial data. As Mr. Conner testified at the preliminary Staff Conference, it is "very hard" to have a viable domestic industry that produces roughly 10 airplanes per year.[457] The data confirm Mr. Conner's point. During the 2007-2013 period, its annual averages were [ ] total aircraft produced,

---

[452] [ ].

[453] [ ].

[454] [ ].

[455] [ ].

[456] [ ].

[457] 5/18 Staff Conference Tr. at 106 (McLain and Conner).

total net sales values of [ ], operating income of [ ], and [ ] aircraft deliveries to U.S. customers.[458] During the 2014-2016 period, by contrast, it averaged only [ ] total aircraft produced (a [ ]), total net sales values of [ ], operating income of [ ], and zero commercial deliveries to U.S. customers.[459]

The Staff Report confirms the domestic industry's deteriorating condition. Table VI-3 and Figure VI-1 show [ ].[460] According to the Staff Report: "{w}ith the [ ], gross profit declined [ ] from 2014 to 2016" and "operating income likewise declined [ ] from 2014 to 2016 and in interim 2017 compared to interim 2016."[461] The Staff Report states further that "{n}et income before taxes and cash flow (the sum of net income and depreciation charges) followed the same trends as operating income."[462] Table VI-2 shows [ ].[463] The Staff Report also states that Boeing's data "depict {an} unfavorable volume variance (lower number of units delivered) and unfavorable cost/expense variance (unit costs/expenses rose) {which} led to lower operating and net income."[464] According to the Staff

[458] Boeing U.S. Producers' Questionnaire Response (Final), Questions II-8, III-9c.

[459] Boeing U.S. Producers' Questionnaire Response (Final), Questions II-7, III-9a.

[460] *See* Staff Report at VI-6, Table VI-3, Figure VI-1.

[461] *See* Staff Report at VI-9.

[462] *See* Staff Report at VI-9.

[463] *See* Staff Report at VI-5, Table VI-2.

[464] *See* Staff Report at VI-10; *see also* VI-11, Table VI-4.

Report, "{t}hese unfavorable variances outweighed a favorable price variance."[465] Moreover, Boeing's average operating return on assets [ ] from 2014-2016.[466]

Furthermore, given the tendency of sales to occur mainly through large but infrequent orders by a handful of major customers, the domestic industry is susceptible to rapid declines in its revenues and profitability, as illustrated by the United sale.[467] Moreover, [

].

[465] *See* Staff Report at VI-10.

[466] *See* Staff Report at VI-15.

[467] Petition at 14.

[468] Affidavit of [ ], paras. 8, 13, attached as Exhibit 2.

[469] Affidavit of [ ], para. 13, attached as Exhibit 2.

[470] Affidavit of [ ], para. 13-14, attached as Exhibit 2.

[471] [ ].

In addition, the domestic industry is enduring a multi-year drought in significant airline orders for the 737 MAX 7, its lone product for the foreseeable future, despite Boeing's investment of many millions of dollars in its ongoing development program. It last received significant orders in 2013: 30 firm orders from Southwest and 25 firm orders from WestJet (with WestJet's order currently at 23 firm orders).[472] The current period leading up to the MAX 7's entry into service in 2019 is a particularly vulnerable time for the program. The MAX 7 has only [ ] orders, with only Southwest and WestJet having ordered more than [ ] aircraft.[473] [

].[474] Thus, the MAX 7 is in danger of being sidelined as a viable option for customers even before it enters service. Indeed, Airbus acknowledged that the C Series has already endangered the A319neo, causing it to experience a similar order drought.[475] As Professor Nickelsburg stated: "the 737 MAX 7 program has had a long drought of U.S. orders. That is not healthy nor does it suggest a high degree of commercial momentum. The 737 MAX 7 is, thus, quite vulnerable and the risk of its collapse is elevated."[476]

---

[472] Boeing Press Release, "Southwest Airlines launches the 737 MAX 7" (May 15, 2013), attached as Exhibit 53; Boeing Press Release, "Boeing, WestJet Announce Order for 65 737 MAX Airplanes" (Sept. 26, 2013), attached as Exhibit 54; 737 MAX 7 Orders, attached as Exhibit 55.

[473] *See* Boeing 737 MAX 7 Orders, attached as Exhibit 55. In its questionnaire response, Boeing reported that the MAX 7 had [ ] firm orders. Boeing U.S. Producers' Questionnaire Response (Final) at II-11d. The updated [ ] order total reflects [

].

[474] Affidavit of [ ], para. 13, attached as Exhibit 2.

[475] For example, Airbus Chief Executive Thomas Enders stated, "to perhaps to answer that question that came also yesterday, but what about the A319 and you're going directly against the A319 with the C Series. Well, the answer is we haven't sold the Airbus 319 over the last 5 years. I think that answers that question." Airbus Conference Call (FD Wire), "Airbus SE and Bombardier C Series Announce C Series Partnership Call - Final" (Oct. 17, 2017), at 3 (Enders), attached as Exhibit 8.

[476] Nickelsburg Report, para. 139 (Boeing 5/24 Post-Conference Brief Exhibit 8).

2. The Domestic Industry Is Threatened with Material Injury "By Reason of" Imminent Subject Sales for Importation, Likely Sales for Importation, and Imports

In the preliminary investigation, the Commission found "a reasonable indication that subject imports are likely to materially injure the domestic industry in the imminent future, by significantly depressing or suppressing domestic prices on those orders that Boeing receives and by securing additional orders for 100- to 150- seat LCA at Boeing's expense."[477] The Commission also found that "subject imports are likely to have significant negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product."[478] Here, the record evidence similarly compels an affirmative threat determination.

As explained in Section IV.C, the C Series is highly substitutable, and competes directly on price, with the domestic like product. The record contains direct evidence of how the C Series' unfair pricing has had an injurious impact on the domestic industry. Bombardier's aggressively priced C Series offers depressed prices for the domestic like product in the United sales campaign, [

], and would have slashed the domestic industry's [ ] and its operating margins [ ] had the United orders remained in place.[479] Bombardier's even more aggressive pricing at Delta has magnified the pricing and sales pressure on the domestic industry. It [

[477] Preliminary Determination, USITC Pub. 4702 at 35.

[478] Preliminary Determination, USITC Pub. 4702 at 35.

[479] Petition at 14.

].[480]

Moreover, subject C Series imports will soon dominate the U.S. market for 100- to 150-seat LCA. Bombardier's sale of dumped and subsidized C Series aircraft to Delta has locked in Bombardier's significant, imminent increase in subject import volumes, from zero in 2017 to [ ].[481] During the same period, the domestic industry's total production is projected to be only [ ] aircraft, [ ].[482] With subject imports—and the C Series' entry into service on Delta's U.S. domestic routes—only a few months away, the pressure is intensifying for other U.S. airlines to obtain comparable pricing, as [ ]. Bombardier's announced partnership with Airbus only serves to amplify the threat of significant increases in subject imports, which is why the parties to the deal have expressed great confidence in the further commercial momentum that the deal will generate for the C Series.[483]

---

[480] Affidavit of [ ], paras. 8-14, attached as Exhibit 2.

[481] *See* Staff Report at VII-10, Table VII-5; Bombardier Foreign Producers' and/or Exporters' Questionnaire Response (Final), Additional Response to Question II-11a.

[482] *See* Boeing U.S. Producers' Questionnaire Response (Final), Question II-13.

[483] *See* discussion, *supra*, Sections I.C-I.D at nn.62-80. *See also* Paul Waldie, *Why Airbus CEO Tom Enders decided to take over Bombardier s C Series*, The Globe and Mail (Nov. 17, 2017) (quoting Airbus' CEO as saying: "I think Bombardier and the Quebec government made a very smart decision by betting and assuming, and I think rightly assuming, that this activity will be worth far more once we have been able to really sell these aircrafts by the hundreds or more than today," and "{i}t's one thing to develop a great aircraft. . . .The other thing is to sell it worldwide and to have sufficient leverage with all these suppliers."), attached as Exhibit 56; Nicolas Van Praet, *Bombardier 'just sold the future.' What now?*, The Globe and Mail (Oct. 21, 2017) ("'I am glad we found a really strong business partner like Airbus to push the C Series into second gear,' said Charles Bombardier, an inventor and member of the founding family that controls the parent company through a block of supervoting shares."), attached as Exhibit 57.

In the imminent future, the subject merchandise and the domestic like product will be competing for sales [ ],[484] where Boeing must either provide pricing at levels similar to Delta's C Series prices or lose the sales and associated revenues and profits.

3. Material Injury Is Imminent

a. *Negative Effects on Product Development:* The Subject Merchandise Will Likely End the 737 MAX 7's Commercial Viability and the Domestic Industry's Ability to Justify and Fund Its Successor

Injury to the domestic industry is both likely and imminent because (i) given the phenomenon of commercial momentum, it will only take one or two additional C Series sales to major U.S. customers to cement the 737 MAX 7's status as an also-ran in the 100- to 150-seat LCA market; (ii) Bombardier needs significant additional U.S. orders to feed into its excess capacity and sustain its production ramp-up; (iii) Bombardier is targeting the U.S. market for those orders; and (iv) enabled by subsidies, Bombardier can drop and has dropped prices far below the levels that Boeing can justify, such that the C Series is likely to beat the domestic like product on price and take the critical U.S. sales that will occur within the next 1-2 years.[485]

As explained in prior Commission rulings, capital-intensive industries such as aircraft rely heavily on sales revenue to fund the onerous research and development required by these

---

[484] [ ].

[485] Nickelsburg Report, para. 142 (Boeing 5/24 Post-Conference Brief Exhibit 8).

industries.[486] Boeing has incurred [ ] dollars in non-recurring costs for the 737 MAX 7 program thus far.[487] Boeing further depends on the financial success of the MAX 7 to fund its next generation of 100- to 150- seat LCA. Absent orders, the domestic industry will fail to obtain sufficient orders, revenues, and profits to sustain the 737 MAX 7, let alone justify investing in a more technologically ambitious successor that will likely be especially expensive to develop, at upwards of [ ].[488]

This fate could be avoided if orders are imposed. The disciplining effect of orders would give the 737 MAX 7 a realistic opportunity to generate the additional U.S. sales and commercial momentum that the domestic industry requires to survive in the market.

b. *Negative Effects on Production:* Even if the 737 MAX 7 Survives, the Domestic Industry Will Still Suffer Material Injury Reflected in Trade and Financial Indicia

In the unlikely event that the 737 MAX 7 manages to remain a viable product in the face of additional pressure from the C Series, the vulnerable domestic industry will be materially injured nonetheless. The low-priced C Series is already injuring the domestic industry's production, revenues, and profits. As discussed above, [

---

[486] *See, e.g., DRAMs and DRAM Modules from Korea*, USITC Inv. No. 701-TA-43-1 (Final), USITC Pub. 3616 at 16 (Aug. 2003) ("To keep abreast of new technology, DRAM producers must invest constantly in new capital equipment as well as research and development and maximize capacity utilization."); *Vector Supercomputers from Japan*, Inv. No. 731-TA-750 (Final), USITC Pub. 3062 at 14 (Oct. 1997) ("Development of a new generation of vector supercomputers entails large capital expenditures. As such, failure of the domestic industry to obtain an adequate rate of return on any given generation of product severely handicaps its ability to fund the next generation product."); *Mechanical Transfer Presses from Japan*, Inv. No. 731-TA-429 (Final), USITC Pub. 2257 at 18 (Feb. 1990) ("{D}emand for mechanical transfer presses is derivative but is also irregular . . . {T}echnological development in this industry is directly related to the installed base of machines of a particular producer . . .").

[487] [ ].

[488] [ ].

[489] Affidavit of [ ], paras. 8-14, attached as Exhibit 2.

].[490] Moreover, [

][491]

The injury to the domestic industry will likely worsen in the imminent future, as aggressively priced C Series aircraft will force Boeing to either lower prices significantly ([ ]) or else lose sales. Boeing can compete and win sales on fair terms, and can offer attractive near-term delivery positions for the major U.S. sales that are likely to occur in the imminent future.[492] However, given the C Series' extremely low, subsidized, pricing, Boeing is likely to lose significant sales. This will cause further reductions in production and shipments (which in turn impacts efficiency and cost reduction, as Boeing would be inhibited from moving down its cost curve), as well as reductions in net sales, gross margins, operating income, returns on investment, and research and development expenditures. Further adverse effects will also be felt by employment within the domestic industry, leading to a reduction in production related workers, hours worked, and total labor income.

[490] Affidavit of [ ], paras. 12, 14, attached as Exhibit 2.

[491] Affidavit of [ ], para. 11, attached as Exhibit 2.

[492] *See* Declaration of [ ], paras. 16-18 and Attachments 1-2, attached as Exhibit 42.

If AD/CVD Orders are not put in place, Boeing will sell even fewer units of the 737 MAX 7 in its crucially important domestic market, resulting in further declines in net sales quantities, net sales values, production, and shipments. Moreover, the units it does sell will have to be sold at significantly depressed prices, given the enduring price transmission effects from the Delta sale and likely additional C Series offers for sale at extremely low prices. Boeing will also be forced to spread large fixed costs over fewer units. Total employment, hours worked, and wages will also be reduced for these reasons.

The adverse impact from lost sales, and sales made at significantly depressed prices, will be immediate, as reflected in terms of lost (or significantly lower) pre-delivery payments and commercial momentum. And the impact will be reflected in lost or lower production, revenues, profits, employment, and other indicia as soon as [ ], given that Boeing is able to offer delivery positions during the [ ] period for [ ] U.S. sales, along with [

].[493]

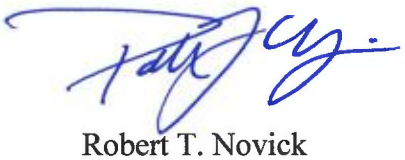
IX. CONCLUSION

The case for affirmative determinations is overwhelming, and the stakes could not be higher. Subsidized and dumped C Series aircraft are severely harming the domestic industry right now, and will imminently cause irreparable material injury absent antidumping and countervailing duty orders. Unreasonably low-priced subject imports will begin surging into the U.S. market in a matter of months as a result of the Delta sale. The C Series will continue taking sales and depressing Boeing's prices because Bombardier, which is pursuing U.S. customers, needs major orders from them to fill its excess capacity and because those customers demand

[493] Affidavit of [ ], paras. 10-11, attached as Exhibit 2.

Delta's pricing. Without a remedy, the 737 MAX 7 will quickly cease to be a viable product, and the domestic industry will have no future to speak of. Bombardier and Airbus will own the 100- to 150-seat market. Boeing urges the Commission to prevent this by voting affirmative.

Respectfully submitted,



Robert T. Novick
Patrick J. McLain
Stephanie E. Hartmann
William Desmond
WILMER CUTLER PICKERING
HALE & DORR LLP

Counsel to The Boeing Company

Public Version
Business Proprietary Information Has Been Deleted

List of Exhibits

Exhibit Number	Description
1	Frederic Tomesco, *Airbus Puts Price Tag on 'Made-in-USA' Label for C Series Jet*, Bloomberg (Oct. 20, 2017)
2	APO – Affidavit of [ ]
3	APO – Purchaser Views
4	Airbus Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017)
5	Benjamin Katz, *Airbus Pledges to Put C Series Ahead of A319 in Sales Push*, Bloomberg (Oct. 18, 2017)
6	Bombardier Press Release, "Airbus and Bombardier Announce C Series Partnership" (Oct. 16, 2017)
7	Alain Bellemare, President and CEO, & John Di Bert, Senior Vice President and CFO, "Partnering to Realize the C Series' Full Potential: Bringing Together Bombardier's Innovative Aircraft and Airbus' Global Reach and Scale" (Oct. 16, 2017)
8	Airbus Conference Call (FD Wire), "Airbus SE and Bombardier Inc. Announce C Series Partnership Call – Final" (Oct. 17, 2017)
9	Event Brief of Q2 2017 Delta Air Lines Inc. Earnings Call – Final, Fair Disclosure Wire (July 13, 2017)
10	Susan Carey & Doug Cameron, *Delta Expects to Buy U.S.-Built CSeries Jets*, Wall Street Journal (Oct. 18, 2017)
11	Jacob Serebrin, *Bombardier, Airbus deal won't take anything away from Quebec, CEOs say*, Montreal Gazette (Oct. 20, 2017)
12	Letter from Airbus CEO Thomas Enders, "Welcome Canada to Airbus' world of partnership" (Oct. 2017)
13	APO – Affidavit of [ ]
14	Karen Walker, *Airbus & Bombardier to partner on CSeries; build aircraft in Alabama*, Air Transport World (Oct. 16, 2017)
15	Bombardier website, "Commercial Aircraft – C Series, CRJ Series and Q Series – Bombardier" (accessed Dec. 6, 2017)
16	*Insight from Bombardier: Five key trends affecting commercial aviation for the next 20 years*, FlightGlobal (Sept. 12, 2017)
17	APO – Boeing Internal Presentation, [ ]

Exhibit Number	Description
18	Department of Transportation, Federal Aviation Administration, Type Certificate No. T00008NY, Revision No. 1 (Dec. 13, 2016)
19	Bombardier Press Release, "Advanced Aerodynamics, Technology and Materials Earn Bombardier C Series Aircraft Aviation Industry Honours" (Mar. 3, 2017)
20	Jon Hemmerdinger, *Bombardier confident 'scope clauses' will not change*, FlightGlobal (Sept. 25, 2017)
21	Loren Thompson, *Boeing Thinks Airbus Is Making A Big Mistake With Bombardier Partnership*, Forbes (Oct. 24, 2017)
22	*Airbus to acquire majority stake in C Series*, AeroTime (Oct. 17, 2017)
23	"New IATA Passenger Forecast Reveals Fast-Growing Markets of the Future," IATA (Oct. 16, 2014)
24	"2016 Annual and December U.S. Airline Traffic Data," Bureau of Transportation Statistics (Mar. 16, 2017)
25	Scott McCartney, *The Comfortable New Planes Airlines Think You Don't Want*, Wall Street Journal (Sept. 7, 2017)
26	Nicolas van Praet & Josh O'Kane, *Top-level change loosens grip of Bombardier founding family*, The Globe and Mail (May 11, 2017)
27	Paige Ellis, *Three Reasons Why Boeing May Actually Fear Bombardier,* Business News Network (Sept. 22, 2017)
28	*Airbus lifts pressure but Bombardier still faces challenges*, The National (Oct. 30, 2017)
29	Allison Lampert & Tim Hepher, *Exclusive: Canada pushed for Airbus deal as Bombardier courted China*, Reuters (Oct. 25, 2017)
30	Bombardier Press Release, "Bombardier Continues to Build Momentum with Successful Paris Air Show" (June 22, 2017)
31	Bombardier Conference Call (FD Wire), "Bombardier Inc. and Airbus SE Announce Partnership on the C Series Aircraft Program – Final" (Oct. 16, 2017)
32	Airbus Presentation, "Airbus & Bombardier, C Series, A Winning Partnership" (Oct. 17, 2017)
33	Sandrine Rastello, *Quebec Touts Airbus Sales Power, Jobs Saved in C Series Deal,* Bloomberg Politics (Oct. 17, 2017)
34	Dominic Gates, *Boeing retools Renton plant with automation for 737's big ramp-up*, The Seattle Times (Apr. 18, 2015)
35	Airbus Press Release, "Airbus Launches Ship Carrying First Components for A320 Family Production in the U.S." (May 29, 2015)

Exhibit Number	Description
36	Graham Rapier, *Here's the Chinese factory where Airbus assemblies its most popular plane*, Business Insider (Aug. 26, 2015)
37	Binyamin Appelbaum & Christopher Payne, *A Look Inside Airbus's Epic Assembly Line*, The New York Times Magazine (May 3, 2017)
38	Airbus website, "How is an aircraft built? – Final assembly and tests"
39	Dominic Gates, *Airbus takes Boeing fight to U.S. soil*, The Seattle Times (Jan. 15, 2008)
40	Daniel Michaels, Jon Ostrower & David Pearson, *Airbus's New Push: Made in the U.S.A.*, Wall Street Journal (July 2, 2012)
41	*Europe's Airbus to build planes in Alabama by 2016*, Agence France Presse (July 4, 2012)
42	APO – Declaration of [ ]
43	Tim Hepher, *Airbus deliveries rose 8 percent, orders outpaced Boeing in 2016*, Reuters (Jan. 11, 2017)
44	APO – Boeing Internal NPV Analysis (2017)
45	*From war to partner: Airbus and the CSeries*, Leeham News (Oct. 18, 2017)
46	Allison Lampert & Christine Murray, *Aeromexico eyes Delta's C Series jet order amid U.S. trade spat: sources*, Reuters (Dec. 4, 2017)
47	Q1 2017 Bombardier Inc. Earnings Call, Fair Disclosure Wire (May 11, 2017)
48	"Comments of the Government of Québec In Response to the Department's Invitation to Submit Comments Regarding Proposed Transaction" (Nov. 13, 2017)
49	Alaska website, "Fleet"
50	Jacquie McNish, *Bombardier's Stock Soars to Two-Year High*, MarketWatch (Oct. 17, 2017)
51	Jon Hemmerdinger, *Bombardier Fires Back After Moody's Downgrade*, FlightGlobal (Oct. 25, 2017)
52	Ross Marowits, *Bombardier expects C Series jets to capture half of global market*, Waterloo Region Record (Sept. 12, 2017)
53	Boeing Press Release, "Southwest Airlines launches the 737 MAX 7" (May 15, 2013)

Exhibit Number	Description
54	Boeing Press Release, "Boeing, WestJet Announce Order for 65 737 MAX Airplanes" (Sept. 26, 2013)
55	APO – 737 MAX 7 Orders
56	Paul Waldie, *Why Airbus CEO Tom Enders decided to take over Bombardier s C Series*, The Globe and Mail (Nov. 17, 2017)
57	Nicolas Van Praet, *Bombardier 'just sold the future.' What now?*, The Globe and Mail (Oct. 21, 2017)