

CERTAIN COMMUTER AIRPLANES FROM BRAZIL

**Determination of the Commission
in Investigation No. 701-TA-188
(Preliminary) Under Section 703 (a)
of the Tariff Act of 1930,
Together With the Information
Obtained in the Investigation**

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information which would reveal the confidential operations of individual concerns may not be published and, therefore, has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 701-TA-188 (Preliminary)

CERTAIN COMMUTER AIRPLANES FROM BRAZIL

Determination

On the basis of the record 1/ developed in investigation No. 701-TA-188 (Preliminary), the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (U.S.C. 1671b(a)), that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, 2/ by reason of imports from Brazil of certain commuter airplanes, 3/ as provided for in item 694.41, of the Tariff Schedules of the United States (TSUS), upon which subsidies are alleged to be paid.

Background

On August 13, 1982, a countervailing duty petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel on behalf of Fairchild Swearingen Corp. of San Antonio, Texas. The petition alleged that certain commuter airplanes imported from Brazil receive, directly or indirectly, bounties or grants within the meaning of section 701 of the Tariff Act of 1930.

1/ The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (47 F.R. 6190, Feb. 10, 1982).

2/ Commissioner Frank determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury.

Accordingly, the Commission instituted a preliminary investigation under section 703(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission investigation and of the conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on August 25, 1982 (47 F.R. 37309). The conference was held in Washington, D.C. on September 8, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission voted on this case in public session on September 21, 1982.

VIEWS OF CHAIRMAN ALFRED E. ECKES, COMMISSIONERS PAULA STERN
AND VERONICA A. HAGGART

On the basis of the record in this investigation, we find there is no reasonable indication that an industry in the United States is being materially injured or threatened with material injury, nor is the establishment of an industry in the United States being materially retarded, 1/ by reason of allegedly subsidized imports of certain commuter airplanes from Brazil.

Domestic Industry

The domestic industry against which the impact of allegedly subsidized imports is to be assessed is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 2/ "Like product" is defined in section 771(10) 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 . . ." 3/

The imported product under investigation in this case is the Bandeirante plane manufactured by Embraer of Brazil. In determining whether a domestic product is like the imported product, the Commission has found there is no one domestic plane which is "like" the imported product under investigation as

1/ Material retardation was not an issue in this case.

2/ 19 U.S.C. § 1677(4)(A).

3/ 19 U.S.C. § 1677(10).

defined in section 771(10) of the Tariff Act of 1930. It is impossible to find all of the characteristics of the imported product incorporated in any one domestic product. In the absence of such a plane the Commission has then considered those planes "most similar" in characteristics and uses to the imported plane. Aircraft can be characterized by many features, including weight, power capacity, cargo capacity, seating capacity, type and number of engines, overall size, pressurization, and performance characteristics. The imported plane, the Bandeirante, is characterized by a particular type of engine, number of engines, seating capacity, overall size, nonpressurization, weight and power. 4/ More specifically, the Bandeirante is a nonpressurized, twin-engine turboprop plane that seats 18 passengers. 5/

Based on the record in this investigation, both the Fairchild Swearingen Metro III (Metro) and the Beech Corporation C99 (C99) airplanes have characteristics which correspond most closely to the characteristics of the Bandeirante. 6/ The Beech C99, like the Bandeirante, is a nonpressurized airplane, whereas the Metro is pressurized. For purposes of this preliminary investigation, we do not find that the dissimilarity with regard to this characteristic alone precludes us from the above conclusion.

With regard to uses, both the imported and the domestic planes are used to carry passengers on short-haul, low-passenger density routes to provide small and medium-sized communities with access to the nation's primary transport

4/ Report at A-4. A substantial percent by value of the Bandeirante's components are of U.S. origin.

5/ The Bandeirante has 18 passenger seats based on a 32-inch seat pitch, the distance between the back of an airplane seat and the seat directly behind it. The number of seats can be stretched to 21 seats at a 29 inch pitch. Report at A-4.

6/ Report at A-2, Table 1.

system. 7/ A variety of domestically produced planes are utilized to serve this purpose.

Considering characteristics and uses together, we determine the like product to be domestic twin-engine turboprop airplanes with a 15-19 seat capacity. 8/ The like product consists of the Metro and the C99. We have not considered domestic planes of 8 to 14 seats to be the like product because these do not have a turboprop engine. We have not considered other domestic planes in the 20 to 30 seat range because there are no domestically produced planes in this range. There are two domestic producers of the like product, Fairchild Swearingen Corporation and Beech Aircraft Corporation, and therefore, these producers constitute the domestic industry for purposes of this investigation.

No reasonable indication of material injury by reason of allegedly subsidized imports

Section 771(7) of the Tariff Act of 1930 directs the Commission to consider in making its determination, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on price, and (3) the consequent impact of the imports on the domestic industry. 9/ In assessing the impact on the domestic industry, we are further directed by section 771(4)(c)(iii) to evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to:

7/ Id. at A-4.

8/ Commissioner Stern bases her negative determination on this finding which defines the industry in the light most favorable to petitioner. Were the determination in the affirmative, significant additional information would have been desirable on this issue in a final investigation.

9/ 19 U.S.C. 1677(7).

production, sales, market share, profits, productivity, return on investments, capacity utilization, cash flow, inventories, employment, wages, growth, ability to raise capital, and investment. 10/ 11/

10/ According to the Senate Report on the Trade Agreements Act of 1979, "[n]either the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC to decide." S. Rep. No. 96-249, 96th Cong., 1st Sess. 88 (1979).

11/ Chairman Eckes and Commissioner Haggart note that the Senate and House reports on the Trade Agreements Act of 1979 discuss the reasonable indication of injury standard. The report of the Senate Committee on Finance states:

While the committee recognizes the ITC cannot conduct a full scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period. The nature of the inquiry may vary from case to case, depending on the nature of the information available and the complexity of the issues.

The Committee intends the 'reasonable indication' standard to be applied in essentially the same manner as the 'reasonable indication' standard under section 201(c)(a) of the Antidumping Act, 1921, has been applied. The burden of proof . . . would be on the petitioner. S. Rep. at 49 and 65.

The House Committee on Ways and Means describes the standard as follows:

It is the intention of the committee that 'a reasonable indication' will exist in each case in which the facts reasonably indicate that an industry in the United States could possibly be suffering material injury, threat thereof, or material retardation. The ITC will make its determination based on the best information available to it at the time, and if the determination is negative, the investigation will be terminated. H.R. Rep. at 52.

Within this context, the "could possibly" language of the House report must be construed to require us to examine whether the particular facts of each investigation reasonably indicate that an industry could possibly be suffering material injury or threat thereof, rather than whether any set of circumstances can be postulated which could indicate material injury or threat thereof.

As we recognized in Certain Rail Passenger Cars and Parts Thereof from Canada, No. 701-TA-182 (Preliminary), the case should be continued if a petitioner in its pleadings or the Commission in the course of the investigation raises sufficient legal issues or develops sufficient factual information to support a reasonable indication of material injury or threat thereof.

After giving the interested parties an opportunity to present their views, we conclude that, based on the record as developed in the course of this investigation, sufficient factual information has not been presented or developed to support a conclusion that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of allegedly subsidized imports from Brazil.

A brief discussion of the history of the commuter airlines is helpful in understanding the development of the domestic industry. The Airline Deregulation Act of 1978 made significant changes in the legislation which resulted in an expanded role for commuter airlines in serving small and medium-sized communities. In 1979, the first year of deregulation, commuter airlines grew by a record of 27 percent over that of the previous nine years. This rapid growth continued until late 1980, when a downturn in the U.S. economy affected the regional carriers.

With regard to our analysis of the condition of the domestic industry, 12/ data which were received from both domestic producers show that domestic production of commuter airplanes rose significantly from 1979 to 1981. This trend continued into the period of January through June 1982 as production during this period increased compared to the corresponding period in 1981. Deliveries in the United States of new planes by the domestic industry nearly doubled from 1979 through 1981. 13/ 14/ They further increased by approximately 50 percent in the first half of 1982 compared to the first half of 1981. Capacity for the domestic producers has more than doubled since 1979, reflecting expansion of capacity of Fairchild Swearingen as well as

12/ Beech Corporation, although on record as supporting the petition, did not supply the Commission with data on employment, new orders, profit and loss, and certain other economic data relevant to our analysis of the condition of the domestic industry. However, it did supply other data on production, capacity, and deliveries.

13/ Id. at A-12.

14/ Commissioners Stern and Haggart note that exports from the United States, which represented a significant portion of domestic production, remained constant during the period 1979 to 1981 and more than doubled during the first six months of 1982 compared to the same period in 1981. Report at A-12.

entry of Beech into the market in late 1980. 15/ Although orders are down for the Metro III plane and we have no information on orders for the C99, Beech has already received a substantial number of letters of intent to purchase its new model, the 1900. 16/ Because Fairchild Swearingen does not accept letters of intent, comparable information on consumer interest in its new model, the Metro IIIA, is not available.

The Commission received information from only one of the domestic producers, Fairchild Swearingen, regarding other indicators of economic performance. Employment figures available to the Commission for that domestic firm show that the average number of production and related workers producing commuter airplanes rose substantially from 1979 to 1981, 17/ and wages paid to these workers have increased steadily. 18/ With respect to the financial condition of Fairchild Swearingen, net sales nearly doubled from 1979 to 1981. Sales kept pace with the cost of goods sold resulting in an increase in gross profit during this period. During the same period, general selling and administrative expenses also increased, and there was a resulting decrease in the ratio of operating profit to net sales. 19/ During the most recent period of January through June 1982, compared with the corresponding 1981 period, net sales increased further, with a slight decline in gross profit as cost of

15/ Id. at A-11 to A-12.

16/ Beech has a new plane, the 1900, scheduled for delivery in 1983; Fairchild Swearingen has a new plane, the Metro IIIA, also scheduled for delivery in 1983. Briefing before Commission, Commission meeting of September 21, 1982.

17/ Id. at A-14.

18/ Id. at A-15.

19/ Id. at A-15.

goods sold increased; 20/ however, general selling and administrative expenses increased significantly resulting in a reduced ratio of net operating profit to net sales. 21/

Volume of imports

During most of the period of growth in the commuter airplane market, there was an increase in imports from Brazil. 22/ This import trend, however, has not continued in the first half of 1982 as growth in the market abated. The number of airplanes imported from Brazil during the period of January-June 1982 totalled 14 compared to 15 for this same period in 1981. 23/ The imports from Brazil as a share of total U.S. deliveries followed a similar trend. 24/ Available new order figures show that the level of orders for the Bandeirante in January through June 1982 is slightly less than in the comparable period of 1981. 25/ Based on most recent trends and new order figures, there is no indication that the level of imports from Brazil will increase.

Effect of imports on prices

Airplanes have various characteristics and uses which make precise price comparisons difficult. For example, any direct comparison of the prices of the Metro and the Bandeirante must take into account increased costs

20/ Commissioner Stern notes that it is reasonable to assume that start up costs for the new model and increasing wage rates are affecting this profit figure.

21/ Id. at A-15.

22/ Id. at A-16.

23/ Id. at A-16, Table 7.

24/ Total U.S. deliveries does not include transactions involving used airplanes which respondent argues are competing with U.S. producers deliveries of new airplanes. Report at A-17.

25/ Briefing of Commission, Commission meeting of September 21, 1982.

associated with features such as pressurization. 26/ Because the Bandeirante and the C99 are nonpressurized airplanes, price comparisons for these planes may be more informative. Nevertheless, such a comparison also should be qualified because the C99 has fewer seats than the Bandeirante. With respect to either comparison, there are also several nonprice concessions which are difficult to factor into an analysis of price, including provisions by domestic producers for free spare parts and pilot and crew training. 27/ Although advantageous financing for competitive products is a factor in any purchasing decision, an analysis of the impact of financing on the cost of purchase presents similar analytical problems to those discussed above. The record in this investigation does not contain information which allows us to conclude that there is any pattern of underselling by the allegedly subsidized imports. 28/

The prices for the domestic Metro have risen for each of the five new models produced since 1969. 29/ Current delivery price for Metro III is approximately \$2 to \$2.3 million. 30/ This price range is substantially higher than the average transaction price reported for the period of January through March 1982, the last period for which price information was supplied

26/ Petitioners contend the current additional cost of pressurization is less than one percent of the Metro's purchase price. (Petitioner's Post-Conference brief at 10). Respondent asserts that pressurization accounts for 20 percent of the purchase price (Respondents Post-Conference brief at 17).

27/ Id. at A-18, Table 9.

28/ Another factor affecting any pricing analysis in this investigation is the option of the U.S. commercial airline industry to lease rather than purchase aircraft outright. Report A-10.

29/ Id. at A-18.

30/ Id. at A-3 and letter to Mr. Mason from David Stoughton, Fairchild Industries of September 13, 1982.

for the Metro III. 31/ Importantly, it appears that sales revenue has kept pace with increases for the Metro in the cost of goods sold throughout the period of 1979-81. Although the price for the C99 has declined since it was first introduced in 1980, nothing on the record indicates that price decreases were in response to subsidized imports. The price for the Bandeirante has increased during the same time period that the price for the C99 decreased. 32/ In fact, the price for the C99 is below the price of the Bandeirante. These factors indicate that there has been no price suppression or depression by reason of the imported planes.

Impact of imports on the domestic industry

We conclude that no causal nexus has been established between the allegedly subsidized imports and any recent problems which have been experienced by the domestic producers.

Profitability levels remained favorable for the domestic producer reporting such data throughout the period 1979-81, despite increases in cost of goods sold which have resulted in reduced profitability. Interim 1982 levels have been affected by increases in general selling and administrative expenses. As explained above, there is no indication that imports have affected prices or adversely impacted profitability.

With regard to inventories, normally a producer of planes would have zero inventory because production is not begun until there is a firm and binding order for the plane. Fairchild Swearingen's inventory of the Metro, however, has dramatically increased in the most recent period. 33/ There is no

31/ Id. at A-18.

32/ Id. at A-18.

33/ Id. at A-13.

information on the record indicating a causal link between the increasing inventory and the allegedly subsidized imports. There is information on the record that some of this inventory buildup is the result of purchasers of domestic airplanes being unable to fulfill payment of their purchase contracts. 34/ Information on the record, with respect to lost sales, supports the conclusion regarding the absence of a causal link between the allegedly subsidized imports and the increased inventory. 35/

The Commission attempted to ascertain the reasons for the increased inventories as part of confirming allegations of lost sales. Both Fairchild Swearingen and Beech stated in their questionnaire that they had lost sales to the Bandeirante. All six purchasers involved in the lost sales allegations of Fairchild Swearingen were contacted. Although financing was considered as a factor in the purchasing decision, purchasers of the Bandeirante all stated that they did not purchase the Metro either because of the extra cost of the unneeded pressurization feature or because of the problems with the engine. 36/ 37/

Dissatisfaction with the Metro II, the predecessor of the Metro III model, was also reflected in response to questions regarding engine performance, maintenance downtime, operating costs, and durability. 38/ The Beech C99 and

34/ Commission Briefing, Commission Meeting of September 21, 1982.

35/ Commissioner Stern notes that the inventory grew at the time Beech entered the market, complaints were being made on the Fairchild Swearingen engine, and the recession was affecting the demand for airplanes.

36/ Id. at A-21.

37/ Some of these purchasers stated that the Beech C99 was too small for their use or unavailable at the time of their purchase.

38/ Id. at A-22.

the Bandierante, both of which uses the same engine, were both rated as satisfactory. The Metro II, however, was rated as unsatisfactory by two of the three purchasers contacted. Metro III was rated well by the one purchaser responding. 39/

There are other factors which lead us to believe that dissatisfaction with the engine utilized on the Metro models has been a problem for Fairchild Swearingen. Fairchild Swearingen has changed its model five times, the last time making modifications in the engine perceived to be causing problems. The company has decided to discontinue use of the Garrett engine and to utilize a Pratt and Whitney engine used on the C99 and the Bandeirante in its new Metro IIIA. 40/ 41/

Further, the record concerning Beech's sales and delivery experience does not indicate any similar statement with regard to its engine performance. There is not sufficient information to demonstrate the impact of imports on this domestic producer. The Commission contacted 5 of the 7 purchasers involved in the alleged Beech lost sales. All of these purchasers stated that they flew the C99 and neither currently owned nor intended to purchase the Bandeirante. 42/

Based on the foregoing, there is no reasonable indication that the allegedly subsidized imports were a cause of any material injury the U.S. industry may be experiencing.

39/ Id. at A-22.

40/ This plane was test flown on September 1, 1982. See note 16.

41/ Commissioner Stern notes that consumers may be postponing purchase decisions until production of the Metro IIIA begins.

42/ Id. at A-21.

No reasonable indication of threat of material injury by reason allegedly subsidized imports

The Senate Finance Committee report on the Trade Agreements Act of 1979 makes clear that an affirmative finding on threat of material injury "must be based upon information showing that the threat is real and injury is imminent, not a mere supposition or conjecture." 43/ The report of the Committee on Ways and Means of the House of Representatives states that, with respect to threat, the Commission should focus on

demonstrable trends--for example, the rate of increase of the . . . dumped exports to the U.S. market, capacity in the exporting country to generate export, the likelihood that such exports will be directed to the U.S. market taking into account the availability of other export markets, . . . 44/

Although the United States historically has been an important market, deliveries of imports from Brazil have not increased during the January through June 1982 period over the comparable 1981 period. 45/ Further, the information provided on new orders does not show an increase from January through June of 1982 over January through June of 1981. We do not have information on Brazilian capacity nor sufficient information with respect to the likelihood that Brazilian exports will be increasingly directed to the United States in the future.

Conclusion

On the basis of the record in this investigation, we have found that there is no reasonable indication of material injury or threat of material injury to the domestic industry by reason of allegedly subsidized imports.

43/ S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979).

44/ H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

45/ Report at A-16.

VIEWS OF COMMISSIONER EUGENE J. FRANK

In this investigation I determine that there is a reasonable indication that an industry in the United States 1/ is materially injured or threatened with material injury by reason of allegedly subsidized imports of commuter airplanes from Brazil. Before addressing my reasons for reaching this determination, however, it is important to discuss why I believe the approach taken by the Commission majority in this investigation fails to comport with Congressional direction contained in Title VII of the Trade Agreements Act of 1979 and, unless subsequently proven to be an aberration, places upon domestic petitioners an unreasonably strict burden of persuasion in a preliminary countervailing duty or antidumping investigation.

The legislative history makes clear that in a preliminary investigation "'a reasonable indication' will exist in each case in which the facts reasonably indicate that an industry in the United States could possibly be suffering material injury, threat thereof, or material retardation." 2/ The determination is to be made on the basis of "the best information available to [the Commission] at the time." 3/ The unmistakable import of this Congressional direction is that the standard for reaching an affirmative

1/ I concur with the majority's finding that the relevant domestic industry should consist of the two domestic producers of twin-engine turboprop commuter aircraft with 15-19 passenger seating capacity, Fairchild Swearingen Corp. and Beech Aircraft Corp.

Much of the information gathered in this preliminary investigation and discussed in the Report, including data on prices, margins of underselling, employment, and other factors related to the condition of the domestic industry, constitute confidential business information. For this reason this opinion discusses such information only in a generalized manner or omits discussion altogether.

2/ H.R. Rep. No. 96-317, 96th Cong., 1st Sess., 52 (1979)(emphasis added).

3/ Id.

determination in a preliminary investigation is a relatively low one, certainly well below the showing necessary to establish material injury or the threat of material injury in a final investigation. As the Commission recently stated: "In conducting a preliminary 45-day investigation, the Commission is not charged with undertaking an abbreviated version of a final investigation, nor must all the information developed in a final investigation be present." 4/

The majority has decided to terminate this investigation on the ground that there is no indication that any injury experienced by the domestic industry can be causally linked to sales in the United States of the allegedly subsidized Brazilian Bandeirante aircraft. The majority purports to find that the claimed reputation of the domestically produced Fairchild Swearingen Metro for engine unreliability, not the availability of the preferential financing package offered to purchasers of the Bandeirante by the Brazilian government, is the true cause of the difficulties faced by Fairchild in this market. At the same time, the majority has found that the other domestic firm in this industry, Beech Aircraft Corp., is doing well and thus is not injured by Brazilian imports. In making these findings, the majority has foregone any attempt at reasoned analysis and careful consideration of the record in favor of a simplistic resolution that avoids the necessity for reaching the many complex issues presented by this case. Treating the investigation as if it were a final investigation with a fully articulated record, they have reached this conclusion on the slimmest of rationales despite a conflicting record.

4/ Certain Rail Passenger Cars and Parts Thereof from Canada, Inv. No. 701-TA-182 (Preliminary), USITC Pub. 1277 (1982) at 3.

Information supporting the possibility that the Fairchild airplane may not be truly competitive with the Bandeirante for reasons of its reputation for mechanical problems is found primarily in brief testimony presented on behalf of respondent Embraer at the staff conference 5/ and in letters and telegrams submitted to the Commission by commuter airline companies. 6/ All these communications were dated subsequent to the date of filing of the petition in this investigation and were submitted at the urging of respondent Embraer. They are necessarily of limited value because of their self-serving nature. 7/

In contrast, there is a great deal of information on the record, all ignored by the majority, indicating that the availability of financing at below-market rates was a significant factor in inducing purchasers to buy the Bandeirante. Thus, the conclusion that mechanical problems with the Metro were solely responsible for purchasers' decisions not to buy the Metro is unwarranted. Information was presented at the conference to the effect that acquisition costs and financing, among other considerations, are important in deciding which aircraft to buy. Low-cost financing is important to prospective purchasers because it lowers the overall cost of owning and operating an aircraft, a critical consideration for the many commuter airlines that operate on an exceedingly low margin of profit. 8/ Petitioner Fairchild

5/ Transcript of staff conference (hereafter "Transcript") at 115-16.

6/ See, e.g., Post-Conference Brief of Embraer-Empresa Brasileira de Aeronautica S.A., Exhibit 13.

7/ Many of these letters and telegrams voiced the concern that this proceeding will result in the imposition of increased import duties that would cause a rise in the prices that commuter airlines must pay to obtain aircraft.

8/ Transcript at 47, 49-52, 58-59. This information is entirely consistent with the majority's findings in our earlier cases involving larger commuter airplanes from France and Italy. Certain Commuter Airplanes from France and Italy, Investigations Nos. 701-TA-174 and 175 (Preliminary), USITC Pub. 1269 (1982), at 9-10, especially n. 16.

has submitted a letter from the president of one commuter airline informing Fairchild that his company had decided to purchase the Bandeirante rather than the Metro "because of the financing available." 9/ Other transactions involving sales lost by the domestic industry to the Brazilian imports were also the subject of testimony. 10/ Highly significant is the testimony of one commuter airline executive, appearing on behalf of the respondent, who, when asked whether the Brazilian financing package was an inducement for that company's purchase of the Bandeirante rather than the Metro, stated:

Oh, the financing package absolutely was an inducement. I mean, I would be lying if I said it wasn't. It was a great inducement for us. 11/

Finally, the Commission's independent efforts to confirm the allegations of lost sales reveal that, although other reasons were cited as being more important, the attractive financing was often stated by purchasers of the Bandeirante to be an important factor. 12/

9/ Petition, Exhibit 15; Transcript at 64-65.

10/ Transcript at 66-67, 71-72.

11/ Id. at 171. Testimony that the Bandeirante could "sell itself" and that Brazil is "damned naive" to offer the attractive financing package cannot be taken seriously. To suggest that the Brazilian interests who have so successfully exploited this U.S. market have been unsophisticated in their methods strains credulity. Respondent has not yet satisfactorily responded to the inquiry why it provides below-market financing unless it considers the financing to be an inducement to purchasers.

12/ Report at A-21. There is also serious reason to doubt the majority's conclusion that Beech Aircraft Corp. has not been injured by Brazilian imports. The rationale is that the Commission could not confirm any of Beech's lost sales allegations and that Beech failed to supply the Commission with information on profitability, employment, or new orders. This information is now sought to be made available by Beech in connection with a motion for reconsideration of the determination filed by Fairchild on September 23, 1982. It is alleged with regard to the lost sales allegations that a clerical error by Beech resulted in the Commission utilizing the wrong list of lost customers.

The information accompanying the motion was not part of the record when I reached my determination and cannot be considered unless and until the motion for reconsideration is granted. Nevertheless, the allegations of the motion demonstrate the dangers of making sweeping judgments regarding the condition of an industry based on the hastily assembled and often incomplete information 18 that is typically available within the confines of a 45-day investigation.

The majority's statement of views simply ignores all information relevant to the impact of the Brazilian financing package. In spite of the conflicting record with regard to the sources of the problems faced by the domestic industry, the majority has chosen to credit only one of several factors shown to be affecting this market--possible purchaser perceptions regarding the reliability of one of the domestically produced aircraft--as the solitary cause. 13/ If anything, information regarding the effectiveness of financing as a marketing tool for the Bandeirante is entitled to greater weight and credibility than information relating to the alleged unreliability of the Metro because much of the former derives from statements that were not in the interest of the person giving the information or that were not produced in anticipation of this investigation. At the very least, the Commission should not be resolving conflicts in the information presented to it when it possesses no adequate basis for their resolution. A final investigation provides the opportunity for a thorough testing and verification of all contested information.

The majority's determination is equally disturbing because it contravenes the Congressional intention that the Commission not weigh causes in considering whether there is material injury by reason of unfairly traded imports. The Senate Finance Committee Report states:

[Title VII] does not . . . contemplate that the effects from the subsidized imports be weighed against the effects associated with other factors (e.g., the volume and prices of nonsubsidized imports, contraction in demand or

13/ In numerous prior preliminary investigations the Commission has elected not to credit similar claims that differences in quality rendered the domestic product insufficiently competitive to have been injured by imports. See, e.g., Certain Rail Passenger Cars and Parts Thereof from Canada, Inv. No. 701-TA-182 (Preliminary), USITC Pub. 1277 (1982); Certain Commuter Airplanes from France and Italy, Investigations Nos. 701-TA-174 and 175 (Preliminary), USITC Pub. 1269 (1982).

changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. Nor is the issue whether subsidized imports are the principal, a substantial, or a significant cause of material injury. Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; such industries are often the most vulnerable to subsidized imports. 14/

In complete disregard of this instruction, the majority's determination seizes upon the single factor of the claimed reliability of the Metro aircraft as the only meaningful determinant of the question of causation. As predicted by the Senate Finance Committee, this has resulted in the denial of relief to a domestic industry that the record indicates has been vulnerable to adverse blows from various sources, not the least of which is the current severe economic recession and the consequent downturn in the fortunes of many commuter airlines. 15/

I view the information developed in this case in a manner wholly different from my colleagues and in a manner that I believe more closely reflects the condition and dynamics of this industry, as far as they can be ascertained on the basis of the presently available record. There is a reasonable indication that the domestic producers of commuter aircraft in the 15-19 passenger range

14/ S. Rep. No. 96-249, 96th Cong., 1st Sess., 57 (1979). This is in marked contrast to section 201 of the Trade Act of 1974, which allows imposition of import relief only after a Commission determination that imports are a "substantial cause of material injury." 19 U.S.C. § 2251(b)(1).

15/ It is indicative of the problems created by the worsening economy that many of the industry's customers have been compelled to cancel orders for new equipment. As a result, producers, who normally maintain few if any airplanes in inventory, now are holding a large supply of aircraft for which they have no present orders. Report at A-13.

have been materially injured or threatened with material injury because of allegedly subsidized Brazilian imports.

Because of the unavailability of key data on employment and profitability from one of the two U.S. producers it is difficult to evaluate fully the present condition of the domestic industry in order to determine whether there is a reasonable indication of material injury. A definitive determination with respect to present material injury need not be made at this time, however, because the trends in the available data unquestionably support a reasonable indication of threat of material injury by reason of the allegedly subsidized imports. Deliveries of imported airplanes from Brazil have increased swiftly from 5 in 1979, the year the model was introduced in this country, to 20 in 1980 and 37 in 1981. Consequently, Brazilian imports accounted for a large and growing share of total U.S. deliveries of aircraft of this type from 1979 to 1981. The market share attained by the Brazilian imports remained at close to the 1981 level during the first half of 1982. 16/ Clearly, the Brazilian imports have shown a remarkable ability to penetrate the U.S. market quickly and to obtain a predominant position in the market. 17/ It is likely to hold and to build upon this advantage because

16/ Report at A-15 to A-17. Because of the normal long lead time between placement of an order for an airplane and its actual delivery, a more accurate picture of the current relative competitive positions of U.S. and Brazilian producers would be demonstrated by information regarding current sales orders rather than deliveries. This comparison unfortunately cannot be made because the respondent submitted figures on sales that are precisely identical to its figures on deliveries for the same time periods. This highly improbable coincidence between the sales and deliveries data indicates that accurate sales data have not been submitted by Embraer, and, unlike the majority, I do not rely on the inaccurate information.

17/ It cannot seriously be argued that the Brazilian imports have simply taken the market share formerly held by other imports, particularly the Canadian-built deHavilland Twin Otter. The argument suggests that a given portion of this market is set aside for the exclusive exploitation of foreign

(Footnote continued)

computer airlines ordinarily continue to purchase the same type of aircraft when expanding their fleets because of the greater expense necessitated by having to provide maintenance, trained crews, and spare parts for two different types of airplanes of a similar size and capability. 18/ Thus, the loss of a single sale today by U.S. producers yields the loss of sales of an entire fleet in the future. Additionally, respondent's counsel has admitted that the Brazilian export financing program is designed to encourage exports, 19/ and the United States is Brazil's principal export market for these aircraft. 20/ The Commission's attempt to gain information regarding Brazilian production capacity, which is relevant to the issue of threat, was stymied by the failure of Embraer to provide the data.

As discussed more fully above in rebuttal to the approach adopted by the majority, there is ample information available at this time indicating that this rapid penetration of the U.S. market was abetted or caused by the highly favorable interest rates provided by the Brazilian financing package. The record demonstrates that these rates greatly decrease the overall cost of acquiring and operating an aircraft that otherwise would be incurred if market interest rates were paid. 21/ All purchasers responding to the Commission's questionnaires stated that the interest rate is important to their purchasing

(Footnote continued)

producers. There is no reason to believe that domestic producers could not have competed successfully for a portion of the sales formerly enjoyed by deHavilland in the absence of the aggressive and allegedly unfair marketing of the Bandeirante. Additionally, from the Commission's data it is clear that increased Brazilian sales more than replaced sales of the Twin Otter in the United States. Report at A-14.

18/ Transcript at 20-21.

19/ Id. at 127.

20/ Business Week, April 12, 1982, at 46, submitted as Exhibit 16 to the petition.

21/ Report at A-18 to A-20.

decisions. 22/ The immediate threat that the rapid and continuing successes of the Bandeirante may pose for the domestic industry is further indicated by the abnormal and very high levels of inventories presently held by the domestic industry, primarily as a result of cancelled orders. The industry is faced with the costly maintenance and need to dispose of this inventory fleet at precisely the same time that its market is being increasingly captured by imports from Brazil.

The majority's determination has reduced the complex and conflicting information in the record of this investigation to a single all-determinative factor. That this oversimplification of the issues does a disservice to the immediate parties is unfortunate. However, it also bodes ill for any future investigations involving non-fungible high-technology products. Of necessity, the markets for such products are shaped and motivated by a wealth of considerations that are not implicated when the Commission deals with more fungible goods like steel products. In this investigation the Commission majority has demonstrated an unwillingness or incapability to deal seriously with the questions raised by a case of this complexity. 23/ As competition

22/ Id. at A-18.

23/ In most investigations, the lack of data on a comparable product-line basis forces the Commission to gather comparable statistics on domestic production, shipments, exports, imports, and inventories to gauge the size of the domestic product. To do this, the Commission must survey producers, importers, and domestic purchasers of the products subject to investigation. This results in an enormous effort to design appropriate questionnaires and mailing lists within days of a petition being filed, to mail the questionnaires within a week of the initiation of a preliminary investigation, and to tabulate responses within two weeks of the mailings. This emphasis on developing statistics has resulted in the criticism that the Commission's determinations are "very long on statistics and short on careful analysis." John D. Greenwald, U.S. Antidumping and Countervailing Duty Laws: Material Injury, 29 Federal Bar News & Journal 38, 39 (January 1982). This case is a good example of the appropriateness of the criticism.

in international trade moves increasingly into the realm of high technology equipment and away from basic manufactured goods, the necessity for this Commission to scrutinize carefully the impacts of unfairly traded imports on domestic firms and the domestic economy will increase in equal measure. I fear that the result of the majority's ill-considered decision in this case will be to dissuade many domestic producers from seeking to enforce the rights given them under our trade laws and international agreements and to embolden further those of our trade partners whose attraction to the open, lucrative U.S. market leads them to practice unfair methods of competition, particularly the sort of predatory export financing alleged to be present in this case.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On August 13, 1982, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce on behalf of Fairchild Swearingen Corp. (Swearingen) alleging that producers, manufacturers, or exporters in Brazil receive, directly or indirectly, bounties or grants on the production and/or exportation of certain commuter airplanes within the meaning of the U.S. countervailing duty laws. The Commission therefore instituted a preliminary countervailing duty investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain commuter airplanes, provided for in item 694.41 of the Tariff Schedules of the United States (TSUS), upon which the petitioner alleges bounties and/or grants are being paid. The statute directs that the Commission make its determination within 45 days of its receipt of a petition, or in this case, by September 27, 1982.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of August 25, 1982 (47 F.R. 37309). 1/ The public conference was held in Washington, D.C., on September 8, 1982. 2/ The Commission is scheduled to vote on the investigation on September 21, 1982.

Previous Commission Investigations With
Respect to Commuter Airplanes

The Commission has conducted two prior countervailing duty investigations concerning commuter airplanes. On May 27, 1982, a petition was filed on behalf of Commuter Aircraft Corp. alleging that producers, manufacturers, or exporters in France and Italy benefit from the bestowal of bounties or grants on the production and/or exports of the ATR-42, a pressurized, twin-engine turboprop commuter airplane designed to carry 42 to 49 passengers. On July 7, 1982, the Commission made a negative determination in these investigations (Nos. 701-TA-174 and 175 (Preliminary)).

Description

Commuter airplanes are civil airplanes powered by piston, turboprop, turbojet, or turbofan engines, having a seating capacity of 8 to 60 passengers and a payload capacity for all cargo not to exceed 18,000 pounds, and used in

1/ A copy of the Commission's notice is presented in app. A.

2/ A list of witnesses appearing at the conference is presented in app. B.

scheduled passenger transportation. ^{1/} The airplanes that are the subject of this investigation are 15- to 19-seat commuter airplanes powered by turboprop engines. According to industry officials, it is not efficient to operate turboprop powered airplanes having less than 15 seats. There is only one turboprop airplane having less than 15 seats currently produced. Although individual planes in this category vary in passenger-seating capacity, interior and exterior finishings, and operating characteristics, they are of similar design and compete with one another in the marketplace. Pertinent characteristics of commuter airplanes that are included in the scope of this investigation are presented in table 1.

Table 1.--Performance characteristics of the Bandeirante, Beech C99, and Metro III commuter airplanes

Item	Bandeirante	Beech C99	Metro III
Powerplant:			
Manufacturer-----	Pratt & Whitney	Pratt & Whitney	Garrett
Model-----	PT6A-34	PT6A-34	TPE-331-11U
Takeoff power (shaft horse power)-----	750	715	1,000
Weight:			
Maximum takeoff-----pounds--	13,007	11,300	14,500
Maximum landing-----do----	12,566	11,300	14,000
Maximum zero fuel-----do----	12,015	None	13,130
Runway required:			
Takeoff-----feet--	2,650	3,333	3,990
Landing-----do----	2,850	2,900	2,714
Pressurized-----	No	No	Yes
Fuel capacity-----gallons--	440	368	648
Range-----miles--	240	630	1,000
Payload-----passengers--	18	15	19
Cruising speed-----knots--	215	249	280

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Domestic product

The Metro airplane, produced by the petitioner, Swearingen, is a pressurized twin-engine turboprop airplane. There have been five versions of the Metro commuter airplane produced: Metro, Metro II, Metro IIA, Metro III, and Metro

^{1/} Under the Federal Aviation Act, Sec. 412, C2B the category "small airplanes" (which includes commuter airplanes) is defined as those planes with less than 60-passenger capacity and 18,000 pounds or less payload capacity. There are currently no airplanes specifically built for the commuter airplane market with less than 8-passenger capacity.

IIIA. The current version, the Metro III, 1/ is a pressurized, low-wing, 19-seat (32-inch pitch 2/) airplane utilizing two Garrett TP33-11U engines. The 59.4-foot Metro III has a cabin length of 25.4 feet and accommodates its passengers in a two abreast seating arrangement, with 4.8 feet of headroom. This airplane is certified under Special Federal Air Regulation 41B of the Federal Aviation Administration (FAA), which allows operation at a gross weight in excess of 12,500 pounds. The plane has a maximum gross takeoff weight of 14,500 pounds. The changes incorporated in the Metro III (from the previous models) include more powerful engines, a 10-foot increase in wingspan, new main landing gear doors, and new fire-protection equipment. Metro III production commenced in May 1981. Current delivery price is approximately \$2.0 million.

The Metro IIA was a derivation of the Metro II aircraft, approximately 10 of the IIA model planes were produced. This plane was manufactured for a short period in late 1980 and early 1981, and served as an interim model between the Metro II and Metro III. The Metro IIA had the same features as the Metro II, except that it had a greater takeoff weight (13,230 pounds) and was certified for use under FAA regulation 41. 3/ The Metro II was produced from 1973 to 1981. It differed from the original Metro (first manufactured in 1971) by the introduction of larger windows and major systems and flight deck improvements. 4/

Metro series airplanes currently account for approximately 14 percent of total commuter airplane seat capacity in the United States. 5/

Beech Aircraft Corp. produces the C99 airplane. The plane is a low wing, nonpressurized, twin-engine turboprop airplane with a passenger capacity of 15 seats and a maximum takeoff weight of 11,300 pounds. The airplane is powered by two Pratt and Whitney of Canada PT6A-36 engines, giving it a normal cruising speed of 252 Knots. The 44.7 foot C99 has a cabin length of 18.7 feet and a cabin height of 4.8 feet. 6/ The C99 is the third version of the original 99 airplane first produced by Beech in 1968. The 99A airplane was manufactured in 1969 and incorporated an upgraded model of the Pratt and Whitney of Canada engine. Beech then produced the B99 in 1972 and this model again incorporated a more advanced engine, giving the airplane greater horsepower. The company ceased production of the B99 in 1978 and did not reenter the commuter airplane market until 1980 when production of the C99 began. 7/

1/ The Metro IIIA is scheduled for delivery in late 1983.

2/ Seat pitch is the distance between the back of an airplane seat and the seat directly behind it.

3/ Telephone conversation with officials of Swearingen Corp., Sept. 9, 1982, and Jane's All the World Aircraft, 1981-82, p. 353.

4/ Jane's All the World Aircraft, 1979-80, p. 450.

5/ Regional Airline Association, 1981 Annual Report, Regional/Commuter Airline Industry, February 1982, p. 128.

6/ Regional Airline Association, op. cit., p. 137.

7/ Information obtained from Beech Aircraft Corp. official.

Foreign product

The EMB-110 Bandeirante commuter airplane is manufactured by Empresa Brasileira De Aeronautica S.A. (Embraer), of Brazil. It was originally designed as a light military transport. The first production Bandeirante flew for the first time on August 9, 1972. First deliveries of the commuter version to the United States began in 1978. 1/

The Bandeirante is a low-wing, nonpressurized, twin-engine turboprop commuter airplane that seats 18 passengers at a 32-inch seat pitch (21 seats at 29-inch pitch). Cabin length is 31.2 feet, and cabin height, 5.3 feet. Two Pratt & Whitney of Canada PT6A-34 turboprop engines give the airplane a normal cruising speed of 220 knots. The airplane has a maximum takeoff weight of 12,500 pounds. Current delivery price is approximately \$1.7 million. 2/

As of November 1981, Embraer had produced approximately 400 Bandeirantes, in 13 different versions. A total of 61 airplanes have been exported to the United States, where the 18-passenger version with rear lavatory and rear cargo door is the most popular. 3/ More than 40 percent of the component parts of the airplane exported to the U.S. market is sourced from U.S. manufacturers. The Bandeirante accounted for 6.6 percent of the total commuter airplane seat capacity in the United States in November 1981. 4/

Users

Commuter airlines (also known as regional airlines) are the predominant users of the aircraft covered in this report. These carriers utilize a wide variety of commuter airplanes, differing in size and capability, according to their route structures and passenger load. Commuter airlines operate frequent, low-density, short-haul routes, typically over a distance of 100 to 300 miles. The principal function of these airlines has been to provide small- and medium-size communities with access to the Nation's primary transport system. In 1981, these airlines transported an estimated 15.2 million passengers 5/ in approximately 1,443 aircraft. 6/ The number of markets these carriers serve has expanded as the larger airlines have reduced their short-haul service and abandoned certain routes.

Commuter airline officials indicate that in determining whether to purchase a particular airplane, the major consideration is the suitability of the aircraft for the individual carrier. Suitability takes into account the size, speed, pressurization, and operating costs of an airplane. Additional factors include price, financing, availability, servicing and availability of spare parts, and supplier reputation, not necessarily in that order. A new equipment decision can often determine the success or failure of a carrier.

1/ Ibid. footnote 1, p. 10.

2/ Regional Airline Association, op. cit., p. 138.

3/ "Brazil: New Bandeirante, Xingo and 100 PT6's", Aviation Convention News, Nov. 1, 1981.

4/ Regional Airline Association, op. cit., footnote 1, p. 123.

5/ The total number of passengers transported by all airlines in 1981 was approximately 300.9 million passengers.

6/ Regional Airline Association, op. cit., p. 124.

The Airline Deregulation Act of 1978 (enacted on October 24, 1978) significantly expanded the role of commuter airlines in the Nation's transportation scheme. Several provisions of deregulation, while written into the legislation primarily for the direct benefit of the major airlines, have provided tremendous marketing opportunities for the small- and medium-size commuter airlines.

One key provision of deregulation allows for the free entry into and exit from markets by national and local airlines. As a result of this provision, national airlines quickly withdrew from uneconomical, short-haul markets to the more profitable, cost-effective, long-haul markets. Commuter airlines immediately stepped in to provide replacement service in these markets. A second key provision of deregulation which benefited commuter airlines was that which raised the number of passenger seats commuters are permitted to operate from 20 to 60. This change was a recognition of the anticipated need by commuters for larger aircraft to service a newly created medium-size market.

Other provisions of deregulation which have helped commuter airlines obtain a larger share of the air transportation market are the Essential Air Service Program (EAS) and the inclusion, for the first time, of commuter carriers as eligible participants in the FAA's Equipment Loan Guarantee Program. ^{1/} The EAS basically provides for the continuation of air service to small- and medium-size markets vacated by the last remaining air carrier. The guaranteed loan program is offered as an inducement for airlines to provide replacement service and to offset losses incurred in providing needed air service. This program is discussed elsewhere in this report; in brief, the guarantee covers 90 percent of the purchase price of the aircraft, spare parts, and engines, and the term of the loan may not exceed 15 years. Also, the loan guarantee is applicable to both domestically produced and foreign produced airplanes.

There exist today some 259 U.S.-based commuter airlines. ^{2/} This figure has remained virtually unchanged since 1978; however, the composition of the industry is in a constant state of change. It is estimated that the top 5 commuter airlines carry some 37 percent of all commuter airline passengers and the top 50 carry 85 percent. The remaining market share is accounted for by small commuters generally operating with one or two piston-powered airplanes having fewer than 10 seats and serving communities having limited passenger traffic.

The total number of passengers carried by commuter airlines increased significantly in 1978 and 1979 and continued to increase in 1980 and 1981, but at a reduced rate, as shown in the following tabulation:

<u>Year</u>	<u>Passengers</u>	<u>Percentage</u>
	<u>carried</u> <u>(thousands)</u>	<u>increase</u>
1978-----	11,026	20.0
1979-----	13,972	26.7
1980-----	14,810	6.0
1981-----	15,200	2.7

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^{1/} The latter program is slated to be phased out in 1983.

^{2/} Regional Airline Association, op. cit., p. 46.

The number of commuter aircraft powered by turboprop engines in service at the end of 1981 totaled 606 airplanes. ^{1/} The number of commuter airlines operating airplanes with seat capacity in the 15-to 19-seat range in 1981 was as follows:

Item	Total	Aircraft with 15 to 19 seats	
		Number	Percent of total
Commuter airlines-----	259	88	34.0
Airplanes in commuter airline service ^{1/} -----	1,443	415	28.8
Turboprop airplanes in commuter airline service-----	606	386	63.7

^{1/} Includes all airplanes operated by commuter airlines in 1981.

A closer examination of individual airplanes capable of carrying 15 to 19 passengers that are currently available to commuter carriers is presented in table 2.

Table 2.--Major commuter airplanes in operation, by seating capacities and by types, 1980 and 1981

Aircraft	Typical seating capacity	Number in operation		Percentage change
		1980	1981	
DeHavilland Twin Otter-----	19	97	102	5.2
Embraer Bandeirante-----	18	27	65	140.7
Beech 99 series-----	15	101	106	4.9
Swearingen Metro series-----	19	103	135	31.1
Government Aircraft Factories--	16	5	7	40.0
Total-----		333	415	24.6

Source: Regional Airline Association, 1981 Annual Report, Regional/Commuter Airline Industry, February 1982, and officials of that association.

U.S. Tariff Treatment

Commuter airplanes included in this investigation are classified for statistical purposes under Tariff Schedules of the United States Annotated (TSUSA) item 694.4155 (civil airplanes, new, other than single-engine planes and helicopters, 4,400 to 12,500 pounds, inclusive, empty weight). Through negotiations at the Tokyo round of the Multilateral Trade Negotiations (MTN) in 1979, all customs duties and any similar charges of any kind on civil

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^{1/} Ibid., p. 127.

aircraft and aircraft parts and on repairs on civil aircraft imported into the United States from all sources except certain Communist countries not entitled to most-favored-nation treatment were eliminated as of January 1, 1980. ^{1/} Prior to this date, the customs duty on commuter airplanes imported into the United States was 5 percent ad valorem in column 1 and 30 percent ad valorem in column 2. The column 2 rate of duty has remained unchanged.

Prior to January 1, 1980, the rates of duty applicable to all civil aircraft parts were 5 percent ad valorem (col. 1) and 27.5 percent ad valorem (col. 2). Since that date, the column 1 rate for civil aircraft parts (if the parts are not certified in accordance with headnote 3) has been 3.1 percent ad valorem. Imports of parts of commuter airplanes under TSUS item 694.61 are eligible for duty-free treatment under the GSP.

Nature and Extent of Alleged Subsidies

The petition alleges that Bandeirante commuter airplanes exported from Brazil benefit from numerous subsidies and grants, all of which are designed to assist in the development of the indigenous industry and to encourage and promote exports. Such subsidies and grants known to the petitioner include preferential export financing, a provision of which includes the offering of preferential or below-market interest rates to U.S. buyers, special loan programs, investment subsidies, and grants for research and development.

Foreign Producers

There are three foreign firms that manufacture commuter airplanes in the 15- to 19-seat range currently utilized by U.S. commuter airlines: Embraer (Brazil), deHavilland Aircraft Co. of Canada Ltd. (Canada), and Government Aircraft Factories (Australia).

^{1/} The rates of duty in col. 1 are most-favored-nation rates, and are applicable to imported products from all countries except those Communist countries and areas enumerated in general headnote 3(f) of the TSUSA. However, such rates would not apply to products of developing countries since they are granted preferential tariff treatment under the Generalized System of Preferences (GSP) or under the "LDDC" rate of duty column.

The preferential rates of duty in the "LDDC" column reflect the full U.S. MTN concession rates implemented without staging for particular items which are the products of least developed developing countries, enumerated in general headnote 3(d) of the TSUSA. Where no rate of duty is provided in the "LDDC" column for a particular item, the rate of duty provided for in col. 1 applies.

The rates of duty in col. 2 apply to imported products from those Communist countries and areas enumerated in general headnote 3(f) of the TSUSA.

The GSP, enacted as title V of the Trade Act of 1974, provides duty-free treatment for specified eligible articles imported directly from designated beneficiary developing countries. GSP, implemented by Executive Order No. 11888 of Nov. 24, 1975, applies to merchandise imported on or after Jan. 1, 1976, and is scheduled to remain in effect until Jan. 4, 1985.

Embraer was created on August 19, 1969, as a quasi-governmental entity. Of the subscribed capital, 92 percent is held by 222,480 public shareholders, and the remainder is held by the Government of Brazil. The Brazilian Government also controls 51 percent of the voting shares. 1/ Embraer currently manufactures the EMB-110 Bandeirante commuter airplane. Development of a 30-seat commuter airplane was also undertaken in 1979. This airplane, referred to as the Brasilia, is currently being offered for sale in the United States, although deliveries will not be made until 1984. Additionally, Embraer produces military training and business airplanes. Through a comprehensive cooperative agreement with Piper Aircraft Corp. of the United States, Embraer also manufactures several models of general aviation airplanes.

The deHavilland Aircraft Co. of Canada Ltd. was established in early 1928 as a subsidiary of deHavilland Aircraft Co. Ltd. On June 26, 1974, ownership was transferred to the Canadian Government, which planned to operate the company only until responsible Canadian investors were found to purchase and operate it. The Canadian Government still owns all but one share of deHavilland's stock. 2/ The company currently produces two turboprop commuter airplanes, the 19-seat Twin Otter and the 50-seat Dash 7.

Government Aircraft Factories (GAF) of Australia are part of that country's defense production facilities. They are owned by the Australian Government and operated by the Department of Industry and Commerce. GAF has a work force of approximately 2,000 persons, who are responsible for the design, development, manufacture, assembly, maintenance, and modification of airplanes, target drones, and guided weapons. Currently GAF produces a 16-seat turboprop commuter airplane called the Nomad 24A. 3/

U.S. Producers

The domestic industry producing commuter airplanes having seating capacities in the 15- to 19-seat range consists of only two producers: Beech Aircraft Corp. and Fairchild Swearingen Corp. Disregarding seating capacity, the U.S. industry could be broadened to include such manufacturers as Cessna Aircraft Co. and Piper Aircraft Corp. However, Cessna and Piper are known primarily for the manufacture of 2- to 11-seat single- and twin-engine executive/commuter-type airplanes. Sales of executive airplanes represent the mainstay of both companies' businesses, and so far neither has entered the market for 15-seat-and-over commuter airplanes.

Beech Aircraft Corp. (Beech) was founded in 1932 as a light-airplane manufacturer. In February 1980, Beech merged with the Raytheon Co. and subsequently became a wholly owned subsidiary of the latter. From its principal office in Wichita, Kan., the company is engaged in the production of civil and military aircraft, missile targets, aircraft and missile

1/ "Brazil Aerospace Today--The Industry That Can't Stop Growing," Interavia, July 1981, p. 707.

2/ "Canada Provides \$500 Million in Loan Guarantees for Dash 8," Aviation Week and Space Technology, Feb. 9, 1981.

3/ Jane's All the World Aircraft, 1981-82, p. 5.

components, and cryogenic equipment for spacecraft. These activities are conducted within four divisions, one of which is located at Selma, Ala., where production of the C99 occurs. Powered by two Pratt & Whitney PT6A-34 turboprop engines, a prototype of the 15-passenger C99 recorded its first flight on June 20, 1980. Production of the airplane commenced in September 1980, and deliveries began in late July 1981. Beech is also developing a 19-seat pressurized commuter airplane that it has named the 1900. If testing and certification proceed as scheduled, deliveries of the 1900 should begin sometime in 1983.

Fairchild Swearingen Corp. is a wholly owned operating subsidiary of Fairchild Industries, of Germantown, Md. At its principal manufacturing facility, located in San Antonio, Tex., Swearingen manufactures twin-engine turboprop executive (Merlin series) and commuter (Metro series) airplanes. The Metro III, the commuter airplane currently in production, is a 19- to 20-seat pressurized airplane utilizing two Garrett TPE-331-11U-601G turboprop engines. Approximately 200 Metro airplanes were in use or on order by airline carriers in mid-1981.

Some of the Garrett engines used on Metros failed to develop maximum certificated power. In addition, operators reported that engine problems added significantly to the operator's maintenance costs and downtime. Aware of the negative image these problems might have instilled in current and future users of the Metro commuter, Swearingen has announced its intention to introduce a new version of the Metro that will utilize Pratt & Whitney PT6A-46 turboprop engines. The new version is referred to as the Metro IIIA and will be available for delivery in late 1983.

Marketing Channels

Generally, the only common provision in any two purchase agreements for commuter airplanes will be that which spells out selling price and terms of payment. Otherwise, no two purchase agreements are likely to be the same. Each will differ with respect to provisions for spare parts, pilot and mechanic training, warranties, compensation for mechanical downtime due to product defects, and so forth. The complexity of the purchase agreement requires the establishment of a close working relationship between the airline and the manufacturer. In addition, any hopes the manufacturer has of future sales of airplanes will depend on the servicing performance of the manufacturer under existing contracts. Both Beech and Swearingen maintain a separate marketing division to handle U.S. sales of their respective commuter airplanes. Domestic sales of the Bandeirante commuter airplane are handled directly by the Brazilian producer, Embraer. Embraer has established a subsidiary (Embraer Aircraft Corp.) in Fort Lauderdale, Fla. to serve as a servicing and spare parts supplier. This subsidiary conducts no sales activities.

New Airplane Acquisition Considerations

The estimated useful life of a new airplane is 20 years or more. A-9 Typically, a new airplane is depreciated over a 10- to 12-year period. An airline's decision to purchase new airplanes may be influenced by its desire

to (1) expand current routes, (2) increase the frequency of scheduled flights, (3) increase the seating capacity of existing flights without adding to existing fleet, and (4) retire old and inefficient equipment and replace it with newer, fuel-efficient equipment. Assuming the decision has been made to acquire new equipment, for whatever reason, the commuter carrier is then confronted with the problem of choosing an airplane that best suits its particular needs in terms of characteristics, performance, operating costs, adaptability to present or future routes, acquisition cost and financing terms. The airline must then determine, on the basis of its present financial condition, whether it is more advantageous to buy new or used airplanes or to forgo an outright purchase and lease the airplane of its choice.

The equipment selection process

It is important to remember that of the nearly 250 commuter airline carriers operating today, the great majority function typically as a one-man operation. Many of these operators lack the sophistication and resources needed to make a methodical and analytical buying decision. Rather, for this group of buyers purchasing decisions are more likely to be based on the operator's judgment.

It is estimated that the top 50 regional/commuter airlines transport roughly 85 percent of all commuter passengers. ^{1/} Approximately half of these airlines have included among their fleet of airplanes the Beech 99/C99, Metro II/III, Bandeirante, or a combination. For an airline in this group selecting the right airplane is an involved process. The airline first collects as much data as possible on all the airplanes which it considers likely prospects. The data are in the form of a type specification, a document prepared by the manufacturer detailing the airplane's design and operational and performance characteristics. The elimination process then begins, and the list of likely airplanes is narrowed down to one or two. The airline next must consider the price and financing of whatever airplane or airplanes it finds suitable.

Financing the purchase

U.S. commuter airlines have traditionally turned to commercial lenders to finance new airplane purchases. However, rising interest rates over the past several years have forced many commuters, especially those on the borderline in terms of cash flow and cash reserves, to look at leasing as a practical alternative to an outright purchase. In the conduct of its investigation, the Commission's staff mailed purchaser questionnaires to 36 commuter airlines known to have in their fleet at least one of the airplanes which are the subject of this investigation. They were asked to list, by types, the number of airplanes currently in service in their operations; the limited response to this inquiry is presented in the following tabulation:

^{1/} Regional Airplane Association, op. cit., p. 46.

<u>Type</u>	<u>Owned</u>	<u>Leased</u>
Bandeirante EMB 110/110P-----	9	12
Beech 99/C99-----	24	0
Swearingen Metro II/III-----	10	0
Total-----	43	12

The data shown in the tabulation should be viewed cautiously for two reasons. First, although the ratio of the number of airplanes owned to the number leased is slightly more than 3 to 1, industry experts, and to some extent, FAA aircraft registry records, indicate that the ratio is closer to 2 to 1. Second, as the lessee the airline carrier is considered a secondary transactor, the primary transaction occurring between the airplane manufacturer (seller) and the lessor (buyer).

Direct sales of the Beech 99/C99 airplanes are assisted by financing offered by Beech Acceptance Corp., a wholly owned subsidiary of Beech Aircraft Corp. Beech also recently formed Beech Leasing Corp. to assist in the leasing of the C99. Swearingen has no such affiliates for assisting buyers in the financing of its Metro plane. It does, however, offer assistance in locating a suitable lender for a prospective buyer. Loans offered by Beech Acceptance Corp. usually call for an interest rate ranging from *** percent with repayment scheduled for *** to *** years. The interest rate may be at a fixed or variable rate or a combination of the two.

Embraer offers financing for U.S. buyers of the Bandeirante under a system of export credits. Loans are arranged at a fixed interest rate, presently 9 percent a year, with a repayment schedule calling for 16 equal semiannual payments of principal and interest, the first being due 180 days following airplane delivery.

Consideration of Material Injury or Threat Thereof

U.S. production, capacity, and capacity utilization

Domestic production of commuter airplanes in the 15- to 19-seat category from 1979 to mid-1981 was accounted for solely by Swearingen. After a long interruption in the production of the B99 airplane, 1/ Beech, in early 1979, made the decision to reenter the commuter market with the C99 airplane. The company started tooling up for C99 production in the fourth quarter of 1980.

U.S. production 2/ of commuter airplanes rose from *** units in 1979 to *** units in 1981, or more than *** percent (table 3). Production increased by *** percent in January-June 1982 compared with production in the corresponding period of 1981.

Capacity figures for U.S. producers are based on operating three shifts a day, 5 days a week. Currently, however, U.S. producers are operating on one 8-hour shift a day, 5 days a week. Beech has operated ***

1/ Production of the B99 was discontinued in 1975.

2/ Includes partially completed units.

since it began production in the latter half of 1980; Swearingen's plant ***. Commuter airplane capacity more than doubled from 1979 to 1981, increasing from *** units to *** units (table 3). Capacity in January-June 1982 remained unchanged at *** units.

Capacity utilization for U.S. producers declined sharply from *** percent in 1979 to *** percent in 1981 (table 3). U.S. producers faced a continuing decline in capacity utilization in January-June 1982 as the rate fell to *** percent.

Table 3.--Commuter airplanes: U.S. production, capacity, and capacity utilization, 1979-81, January-June 1981, and January-June 1982

* * * * *

U.S. producers' domestic deliveries and exports

U.S. producers delivered *** airplanes to U.S. buyers in 1979 and *** in 1981 (table 4). The latter figure reflected first-customer deliveries of the Beech C99. U.S. deliveries in January-June 1982 stood at *** airplanes, nearly *** percent more than in January-June 1981. The value of U.S. producers' domestic deliveries rose only slightly from 1979 to 1980, but jumped from *** million in 1980 to *** million in 1981. At *** million, the value of U.S. deliveries in January-June 1982 was substantially above the value of deliveries in the corresponding period of 1981.

Table 4.--Commuter airplanes: U.S. producers' U.S. deliveries and exports, by firms, 1979-81, January-June 1981, and January-June 1982

* * * * *

The trend in U.S. producers' exports of commuter airplanes was irregular between 1979 and 1981. Exports rose from *** units in 1979 to *** units in 1980 but then declined to *** units in 1981. Producers' exports in the first half of 1982 increased by *** percent over the number of airplanes exported in the corresponding period in 1981. The value of U.S. producers' exports rose from *** million in 1979 to *** million of 1981 (table 4).

The ratio of U.S. producers' exports to total U.S. production was slightly over *** percent in 1979 and 1980. The ratio fell to *** percent in 1981 but then rose to *** percent in January-June 1982, as shown in the following tabulation:

* * * * *

Sales of U.S. produced commuter airplanes in foreign markets are generally made by distributors in those markets. In an effort to hold down selling prices, foreign distributors receive discounts to allow for the add-on of commissions. The differences in the average unit value of U.S. delivered airplanes and airplanes delivered in foreign markets are shown in the following tabulation:

	<u>U.S. deliveries</u> (1,000 dollars)	<u>Export deliveries</u> (1,000 dollars)
1979-----	***	***
1980-----	***	***
1981-----	***	***
January-June--		
1981-----	***	***
1982-----	***	***

U.S. producers' inventories

U.S. producers typically will not start a commuter airplane through the production process until a firm and binding order is received. Therefore, inventories consist of completed units for which orders have been cancelled and partially completed units. U.S. producers reported ***. As of June 30, 1982, U.S. producers were holding a total of *** airplanes in inventory, as shown in the following tabulation:

* * * * * *

Of the *** airplanes held in inventory on June 30, 1982, *** were partially completed units and *** represented cancelled orders. 1/

U.S. deliveries

New airplanes.--Total U.S. deliveries of new commuter airplanes from all sources rose by 77 percent and 53 percent in 1980 and 1981, respectively. New airplane deliveries increased from *** units in 1979 to *** units in 1980 and to *** units in 1981 (table 5). Deliveries in January-June 1982 totaled *** units, compared with *** units delivered in January-June 1981.

1/ A cancelled order does not necessarily represent a switch from one airplane to another by the buyer but rather may also reflect the inability of the buyer to follow through on the purchase due to economic circumstances.

Table 5.--Commuter airplanes: U.S. deliveries of new airplanes from all sources, 1979-81, January-June 1981, and January-June 1982

(In units)							
Period	Total U.S. deliveries	U.S. producers' deliveries			Import deliveries		
		Total	Beech	Swearingen	Total	From Brazil	From other sources 1/
1979-----	***	***	***	***	8	5	3
1980-----	***	***	***	***	29	20	9
1981-----	***	***	***	***	39	37	2
January-June--							
1981-----	***	***	***	***	17	15	2
1982-----	***	***	***	***	14	14	0

1/ Consists only of the deHavilland Twin Otter commuter airplane imported from Canada.

***.

Source: U.S. producers' deliveries, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission; import deliveries, compiled from official statistics of the U.S. Department of Commerce.

Used airplanes.--Embraer suggests that U.S. transactions involving used airplanes compete directly with U.S. producers' deliveries of new airplanes. 1/ Estimates of the number of used Metros on the market vary from Swearingen's estimate of 35 to Embraer's estimate of 73. 2/ Swearingen counters this argument by suggesting that higher investment tax credits, warranties, better depreciation allowances, and new engines are some of the advantages in favor of choosing a new airplane over a used airplane. Used airplane sales decreased from 33 airplanes in 1979 to 25 in 1981 according to data provided by Avmark, Inc., a concern that collects and publishes data on sales and purchases of used airplanes by U.S. airlines. Such sales totaled 25 units in January-June 1982, as shown in the following tabulation (in units):

	Total 1/	Metro	Bandeirante	Other
1979-----	33	***	***	***
1980-----	24	***	***	***
1981-----	25	***	***	***
1982 (January-June)--	25	***	***	***

1/ There were no sales of used C99 airplanes.

U.S. employment 3/

The average number of production and related workers producing commuter airplanes ***. The number of man-hours worked by such production and related workers ***, as shown in the following tabulation: A-14

1/ See Transcript of the conference, pp. 99, 111, and 132.

2/ Ibid., pp. 83 and 225.

3/ Beech failed to provide employment data in its questionnaire response.

* * * * *

The average hourly wage paid to production and related workers producing commuter airplanes during the period was as follows:

* * * * *

Financial experience of the U.S. producer 1/

Profit-and-loss data.--Net sales on Swearingen's overall establishment operations *** (table 6). ***.

Table 6.--Profit-and-loss experience of Swearingen on their overall establishment operations and on their commuter airplane operations, 1979-81, January-June 1981, and January-June 1982

* * * * *

Highlights of Swearingen's profit-and-loss experience on commuter airplane operations during 1979-81 are as follows. ***

Cash flow.--Swearingen's cash flow from commuter airplane operations is shown in the following tabulation:

* * * * *

Research and development and capital expenditures.--Swearingen's research and development and capital expenditures ***, as shown in the following tabulation:

* * * * *

Consideration of the Causal Relationship Between Allegedly Subsidized Imports and Alleged Injury

U.S. imports and market penetration

On the basis of characteristics and availability, commuter airplanes imported from Brazil and Canada are considered, to be the only imported airplanes directly competitive with the U.S. product. Therefore, for the purposes of this discussion, only imports from these two countries are considered. (U.S. imports from Brazil consist exclusively of the Bandeirante and imports from Canada consist primarily of the Twin Otter.)

A-15

1/ Beech failed to provide profit-and-loss and other financial data in its questionnaire response.

Imports from Brazil have grown rapidly since Brazil first introduced its commuter airplane in the United States in 1979. From 5 airplanes in 1979, imports from Brazil quadrupled to 20 airplanes, valued at \$21.7 million, in 1980. Such imports rose by 85 percent to 37 airplanes, valued at \$54.0 million, in 1981. Brazil's share of U.S. imports increased from 62 percent in 1979 to 95 percent in 1981. In January-June 1982, commuter airplanes imported from Brazil totaled one fewer than imports in the corresponding period of 1981, but such imports accounted for virtually all U.S. imports (table 7).

Imports from Canada reached their peak in 1980 at 9 airplanes, valued at \$7.8 million. There were no imports of new airplanes from Canada in January-June 1982.

Import penetration is measured against total U.S. commuter airplane deliveries. The petitioner suggests using sales or new orders rather than deliveries as a more accurate measure of import penetration. The petitioner cites the late entry into the market of Beech Aircraft Co. in the second half of 1981 as the basis for this argument.

Table 7.--New commuter airplanes: U.S. imports for consumption, from Brazil and Canada, 1979-81, January-June 1981, and January-June 1982

Source	1979	1980	1981	January-June--	
				1981	1982
Quantity (units)					
Brazil-----	5	20	37	15	14
Canada-----	3	9	2	2	1/
Total-----	8	29	39	17	14
Value (1,000 dollars)					
Brazil-----	5,298	21,653	54,016	20,756	23,062
Canada-----	2,523	7,811	2,542	2,542	1/
Total-----	7,821	29,464	56,558	23,298	23,062
Percent of total quantity					
Brazil-----	62.5	69.0	94.9	88.2	100.0
Canada-----	37.5	31.0	5.1	11.8	1/
Total-----	100.0	100.0	100.0	100.0	100.0

1/ There was 1 used airplane imported at a value of \$734,000.

Source: Compiled from official statistics of the U.S. Department of Commerce.

U.S. imports of commuter airplanes as a share of total U.S. deliveries rose from *** percent in 1979 to *** percent in 1980 (table 8). Imports from Brazil as a share of total deliveries rose from *** percent in 1979 to *** percent in 1980. Total import penetration and import penetration from Brazil stood at *** percent and *** percent, respectively, in January-June 1981. As a result of Beech's entering the market in the latter half of 1981, Brazil's share of U.S. deliveries declined from *** percent in January-June 1981 to *** percent for the entire year. Imports from Brazil as a share of total U.S. deliveries also declined somewhat in January-June 1982 (*** percent), compared with its share in January-June 1981 (*** percent).

Table 8.--Commuter airplanes: U.S. imports as a share of total U.S. deliveries, 1979-81, January-June 1981, and January-June 1982

Period	Total U.S. deliveries	Total imports		Imports from Brazil		
		Quantity	Share of	Quantity	Share of total	
			total		U.S. deliveries	
			U.S.		U.S. deliveries	
		Units	Units	Percent	Units	Percent
1979-----	***	8	***		5	***
1980-----	***	29	***		20	***
1981-----	***	39	***		37	***
January-June--						
1981-----	***	17	***		15	***
1982-----	***	14	***		14	***

Source: Compiled from data presented in tables 5 and 7.

Orders received for commuter airplanes

New orders for the Metro airplane, as reported by Swearingen, decreased from *** units in 1979 to *** units in 1980 but then increased in 1981 to *** units. New Metro orders in January-June 1982 fell by *** percent to *** units compared with orders received in the corresponding January-June 1981 period. Additionally, Swearingen reported it had received *** orders for its soon to be delivered Metro IIIA airplane. Beech did not provide data on new orders for its C99 airplane, but it did report that it had received *** letters of intent to purchase the Beech 1900. Orders for the Bandeirante increased from *** units in 1979 to *** units in 1981. Such orders fell to *** units in January-June 1982 compared with *** units in the corresponding period in 1981.

Prices

The Commission asked both domestic producers and Embraer for transaction price data for aircraft on a flyaway factory (f.a.f.) basis (table 9). These

prices exclude the cost of ferrying the aircraft from the factory to the airline's base of operations, but that cost is a minimal part of the total cost of the airplane. 1/

Table 9.--Commuter aircraft: Transaction prices, by models and by quarters, April 1980-September 1982

* * * * *

Each new model of the Metro has been more expensive than its predecessor. In the second quarter of 1981, for example, a Metro III cost *** percent more than the Metro IIA. The price of the Metro III rose by only *** percent from the second quarter of 1981 to the first quarter of 1982. The price of the C99 declined from the third quarter of 1981 to the third quarter of 1982 by *** percent. The price of the Bandeirante rose by *** percent from the fourth quarter of 1981 to the third quarter of 1982.

The prices Embraer reported for the Bandeirante are compared with Metro III prices in table 10 and C99 prices in table 11. The pressurized 19-seat Metro III had the highest price, the unpressurized 19-seat Bandeirante had the second highest price, and the unpressurized 15-seat C99 had the lowest price. The Bandeirante's f.a.f. price was *** percent to *** percent below the Metro III's price, but *** percent to *** percent above the C99's price.

Table 10.--Commuter aircraft: Comparison of prices of the Metro III and Bandeirante, October 1981-March 1982

* * * * *

Table 11.--Commuter aircraft: Comparison of prices of the C99 and Bandeirante, October 1981-March 1982

* * * * *

Effects of interest-rate differences

To help determine the importance of interest rates, purchasers were asked how important the interest rate was in their purchasing decisions. Four responded that it was somewhat important; seven responded that it was very important. None called it critical, but none called it unimportant.

The effect of differences in interest rates on the costs of purchasing equipment can be evaluated with present-value analysis. This analysis

1/ Purchasers have told the staff that it currently costs from \$5,000 to \$8,000 to ferry the Bandeirante from Brazil to the United States. These prices do not include certain nonprice concessions that domestic producers state they have given to meet Brazilian competition. These concessions include free spare parts and crew training for Swearingen and below-market financing for Beech.

indicates that the difference between Embraer's interest rate and market rates can reduce the pretax cost of the Bandeirante by *** percent to *** percent and the aftertax cost by *** percent to *** percent. 1/

Present value adjusts the price of the equipment purchase to reflect the value of financing concessions. Therefore, the extent to which a financing agreement reduces costs can be found by comparing the present value of payments called for in the agreement with the equipment's price.

Market interest rates vary between purchasers and over time, so present values will be calculated using three different market interest rates: 14 percent, 16 percent, and 20 percent. 2/ These rates were chosen for several reasons. To determine what market interest rate should be used in this analysis, purchasers were asked what rate they would most likely have qualified for when they last purchased equipment. Five responded that the rate would have been between 13 percent and 15 percent, three responded that the rate would have been between 16 percent and 20 percent, and one responded that the rate would have been over 20 percent. All respondents were commuter airlines. Airplanes are often bought by leasing companies; industry sources indicate that these companies usually pay interest rates 1 to 2 percentage points above the prime rate. Some commuter airplanes are purchased using loan guarantees from the Federal Aviation Administration; the most recent FAA-guaranteed loans have been at interest rates of 16 percent to 17 percent.

Three purchasers provided enough data to determine the effects of the Brazilian financing on the cost of their equipment. All three received financing at 8.5 percent interest with a 15-percent downpayment. In two of these contracts, 7 years elapse from first to final payment; in one, 8 years elapse. 3/ The present value of each contract is shown in table 12.

The data indicate that Embraer's lower interest rate reduces the cost of its aircraft from *** percent to *** percent under the 8-year contract and from *** percent to *** percent under the 7-year contracts.

1/ The calculation of present value is based on a weighted sum of a series of payments. Payments that are further away in time receive lower weights, because if a purchaser can postpone payments for its equipment, it may be able to reduce its other borrowings or retain its earnings in interest-bearing accounts for a longer period of time. Thus, if other factors remain constant, purchasers will prefer financing packages that allow them to postpone payments for as long as possible. As a result, the full cost of a purchase will depend not only on the price and interest rate, but also on other factors affecting the timing and size of the payments. The benefits of postponing payments depend on the market interest rates, because if payments are not postponed, the purchaser must reduce its lending or increase its borrowing at these rates. Therefore, present value will also depend on the market interest rate.

2/ The rates used in this example are fixed, but bank loans for aircraft are often made at variable rates. Were interest rates to decline, the advantage of Embraer's financing package would diminish.

3/ In all cases, the first payment is due 6 months after delivery. All loans call for semiannual payments. Two call for equal payments of principal and declining interest payments; the loan of January 1982 calls for equal total payments.

The extent to which Embraer's financing reduces total interest payments over the life of a contract is shown in table 13. An increase in the interest rate from 8.5 percent to 20 percent, a 135 percent increase, leads to a 135 percent increase in total interest payments for the first two loans. Because the third loan is of a slightly different form, a change in the interest rate has a greater effect on total interest payments. The same increase in the interest rate increases interest payments by 159.2 percent.

Table 12.--Effects of financing on the cost of purchasing the Bandeirante commuter airplane, contract dates of November 1981, December 1981, and January 1982

* * * * * * *

Table 13.--Total interest payments on the Bandeirante commuter airplane at various interest rates

Term	Price	Interest Rate			
		8.5 percent	14 percent	16 percent	20 percent
***-----	***	***	\$851,407	\$973,037	\$1,216,296
***-----	***	***	702,220	802,537	1,003,171
***-----	***	***	825,642	962,889	1,237,388

Source: Estimated by the staff of the U.S. International Trade Commission.

Embraer contends that commuter airlines' ability to deduct interest payments from taxable income significantly reduces the effect of interest-rate differences on the aftertax cost of purchasing airplanes. Aftertax present values for two of the contracts are shown in table 14. Present values are calculated on the assumption that the firm deducts 30 percent of all interest payments from its taxes. This tax benefit reduces the effect of the difference in interest rates. However, financing at the 8.5 percent rate rather than the market rate still reduces the cost of the Bandeirante by 9.7 percent to 20.1 percent.

Table 14.--Effects of interest rate differences on the cost of purchasing the Bandeirante commuter airplane 1/ given a 30 percent tax rate

* * * * * * *

Lost sales

Swearingen stated in its questionnaire response that from November 1978 to August 1982 it lost sales of *** airplanes to the Bandeirante. Although no value could be placed on *** of these airplanes, the remaining *** were valued at *** million. The six purchasers named in these allegations of lost sales each gave quality as their primary reason for buying the Bandeirante rather than the Metro airplanes. Further, these purchasers bought the Bandeirante rather than the Beech 99 or C99 because of size, quality, or because the Beech airplanes were not manufactured when the purchasing decision was made.

Beech alleged that it lost sales of *** C99's valued at *** million to the Bandeirante. Of the seven purchasers involved in these allegations, accounting for alleged lost sales of *** C99's, valued at *** million, 5 were contacted. These purchasers all stated that they flew the C99, did not fly the Bandeirante, and had no Bandeirantes on order.

Two nonprice issues which seemed to be important to the Bandeirante's ability to attract sales from domestic producers are pressurization and performance. Embraer contends that because the Bandeirante is not pressurized it does not compete for the same purchasers as the Metro. Embraer also contends that domestic producers lost sales because their airplanes performed poorly. Questions concerning pressurization and performance were included in the purchasers' questionnaire. Bandeirante purchasers generally indicated that pressurization was not important to them, whereas Metro purchasers indicated that it was very important. Purchasers were generally satisfied with the performance of the Bandeirante and the C99, but were generally dissatisfied with the Metro II's performance.

*** stated in its questionnaire response that the primary reason for purchasing the Bandeirante was availability; other important reasons were superior quality and an attractive financing package. The Metro IIA and III were not being manufactured when this firm made its purchasing decision. The Metro II was considered unacceptable because it was considered to be unreliable, its engines were manufactured by Garrett, and its cabins were cramped. The Beech C99 was unacceptable because it had only 15 seats.

*** stated in its questionnaire response that it chose the Bandeirante primarily because of its superior quality, availability, and supplier support. All models of the Metro were unacceptable because of poor design, high maintenance, poor factory support, and low public acceptance. The Beech C99 was too small and had a poor cabin environment.

Executives of *** stated in the questionnaire that the major reasons for buying the Bandeirante were availability, financing, and its operating costs. They said, however, that they would have bought the Bandeirante without the financing package. All models of the Metro could meet their requirements but are expensive to operate. In a phone conversation, they stated that they would not buy a Metro because of poor engine reliability and high maintenance. They fly the Beech 99 and consider its performance satisfactory. They bought the Bandeirante because the Beech 99 was unavailable when they made their purchase.

*** stated that it chose the Bandeirante over the Metro primarily because of its superior reliability and comfort. Financing had little effect, but the Bandeirante's lower price was a factor. The airline did not buy the Beech 99 because of its old design and old technology.

*** stated that it bought the Bandeirante rather than the Metro because the Metro was unreliable, ugly, and uncomfortable. Its poor reliability, looks, and comfort meant the Metro had poor passenger acceptance. The Beech 99 was not considered because it was too small.

*** stated that it bought the Bandeirante rather than the Metro because the Bandeirante was more fuel efficient, more suitable to its operations because it was not pressurized, looked better, and performed better. The Beech C99 was not manufactured when the purchasing decision was made. The C99 became available in time for this airline to switch to it, but it did not because of its poor appearance and because it believed that the Beech 99 had not performed well.

Pressurization.--To determine the role of pressurization in the competition among airplanes, purchasers 1/ were asked how important pressurization was to them. Of the 13 Bandeirante and C99 purchasers responding to this question, 11 said pressurization was of little or no value, and 2 said it was of significant but not overwhelming value. All five Metro purchasers responding to this question said pressurization was very important. Metro purchasers are generally unlikely to buy a nonpressurized airplane. Bandeirante and C99 purchasers are generally unwilling to pay extra for pressurization.

Performance.--To help evaluate the claims concerning the operating performance of the domestic and Brazilian airplanes, purchasers were asked to rate the engine performance, maintenance downtime, operating costs, and durability of airplanes they flew. Their responses are summarized in table 15. Bandeirante purchasers generally found that the airplane performed satisfactorily. Beech purchasers were generally satisfied with that plane. Metro II purchasers were often dissatisfied. The only Metro III purchaser responding reported that it performed well.

1/ Responses of all Metro purchasers and six Bandeirante purchasers are from questionnaires. Responses of three Bandeirante purchasers and all four C99 purchasers are from phone calls.

Table 15.--Commuter airplane: Number of purchaser responses rating aircraft performance as satisfactory or unsatisfactory

Element	Bandeirante		Beech 99/C99		Metro II		Metro III	
	:Satis- :factory	:Unsatis- :factory	:Satis- :factory	:Unsatis- :factory	:Satis- :factory	:Unsatis- :factory	:Satis- :factory	:Unsatis- :factory
Engine	:	:	:	:	:	:	:	:
performance--	6	0	3	0	0	3	1	0
Maintenance	:	:	:	:	:	:	:	:
downtime----	6	0	3	0	1	2	1	0
Operating	:	:	:	:	:	:	:	:
costs-----	6	0	3	0	1	2	1	0
Durability----	6	0	2	1	1	2	1	0
	:	:	:	:	:	:	:	:

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

APPENDIX A

COMMISSION'S NOTICE OF INSTITUTION
OF PRELIMINARY COUNTERVAILING DUTY INVESTIGATION

[Investigation No. 701-TA-188
(Preliminary)]

Certain Commuter Airplanes From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: August 13, 1982.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-188 (Preliminary) to determine, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain commuter airplanes, provided for in item 694.41 of the Tariff Schedules of the United States, upon which subsidies are alleged to be paid. For purposes of this investigation, "commuter airplanes" are turboprop powered airplanes having a

seating capacity ranging from 15 to 19 seats.

FOR FURTHER INFORMATION CONTACT: Mr. Woodley Timberlake, Office of Investigations, U.S. International Trade Commission; telephone 202-523-4618.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1982, a petition was filed with the U.S. International Trade Commission and the Department of Commerce by counsel for Fairchild Swearingen Corporation alleging that producers, manufacturers, or exporters in Brazil of certain commuter airplanes receive, directly or indirectly, bounties or grants within the meaning of section 701 of the Tariff Act of 1930 (the Act).

The Commission must make its determination in the investigation within 45 days after the date on which the Commission and the Department of Commerce receive a petition filed under section 702(b) of the Act, or by September 27, 1982 (19 CFR 207.17 (1981)). The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207.17 (1981)), as amended by 47 FR 6190 (February 10, 1982)), and particularly subpart B thereof.

Service of Documents

Any interested person may appear in these investigations as a party, either in person or by representative, by filing an entry of appearance with the Secretary in accordance with § 201.11 of the Commission's rules (19 CFR 201.11). Each entry of appearance must be filed with the Secretary no later than September 1, 1982.

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions

Any person may submit to the Commission on or before September 13, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen (14) copies of such statement must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall

have been marked "nonconfidential" or "public inspection."

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 (1981)). Each sheet of information for which confidential treatment is desired must be clearly marked at the top "Confidential Business Data."

All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.d.t., on September 8, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. William Fry, telephone 202-523-0267, not later than September 3, 1982, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207, 47 FR 6182, February 10, 1982), and Part 201, Subparts A through E (19 CFR Part 201, 47 FR 6182, February 10, 1982). Further information concerning the conduct of the conference will be provided by Mr. Fry.

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: August 13, 1982.

Kenneth R. Mason,
Secretary.

[FR Doc. 82-23251 Filed 8-24-82; 8:45 am]

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APPENDIX B

LIST OF WITNESSES APPEARING AT THE CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Investigation No. 701-TA-188 (Preliminary)

CERTAIN COMMUTER AIRPLANES FROM BRAZIL

Those listed below appeared as witnesses at the United States International Trade Commission conference held in connection with the subject investigation on Tuesday, September 8, 1982, in the Hearing Room of the USITC Building, 701 E Street, NW., Washington, D.C.

In support of the imposition of
countervailing duties

Dow, Lohnes & Albertson--Counsel
Washington, D.C.
on behalf of

Fairchild Swearingen Corp.

Anthony Spuria, Sr. Chairman of the Board

James M. O'Brien, Vice President, Product Support

Earl E. Morton, Director, Domestic Metro Sales

David E. Candler, Vice President, Financial Services

Samuel C. Coldwell, Director, Market Planning
Fairchild Industries, Inc.

Mr. John Schaffer, Member, Board of Directors,
Beech Aircraft Corp.

Chester Schickling, Sales Manager, Commuter Marketing
Beech Aircraft Corp.

William Silverman)-OF COUNSEL
Bruce Beckner)

In opposition to the imposition of
countervailing duties

Santarelli & Gimer--Counsel
Washington, D.C.
on behalf of

Empresa Brasileira De Aeronautica S.A.
Mr. Peter Van Arsdale, President
Provincetown-Boston Airlines, Inc.

Mr. Morten Beyer, President
Avmark, Inc.

Ms. Barbara Beyer, Vice President
Avmark, Inc.

Mr. Robert Guinn, Director of Operations
Royale Airlines. Inc.

Mr. Alan Jones, President
Silver State Airlines

Mr. Edward M. Kaitz, President
Edward M. Kaitz and Associates

Mr. Robert Paterno, Executive Committee
Dolphin Airlines

Mr. George Pickett, Jr., President
Atlantic Southeast Airplanes, Inc.

Mr. Robert Wilson, Executive Vice President
Sunbelt Airlines

Donald E. Santarelli)
C. Micheal Tarone)--OF COUNSEL
James J. Pinto)

