

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
100- TO 150-SEAT LARGE CIVIL AIRCRAFT) 701-TA-578 AND
FROM CANADA) 731-TA-1368 (FINAL)

Pages: 1 - 318
Place: Washington, D.C.
Date: Monday, December 18, 2017



Ace-Federal Reporters, Inc.
Stenotype Reporters
1625 I Street, NW
Suite 790
Washington, D.C. 20006
202-347-3700
Nationwide Coverage
www.acefederal.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
BEFORE THE
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
100- TO 150-SEAT LARGE CIVIL) 701-TA-578 AND 731-TA-1368
AIRCRAFT FROM CANADA) (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Monday, December 18, 2017

The meeting commenced pursuant to notice at 9:30
a.m., before the Commissioners of the United States
International Trade Commission, the Honorable Rhonda K.
Schmidtlein, Chairman, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Rhonda K. Schmidtlein

5 Vice Chairman David S. Johanson

6 Commissioner Irving A. Williamson

7 Commissioner Meredith M. Broadbent

8

9

10

11

12 Staff:

13 William R. Bishop, Supervisory Hearings and Information
14 Officer

15 Tyrell Burch, Program Support Specialist

16

17 Andrew Dushkes, Investigator

18 Jennifer Powell, Investigator

19 Justin Enck, Investigator

20 John Benedetto, International Economist

21 Charles Yost, Accountant/Auditor

22 Karl von Schrittz, Attorney/Advisor

23 Douglas Corkran, Supervisory Investigator

24

25

1 APPEARANCES (Continued):

2 Embassy Witnesses:

3 The Embassy of the United Kingdom

4 Washington, DC

5 His Excellency Sir Kim Darroch, British Ambassador to
6 the United States of America

7

8 The Embassy of Canada

9 Washington, DC

10 His Excellency David McNaughton, Ambassador of Canada
11 to the United States of America

12

13 Delegation Witness:

14 Delegation of the European Union to the United States

15 Washington, DC

16 Damien Levie, Minister Counselor and Head of Trade
17 Section

18

19 Opening Remarks:

20 Petitioner (Robert T. Novick, Wilmer Cutler Pickering Hale
21 and Dorr LLP)

22 Respondents (Peter Lichtenbaum, Covington & Burling LLP)

23

24

25

1 APPEARANCES (Continued):

2 In Support of the Imposition of Antidumping and

3 Countervailing Duty Orders:

4 Wilmer Cutler Pickering Hale and Dorr LLP

5 Washington, DC

6 on behalf of

7 The Boeing Company ("Boeing")

8 Kevin McAllister, Executive Vice President, The Boeing

9 Company; President and Chief Executive Officer, Boeing

10 Commercial Airplanes

11 Jerry Nickelsburg, Ph.D., Adjunct Professor of

12 Economics, University of California, Los Angeles ("UCLA");

13 Senior Economist, UCLA Anderson Forecast

14 Charles Anderson, Principal, Capital Trade

15 Robert T. Novick, Patrick J. McLain and Stephanie

16 Hartmann - Of Counsel

17

18

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2 In Opposition to the Imposition of Antidumping and
3 Countervailing Duty Orders:

4 Dentons US LLP

5 Washington, DC

6 on behalf of

7 Delta Air Lines, Inc.

8 Scott McClain, Associate General Counsel, Delta Air
9 Lines, Inc.

10 Joe Esposito, Vice President, Network Planning,
11 Americas, Delta Air Lines, Inc.

12 Greg May, Senior Vice President, Supply Chain
13 Management & Fleet, Delta Air Lines, Inc.

14 Yohai Baisburd and Daniel Morris - Of Counsel

15

16 Covington & Burling LLP

17 Washington, DC

18 on behalf of

19 Bombardier Inc.

20 Ross Mitchell, Vice President, Commercial Operations,
21 Commercial Aircraft Division, Bombardier Inc.

22 Robert Dewar, Vice President, C Series Program,
23 Commercial Aircraft Division, Bombardier Inc. and C Series
24 Aircraft Limited Partnership

25

1 APPEARANCES (Continued):

2 Sylvain Levesque, Vice President, Corporate Strategy,
3 Bombardier Inc.

4 George Dimitroff, Flight Ascend Consultancy

5 Shara L. Aranoff, Peter Lichtenbaum and James M. Smith
6 - Of Counsel

7

8 Steptoe & Johnson

9 Washington, DC

10 on behalf of

11 Government of Canada

12 Mark A. Moran, Eric C. Emerson, Pablo Bentes, Alexandra
13 Baj and Maureen F. Browne - Of Counsel

14

15 Steptoe & Johnson

16 Law Office of Gary N. Horlick

17 Washington, DC

18 on behalf of

19 Government of the United Kingdom

20 Gary N. Horlick - Of Counsel

21

22 Rebuttal/Closing Remarks:

23 Petitioner (Robert T. Novick, Wilmer Cutler Pickering Hale
24 and Dorr LLP)

25 Respondents (Shara L. Aranoff, Covington & Burling LLP)

I N D E X

1		
2		Page
3	His Excellency Sir Kim Darroch, British Ambassador to the	
4	United States of America	11
5		
6	His Excellency David McNaughton, Ambassador of Canada to the	
7	United States of America	14
8		
9	Damien Levie, Minister Counselor and Head of	
10	Trade Section	17
11		
12	Opening Remarks:	
13	Petitioner (Robert T. Novick, Wilmer Cutler Pickering Hale	
14	and Dorr LLP)	21
15	Respondents (Peter Lichtenbaum, Covington & Burling LLP)	
16		26
17	Robert T. Novick, Wilmer Cutler Pickering	
18	Hale and Dorr LLP	30
19		
20	Kevin McAllister, Executive Vice President, The Boeing	
21	Company; President and Chief Executive Officer, Boeing	
22	Commercial Airplanes	37
23		
24		
25		

I N D E X

	Page
1	
2	
3	Jerry Nickelsburg, Ph.D., Adjunct Professor of Economics,
4	University of California, Los Angeles ("UCLA"); Senior
5	Economist, UCLA Anderson Forecast 47
6	
7	Charles Anderson, Principal, Capital Trade 57
8	
9	Patrick J. McLain, Wilmer Cutler Pickering
10	Hale and Dorr LLP 66
11	
12	Robert Dewar, Vice President, C Series Program, Commercial
13	Aircraft Division, Bombardier Inc. and C Series Aircraft
14	Limited Partnership 179
15	
16	Ross Mitchell, Vice President, Commercial Operations,
17	Commercial Aircraft Division, Bombardier Inc. 184
18	
19	Sylvain Levesque, Vice President, Corporate Strategy,
20	Bombardier Inc. 190
21	
22	Greg May, Senior Vice President, Supply Chain
23	Management & Fleet, Delta Air Lines, Inc. 195
24	
25	

I N D E X

	Page
1	
2	
3	Joe Esposito, Vice President, Network Planning, Americas,
4	Delta Air Lines, Inc. 203
5	
6	George Dimitroff, Flight Ascend Consultancy 208
7	
8	Shara L. Aranoff - Covington & Burling 214
9	
10	Rebuttal/Closing Remarks:
11	Petitioner (Robert T. Novick, Wilmer Cutler Pickering Hale
12	and Dorr LLP) 306
13	
14	Respondents (Shara L. Aranoff, Covington & Burling LLP) 312
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

P R O C E E D I N G S

9:33 a.m.

MR. BISHOP: Will the room please come to order?

CHAIRMAN SCHMIDTLEIN: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on the final phase of Investigation Nos. 701-TA-578 and 731-TA-1368 involving 100 to 150 seat large civil aircraft from Canada.

The purpose of these Final Investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of imports of 100 to 150 seat large civil aircraft from Canada.

Schedule setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

I understand that the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary. Speakers are reminded not to refer in their remarks or answers to

1 questions to business proprietary information. Please speak
2 clearly into the microphones and state your name for the
3 record for the benefit of the court reporter. If you will
4 be submitting documents that contain information you wish
5 classified as business confidential your request should
6 comply with commission rule 201.6.

7 Mr. Secretary, are there any preliminary matters?

8 MR. BISHOP: No, Madam Chairman.

9 CHAIRMAN SCHMIDTLEIN: Very well. Will you
10 please announce our Embassy Witnesses.

11 MR. BISHOP: Our Embassy Witness is his
12 Excellency Sir Kim Darroch, British Ambassador to the United
13 States of America minutes.

14 CHAIRMAN SCHMIDTLEIN: Welcome Ambassador
15 Darroch, you may begin when you are ready.

16 STATEMENT OF AMBASSADOR SIR KIM DARROCH

17 AMBASSADOR DARROCH: Thank you very much and good
18 morning. Can I begin by expressing my appreciation to the
19 U.S. International Trade Commission for providing me with
20 the opportunity to set out the UK's position on this issue.
21 As we have made clear in legal statements submitted as part
22 of the Department of Commerce investigation, we believe that
23 Boeing has no basis for bringing the UK into this
24 investigative process.

25 Their actions are not what we would expect from a

1 long-term partner. We are clear that no aircraft have been
2 exported from the UK to the U.S. Market. In addition, the
3 UK programs to Short Brothers in Belfast for outside the
4 scope of countervailing duty investigation as a matter of
5 U.S. and WTO Law. However, due to the close and cordial
6 relationship between the UK and the United States we have
7 voluntarily chosen to participate in this investigation.

8 Boeing argued that they are attacking bad
9 subsidies provided to Bombardier including a UK Government
10 loan on commercial terms for more than 100 million pounds
11 for the development of wings in Northern Ireland. Yet, this
12 claim is made when Boeing itself enjoys billions of dollars
13 of U.S. Government subsidies for its aircraft.

14 Between 1989 and 2006 Boeing received more than
15 5.3 billion dollars worth of U.S. Government support. We
16 are concerned that Boeing's approach is not consistent with
17 the principals of the U.S. antidumping and countervailing
18 duty law or the international agreements signed by the U.S.

19 On the question of material injury, the UK says
20 that first, despite Boeing's argument, this is not a case
21 where dumped or subsidized imports or sales of 100 to 150
22 seat large civil aircraft have caused material injury to
23 domestic production. This is because following the end of
24 production of the Boeing 717 there is no U.S. Domestic
25 production of a like-product.

1 Second, the import or sale of C-series aircraft
2 could not threaten material injury to future Domestic
3 production of the like-product and is not preventing the
4 establishment of a Domestic Industry producing the
5 like-product. This is because Boeing has presented no
6 evidence of attempts to invest any time or money in the
7 design, manufacture or sale of a new competing type of a 100
8 to 150 seat LCA in the 1-2 years' time frame required by
9 U.S. Law.

10 The two sales campaigns have been examined by the
11 Commission at Delta and at United Airlines show that Boeing
12 have no plans to produce the like-product in the imminent
13 future. At Delta, Boeing did not offer an aircraft
14 comparable to that supplied by Bombardier. It did not even
15 offer a Boeing Aircraft, it tried to sell second hand
16 Embraer aircraft.

17 At United, Boeing persuaded the customer that it
18 was commercially advantageous to accept a larger aircraft
19 than originally requested. The UK Government is concerned
20 that Boeing is arguing that the ITC should come to a
21 determination that comes to the imposition of commercially
22 damaging duties. This determination would be based merely
23 on a competitor's entry into a new market, a market in which
24 Boeing does not at present compete and in which it has no
25 eminent plan to compete.

1 Such a determination damages international trade,
2 competition and in this case ultimately damages American
3 Airlines customers and American businesses in the C-series
4 supply chain. For these reasons, I, on behalf of the UK
5 Government ask the ITC to reject Boeing's argument and
6 recognize that there is no threat of material injury to U.S.
7 Industry. Thank you.

8 CHAIRMAN SCHMIDTLEIN: Thank you very much.

9 MR. BISHOP: Our next Embassy Witness is his
10 Excellency, David McNaughton, Ambassador of Canada to the
11 United States of America.

12 AMBASSADOR MCNAUGHTON: Madam Chair, Members of
13 the Commission. On behalf of Canada, thank you.

14 MR. BISHOP: Ambassador, could you pull your
15 microphone just a bit closer? Thank you.

16 STATEMENT OF AMBASSADOR DAVID MCNAUGHTON

17 AMBASSADOR MCNAUGHTON: Sure. On behalf of Canada,
18 thank you for providing me the opportunity to testify in
19 this trade dispute which is of the utmost importance to the
20 aerospace industries of both Canada and the United States.
21 I come before you today because of the extraordinary nature
22 of the dispute and its implications for the integrity of the
23 trade laws that both of our countries have a strong stake in
24 preserving.

25 Under the relevant WTO agreements to which both

1 the United States and Canada are parties, a determination of
2 threat of material injury cannot be based on allegation,
3 conjecture or remote possibility. I understand that a
4 similar admonition is contained in the U.S. Statute that the
5 Commission is obliged with administering.

6 The case before you pushes beyond the boundaries
7 of the Commission's threat of material injury analysis.
8 Positive evidence on the record does not show any actual or
9 planned exports by Bombardier to any U.S. airline.
10 Therefore Boeing's assertion and future imports from Canada
11 threaten to cause material injury is necessary based on just
12 the type of speculation and conjecture that is prohibited in
13 both U.S. and International Law.

14 Equally important, the relevant WTO agreement and
15 U.S. Law stress the requirement that any threat of material
16 injury determination must be based on evidence of imminent
17 imports, not sales or likely sales, but actual imports.
18 Bombardier has not exported any of the aircraft that are the
19 subject of this case to the United States. This is
20 undisputed and there are no planned exports.

21 Here, too, Canada expects the Commission will
22 follow both the U.S. Statute and its relevant,
23 international, legal obligations. Stepping back from the
24 issue of the United States' obligations under international
25 law, the facts of the case are perplexing. Boeing did not

1 compete against the plane that Bombardier sold to Delta
2 because it does not have a plane in that size.

3 Moreover, it is difficult to understand how a
4 company with such an enviable commercial and financial
5 position and an order book stretching nearly seven years
6 into the future could file a case complaining of a threat of
7 future injury by a new entrant to the market. Boeing has
8 been quite candid that its target is not the plane that
9 exists now but the competitive threat that Bombardier may
10 pose in the future.

11 What's more, Boeing is asking you to reach a
12 determination that could have severe consequences for U.S.
13 jobs and manufacturing. In a typical case a U.S. Industry
14 can often claim that an affirmative determination will
15 preserve U.S. manufacturing operations and U.S. jobs. The
16 conclusion in this case is precisely the opposite. U.S.
17 made components contribute over half of the value to the
18 C-series aircraft.

19 These components are supplied by American
20 Companies directly supporting roughly 23,000 well-paying
21 jobs in many U.S. states including Connecticut, Florida, New
22 Jersey, Washington, New York, Ohio, Kansas, Pennsylvania and
23 Colorado. Simply put, an affirmative determination would
24 put U.S. jobs in jeopardy. There is no reason to believe
25 that an affirmative determination would lead Boeing to

1 create any more jobs to compensate for this loss in the
2 United States' work force, particularly given its current
3 massive back log.

4 Madam Chair, Members -- Canada and the United
5 States benefit from the North American Aerospace Center that
6 is the envy of the world. We have developed an
7 interconnected supply chain and manufacturing and delivery
8 system. An affirmative action decision in this case would
9 have profound negative implications for this deeply
10 integrated sector.

11 Moreover, as Canada and the other responding
12 parties will be further demonstrating to you today, the
13 facts of this case and the applicable law require you to
14 make a negative determination. I urge you to do so. Thank
15 you very much.

16 CHAIRMAN SCHMIDTLEIN: Thank you very much. Are
17 there any questions for the Ambassador? No. All right.
18 Thank you both very much for taking the time to be with us
19 today.

20 MR. BISHOP: Our next witness is Damien Levie,
21 Minister Counselor and Head of the Trade Section from the
22 Delegation of the European Union to the United States.

23 CHAIRMAN SCHMIDTLEIN: Welcome Minister Levie.

24 STATEMENT OF DAMIEN LEVIE

25 MINISTER LEVIE: Thank you, good morning. On

1 behalf of the European Commission I would like to thank the
2 ITC for the opportunity to present comments in the framework
3 of this hearing. To begin with, the European Commission
4 wishes to express its deepest concerns that these
5 investigations were initiated and provisional determinations
6 were made on such weak grounds.

7 Trade defense instruments are an important tool
8 for industries to defend themselves when faced with unfair
9 trading practices but relevant requirements both at domestic
10 and WTO level need to be respected. The WTO expects all its
11 trading partners to comply with these strict rules and
12 certainly important partners like the United States.

13 In the present case, the Commission has already
14 been provided detailed comments in writing and I would now
15 like to draw your attention to the most salient issues.
16 First, concerning the threat of material injury and the
17 investigations at issue, the ITC relied on a threat of
18 material injury initiating the case in the absence of any
19 imports.

20 However, a threat of injury can only emanate from
21 actual and not potential imports which are not yet causing
22 material injury but will cause such injury in the imminent
23 future. In this context, I wish to recall that according
24 Article 3-7 of the WTO Antidumping Agreement "a
25 determination of a threat for material injury shall be

1 based on facts and not merely allegation, conjecture or
2 remote possibility".

3 In this case, the threat of injury allegation is
4 based on merely one order for which Boeing did not even
5 participate in the bidding process as you well know, no part
6 of that order was delivered during the Period of
7 Investigation, nor do we understand any of it to be expected
8 within an eminent timeframe.

9 On the other hand, the evidence that has been
10 provided regarding the situation of the Domestic Industry
11 shows that it is in a rather comfortable position. Its
12 order books are full. It has a backlog of around 4 or 5
13 thousand claims and it seems it is not in the position to
14 deliver any additional aircraft before 2020. Based on U.S.
15 and WTO rules this is clearly not a situation of a threat of
16 material injury to the Domestic Industry.

17 Second with regard to causality and other
18 factors, in any event, any difficulties that the Domestic
19 Industry may experience in the remote future are clearly not
20 caused by allegedly dumped or subsidized imports but by
21 other factors. First, due to Boeing's enormous backlog
22 delivery times are very long which means potential clients
23 look for other sources of supply.

24 Second, while the demand for small airplanes of
25 100-110 seats remains this demand cannot be satisfied by the

1 Domestic Industry because it does not have the smaller type
2 of aircraft in its portfolio and this explains why the
3 Domestic Industry was not able to bid for the one order from
4 Delta Airlines, the only evidence that this case is based
5 on.

6 Furthermore the Domestic Industry is now in
7 position of the newest technology. Boeing has indeed
8 further developed its existing technology in the 737 Max 7
9 due to be delivered by 2019 but this is not as innovative as
10 the technology of the product under investigation. All
11 these various factors are related to Domestic Industry's
12 business decisions and its business model.

13 Any resulting impact on the situation of the
14 Domestic Industry can in no way be attributed to imports of
15 the product concerned. Therefore in view of these elements
16 we believe the imposition of measures in this case would
17 clearly be unjustified particularly there are no imports of
18 the product concerned in the United States therefore there
19 can be no threat of injury. In any event, the
20 Domestic Industry is in a comfortable position, which is
21 unlikely to change in an imminent time period and any
22 possible future difficulties are due to factors other than
23 imports. To conclude, the European Commission expects that
24 the U.S. Authorities terminate this investigation to avoid
25 further delay and without the imposition of any measures.

1 The other course of action would clearly be
2 breach of the WTO obligations of the United States of
3 America. Thank you.

4 CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Levie. Are
5 there any questions? Alright, thank you very much.

6 We will now move to opening statements.

7 OPENING STATEMENT OF ROBERT T. NOVICK

8 MR. BISHOP: Opening remarks on behalf of
9 Petitioner will be given by Robert T. Novick of Wilmer
10 Cutler Pickering Hale and Dorr. Mr. Novick, you have five
11 minutes.

12 MR. NOVICK: Good morning. I'm Bob Novick from
13 Wilmer Hale Counsel to the Boeing Company. We thank the
14 Commission for the opportunity to be here today.

15 MR. BISHOP: Pull your mic a little closer
16 please, thank you.

17 MR. NOVICK: Remarkably for a threat case, the
18 Commission can see clearly what will happen absent orders.
19 You saw it at the preliminary and developments since then
20 have confirmed your preliminary determination was right.
21 The only speculation introduced since the preliminary is the
22 Respondents' rouse to "solve" the trade case. The notion of
23 plans to establish a C-series production facility in
24 Alabama.

25 I will address this "trust us" defense further

1 when our Panel is seated but for now I will demonstrate that
2 each broad area of inquiry: Volume, price and impact. The
3 Commission has detailed information on the record about what
4 will transpire absent orders.

5 First, volume. Increased Subject Imports volumes
6 are certain. Bombardier is executing plans to ramp up
7 production to 120 units per year by 2020. Therefore
8 Bombardier will produce many more C-series than the 75 to
9 125 units that will go to Delta to fill the April 2016
10 order. Deliveries from that order alone, which will begin
11 in a few months absent orders, will lock in Boeing's lost
12 market share.

13 As set forth in the Petition, those imports will
14 account for a full 100 percent of imports and market share
15 in 2018 and 61 percent in the period 2018 to 2021. In turn,
16 the Domestic Industry's market share will drop to 24 percent
17 over that same period.

18 So where will the remaining airplanes go that
19 they're going to produce? Here. There is broad agreement
20 that the United States is the most important market for the
21 100 to 150 seat large civil aircraft and Bombardier is
22 determined to repeat the scenario like Delta with other
23 major U.S. Airline customers. Just two months ago
24 Bombardier's CEO stated that Bombardier is in talks with
25 several potential U.S. customers for the C-series and

1 Airbus' President COO confirmed that Jet Blue was such a
2 customer.

3 Several airlines including Jet Blue and Spirit
4 have written the Commission expressing interest in the
5 C-Series at Delta prices of course. While it is clear that
6 more sales for importation will follow absent orders, the
7 potential for more sales cannot reasonably be in question.

8 Now to price. The Commission already found that,
9 and I quote "The low prices offered by Bombardier for the
10 CS100 in both the United and Delta sales campaigns are
11 likely to have a significant depressing or suppressing
12 effect on Domestic prices and are likely to increase demand
13 for further imports". Development since the preliminary
14 determination confirmed that you were right. They confirm
15 how low the prices were and that they are likely to go
16 lower still.

17 First, the historically high countervailing and
18 antidumping duty margins in Congress' preliminary
19 determination show just how low Bombardier's prices really
20 are. They are not launch or marquis pricing, they are
21 dumped and subsidized pricing. A 79 percent dumping margin
22 which is based on adverse facts available as Bombardier
23 refused to cooperate rather than reveal the full extent of
24 dumping means that Bombardier is selling the C-series to the
25 United States at half its market value.

1 Second, the joint venture has stated that it will
2 market and price the C-series even more aggressively; and
3 that's a quote. Third, the very price transmitting effect we
4 have identified in the Staff Conference has operated as we
5 said it would to Boeing's detriment as you can see from
6 confidential information in the record.

7 Bombardier will have you believe it will increase
8 its prices, that other U.S. airlines that compete with Delta
9 will put themselves at a disadvantage vis- -vis Delta and
10 pay a higher price. They won't and they've told you that.
11 Finally, impact. The Commission said it precisely and
12 accurately and I quote "in the face of low-priced Subject
13 Imports competition Boeing will likely be forced to either
14 reduce its own prices to win sales, thereby causing a
15 significant depressing or suppressing effect on Domestic
16 prices or else lose the sales".

17 Boeing experienced the former, that is reducing
18 prices at United and it is experiencing again today as
19 evidenced in confidential information in the record. This
20 is real and it's happening now. The later threat that the
21 Max 7 program fails because it cannot make sales is real
22 too.

23 Boeing simply cannot sell aircraft at
24 Bombardier's irrationally low price point. The Max 7 is
25 suffering from an order drought. The current orders are

1 inadequate to sustain the program. Respondents agree with
2 all of that. We told you the C-series was having this
3 impact and since then Airbus' CEO, Bombardier's new partner
4 has confirmed it.

5 Citing the 5-year order drought for the 8319, Mr.
6 Anders stated and I quote "that was the last time we sold
7 the plane. That tells you something about the competition
8 between the A319 and the C-series. It tells you the same
9 thing about the competition between the Max 7 and the
10 C-series as they stand in the same competitive position."
11 There is a real threat, confirmed by Airbus that Boeing
12 could be forced out of the 100 to 150 seat market, absent
13 orders.

14 In sum, the Commission cannot stand by and allow
15 the Domestic Industry and its employees to be decimated by
16 an airplane that is selling through subsidies at twice its
17 value and selling at half its value. The Commission cannot
18 be duped by this recent rouse to avoid orders. It will be
19 undone just as fast as it was concocted.

20 There is no doubt what would happen to the
21 Domestic Industry absent orders. Only you can stop that.
22 Thank you very much.

23 CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Novick.

24 MR. BISHOP: Opening remarks on behalf of
25 respondents will be given by Peter Lichtenbaum of Covington

1 & Burling.

2 Mr. Lichtenbaum, you have five minutes.

3 CHAIRMAN SCHMIDTLEIN: Mr. Secretary, why don't
4 we add an additional minute to be fair?

5 MR. BISHOP: Will do, Madam Chairman, thank you.

6 CHAIRMAN SCHMIDTLEIN: Thank you.

7 Welcome, Mr. Lichtenbaum.

8 OPENING STATEMENT OF PETER LICHTENBAUM

9 MR. LICHTENBAUM: Good morning, Chairman
10 Schmidtlein and Commissioners. I'm Peter Lichtenbaum from
11 Covington & Burling, appearing for respondents Bombardier,
12 Inc. and C Series Aircraft Limited Partnership or CSALP.

13 Even when Boeing filed its petition in April,
14 its claim of an imminent threat of injury rested on a very
15 slender reed, a single order by Delta for 109-seat aircraft,
16 where Boeing didn't compete with no deliveries until a year
17 after the petition.

18 And since April, events have completely
19 overtaken Boeing's case. The partnership announced by
20 Bombardier and Airbus to build C Series in the U.S. means
21 there's no longer any prospect, much less an imminent
22 threat, of material injury caused by imports.

23 Indeed, there will not be any imports for the
24 Delta order. CSALP plans to supply its U.S. customers not
25 from Quebec, but from a new assembly line at the Airbus

1 facility in Alabama.

2 The line will have the same production steps as
3 CSALP performs in Quebec. The parties will invest about
4 \$300 million and support thousands of U.S. jobs. The C
5 Series will be made in America for delivery to U.S. airlines
6 that want this innovative and efficient aircraft.

7 Boeing reacted to this good news for the U.S.
8 economy by suggesting a new U.S. line somehow is a threat to
9 the domestic industry. It should go without saying that
10 anti-dumping and countervailing duty laws do not apply to
11 domestic production. And the C Series will soon be
12 domestically produced, not imported.

13 While Boeing may not want another domestic
14 competitor, that's not the role of the trade laws. In its
15 brief, Boeing has two responses, both misguided. First,
16 Boeing argues that the investment is a sham. Boeing asks
17 the Commission to speculate that the U.S. line will not be
18 built if the Commission makes a negative determination.
19 This is false. Given the demand for single aisle aircraft,
20 the partnership synergies and customer concern about future
21 trade cases, compelling reasons mandate a U.S. line for the
22 C Series regardless of how this case ends. And the parties
23 are moving ahead quickly. They've engaged the relevant
24 anti-trust authorities in detail and are taking other
25 concrete steps explained in our confidential filings.

1 They're planning for the volume and timing of deliveries,
2 the necessary production equipment, the organizational
3 structure, the tasks to be executed, local permitting, and
4 budgeting.

5 It's frankly incredible to suggest that all this
6 is a sham as it would require two blue chip public companies
7 to lie about their plans, which were signed off by their
8 boards of directors and the Quebec government.

9 Second, Boeing argues that even if the U.S. line
10 will happen, these dramatic effects should be disregarded as
11 post-petition evidence. But the Commission has discounted
12 temporary changes to import volumes or price trains -- price
13 trends that may mask evidence of injury. It has never
14 disregarded a permanent shift in production like the
15 establishment of a new U.S. assembly line and it should not
16 do so now.

17 Boeing's willful denial is part of its strategy
18 to ignore the record. For instance, there's abundant
19 evidence that the 737 family is a continuum of nearly
20 identical single-aisle aircraft with different lengths. Yet
21 Boeing continues to argue there's something distinctive
22 about the Max 7 compared to the rest of the family.

23 The only thing distinctive about the Max 7 is
24 how poorly it's done in the market compared to the Max 8,
25 because it fails to deliver the efficiency that airlines

1 require in the size range.

2 When the domestic like product is properly
3 defined as all single aisle aircraft for more than 100
4 seats, Boeing faces no imminent threat of injury. Boeing
5 has a commanding position in the single aisle market.
6 According to its public financials, Boeing is making money
7 hand over fist. And with a backlog of 737 orders years into
8 the future, there are no signs of difficulty on the
9 horizon.

10 In sum, Boeing does not deserve protection under
11 the trade laws and any lack of Max 7 sales has nothing to do
12 with the C Series. As another example, the record shows
13 that the C Series generally competed with Embraer's E-Jets,
14 not with any Boeing models in the Delta and United campaigns
15 that Boeing complains about.

16 Yet by imposing an artificial ratings limit,
17 which we've challenged at the Commerce Department, Boeing
18 has tried to erase Embraer's E-Jets from the case. Indeed,
19 Boeing never mentions Embraer in its brief. Presumably,
20 that's because Embraer doesn't fit Boeing's distorted
21 narrative of these campaigns, which strains to position
22 Boeing as the supposed alternative to the C Series.

23 So as you listen to Boeing, here are four
24 questions to bear in mind. First, what specific evidence
25 does Boeing have that the U.S. line is a sham, given the

1 concrete information that we have provided? Second, why
2 should the Commission disregard the Bombardier and Airbus
3 decision to make a major investment in the United States?
4 Third, what's the evidence that the Max 7 is a
5 distinct-like product, i.e. that the differences between the
6 Max 7 and the Max 8 are greater than the differences between
7 other 737 aircraft? And fourth, how does Boeing respond to
8 the critical role of Embraer aircraft in the market,
9 including the United and Delta transactions?

10 The Commission should reach a negative
11 determination. We look forward to completing our
12 presentation and answering your questions later today.
13 Thank you.

14 CHAIRMAN SCHMIDTLEIN: Thank you.

15 Mr. Secretary, will you please call the first
16 panel?

17 MR. BISHOP: Would the panel in support of the
18 imposition off anti-dumping and countervailing duty orders
19 please come forward and be seated?

20 Madam Chairman, all witnesses on this panel have
21 been sworn in. This panel has 60 minutes for their direct
22 testimony.

23 CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Secretary.

24 You may begin when you're ready, Mr. Novick.

25 STATEMENT OF ROBERT T. NOVICK

1 MR. NOVICK: Thank you. For the record, my name
2 is Bob Novick. With me are Kevin McAllister, president and
3 CEO of Boeing Commercial Airplanes, Professor Jerry
4 Nickelsburg, Chuck Anderson, and Pat McLain. They will each
5 introduce themselves. Stephanie Hartmann is with me as
6 well, but she won't be testifying.

7 I would like to resume where I left off 10
8 minutes ago. Again, development since the preliminary
9 confirm and reinforce the soundness of each of the
10 Commission's preliminary findings and compel you to make an
11 affirmative final determination.

12 I will use this time to touch on two issues to
13 keep front of mind over the course of the day and in this
14 investigation. The first is the trust us defense that
15 respondents concocted to solve the trade case. And the
16 second, the now disingenuous argument that there is no 100
17 to 150-seat market.

18 First, based on the respondent's submissions, we
19 will hear a fair amount about the "solution to the trade
20 case, the trust us defense." It is essential to their
21 negligibility and injury arguments for the Commission to
22 accept that there is no potential that there will be
23 deliveries from Canada to Delta or sales for importation or
24 deliveries to any U.S. carrier because Bombardier may build
25 an assembly line in Alabama to serve that customer base.

1 They admit that this notion is an effect of the
2 petition and the insurmountable duty or -- duties orders
3 will lead to. And on top of asking you to accept their
4 factual assertions, they then want you to believe a
5 statutory construction that would as a legal matter deprive
6 the large commercial airplanes industry and other industries
7 with long lead times between sale and delivery from using
8 the trade remedies laws.

9 Unfortunately for them, their factual assertions
10 are at odds with the record and economic logic, and their
11 legal assertions at odds with the statute, legislative
12 history, and Commission precedent. Alabama is speculative.
13 There is no final approved deal. There are no concrete
14 plans, just drawings. There is no construction. There are
15 no legal commitments, just words. At bottom, no one knows
16 whether, what, or when anything will happen in Alabama.

17 More remarkably, they want you to believe that
18 Alabama will happen even if the Commission votes negative.
19 This is due to what they call the Boeing effect, the theory
20 that even if you vote negative, the petition in this case
21 will ensure U.S. customers never order another Canadian C
22 Series.

23 In other words, according to the respondents,
24 even without duties, everyone will act as though the duties
25 were in place. This is nonsense. More than not, the record

1 evidence is at odds with their representations.
2 Bombardier's questionnaire response told you how many C
3 Series aircraft it will export from Canada to the U.S.
4 beginning in 2018.

5 And it makes no economic sense to build a second
6 line in Alabama until you have orders that cannot be
7 satisfied by your existing line. And even apart from
8 deliveries to Delta, Bombardier and Airbus have told us they
9 are in discussions with other U.S. customers. Those
10 customers will take the Delta airplanes that are rolling off
11 the production line any day now.

12 And Jetblue and Spirit wrote you letters asking
13 you not to impose orders so that they can buy the C Series
14 without having to pay duties.

15 But the clearest evidence, against the Boeing
16 effect, again, that customers will not order the C Series
17 even absent orders, that -- is that Bombardier and Delta are
18 here today fighting for a negative determination. If they
19 really believe that no U.S. customer's ever going to
20 purchase another C Series of aircraft from Canada,
21 regardless of the outcome of this case, then all this effort
22 is unnecessary. We could all have a happy holiday.

23 Bombardier itself equivocates on whether Alabama
24 will really happen in the absence of orders as evidenced in
25 its brief, as do Bombardier and Delta in their confidential

1 questionnaire responses. Bombardier's brief uses words like
2 "there may be a delay in its deliveries at page 1" and "the
3 market share of subject imports is zero, and will remain
4 there until at least" and there's bracketed language. And
5 indefinitely, if Delta planes are produced at the U.S. FAL
6 at page 82, to be fair, they do occasionally use the word
7 "will". So as of last week, the question is will they
8 serve U.S. airlines exclusively from a client in Alabama?
9 Not if you reach a negative determination.

10 Furthermore, here's where Bombardier and -- told
11 Commerce about these notional plans just a month ago. And I
12 quote, "The proposed transaction has not been finalized and
13 determinations based on it would be speculative."

14 And Canada stated, and I quote, "At this point,
15 a new business relationship has been announced, but the deal
16 has not been closed and operational aspects of that new
17 relationship have not been finalized. At this point, there
18 is nothing final and concrete for the department to
19 evaluate."

20 To allow the Alabama contrivance to support a
21 negative determination would be at odds with the statute,
22 legislative intent, and would eviscerate key statutory
23 provisions. It would provide exporters and importers a
24 roadmap to secure negative determinations only then to turn
25 around the next day, inflict -- and inflict the injury with

1 impunity. Congress did not add the sale for importation
2 provisions so that foreign exporter could avoid the
3 consequences of their actions.

4 If respondents had wanted to resolve this case
5 by not importing airplanes from Canada, they could have
6 negotiated a suspension agreement with Commerce. The case
7 would have been frozen in time so long as they complied, but
8 they can't unilaterally devise a suspension agreement and
9 one that involves effectively a withdrawal of petition with
10 no safeguards. They say just trust us.

11 Inviting petitioners to refile when the Canadian
12 imports arrived, as they graciously invite us to do, is not
13 what the trade laws envision.

14 To address the Boeing effect and approach in a
15 manner consistent with the trade laws would be for
16 Bombardier to repay the subsidies and sell the product from
17 Canada at fair prices. If it did that, it could assure its
18 U.S. customers that they would have no duty exposure,
19 because during the administrative review, there'd be no
20 finding of dumping or subsidization.

21 Alternatively, Bombardier could avoid the Boeing
22 effect with orders in place by simply not importing. But
23 what you can't do is get massive subsidies, dump your
24 product, refuse to cooperate with Commerce in its
25 investigation, receive almost 300 percent margins, retaliate

1 against Boeing for availing itself of the U.S. trade laws as
2 Canada has done, and then come to the Commission and say do
3 nothing, trust us.

4 We and everyone that wants to buy our dumped
5 product have learned our lesson. The trade laws don't
6 operate that way. Orders are the only way to stop the
7 unfair trade.

8 Before turning to Kevin, one final point. The
9 respondents' continued argument that there is not a 100 to
10 150-seat market and related-like product discussion is at
11 best disingenuous. At the preliminary hearing, we
12 reproduced a landing page to Bombardier's website and it
13 depicted the CS-100 and CS-300 with the legend, "Optimized
14 for the 100 to 150-seat market segment." And when Airbus
15 and Bombardier announced their joint venture, their
16 respective senior executives referred to the 100 to 150-seat
17 market repeatedly

18 And just last week, just last week, two days
19 after Bombardier filed the pre-hearing brief in which they
20 continued to argue that there's no 100 to 150-seat segment,
21 Bombardier at their Investor Day in New York, speaking about
22 the virtues of the joint venture said this, and I quote, "It
23 is a recognition of the market potential that we for years
24 at Bombardier have been talking about in that 100 to
25 150-seat category."

1 And at that same investor conference, when asked
2 about whether the joint venture would compromise
3 Bombardier's ability to produce an airplane in a larger
4 market segment, Bombardier said, and I quote again, "I mean,
5 there's a great strategic fit right now between the C
6 Series, the 100 and 300, and the A-320 and A-321."

7 This not only disposes of the argument regarding
8 the 100 to 150-seat market, but it also disposes of the
9 entire like product argument. They confirmed as they have
10 many times before that the 100 to 150-seat market is
11 distinct from the larger single aisle markets that the A-320
12 and A-321 inhabit, which are the competitors to the Max 8,
13 Max 9, and Max 10, not the Max 7.

14 Bombardier should not be allowed to tell
15 investors, customers, and governments the globe one thing
16 and come to the Commission and tell you another. Thank you
17 and I turn it over to Kevin McAllister, the president and
18 CEO of Boeing Commercial Airplanes.

19 STATEMENT OF KEVIN MCALLISTER

20 MR. MCALLISTER: Good morning, I'm Kevin
21 McAllister, president and CEO of Boeing Commercial
22 Airplanes. I'm here to talk about the threat to Boeing from
23 Bombardier's subsidies and dumped pricing.

24 They have already injured Boeing and our injury
25 is certain to increase unless you ensure that Bombardier

1 competes on a level playing field. Since your preliminary
2 determination, customers are continuing to demand
3 significant price cuts drive by Bombardier's pricing at
4 Delta. Our Max 7 is at extreme risk.

5 If you don't level the playing field now, it
6 will be too late. I started in this industry at GE Aviation
7 in 1989 as an engineer. I held a number of positions,
8 including the head of sales in Americas, the head of
9 worldwide sales for GE Aviation. I ultimately became the
10 CEO and president of GE Aviation Services. GE supplies
11 engines for both Boeing and Airbus, including the engines
12 for the 700 and Max 7.

13 I was personally involved in hundreds of sales
14 campaigns worth hundreds of billions of dollars together
15 with airplane manufacturers and am very familiar with the
16 airlines and how they make purchasing decisions.

17 In November 2016, I had the honor of being named
18 president and CEO of Boeing Commercial Airplanes. I care
19 deeply about the aerospace industry in the United States.
20 As we explained in May, Bombardier's unfair competition is
21 destroying the market for the 700 and Max 7 airplanes. It
22 started in 2015. We competed our 700 head to head with the
23 CS-100 at United, but Bombardier slashed its prices. That
24 pushed us to the wall.

25 The 700 ultimately won at United against the

1 CS-100, but only after we were forced to slash our prices to
2 the lowest possible level. And this lowered the pricing
3 threshold both the 700 and the Max 7, but this was only the
4 first sign of how bad things would ultimately get.

5 The United campaign proved that the 700 could
6 compete and win against the CS-100, but Bombardier was even
7 more aggressive at Delta. Delta was looking to buy used
8 airplanes. As we were pulling together a package to meet
9 Delta's requirements, Bombardier swooped in and offered to
10 sell Delta brand new C Series airplanes for less than \$20
11 million each. No new airplane rationally priced, including
12 the 700, could compete at that price point.

13 Essentially, Bombardier offered new airplanes at
14 used airplane prices and it worked. Delta bought 700 C
15 Series airplanes with options for 50 more.

16 The reason Bombardier and its government backers
17 would do this is straightforward. The United States is the
18 largest and most important market in the world for 100 to
19 150-seat airplanes. Penetrating the U.S. market is critical
20 to an airplane's success. Major U.S. airlines like Delta
21 are among the biggest and most respected airlines in the
22 world. They are true market leaders.

23 A sale to Delta, United, or another big U.S.
24 airline generates commercial momentum, making it more likely
25 that other airlines will purchase the airplane. Orders lead

1 to more orders. Securing commercial momentum with key
2 campaigns provides important credibility and helps determine
3 whether a new airplane will thrive or die.

4 That's why Bombardier is willing to lose
5 millions of dollars per airplane. And that's what
6 Bombardier purchased with the government subsidies, a seal
7 of approval for the C Series.

8 Now let me explain the harm subsidies are
9 causing and why the C Series threatens Boeing and our
10 employees. First and foremost, a single large order like
11 Bombardier's sale to Delta takes years of demand out of the
12 market. In this industry, if we lose a sale, it's gone
13 forever.

14 That's years of lost production deliveries for
15 Boeing, years of lost work for employees, and years of lost
16 work for our U.S. suppliers.

17 And because airplanes can remain in an airline's
18 fleet for 20 years or more, we may not have another chance
19 to sell an airplane of that size to that customer for
20 decades.

21 Secondly, the subsidized pricing Bombardier
22 offered at United and especially at Delta lowered the
23 pricing benchmark for the 100 to 150-seat market. And we're
24 suffering the predictable result. Other U.S. customers are
25 demanding that we significantly lower our Max 7 pricing.

1 Look, I understand why customers are doing this.
2 Bombardier's subsidized price gives Delta an operating cost
3 advantage. To remain competitive, other airlines need
4 similar pricing, but the only way to get those prices is to
5 buy from Bombardier at dumped prices or pressure Boeing to
6 sell its airplanes at irrationally low prices. Either way
7 is devastating to the Max 7 program.

8 At the preliminary hearing, we predicted that
9 this pressure would come and it has. As we move closer to
10 the importation of the first C Series, customer demand for
11 reduced prices is greater than ever.

12 As described in the confidential information we
13 have provided, the harm is real right now. And unless the
14 Commission acts to ensure a level playing field, even
15 greater harm is certain.

16 Given these facts, this case is the only thing
17 that can stop the harm. U.S. airlines are waiting to see
18 what happens in this case before buying the 100 to 150-seat
19 airplanes. They need to know whether pricing will be on a
20 cut rate Delta pricing or in a fair market-based terms
21 before they lock themselves into a new airplane for 20 years
22 or more.

23 If this case ends with no duties, the signal
24 will be clear, those airlines will have no choice but to buy
25 dumped, subsidized C Series airplanes at the Delta price or

1 else demand that Boeing cut its prices drastically.

2 Be assured of one thing. Boeing loves to
3 compete. We wake up every day excited to work -- to come to
4 work focused on finding new ways to provide value to our
5 customers so we can compete and win. And in a fair
6 competition, I'll bet on Boeing, our U.S. employees, and the
7 U.S. industry every time.

8 But we should only have to compete against
9 private companies, not governments and the airplanes they
10 create and produce through endless subsidies. Subsidized
11 competitors don't face the same market realities that we do.
12 Our fortunes rise and fall, based on the business decisions
13 we make. There's no other -- there's no one there to bail
14 us out if we misstep.

15 But because of its massive government subsidies,
16 Bombardier doesn't have to worry about these market
17 realities. It used those subsidies to create and sell
18 airplanes for millions of dollars under cost in the United
19 States.

20 To see what it's like to compete against
21 governments, rather than truly private companies, look no
22 further than the reaction to this case abroad. Simply
23 because Boeing sought the protection of trade laws enforced
24 by this Commission, Canada and Europe have canceled or
25 threatened to cancel existing contracts or block us from

1 future work.

2 As just one example last week, Canada canceled a
3 \$5 billion order for Boeing fighter jets just because we
4 brought this case. And Canada also made clear that if we do
5 not drop this case, we will not get future orders.

6 Make no mistake, Canada is home to some of our
7 most valuable commercial customers and it's also a very
8 important defense customer for us. We've sold billions of
9 dollars in products and services in Canada and we are
10 pursuing billions more in future commercial and defense
11 contracts.

12 Given this rift this case is causing with such
13 an important customer, some might wonder why we're even
14 bringing this case. The answer is simple. We've learned
15 from bitter experience that subsidy-fueled trade violations
16 like this don't stop on their own. We will continue to lose
17 more and more of the market as we're unable to compete
18 against the combined resources of sovereign governments. No
19 U.S. Company should be forced to do that.

20 But that's exactly what's happening. And it's
21 only gotten worse for the domestic industry since you made
22 your preliminary determination. Bombardier announced in
23 October that it's joining forces with Airbus perhaps the
24 world's most notorious recipient of illegal government
25 subsidies. In some ways, this is d j vu for Boeing. From

1 Airbus' very inception, we've lived with the Airbus threat
2 and suffered the Airbus injury.

3 We've seen Airbus use billions and billions in
4 government subsidies to create its products and muscle its
5 way into the market, putting American aerospace companies
6 out of business.

7 And now Airbus has announced it intends through
8 its partnership with Bombardier to make -- market the C
9 Series even more aggressively, to sell thousands of C Series
10 airplanes, and to focus on the U.S. market even more than
11 before.

12 And even apart from Airbus, I've seen the
13 damages that foreign government subsidies can cause to a
14 healthy U.S. industry. I grew up in Bethlehem, Pennsylvania
15 where Bethlehem Steel was the pride of the U.S. industry for
16 over 100 years. By the 1970s, low priced foreign steel took
17 sales, forcing the company to huge losses and laid off
18 thousands of U.S. workers ultimately leading to its
19 bankruptcy.

20 This left a lasting impression on me. And in my
21 office, I keep a painting of the old Bethlehem Steel plant.
22 It reminds me each and every day as a leader of the
23 country's largest exporter, how important it is for us to
24 focus and find new ways to compete in the global
25 marketplace.

1 But it's also a reminder that even the strongest
2 industries in the communities they sustain can be devastated
3 by unfair trade, a lesson I take to heart as a veteran of
4 the aerospace industry.

5 We're at a critical moment for the Max 7
6 program. We haven't received a major Max order since 2013
7 and have a backlog of fewer than 75 orders, which is far
8 from healthy. With only a handful of make or break orders
9 to go around, every major order that Bombardier wins, and
10 they will win if they are able to offer the current
11 subsidized pricing, helps convince the remaining U.S.
12 customers that Bombardier will be their best long-term
13 partner.

14 That makes it much harder for Boeing to generate
15 commercial momentum for the Max 7 and puts the U.S. industry
16 at serious risk of not having any viable product in this
17 market.

18 Before I close, there are two arguments I
19 understand Bombardier is making that I'd like to address.
20 First, Bombardier claims that Boeing doesn't care about the
21 100 to 150-seat market in the Max 7. I assure you this is
22 completely false. We have spent significant resources in
23 dollars and time and in energy developing the Max 7. It is
24 a great airplane and it's improvement over the 700, which
25 secured more than 1200 orders. We anticipate that the Max

1 7, assuming a level playing field, will generate billions in
2 additional revenue for Boeing over the next 20 years. We
3 absolutely care about this airplane and this market.

4 Second, I understand that Bombardier is arguing
5 that we don't have the capacity to meet new orders until
6 2022, because of the backlog for all 737 models. That, too,
7 is false. Like other airplane manufacturers, Boeing focuses
8 on winning every order and adjust capacity to meet demand.
9 If a customer places a large order, we have ways to
10 accommodate those delivery at our current production rate in
11 Renton.

12 If we win five or six large orders for delivery
13 starting in two years, we would increase our production
14 rate, which we've done multiple times over the last two
15 decades. But there's no realistic scenario in which we
16 would simply turn down a major order because of capacity.

17 In closing, I want to stress again that we
18 thrive on competition. It makes us stronger. But that's
19 only true if competition is on a level-playing field. It
20 doesn't work when foreign governments tilt the field for the
21 benefit of the C Series, a plan that wouldn't even exist
22 were it not for government subsidies.

23 Boeing makes the best airplanes in the world,
24 but we can't compete with companies funded and backed by
25 governments. Thank you for your time and I will now turn it

1 over to Professor Nickelsburg. Thank you.

2 STATEMENT OF DR. JERRY NICKELSBURG

3 DR. NICKELSBURG: Good morning. My name is
4 Professor Jerry Nickelsburg. I am an economist on the
5 faculty of the UCLA Anderson School of Business. Before
6 academia, I had a 20 year career in aviation, with executive
7 positions with McDonnell-Douglas, Flight Safety
8 International and Flight Safety Boeing. In 1986, I began
9 doing research in transportation economics, with a
10 particular emphasis on aviation.

11 I submitted a detailed report and testimony at
12 the preliminary stage of this proceeding, and I stand by
13 those submissions. So rather than repeat them here today, I
14 would like to focus on a few specific areas. First, I will
15 provide some additional comments on the key conditions of
16 competition, in the 100 to 150 seat large civil aircraft
17 market, with an emphasis on the critical role of commercial
18 momentum.

19 Second, I will briefly address the report by
20 Flight Ascend Consultancy attached to Bombardier's
21 prehearing brief, a report which largely validates my views
22 but arrives at erroneous conclusions. Third, I'll discuss
23 the Airbus Bombardier C series partnership announced in
24 October 2017, and how Bombardier's announcement that it
25 plans to establish a second production line in Mobile,

1 Alabama has no economic justification other than avoiding
2 duties that might be imposed in this case.

3 First some comments on the conditions of
4 competition in the 100 to 150 seat LCA industry. This
5 industry is unusual compared to many others such as those
6 involving agricultural commodities, raw materials or basic
7 industrial inputs. The research and development required to
8 bring a new airplane model to market can run from several
9 hundred million dollars to billions of dollars, and the
10 research and development process is not quick. It will
11 typically last years.

12 As a result, while research and development is
13 still underway, manufacturers seek to accumulate orders and
14 order backlog for the new aircraft they're developing.
15 Indeed, at the time of product launch, that is the moment
16 when a company formally approves the model for sale,
17 manufacturers are normally required by the board to obtain a
18 high volume of aircraft orders.

19 This is intended to signal to confidence in
20 the product to both the board and to potential customers.
21 These orders can spur more orders. Another important
22 characteristic related to competition in this industry is
23 the high cost and long life of each individual aircraft.
24 The price tag for each new build aircraft is tens of
25 millions of dollars.

1 Once in use, an aircraft will normally remain
2 in service for two decades or more. Indeed, the original
3 purchasers of aircraft typically keep them more than a
4 decade before releasing them into the secondary market.
5 Because planning for the operating of the aircraft years in
6 the future is critically important, orders by other
7 customers send an important signal to potential purchasers.
8 They build confidence in the viability of the aircraft as a
9 competitive capital good in the future.

10 Models that sell in high volumes are also more
11 likely to be able to be serviced and maintained in a cost
12 effective manner over the lifetime of the aircraft.
13 Moreover, a large number of aircraft and operators create
14 confidence among lessors and among the secondary market
15 purchasers. This in turn makes those aircraft more likely
16 to have a higher residual value.

17 These factors increase the probability of a
18 long production run, economies of scale and also increase
19 the probability of the very next sale of the aircraft. This
20 phenomenon is known as commercial momentum, that success
21 tends to beget success. It is not merely or even primarily
22 a popularity contest. It is an economically rational
23 response by airlines looking to reduce the life cycle costs
24 of ownership and to maintain the value of their assets.

25 This idea is not particularly controversial,

1 as both airbus and Bombardier explicitly recognize the
2 importance of commercial momentum in numerous statements
3 regarding their JV and Delta sale, as shown in the slide to
4 your left. Just as commercial momentum is crucial in
5 spurring more sales, negative commercial momentum can
6 significantly harm the prospect of future sales. If a model
7 is unable to attract large orders for a long period of
8 time, especially when another product of the same type is
9 gaining market share, the market confidence in that model
10 begins to wane.

11 The value of the model decreases; the expected
12 costs of servicing and maintaining the aircraft over its
13 lifetime increases; and the expect resale value falls. A
14 cloud gathers and hangs over the model, and before long the
15 program is at risk of termination or entry into the zombie
16 status, by which I mean a program that exists only in a
17 catalogue but for which no serious act of production occurs.

18 The concept of commercial momentum explains
19 part of the critical harm that the C series is causing to
20 the domestic industry, even before the first 737 Max 7 rolls
21 off the production line. If Bombardier is able to sell the
22 aircraft into the U.S. market at approximately \$19 million
23 each, then clearly it will win orders and buy commercial
24 momentum.

25 Not only does it buy commercial momentum but

1 it also saps commercial momentum from competing 100 to 150
2 seat LCA such as the Boeing 737 Max 7. Historical examples
3 from the aerospace industry clearly demonstrate this point.
4 Most recently, Airbus' CEO acknowledged that the C series
5 sapped commercial momentum from the A319, another competing
6 airplane in the 100 to 150 seat market. As well there are a
7 number of other historical cases of aircraft whose
8 production termination also illustrates the role of
9 commercial momentum in creating a death spiral of aircraft
10 orders.

11 These examples show that once lost, commercial
12 momentum is difficult, often impossible to regain. I would
13 be happy to discuss these historical cases in Q and A.
14 Before leaving this topic, I'd like to point out that there
15 are several developments since my testimony at the
16 preliminary phase that have confirmed key points I made
17 about conditions of competition in this market.

18 First, notwithstanding the fact that
19 Bombardier's own web site touts the C series as, and I quote
20 "Optimized for the 100 to 150 seat market segment," at the
21 preliminary Bombardier argued that there was in fact no 100
22 to 150 seat LCA market all. However since then, Bombardier
23 and Airbus have repeatedly issued press releases
24 highlighting the existence of the 100 to 150 seat LCA
25 market and the C series as existing in that market, and they

1 distinguish the 100 to 150 seat market from the market for
2 larger single aisle LCA, such as those served by the A320,
3 the 737, 800 and the Max 8. So this is an area where we
4 apparently no longer disagree.

5 Second, Bombardier previously questioned the
6 existence in this market of a price transmission mechanism.
7 That is, the phenomenon of market participants being able to
8 estimate the prices paid by other market participants with a
9 high degree of accuracy. The price transmission mechanism
10 is particularly important because it explains part of the
11 reason why Bombardier's dumped and subsidized pricing can be
12 so harmful to the domestic industry.

13 Customers demand prices from Boeing that are
14 comparable to the prices that Delta received for the C
15 series, which forces Boeing to choose between losing the
16 sale or winning it at a price that makes no economic sense
17 for Boeing. However, Footnote 191 of the confidential ITC
18 report in the preliminary investigation and the confidential
19 affidavit attached to Boeing's prehearing brief as Exhibit
20 3, should end all question about whether such price
21 transmission exists. It does.

22 Turning to my second topic, let me respond to
23 the report by the Consultancy Flight Ascend, which was
24 attached to Bombardier's prehearing brief. At the outset, I
25 want to note that Flight Ascend's conclusions are based on

1 data that are not in the record and therefore neither I nor
2 the Commission can verify Flight Ascend's quantitative
3 analysis. As to its substance, the report arrives at four
4 key conclusions.

5 First, Flight Ascend that the Max 7's poor
6 market performance is driven by suboptimal design. Putting
7 aside the reasons the designs are different and the issue of
8 development subsidies of the C series, let's consider the
9 economic point of how the market would and should react to
10 operating cost differentials. The nature of competitive
11 markets is that purchase prices adjust to such
12 differentials. Were C series operating costs in fact lower,
13 as argued by Flight Ascend, then the C series should be
14 selling at a higher price per seat mile.

15 But in actuality the exact opposite is
16 happening. The C series is priced far below its
17 competitors. This makes clear that the real cause of the
18 Max 7's poor market reception is dumped C series pricing,
19 not suboptimal design. Second, Flight Ascend states that
20 the demand for the aircraft in the 100 to 150 seat LCA
21 market is small and not worth pursuing relative to other LCA
22 markets.

23 But Boeing, Bombardier and Airbus are all
24 competing in this market, and in announcing their new JV
25 Bombardier and Airbus touted the strength of this market.

1 So their actions and statements put that argument to rest.
2 Third, Flight Ascend states that Boeing has no incentive to
3 sell the Max 7 because the Max 8, 9 and 10 command higher
4 prices. But this assumes a false choice.

5 Boeing can and does produce all four.
6 Production rates may and do increase when demand dictates,
7 as evidenced by the recent increases in rates at both Boeing
8 and Airbus. Thus, a Max 7 order would be additive not
9 substitutive to the production line. Fourth, Flight Ascend
10 states that launch pricing is typically offered, and I
11 quote, at the outset of the commercial aircraft program for
12 a finite period of time. True. The Delta sale was eight
13 years after the launch of the C series program, confirming
14 that it was not launch pricing but rather abnormally low
15 dumped and subsidized pricing.

16 Flight Ascend asserts that Delta is a marquee
17 or strategic customer, one who obtains price discounts in
18 consideration of the quantity of aircraft they purchase and
19 the influence their purchase has on smaller aircraft
20 acquisitions. True. However, strategic pricing is not
21 below production cost pricing, and it is not dumped pricing.

22 Rather, it is the pricing that all other large
23 airlines will demand as the confidential evidence and as
24 history confirms. Now let me turn to my third topic, the C
25 series partnership that Airbus and Bombardier announced in

1 October. When it closes, the transaction would transfer
2 majority ownership and control of the C series from
3 Bombardier and the Government of Quebec to Airbus for \$1.

4 The deal represents a decision by Bombardier
5 to essentially give away its flagship LCA program to Airbus
6 in exchange for the market validation, marketing prowess and
7 government backing that Airbus can provide. As part of the
8 announcement for the JV, Airbus and Bombardier said that
9 they plan to set up a second C series assembly line in
10 Mobile, Alabama to supply U.S. customers. The facts of this
11 JV lead to an obvious conclusion, that there's no economic
12 justification for setting up a second facility in the U.S.
13 other than to get around any tariffs that might be imposed
14 on imported aircraft.

15 Why? Bombardier has sunk millions of dollars
16 and years of time building this current production facility
17 in Mirabel, a facility they plan to use to produce at least
18 120 aircraft per year by 2020, and you can see the
19 production ramp up on the slide to your left. Yet today,
20 based on public information, Bombardier has only
21 approximately 250 not at risk orders for the C series in
22 total.

23 So the backlog is not great enough to task the
24 current production plan at Mirabel. Looking past today's
25 firm orders, Bombardier's expert Flight Ascend estimates

1 that the total worldwide deliveries of C series aircraft,
2 including those delivered to airlines in the United States,
3 is less than the planned production of the Mirabel Canada
4 factory.

5 Therefore investing hundreds of millions of
6 dollars to set up a second facility dedicated exclusively to
7 the U.S. market does not have an economic justification
8 other than avoiding duties. Many statements by Bombardier,
9 Airbus and Delta support this conclusion. For example, in
10 its prehearing brief Bombardier stated that it will supply
11 the U.S. customers from the Mobile facility because "paying
12 duties in excess of 300 percent on imported C series would
13 not be commercial feasible."

14 With respect to the proposed Mobile facility,
15 Bombardier also argues that it will move forward even if
16 there's a negative ITC determination in this case because
17 "U.S. airlines will likely remain extremely reluctant to
18 place any orders for the C series manufactured in Canada."
19 However, I would expect the opposite, namely that the market
20 will interpret a negative ITC determination as a green light
21 to import C series aircraft from Canada.

22 So if the ITC determination is negative, I
23 would not expect the production facility in Mobile to be
24 built. Let me close with one final observation with this
25 JV. Bombardier has now joined forces with Airbus on the C

1 series aircraft. They announced that the JV would exploit
2 Airbus' marketing and sales power to aggressively market and
3 sell the C series in the United States.

4 As a result, the only domestic producer,
5 Boeing, will be competing against a combination of two
6 government subsidy fueled competitors who can price below
7 cost, thus making it even more likely that absent duties the
8 sole domestic producer will be forced from the market. I
9 thank you and I will now turn it over to Mr. Anderson.

10 STATEMENT OF CHARLES ANDERSON

11 MR. ANDERSON: Good morning. I'm Chuck
12 Anderson of Capital Trade. Over the past 30 plus years,
13 I've worked in a large number of cases and gotten to know
14 many different products. But none perhaps is fascinating as
15 the 100 to 150 seat LCA industry. Today in my remarks, I'll
16 compare this industry to other industries that the
17 Commission is familiar with, especially as it relates to
18 the following areas: domestic like product,
19 substitutability, imminence and finally threat.

20 As you will see based on the record, I believe
21 that the case for an affirmative threat finding is
22 overwhelming. Bombardier argues that the Boeing 737 family
23 is a continuum with no clear dividing lines, and asks the
24 Commission to include the whole 737 family in the domestic
25 like product. The dictionary definition of the word

1 "continuum" is "a coherent whole characterized as a
2 collection, sequence or progression of values or elements
3 varying by minute degrees."

4 So Bombardier's arguing that the differences
5 between the members of the 737 family are minute. Here are
6 the facts. Today, Boeing offers four discrete products in
7 the 737 Max family: the 737 Max 7, the 8, 9 and the 10.
8 The number of passengers these airplanes can transport in a
9 standard dual class configuration is as follows. For the
10 Max it is 138 passengers, and for the Max 8, 9, 10 it is
11 162, 178 and 188 passengers respectively.

12 I simply can't see how Bombardier can find,
13 and I quote "no logical dividing line" between one next
14 generation airplane that carries 138 passengers and one that
15 carries 162 passengers. The jump from 138 to 162 is not
16 minute. Certainly for airlines that try to fill every seat
17 on every flight they operate, the differences between these
18 two aircraft are significant.

19 Bombardier argues that seat pounds are not
20 fixed, that airlines can squeeze more than 138 passengers
21 into a Max 7, sometimes even more than 150. But that really
22 is a false comparison. To assess comparability of size and
23 performance across miles, it's necessary to hold certain
24 parameters constant, such as seat, pitch and class
25 configuration. This is how airlines assess competing

1 models.

2 My views are only reinforced when I look at
3 the past ITC cases Bombardier cites. For example,
4 Bombardier cites wire rod. I've worked on a number of wire
5 rod cases. It's made in thousands of different combinations
6 of dimensions, chemistries, surface finishes and other
7 physical characteristics. Often, the differences between
8 two products on the wire rod spectrum is a matter of a
9 millimeter. That's minute.

10 The same is true for other continuum product
11 cases I've worked on, including line school paper products,
12 dimensional lumber and pipe, cases which have been cited by
13 Bombardier and Delta in their continuum arguments. These
14 cases could not be more different from 100 to 150 seat LCA.
15 All it takes to change the dimension of a line paper product
16 is to adjust a knob on a sheeting machine.

17 Here, making the 737 Max 7 requires a massive
18 up front capital investment in the hundreds of millions of
19 dollars. I find it hard to believe that Boeing would have
20 been willing to make that investment if Bombardier's
21 arguments were correct. The Max 737 Max 7 and Max 8, 9, 10
22 also require a very different level of investment from
23 purchasers.

24 The staff report confirms that customers
25 consider price to be a clear differentiating factor between

1 scope and non-scope LCA. The ITC rarely sees price gaps
2 this large. These gaps loom even larger in purchasing
3 decisions when you consider that a \$10 million difference
4 between smaller and larger LCAs balloons to 100 million for
5 a ten aircraft order and a billion dollars for 100 aircraft
6 order.

7 Keep these price gaps in mind when you assess
8 the argument made by Bombardier that conversions are an
9 indication of customer indifference to price between scope
10 and non-scope LCA. Most of those conversions after all are
11 from smaller to larger and higher priced aircraft. If the
12 distinction between smaller and larger aircraft were truly
13 arbitrary and customers didn't care as Bombardier argues,
14 then airlines would not voluntarily pay millions of dollars
15 more for the larger ones.

16 In fact, Bombardier's own submission makes
17 clear that all single aisle LCA are not a continuum.
18 Specifically in its prehearing brief, Bombardier submitted
19 the graph before you now to show the current global order
20 book for the C series, the 737 Max 7, and the 8319 320 Neo.
21 Orders are a measure of demand. If all single aisle LCAs
22 were a true continuum, you would expect to see very close
23 levels of demand from model to model.

24 Visually, you would expect to see bars that
25 only gradually change across all models. Instead, you see

1 from the graph that demand for single aisle LCA falls into
2 three distinct groups: small, which corresponds exactly to
3 the scope of these investigations, medium and large. The
4 enormous step changes in demand between the three groupings
5 is compelling additional evidence of three different markets
6 for three distinct products.

7 Bombardier and Delta argue that the 737 Max 7
8 and Max 8 are interchangeable because there is commonality
9 in operational requirements and maintenance among the 737
10 family. But it's wrong to conflate commonality with
11 interchangeability. These are two very different concepts.
12 Commonality in this industry simply means that multiple
13 aircraft models share certain features such as cockpit
14 controls.

15 These commonalities provide airlines with
16 significant operational cost benefits. But aircraft that
17 share common features can and do vary widely in mission,
18 price and performance. It's precisely because such wide
19 variations exists that commonality is important. It means,
20 for example, that as different as the 737 Max 7 and a 737
21 Max 10 are, the pilot experience is similar for both.

22 Indeed, as shown in the excerpt before you
23 now, Airbus champions the commonality of its single aisle
24 100 seat A318 with its twin aisle A380, a plane that
25 typically carries over 500 passengers. Notwithstanding

1 commonality between these two airplanes pictured on the
2 slide, absolutely no one I think would claim that they are
3 interchangeable.

4 Now onto substitutability. The staff report
5 rightly found that the like product and subject imports to
6 be moderately to highly substitutable. As is clear from the
7 questionnaire responses as well as the customer Avid Havid,
8 attached to Boeing's prehearing brief, customers view
9 Boeing's 737 700 and Max 7 and Bombardier's C series models
10 as competitors.

11 Bombardier and Delta, however, argue that
12 substitutability is limited due to non-price differences.
13 But such non-price differences in this market can and in
14 fact are reduced to price and do not limit competition.
15 During sales campaigns, LCA producers and customers monetize
16 those non-price differences and adjust their starting prices
17 for competing products in that's within the same segment
18 accordingly. A specific example of how this is done, called
19 an NPV or net present value analysis, can be found at
20 Exhibit 44 of the Boeing prehearing brief.

21 Thus, non-price factors unlike other cases
22 that the Commission has seen are factored into price, and
23 therefore do not overwrite price and purchasing decisions.
24 Bombardier and Delta tout the fuel efficiencies and other
25 operational cost benefits of the C series as the real reason

1 why airlines choose this aircraft over Boeing's 700 and Max
2 7. No doubt these factors are attractive to airlines.

3 But, and this is the critical point, at what
4 price? Of course customers will find these features
5 attractive, especially if they don't have to pay for them.
6 But that does not mean that an airline would not consider
7 purchasing a 737 Max 7 instead of a C series if both
8 aircraft were priced fairly.

9 Let me now turn to the issuance of imminence.
10 The concept is industry-specific and depends on the time
11 horizon for the industry at issue. The LCA industry, like
12 other capital equipment industries, has an unusually long
13 time horizon. On average, deliveries lap orders by around
14 by around four to five years. Prices are fixed at the time
15 of order, subject to predictable escalators.

16 Because many costs are subject to long-term
17 contracts, Boeing could project several years into the
18 future. Volumes of imports and domestic shipments are
19 predictable years in advance, as the questionnaire responses
20 show. Thus, it's possible to make reliable predictions for
21 this industry and to adjust those predictions for different
22 sales campaign outcomes.

23 The level of predictability over multiple
24 years simply does not exist with most industries before the
25 Commission, where typically there are no commercial

1 commitments regarding future volumes, prices or input costs
2 beyond a year.

3 Now on to threat factors. First, volume.
4 Bombardier's deliveries to Delta are scheduled to begin in
5 2018, so that is a locked in increase in subject import
6 volumes. Beyond that, Bombardier and Airbus have confirmed
7 that they are seeking more U.S. sales now. That's
8 understandable because the C series order book is not close
9 to being adequate to sustain its production ramp up and get
10 the C series production costs down its learning curve over
11 the next five years.

12 Bombardier's order shortfall is even more
13 acute given the number of at risk orders in the C series
14 backlog. On this point, I would urge the Commission to
15 carefully review Bombardier's own capacity and production
16 projections, as well as its guideline and responses to the
17 Commission's questions regarding at risk and deferred
18 orders.

19 On to price effects. The customer
20 questionnaire responses almost universally reflect the
21 importance of price in purchasing decisions. Given their
22 market power, there's no doubt that customers will use
23 Bombardier to force lower prices in the U.S. market. As the
24 staff report states, with only a few potential 100 to 150
25 LCA customers worldwide, sales are concentrated in a few

1 transactions with a few customers placing very large orders.
2 So in sales campaigns, airlines have leverage.

3 The evidence of likely price effects in this
4 case is substantial. First, there's the concrete example of
5 price suppression, depression in the United campaign.
6 Second, as mentioned by others, Airbus has signaled its
7 intention to market the C series in the United States
8 aggressively. Third, additional evidence of ongoing price
9 suppression and price depression following the Delta sale is
10 set forth in Boeing's confidential prehearing brief.

11 Now let me address the issue of vulnerability.
12 All parties agree that the Max 7 program right now is
13 vulnerable. The trade and financial trends over the past
14 three years are strongly downwards. For example in the last
15 three years, the domestic industry's gross profits,
16 operating net income, net income and cash flow have all
17 declined.

18 Finally, impact. Bombardier's unfettered
19 access to the U.S. market can only mean one of two things.
20 Boeing will either sell far fewer 700s and Max 7s than it is
21 capable of selling, or it will sell airplanes at lower
22 prices. Either or both will have a material negative impact
23 on Boeing's production and shipments of the domestic like
24 products. Net sales, gross margins, operating income,
25 returns on investment and research and development

1 expenditure.

2 The number of production-related workers,
3 hours worked and total labor income all will decline.
4 Boeing will be forced to spread large fixed costs for the
5 Max 7 over fewer units. The inability to gain orders will
6 further damage the Max 7's commercial momentum, making
7 future orders even more unlikely. Ultimately, the loss of
8 commercial momentum will impact the company's ability to
9 finish developing the Max 7 and to fund the next generation
10 of product.

11 For threat purposes, what is most telling is
12 lack of any orders from the U.S. airlines for the Max 7
13 since 2013. Injury is locked in at the time that the order
14 is lost. As Professor Nickelsburg has explained, this is
15 precisely the type of situation where historically LCA
16 producers have been forced to exit the market, and that is
17 precisely the risk that the domestic industry faces in this
18 case.

19 That is why it is necessary to address the
20 threat now, and not when Bombardier makes additional sales
21 in the future. Thank you. I'll now turn it over to Pat
22 McLain.

23 STATEMENT OF PATRICK J. MCCLAIN

24 MR. MC LAIN: Good morning. I'm Pat McLain at
25 Wilmer Hale. The ultimate question for the Commission is

1 whether material injury would occur unless an Order is
2 issued.

3 The Commission should answer this question by following its
4 normal practice as it did in the preliminary: Look at the
5 economics of this industry. Look at what Bombardier has
6 done and what it can do, and has the economic incentive to
7 do, independent of this case.

8 On this basis, it is not a close call. First,
9 the record shows further dumped and subsidized imports will
10 likely increase to significant levels in the imminent
11 future. This is clear from the evidence cited on pages 84
12 and 86 of our confidential brief.

13 Bombardier has already made the Delta sale. The
14 initial Delta deliveries are either finished or in
15 production, and those subject imports are due to start this
16 spring. This is imminent by any measure. And Bombardier
17 will likely win additional U.S. sales in the imminent
18 future.

19 The Commission saw this clearly in the
20 preliminary determination. Bombardier must adhere to its
21 production ramp-up, but it badly needs major orders to do
22 so. Bombardier will target the U.S. market for those
23 additional orders. There's not really a dispute about this.

24 On page 14 of its brief, Bombardier refers to
25 the, quote, "unique importance of the U.S. market," and

1 states that, quote, "no manufacturer of LCAs can expect to
2 build a successful program without access to the United
3 States."

4 We agree. And the same goes for Boeing 700 Mach
5 7. Both sides need the U.S. market. The problem is, the C
6 Series will own the U.S. market if you go negative.

7 Second, Bombardier low-price strategy, the Delta
8 sale for importation, and the imports for Delta are causing
9 adverse price effects and will continue to do so. There is
10 no dispute that Bombardier pricing at Delta was low.

11 Bombardier admits on page 64 of its brief that it offered,
12 quote, "Particularly favorable pricing."

13 Bombardier asks you to discount this as benign
14 behavior, but the record shows otherwise. Confidential
15 evidence shows--and Mr. McAllister has confirmed, that
16 aggressive C Series pricing is depressing Boeing's prices
17 right now and will continue to do so.

18 This is consistent with the record evidence on
19 substitutability and the importance of price, as Mr.
20 Anderson just mentioned. Bombardier even states at page 62
21 of its brief that airlines cross-shop the C Series in
22 Boeing's 737, 700, or Mach 7. And the staff report shows
23 that price is very important in purchasing decisions.

24 Finally, Boeing and Bombardier agree that the
25 Mach 7 is in bad shape. On page 13 of its brief Bombardier

1 states that perspective purchasers, quote, "fear orphan
2 aircraft and low residual values." Indeed they do.

3 On page 94 of its brief, Bombardier refers to the
4 Mach 7's, quote, "failure to achieve commercial success."
5 We agree that this has happened. The Mach 7's total order
6 book is less than the C Series 75 firm orders from Delta.

7 The question is why. Why does the C Series have
8 commercial momentum while the Mach 7 is on the verge of
9 failure? It's not because the C Series is a fundamentally
10 different aircraft in a different market. Again, these are
11 substitutable products and price is very important. It's
12 not because the Mach 7 is a flawed design. The Mach 7 is a
13 more efficient successor to the 737/700 airplane that sold
14 over 1200 units worth tens of billions of dollars. And the
15 Mach 7 is positioned in the 100- to 150-seat market that
16 everyone agrees is worth many billions of dollars over the
17 next 20 years. Nor is it because the C Series is a
18 clean-sheet design. That meant very little in terms of
19 major sales until Bombardier started dumping the airplane at
20 extreme levels.

21 What matters for this case is the C Series is a
22 low-priced airplane that suppresses and depresses prices for
23 the domestic like product, even after accounting for
24 nonprice differences. The evidence discussed on pages 95 to
25 104 of our brief confirms this.

1 In sum, the Mach 7 is on the verge of failure
2 because it is competing against subsidy created and dumped C
3 Series airplanes in the U.S. market. This constitutes a
4 threat of material injury.

5 Bombardier asks the Commission to disregard the
6 Mach 7's troubles as unrelated to the C Series, and
7 something Boeing should remedy on its own. On page 58 of
8 its brief Bombardier contends that there is, quote, "nothing
9 like the C Series."

10 This assertion of attenuated competition is
11 incorrect for the reasons I just mentioned. Bombardier also
12 ignores the indisputable fact that it could not have brought
13 the C Series to market on a commercial basis. The C Series
14 only exists right now because of subsidies. And the C
15 Series has pushed the Mach 7 to the brink because those
16 subsidies are working as intended.

17 Bombardier's solution, as stated on page 93 of
18 its brief, is for Boeing to use sales revenues from
19 out-of-scope products to, quote, "finance further research
20 and development of the Mach 7 or another aircraft. By this
21 logic, the Commission should ignore the fact that the Mach
22 7's viability is at risk even before it enters service, and
23 force Boeing to go right back to the drawing board to
24 compete against the C Series. Never mind that subsidies
25 created the C Series. Never mind the C Series' low prices,

1 its commanding share of the U.S. market, the harm it is
2 causing now, or the U.S. sales it is likely to take in the
3 imminent future.

4 But the law does not permit the Commission to
5 look away when the subject merchandise is killing off the
6 domestic like product. The law requires an affirmative
7 determination and the imposition of Orders. Thank you.

8 MR. NOVICK: That concludes our presentation. We
9 are happy to take your questions.

10 CHAIRMAN SCHMIDTLEIN: Okay, thank you very much.
11 I'd like to thank all the witnesses for being here today and
12 helping us to understand this case.

13 We will begin with Commissioner Williamson for
14 the Commissioners' questions.

15 COMMISSIONER WILLIAMSON: Thank you, Madam
16 Chairman. And I want to express my appreciation to the
17 witnesses for coming today and presenting their testimony.
18 I also want to thank Boeing for the very valuable instructor
19 tour at the Renton Facility that we had earlier, I guess
20 back in October.

21 The first question is, can you provide any
22 examples of 737/700 or Mach 7 aircraft that operate between
23 100 and 125 seats? When you look at the table at Table 1-1
24 where they list all the competing aircraft, the CS-100 is
25 the only that's really below 120. And so I'm just curious

1 about that.

2 MR. McLAIN: Pat McLain. If -- Commissioner, I
3 think one of the best things to look at in that regard is
4 the confidential evidence in Exhibit 101 to the Petition
5 which concerns the seating configurations that were at issue
6 in the United campaign. And I think you can see that it's
7 pretty close between the CS-100 and the 737/700.

8 COMMISSIONER WILLIAMSON: Okay. So without
9 getting into confidential information, was that a
10 nonstandard? I mean you kind of used this table, Table 1-1,
11 used sort of a standard configuration for all the airlines,
12 I think.

13 MR. NOVICK: Commissioner Williamson, Bob Novick
14 for the record. If I--I want to make sure I understand your
15 question. When a customer seeks a plane, it seeks it for a
16 particular mission. And there are several planes that are
17 in the segment in the market that can serve that mission.
18 They may choose one or the other. They're not all
19 identical, obviously. And so the question is: What are
20 their choices in terms of competitive products?

21 And the campaign that you're referring to
22 involved a competition between the CS-100 and the 737/700.
23 Those were the planes that competed. The customer makes a
24 decision about each plane based on what it's looking for at
25 that moment. It might decide that a plane with 119 seats,

1 or 117 seats, or 125 seats is the one it wants, versus 128
2 because--I mean who knows why? That's a customer question.
3 But the way the airplane manufacturers work is they build
4 planes to serve a segment of the market--in this case, the
5 100, 150-seat market--and the question is: What planes are
6 they competing with?

7 For Boeing, what they do is they compete with the
8 737/700, and now the Mach 7, in that space against those
9 very same planes. So they don't--I mean a customer could
10 obviously ask for a different seating configuration, but
11 that's a different question than what the plane is that
12 they're competing.

13 COMMISSIONER WILLIAMSON: Okay, let me get to the,
14 I guess where I was heading with this. Delta claims that
15 you didn't lose the sale to Bombardier because they wanted
16 110-seat aircraft. And that Boeing doesn't make anything in
17 that range. And so I'm really questioning how do you
18 respond to their claim that you really didn't lose it
19 because you didn't make anything in the size range that they
20 particularly wanted?

21 MR. MC ALLISTER: Well regarding the Delta
22 campaign, the request from Delta and the commercial solution
23 we were working on involved used aircraft. That was the
24 solution that we were heading down. And it wasn't until the
25 C Series came in and offered the pricing that it offered

1 below \$20 million that a new aircraft entered the market
2 into that competition.

3 And that pricing is--obviously, the max 700--the
4 700 or the Mach 7 could not compete. I would reference that
5 customers, as they look at--including Delta's--they look at
6 demands across the network and city pairs they want to
7 connect. They look at what is the right-size aircraft to
8 serve the broad network, as well as the concentration in
9 network. And in this case, the Mach 7 like the C Series
10 offers transcontinental capability, and falls in a very
11 clear segment of 100 to 150 seat aircraft.

12 COMMISSIONER WILLIAMSON: But I think the question
13 I'm raising, because in a sense Delta almost implies it,
14 there's a 100- to 110-seat category which I guess can be
15 serviced by Embraer, maybe moving up--so that's the question
16 I'm asking. If Delta says I want a 100- to 110-seat
17 aircraft, you don't have one.

18 MR. MC ALLISTER: Yeah, we don't see categories in
19 the marketplace with customers that are as finitely defined
20 as 100- to 110 seats. That's just not the reality in the
21 market. Customers look at a segment of 100 to 150 seats
22 where we have the Mach 7 and the 700.

23 MR. NOVICK: And, Commissioner Williamson, if I
24 might add--Bob Novick, for the record again--if you look at
25 what Delta actually purchased, it purchased 75 to 125

1 planes, C Series 100s, with the option to take C Series
2 300s. They could take up to 90 CS 300s as part of the
3 purchase that they made.

4 And so what they ended up buying, what they ended
5 up buying weren't used aircraft that they said they wanted,
6 they ended up buying essentially an entire 20-year supply of
7 planes that are in the 100- to 150-seat market. They
8 established the price for all of those planes, because the
9 price for the CS 300 is established as part of the contract,
10 and so they have set the market for the entire 100-to
11 150-seat market with that purchase.

12 So when you look at what they did versus what
13 they say, it is quite different. They may have gone into
14 the market thinking about it that way, and they may well
15 have decided the CS 100 served certain purposes for them,
16 but they ended up buying the full range.

17 And you mentioned the transcon--you mentioned
18 Embraer could do that, you're right. They have planes that
19 have more than 100 seats, but they don't have
20 transcontinental capability. The very reason, or at least
21 one of the very reasons that Bombardier built the C Series,
22 they have regional jets already. They built the C Series so
23 they could offer a transcontinental option so it could
24 compete with Boeing in the 100- to 150-seat market.

25 So the plane that Delta bought was one with

1 transcon capability. It bought the CS 100 and the CS 300,
2 set pricing for the market for a long period by doing that,
3 and so to come in and say we wanted a plane that serves
4 exactly this number of seats is maybe what they started
5 with, but what they ended with is quite different than that.

6 MR. ANDERSON: And I would just like to add--Chuck
7 Anderson--that if the 100- to 110 segment were truly unique,
8 then that Delta price would not have had an impact on future
9 Boeing Mach 7 pricing and sales. And we've presented
10 evidence that it does indeed have an impact on price,
11 suggesting that it's not a distinct segment, again because
12 airlines do have essentially a number of physical
13 characteristics of the aircraft that they balance off
14 against each other when arriving at purchasing decisions.
15 So it's just not simply the number of seats.

16 COMMISSIONER WILLIAMSON: Okay, yeah, there are
17 plenty of examples of people switching, moving up and all,
18 but--and maybe this is post-hearing--I'm still trying to
19 figure out why somebody wants a 100- 110-seat plane to fly
20 transcontinental. I mean it seems like, you know, I'm so
21 used to hearing about the hub-and-spoke system, but what's
22 the evidence or examples of why that is an important
23 consideration?

24 MR. NICKELSBURG: Jerry Nickelsburg. The 100- to
25 150-seat market segment defined by the number of seats--

1 COMMISSIONER WILLIAMSON: I'm talking about the
2 lower end of it. I know the scope is 100 to 150, but that
3 lower end of it. Why would somebody want or need a plane to
4 fly transcontinental for that?

5 MR. NICKELSBURG: I understand. I'd like to give
6 some historical context and then come directly to your
7 question. So first of all, this market has been defined for
8 about 60 years by the airlines, by those two
9 characteristics, that seat bracket, 100 to 150 seats, and
10 transcontinental capability.

11 And why I say this is that Convair with their 990
12 tried to enter this market, the 100- to 150-seat market,
13 with an aircraft that ostensibly would have transcontinental
14 capability. It turned out that when they delivered the
15 aircraft to American Airlines, it did not. And so they lost
16 to American Airlines, and they lost the market and
17 ultimately exited because Boeing came in with the 720 and
18 720-B that did have transcontinental capability.

19 So that's been what the airlines have been
20 demanding. So then the question is why did they demand that
21 all these years? And the answer is that airlines fly a
22 network of routes. They just don't fly--

23 COMMISSIONER WILLIAMSON; No, I understand. I
24 used to work --

25 MR. NICKELSBURG: Yes--

1 COMMISSIONER WILLIAMSON: --interested in the
2 subject.

3 MR. NICKELSBURG: Right. So when they're buying
4 for that network, if that network importantly needs
5 transcontinental capability, they're in the 100- to 150-seat
6 LCA. If it does not need that, then they're in the regional
7 jet market, which is the market that you're referring to.

8 So that's really the distinction, is what the
9 network that the airline is trying to operate their aircraft
10 over requires.

11 COMMISSIONER WILLIAMSON: Okay, thank you. By the
12 way, was there a popular name for that? And when was that
13 period?

14 MR. NICKELSBURG: The Convair?

15 COMMISSIONER WILLIAMSON: Yes.

16 MR. NICKELSBURG: So that's the Convair 990
17 Coronado that was produced in San Diego, California, and it
18 was produced between 1961 and 1963. They started with a
19 large order with American Airlines, but the lack of
20 transcontinental capability was really the death of that
21 airplane.

22 COMMISSIONER WILLIAMSON; Okay, thank you. Thank
23 you for those answers.

24 CHAIRMAN SCHMIDTLEIN: Thank you. Commissioner
25 Broadbent?

1 COMMISSIONER BROADBENT: Thank you. I want to
2 thank Mr. McAllister for giving us a great tour. You have a
3 really impressive staff out there in Renton and we enjoyed
4 it.

5 MR. McALLISTER: Thank you very much.

6 COMMISSIONER BROADBENT: Okay, the thing I was
7 struck by is there is no in-scope products being produced in
8 that plant.

9 MR. McALLISTER: In scope?

10 COMMISSIONER BROADBENT: In scope, in domestic
11 product that we're looking at.

12 MR. McALLISTER: Yeah, we are obviously in the
13 process of, as you know the 700 has more than 1200 orders in
14 its history, and we are in the process of introducing the
15 Mach 7 into the market over the next two years.

16 COMMISSIONER BROADBENT: Okay.

17 Mr. Novick, I'm really struggling with the
18 domestic like product as the Commission looks at it. And
19 I'm getting a tension in your arguments on domestic like
20 product and interchangeability. So on domestic like product
21 you rely largely on the idea of physical differences,
22 particularly size and seat count limit the
23 interchangeability between in-scope and out-of-scope
24 aircraft. However, the seat count difference between the
25 smallest and the largest in-scope aircraft really exceeds

1 the difference between the craft's most similar out-of-scope
2 out-of-scope aircraft.

3 How can the Commission determine that there is
4 limited interchangeability between 138 seat 737 Mach 7 and a
5 162 seat 737 800? But then again moderate to high
6 interchangeability between the 130 seat 737 Mach 7 and the
7 108 seat CS 100?

8 MR. ANDERSON: So it's really not just about seat
9 count. There are a number of different physical
10 characteristics that we think make up the like product.
11 Seat count is of course important, but range is important,
12 maximum take-off weight is important. All of these factors
13 go to essentially--feed into the performance parameters of
14 the plane and its operating costs.

15 We think that on balance, if you take all those
16 factors into consideration, it basically then dictates the
17 particular end uses for the plane. That is, if an airline
18 wants a smaller aircraft because they basically are always
19 trying to keep the seats filled to the maximum amount, or
20 are flying through high-end airports, they'll choose this
21 particular aircraft for their mission.

22 Again, I think the Ascend Data is very compelling
23 evidence, the graph, that these are in fact distinct
24 markets. Because if the--yeah, can you put that back up,
25 Will? There's the orders for the Mach 7 down there. I

1 don't know if you can see it or not. And here's the orders
2 for the Mach 8.

3 Now if these were really--if customers were
4 really indifferent, then wouldn't you expect to see demand
5 much closer? Wouldn't you expect to see more people buying
6 the Mach 7 because they could use it interchangeably?

7 The reality is--but instead you see a huge
8 difference in the demand curve because it's a different
9 market. That is, that particular market, the 100- to
10 150-seat segment, with transcontinental range, is
11 essentially served by those aircraft that are in the red.
12 And in some they're actually--they perform much differently
13 from the next segment up. And that's why there's such a
14 clean break.

15 MR. MC LAIN: Commissioner Broadbent, I should
16 also add, and perhaps Mr. McAllister can elaborate, but that
17 middle single-aisle segment between the Mach 8 and the A-320
18 is such a well-defined distinct market segment that there's
19 also a producer and customer perception distinction there
20 that, you know, if the Mach 8 is competing against
21 something, what aircraft is it competing against?

22 COMMISSIONER BROADBENT: Could you say your first
23 sentence again? I didn't quite get it.

24 MR. MC LAIN: That there is just an extremely well
25 defined mid-size single-aisle market segment, and that's the

1 8 versus the Air Bus A-320, or this 800 versus the A-320.

2 MR. MC ALLISTER: That's correct. When customers
3 look at where a Mach 8 would compete, it is always against
4 an A-320 Neo. Now there are customers obviously who when
5 you look at wanting transcon capability, but wanting less
6 seats in the aircraft, a Mach 8 would not be the product
7 that they would be looking for. They would be looking
8 specifically in a segment of 100- to 150 seat, or a 700, or
9 a Mach 7 would compete. Very distinctly from the 737-800 or
10 a Mach 8 with the A-320.

11 COMMISSIONER BROADBENT: So you're giving me a
12 demand argument? Distinctions in demand?

13 MR. ANDERSON: I'm using this as an illustration
14 to sort of support the argument that these are very
15 different markets. Because if airlines were truly
16 indifferent to buying the Mach 7 or Mach 8, wouldn't you
17 expect to see their demand curves much closer together?
18 Especially given the fact that the Mach 7 is cheaper. Why
19 wouldn't they buy Mach 7s? One of the things that I think
20 really makes this not a continuum are the magnitudes of the
21 price gaps. And those price gaps are of a magnitude you
22 don't oftentimes see. And they're also reflective of even
23 larger operating costs over time.

24 So for that reason, basically, you know, these
25 are different models that cost airlines different amounts to

1 run, and they're very different.

2 COMMISSIONER BROADBENT: Okay, and what I struggle
3 with here is just the tradeoff of parameters, and really a
4 long continuum and airlines trying to calibrate in a very
5 sophisticated way the best usage for the price. And I think
6 our capabilities with the software, the abilities we have
7 now, make that an easier exercise for airlines and make this
8 more of a fluid continuum market. I'm really struggling
9 with the hard dividing lines that you guys are laying out.

10 MR. MC ALLISTER: If you look at an airline's
11 decision on which airplane fits, we work very closely to
12 understand what's the demand in the city pairs those
13 airlines have. And to the extent that they want to serve
14 the broader transcon capability, an airline is always
15 incented to be able to fill an airplane. To have what is
16 called "high load factors."

17 And so it is very important that, as an airplane
18 gets selected by an airline, that the amount of passengers
19 it carries, and therefore the load it has, be optimized.
20 And so airlines were looking for something where you
21 couldn't fill repeatedly through its network a larger
22 aircraft size would fall into the 100- to 150-seat class
23 that they're looking for, making it very distinctive.

24 And as you mentioned, price is obviously a very
25 significant consideration in this airline's decision. And

1 while operating cost is a factor, it occurs over time versus
2 price which occurs at point of order or sale.

3 COMMISSIONER BROADBENT: Mr. McAllister, who's
4 the customer that's alright with sitting at the end of an
5 eight-year skyline or kind of being bumped or adjusted if
6 you were all going to start a new production for a new
7 contract?

8 MR. MC ALLISTER: Typically, customers are
9 spread across the skyline. An individual customer's order
10 will occur over a number of years and they do that in order
11 to phase in airplanes in a non-disruptive way into the
12 network versus being concentrated in the end. And one thing
13 for certain when an airline places an order it's firm. It's
14 a firm obligation for us to have an airplane available and
15 it's a firm obligation for them to take an airplane.

16 But throughout time, as needs change or their
17 network changes, there are opportunities where a customer
18 may want to move from one year of delivery to another year
19 of delivery, maintaining the general spread of aircraft over
20 a number of years.

21 COMMISSIONER BROADBENT: Okay. This is, I
22 guess, would be for Mr. McAllister or for Mr. Nickelburg.
23 Given the success of the larger 737s, as well as the
24 hundreds of historical sales of 737s, 700s, wouldn't this
25 generate the type of commercial momentum for all 737s that

1 you say is critical for the success of any model?

2 MR. MCALLISTER: The decision to buy Mac 7 or
3 737, as we've said, it's a stand-alone. For us, obviously,
4 we view it as a stand-alone and our customers do too. And
5 so momentum on a broader or another member of the 737
6 doesn't, in itself, drive momentum. What does is pricing on
7 the order of what Bombardier put at Delta. It puts
8 immediate pressure on Boeing.

9 If you look at what's happening in the market
10 today is there is a strong replacement cycle needed for
11 aircraft of that size in the market. The pricing Bombardier
12 put at Delta creates an immediate pricing pressure in the
13 market. It sets the pricing in the market, not only for the
14 CS-100, but sets the pricing in the market for the CS-300
15 and sets the pricing in the 100 to 150-seat market.

16 The result of that has been a number of people
17 who would be otherwise today discussing airplanes in this
18 100 to 150-seat market discussing replacement orders are
19 waiting on the sidelines to find out what the pricing of
20 this airplane will be to them.

21 COMMISSIONER BROADBENT: Okay. I guess -- and I
22 guess Mr. Nickelburg, can you just help me on commercial
23 momentum here? I'm trying to understand this concept and
24 whether you've sort of developed it for this case or this is
25 something that you teach in your business school and how you

1 would balance that against Boeing's strong reputation, it's
2 success with the larger 737 Mac products and just it's long
3 history and really superior performance in the U.S. economy
4 and globally.

5 MR. NICKELSBURG: The way to think about
6 commercial momentum is to think about it in terms of the net
7 present value of the aircraft. And that net present value
8 involves the purchase price. It involves the operating
9 costs. It involves the residual value. And an aircraft
10 that sells well then creates economies of scale;
11 particularly, in the secondary market when the aircraft is
12 sold to smaller airlines. Economies of scale in support in
13 like training and maintenance and spares inventory -- all of
14 the things that keep aircraft flying when they encounter
15 problems or keep the pilots and the flight crew current in
16 the aircraft.

17 If you have a small production run, those costs
18 go up because you have fewer aircraft to spread the original
19 capital cost of those support services over. Moreover, if
20 you have a thin market for the aircraft, that is, there's
21 not many aircraft in the market, larger customers are not
22 going to be able to find sufficient numbers to satisfy their
23 fleet, so you have less demand when the aircraft are turned
24 into the secondary market. That affects the residual value.
25 So the residual value is lower if the lifetime operating

1 costs are higher then the net present value of the aircraft
2 goes down and that means that the price has to fall in
3 order to create a value proposition for the airline. So
4 that's kind of the calculus that goes into it.

5 And if we think about the case here, if the
6 capital cost is already very low and you're not making many
7 orders, as with the Mac 7, so the other components of that
8 net present value calculation are declining, then for the
9 airline the value proposition is not as attractive and
10 that's why the lack of orders saps commercial momentum and
11 leads to further lack of orders and conversely.

12 MR. NOVICK: If I might just add, in your
13 question I thought I heard you say did we develop this
14 concept to this case. I draw your attention to the slide
15 that Airbus and Bombardier put out when they announced their
16 joint venture, which links the Delta sale and the Air Canada
17 sale to the commercial momentum that they had. This is a
18 concept that everyone understands. They embrace it. They,
19 in fact, are now talking about the great commercial
20 momentum they have because of the Delta sale and how they're
21 going to capitalize on that commercial momentum with the
22 Airbus/Bombardier joint venture.

23 And just, if I might add, which I probably
24 should be clear about from my earlier testimony, we don't
25 for a minute question the logic of the joint venture. We

1 understand why Airbus and Bombardier would get together to
2 target Boeing further in this segment. We question the
3 economic logic of another line and particularly the logic of
4 that if there are no orders in place. I want no ambiguity
5 as whether we're questioning why they might've done this
6 joint venture. Bringing the two companies together with
7 all the government backing they have is a powerful
8 combination.

9 COMMISSIONER BROADBENT: Okay, my time's
10 elapsed, sorry.

11 CHAIRMAN SCHMIDTLEIN: Okay, thank you. I
12 wanted to follow up on this question about like product.
13 And Mr. Anderson, you mentioned wire rod and pipe, but a
14 more recent case that I had in my mind is the washing
15 machine case, right, which is a retail product. There we
16 found that there was a single like product, that there was a
17 continuum. There are washing machines that are bigger in
18 size. They have different features. There are different
19 segments of the market, right? There are more expensive
20 machines. Some of them even now have an extra space where
21 you can do two loads at once with different settings, right?
22 But notwithstanding that, we found that there was one like
23 product.

24 At the other end of the continuum were machines
25 that had agitators, right, which is the thing that sticks

1 out, so not to take us too far down in the weeds, but my
2 point is that these were really different machines, right?
3 And they are different price points and arguably different
4 segments of the market. I had the same question in my mind
5 with regard to tires. So we had a number of tires cases
6 here at the Commission in the last year or so and there are
7 clearly different classes and tiers of tires. Now who is
8 selling in each of those tiers was a question, but there are
9 expensive, high-end tires and then there are cheap tires,
10 right? And again, we found that there was a continuum of
11 product.

12 So here where you have airplanes that there's a
13 little bit of overlap in the seats that you could put in it,
14 you know, they're obviously being used for the same purpose,
15 so how do I distinguish those other cases from here?

16 MR. ANDERSON: Well, let me start by saying I've
17 done a little bit of work on washers and also a little bit
18 of work on tires and you're correct in washers in that there
19 is a very wide spectrum of washers the Commission has seen
20 from the least expensive, conventional agitator models to
21 the super expensive dual washing models, et cetera, et
22 cetera.

23 There are literally hundreds of different models
24 within that spectrum and it's a very continuous slope of
25 upwards price, lots of different products. The differences

1 between two adjacent models may be fairly imperceptible.
2 That creates a spectrum. That creates a continuum.
3 Similarly, with tires, tires come in it seems like countless
4 variations of size and things like that. This is a very
5 different market. Essentially, what you're asking is, is a
6 737, Mac 7 and 8 and a 9 and a 10 a continuum. We don't
7 think so. It looks much more like a step because of the
8 substantial differences in operating costs and the
9 substantial differences in price. Those we believe clearly
10 distinguish the products from each other.

11 Again, I go back to the point that I made in my
12 testimony. If customers truly were indifferent on flying a
13 Mac 7 versus a Mac 8, then why would you not see more sales
14 of the Mac 7? The demand curve is very different,
15 suggesting they're operating at very different markets. To
16 add a 100 to 150-seat LCA segment that has transcontinental
17 range has a distinct market, which are smaller, thin routes
18 that do fly across transcontinentally where the airlines
19 needs some type of aircraft to fit that need. They don't
20 want to fly a 170-seat aircraft on that route on a regular
21 basis because the demand is not there to fill all those
22 seats regularly. So therefore that is why the airlines
23 spends hundreds of millions of dollars to develop smaller
24 variance and to offer those in the market because there is
25 essentially enough differences in operating costs and things

1 like that to make it a truly distinct product.

2 CHAIRMAN SCHMIDTLEIN: So okay, so let's bring
3 it back to the facts in this case. Can you -- or maybe Mr.
4 McAllister, you want address -- talk about how the fact that
5 in the United sales campaign that's mentioned in the
6 petition where there was a loss revenue allegation. You did
7 have a sale there and then later, and it is public -- in the
8 public staff report. That sale of whatever it was -- I
9 don't remember -- 700s or Mac 7s -- was converted to larger
10 aircraft.

11 So in terms of talking about customers come in
12 and they calculate their net present value based on their
13 vision of what the demand is going to be and so forth and so
14 on, does that not suggest that this is a bit more -- at
15 least between the 7 and 8 of a continuum if you got an
16 airline -- and you know Canada argues that this happens
17 quite a bit. That there is this fluidity in that airlines
18 buy one thing and then later convert to something else.

19 MR. ANDERSON: So when that happens the airline
20 voluntarily agrees to pay millions of dollars more. If it's
21 a multi-aircraft order, it's in maybe the hundreds of
22 millions of dollars more. If it were truly indifferent, why
23 would they pay that additional money for that larger
24 aircraft? It's because the airlines projected mission needs
25 have changed since the time of the original order. They're

1 now looking for a larger aircraft because they either
2 project demand on certain routes to be greater or they're
3 changing their ideas of what routes they're going to fly
4 to, but they're not just -- they're just not indifferently
5 saying, oh, we want the bigger one because it can serve the
6 same need. It's got very different operating economics
7 which means that their projected mission needs have changed
8 since the time of the original order.

9 CHAIRMAN SCHMIDTLEIN: And that was a loss
10 revenue allegation. Did that affect the additional price
11 that the United would pay on the larger aircraft, Mr.
12 McAllister?

13 MR. MC ALLISTER: If I could just comment back
14 on the ^^-

15 CHAIRMAN SCHMIDTLEIN: Well, my question really
16 is now about when United converted to those larger aircraft
17 did the fact that you -- you know you allege that there was
18 loss revenue from the downward pricing pressure from the
19 Delta sale on this United campaign. Did that flow through
20 to what United had to pay in terms of -- you know they paid
21 more for the bigger plane? Did that have an affect on what
22 United paid for those larger planes?

23 MR. MC ALLISTER: If I could just make one
24 comment on the first half of your question.

25 CHAIRMAN SCHMIDTLEIN: Can we come back to that

1 so I don't forget what I'm trying to ask? I'd just like Mr.
2 McAllister since he's the fact witness.

3 MR. MC ALLISTER: This is the information about
4 the pricing that's confidential.

5 CHAIRMAN SCHMIDTLEIN: I don't want to know the
6 exact pricing. I just want to know whether or not the
7 downward pressure that was put on because it's public that
8 there was a loss revenue allegation having to do with that
9 United campaign. It's public that those planes were
10 converted to larger planes. Can you tell me whether that
11 downward pricing pressure flowed through and had an affect?
12 You don't need to give me magnitude. You don't need to
13 give me -- did it have an affect on the price when they
14 converted to those larger planes?

15 MR. MC ALLISTER: You're asking whether the
16 price of the larger plane that United converted to --

17 CHAIRMAN SCHMIDTLEIN: Right.

18 MR. MC ALLISTER: Whether the price that Boeing
19 had offered the 700 at United bought when they then decided
20 to take the 800 instead what was the -- was there a downward
21 pressure on the price of the 800 as a result of the original
22 price on the 700; is that the question?

23 CHAIRMAN SCHMIDTLEIN: Yes. Was there an
24 affect? Your allegation is there was loss revenue, right?
25 You had to reduce the price for that sale. They then

1 converted to a larger plane. So my question is was there an
2 affect from that original downward pressure on that larger
3 plane price? Can you answer that? I mean most of this is
4 all public? I'd like Mr. McAllister to answer. He's the
5 head of commercial aircraft at Boeing. You don't know
6 whether or not in this case -- you have two allegations.
7 One is revenue and one is sales.

8 MR. MC ALLISTER: Yes. If I could just respond
9 to the question this way, the decision was not made to
10 replace a need for 700-size aircraft or Mac 7s with Mac 8s.
11 It was a need in the bigger operating segment for more
12 airplanes. It's my perspective that any airline who does
13 that is fitting a separate need. Not using the larger
14 aircraft to serve what would've been the Mac 7 market, but
15 to serve a need in the fleet over that delivery period for
16 the bigger aircraft.

17 It is also my perspective that an airline would
18 come back, given the pricing of the Bombardier C Series on
19 the Mac ^^^^ the Bombardier C Series would come back and
20 compete -- re-compete aircraft in the 100 to 150-seat
21 segment. So there is no question that there has been
22 significant price degradation in the 100 to 150-seat market.
23 And I don't have it handily here in front of me what impact,
24 obviously, that had in any other and wouldn't --

25 CHAIRMAN SCHMIDTLEIN: So to your knowledge --

1 MR. MC ALLISTER: It's sensitive pricing
2 information of United and I'd rather not provide it in this
3 open forum.

4 CHAIRMAN SCHMIDTLEIN: You can't say whether
5 there was any affect.

6 MR. MC ALLISTER: I'd just prefer to provide it
7 in a confidential manner.

8 CHAIRMAN SCHMIDTLEIN: Okay.

9 MR. MC ALLISTER: And put it to the Commission
10 at a later date.

11 CHAIRMAN SCHMIDTLEIN: Okay, alright, if you
12 could do that in the post-hearing brief that would be great.

13 MR. MC ALLISTER: I've very worried, as you
14 pointed out, obviously, very weary as to commercial
15 airplanes that we don't discuss specific commercial
16 negotiations with any individual customer. I again want to
17 point out, though, that the decision to make the bigger
18 airplane, which is relative to a very separate need for a
19 larger aircraft in a different network use in the airline.

20 And I would also point out that I expect that as
21 they look at the need in the 100 to 150-seat market any
22 airline would come back at the pricing of the C Series and
23 compete or re-compete that market.

24 CHAIRMAN SCHMIDTLEIN: Does this happen -- how
25 often does this happen that airlines convert their orders to

1 different airplanes.

2 MR. MC ALLISTER: You know it happens. Airlines
3 convert up in size and they may convert down in size. It
4 depends on how things within the network change. You may
5 see that set of a piece of the network will involve cities
6 where you can handle 170 plus passengers and fill the
7 airplane with regularity and that would mean that you could
8 use an 800, but in this case there was a separate need, not
9 a use of a Max 8 to fill a Mac 7 network plan. It was a Mac
10 8 to fill a separate need within the fleet plan.

11 CHAIRMAN SCHMIDTLEIN: So do most contracts
12 include that sort of option for airlines to convert to a
13 different type of airplane?

14 MR. MC ALLISTER: Most of our contracts are
15 specific. I would say all of our contracts are specific on
16 the type of aircraft and the delivery year.

17 CHAIRMAN SCHMIDTLEIN: But the option to
18 convert.

19 MR. MC ALLISTER: The option to convert there
20 are minimal -- there are conversion opportunities for
21 customers, but obviously, we have a 20-year partnership with
22 a customer when they select their airframe. To the extent
23 that there are opportunities to sit down and discuss varying
24 fleet needs, varying aircraft needs we will always sit down
25 and work with them. It doesn't in any way suggest that that

1 100 to 150-seat market could be served by a larger airplane
2 or that their fleet plans they were no longer of
3 considerable importance to them.

4 CHAIRMAN SCHMIDTLEIN: Okay, alright, my time is
5 up. Vice-Chairman Johanson.

6 VICE CHAIRMAN JOHANSON: Thank you, Chairman
7 Schmidtlein. And I would like to thank all of you for
8 appearing here today.

9 On the question of the timeframe for imminence
10 you all please comment on the claim of the Bombardier at
11 page 68 of its brief? That is, that there is no support or
12 precedent for the Commission using a period greater than two
13 years. This is also discussed by the Government of Canada
14 on pages 10 to 11 of its brief.

15 MR. NOVICK: The concept of imminence as you
16 know, is one that is tied to the conditions of competition
17 in a particular industry and the Commission has in many
18 cases looked at the conditions of competition and seen
19 periods that are longer than two years. There's no
20 statutory or other condition that places a two-year limit on
21 imminence. It is tied to the condition of the industry. I
22 think that the argument that you're referring to that they
23 made suggests that if you have a sale for importation --
24 like you're going to have the imports within a two-year
25 period somehow that precludes the Commission from reaching

1 an affirmative finding. That's simply wrong. The law is
2 quite clear the sale for importation provision is the harm
3 comes from the sale for importation, not from the import.

4 If you accepted the argument that they make, the
5 conclusion would be that if tomorrow Bombardier offered
6 every U.S. airline a sale on planes and said you can have as
7 many planes as you want at whatever price you want, but you
8 can't take delivery for 25 months. Would the Commission not
9 be able to find injury? That's what that reading would
10 suggest.

11 Congress was quite clear when it added the sale
12 for importation provision that it was intended to deal with
13 large capital equipment cases. They cite aircraft
14 explicitly. I can read from the legislative history. There
15 is no obligation that the imports come in, in any particular
16 timeframe. If the Commission were to conclude that the lag
17 time, as I think everyone agrees, in this industry is
18 somewhere between four and five years between order and
19 delivery. The imminence period would have to reflect that;
20 otherwise, in a sense, by definition, you'd be depriving
21 certain industries that have long lag times between orders
22 and deliveries of relief.

23 Congress added the sale for importation
24 provision so that you would be in that position, in fact,
25 quite to the contrary. They instructed you that where

1 there's a sale for importation or even a potential sale for
2 importation it's that event that you look at and the injury
3 is determined based on the sale for importation and not on
4 the imports. So we don't accept the argument that there's a
5 fixed imminence period of two years and that if the imports
6 don't come in within that somehow the Commission can't vote
7 affirmative.

8 That said; we don't even come up to that issue.
9 We have imports that are imminent from the Delta sale. The
10 Connants by Bombardier that some how their questionnaire
11 response was not -- you know they weren't aware of the
12 expectation of the new joint venture that -- you know that
13 the questionnaire response came in a month after the
14 announcement of the joint venture. Separately, as I said
15 earlier, that we have comments by the CEOs of both Airbus
16 and Bombardier that they're in discussions with other U.S.
17 airlines, so you have a potential sale for importation and
18 so we don't even get to that question; but you asked what I
19 think is the legal question and that the answer to that is
20 it can't be. An imminence period is defined in such a way
21 that if sales for importation occur and the deliveries from
22 that sale for importation are outside some arbitrarily
23 picked period the Commission can't find an affirmative
24 injury or threat of injury determination -- may a threat of
25 injury determination. It can't be the way the statute is

1 read, but we will certainly provide in our post-hearing
2 brief an analysis of the statutory construction that was
3 presented by Canada, in particular, and Bombardier.

4 It misses the fundamental point that in 1984
5 Congress made quite clear that the sale for importation was
6 adequate for a finding of injury or threat of material
7 injury regardless of when the imports come in.

8 VICE CHAIRMAN JOHANSON: Thank you, Mr. Novick.
9 Also, for your post-hearing brief, could you please comment
10 on the confidential statement at the bottom of page 12 of
11 Canada's brief? Specifically, I am referring to the last
12 three lines of page 12, which are in brackets.

13 MR. NOVICK: Of course, we will

14 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.
15 Novick.

16 Following with the Government of Canada, could
17 you please comment on the Government of Canada's legal
18 interpretation of our statutory guidance on imminence,
19 especially, the passage on page 12 of its brief. And in
20 particular, could you also comment on the special care
21 standard for threat determinations that is mentioned in the
22 legislative history as discussed in the Government of
23 Canada's brief at page 34, footnote 103.

24 MR. NOVICK: We will do so.

25 VICE CHAIRMAN JOHANSON: Thank you, Mr. Novick.

1 When considering imminence, how should we take
2 into account the cutoff period for changing a manufacturer's
3 skyline? That is, the last date for which flexibility for
4 any conversion cease? Does Bombardier's estimate of 18 to
5 24 months mentioned at page 69 of their brief seem correct?

6 MR. NOVICK: I want to make sure I understand
7 the question. It may be better for Mr. McAllister or
8 Anderson. You're asking at what point does a customer have
9 to lock into a delivery that they want so that they can't,
10 at that point, change it?

11 VICE CHAIRMAN JOHANSON: Yes, that is what --
12 yes. Bombardier estimates 18 to 24 months of what they note
13 is a cutoff time after which the order cannot be changed. I
14 believe I'm characterizing Bombardier correctly there.

15 MR. MC ALLISTER: Relative to a customer we are
16 working with to the extent they had a need for airplanes in
17 a shorter period than that, we would obviously work to make
18 an airplane available. Whether it was going out in the
19 market and finding least available capacity for them in that
20 size or whether it would be, in fact, looking for
21 opportunities within our skyline to create an earlier
22 opportunity.

23 What 18 to 24-month supplies do is in the event
24 that we had larger orders we would do what we routinely have
25 done over decades, which is look at a capacity increase at

1 rent. We would make the decision to go increase our
2 capacity on the Mac line in rent and raise that capacity and
3 make the capability to provide airplanes to that customer in
4 that period of time. That is a typical lead time in order
5 to get ourselves and the supply chain ready to deliver, but
6 it doesn't mean we can't serve demand prior to that within
7 the skyline or within other modes like lease availability.

8 VICE CHAIRMAN JOHANSON: And to interject here,
9 what I was referring to was flexibility for conversions, if
10 that clarifies for you.

11 MR. MC ALLISTER: Yes, typically, obviously,
12 because it is very different in our production system to
13 bring through a Mac 7 or a Mac 8 or a different aircraft.
14 Obviously, those lead times are important for us to
15 adequately plan the production system.

16 MR. ANDERSON: I'd just like to turn it back to
17 Bombardier. They've said 18 to 24 months. What that means
18 is that the Delta aircraft clearly entered into production
19 many months ago, so I do think that has relevance to your
20 imminent period. And with respect to conversions, the only
21 conversions possible in Canada are from a 100 to 300. And
22 obviously, both are scope merchandise, so I think that's
23 relevant as well.

24 VICE CHAIRMAN JOHANSON: Thank you, Mr. Anderson
25 and others. The yellow light is on, so I'd better stop

1 there, but thank you for your responses.

2 CHAIRMAN SCHMIDTLEIN: Commissioner Williamson.

3 COMMISSIONER WILLIAMSON: Thank you. Continuing
4 on that line and to this question of imminence and the
5 question that you can't base a threat on conjecture or
6 supposition and so my question is were orders of delivery
7 are fluid and particular not in the 18 to 24-month period,
8 but beyond that as we have many examples of people changing
9 their orders or sometimes even people even getting out on
10 them, given that fluidity isn't it kind of conjecture or
11 speculation to say what orders are going to beyond I'll say
12 24 months out?

13 MR. NOVICK: I just want to come back to the law
14 and what Congress said just to set the parameter, so I'm
15 going to just read from legislative history.

16 COMMISSIONER WILLIAMSON: I'm sorry. I agree
17 with you, yes, we have the flexibility to look out further
18 than that.

19 MR. NOVICK: I'm going to address your question.

20 COMMISSIONER WILLIAMSON: Okay, go ahead. I'm
21 sorry.

22 MR. NOVICK: Or at least try to.

23 COMMISSIONER WILLIAMSON: Okay.

24 MR. NOVICK: So Sections 101(A)(2) and (b),
25 amended Section 701(A) and 705(B)(1) of the Tariff Act of

1 1930 of the Act "To explicitly permit countervailing duty
2 investigations when there are present sales for future
3 delivery, but no present imports. The Administration
4 supports this proposal. As the CBD investigation" -- and
5 we're back to Canada and Bombardier -- "investigation of
6 railcars from Canada demonstrated the situation where the
7 sale occurs years before actual importation the loss of the
8 bid (sale to the foreign competitor) is the point at which
9 injury occurs."

10 So when a sale is made and a price is determined
11 and demand at that moment is taken out of the market, there
12 is injury that occurs. We've talked about price
13 transgression. It sends a price to the market. The fact
14 that two years later, hypothetically, the customer decides
15 to take a larger plane or decides to push it out a year
16 doesn't undermine the impact that that sale had. That price
17 point was set. The market understands what that price point
18 is and the competition has to react to that. That's where
19 the injury comes from. Congress was clear, crystal clear
20 that the harm comes at the moment of the sale.

21 It's not a question what happens two years later
22 or six months later or three years later. It happens at the
23 moment of the sale. You can't -- in a large capital goods
24 case where you're going to have deliveries long after the
25 order is made the question of whether there's injury or

1 threat of injury is determined then, not when imports come
2 in, not if there's a subject or change. The harm occurs at
3 that moment. Certainly, there's a price harm that occurs at
4 that moment. If the sale continues through, as most do,
5 you have a volume impact as well.

6 So I just want to make sure we can talk about
7 the fact that there are changes later on and there might be
8 this and some customer up gauges, but the law is designed,
9 the statute is clear, the legislative history is clear.
10 Your precedent is clear that the sale for importation is the
11 time that you look at to determine whether there's a threat
12 of material injury, and here we have two such sales.

13 COMMISSIONER WILLIAMSON: Post-hearing, can you
14 maybe address examples where we've actually applied this in
15 a period beyond two years?

16 MR. NOVICK: Well, let me just clarify what I
17 said. I don't know that you've ever said there's an
18 imminence period beyond two years. You didn't need to do
19 that. You certainly have found threat of material injury
20 where there were no imports. That's clear.

21 COMMISSIONER WILLIAMSON: Yeah.

22 MR. NOVICK: What I'm saying is, you can't
23 construe the statutes, you can't read the statute to
24 essentially, as a matter of law, take industries out of its
25 ambit because the time between order and delivery exceeds

1 some period, some period that Canada would like to say is
2 two years. Why is it two years?

3 COMMISSIONER WILLIAMSON: Okay. I understand
4 that point. I guess the question I'm raising is, this goes
5 to the interpretation that's speculative and conjecture,
6 say, what's the standard there? And is that relevant here?

7 MR. NOVICK: Well, maybe we were talking about
8 different parts of the statute. But we believe--I
9 believe--that the Commission -- we're here because it's for
10 the Commission to determine, to decide, based on the
11 information it has before it, which is the more credible
12 scenarios based on what rational actors do in a market and
13 what the record evidence shows.

14 And I, in our opening, made the points about
15 what information is on the record, what's--as an economic
16 matter--logical to do. Do you build a second plant when
17 your first one isn't functioning? The joint venture says
18 Mirabel's gonna be the primary production line. There's a
19 promise that the workers will all be retained and employed.
20 They're talking to other U.S. airlines.

21 The fact that they say they're gonna build a
22 facility in Alabama tells you how critical the U.S. market
23 is. So against the weight of all that, which I don't think
24 requires a lot of speculation to include that there's a
25 potential -- it's all they have to find, there's a potential

1 or likely -- you don't have to find that there are --
2 against the speculation that there's gonna be this big, new
3 shiny plant in Alabama that's gonna come online and sell all
4 the planes -- they're gonna sell to all these American
5 Airlines?

6 I'm curious when they're gonna make these sales
7 -- even if there are no orders. Somehow all these people
8 are gonna say, "We'll wait a couple of years, however long
9 it's gonna be, to buy your plane," but there are no orders.
10 You can sell it to me right now without any duty. You can
11 give me that same Delta price right now with no duties, but
12 you're actually gonna wait two, three years for that plane?
13 Bombardier's gonna wait two, three years to sell that plane
14 if there are no orders in place? That's speculation and
15 conjecture.

16 COMMISSIONER WILLIAMSON: That was the
17 conjecture and speculation question I had for them. But I
18 also had this one for you.

19 MR. NOVICK: Well, now they're ready for it. So
20 I'm happy for them.

21 COMMISSIONER WILLIAMSON: Yeah, but could you
22 get to this one -- I mean I understand clearly what you're
23 saying about the statute and what it's expecting. I'm just
24 raising the question of --

25 MR. NOVICK: Then I do apologize, Commissioner

1 Williamson. I missed the respective question where --

2 COMMISSIONER WILLIAMSON: No, I'm just raising
3 the question, was it not the fluidity and those changes?
4 And it may not. But I'm just raising the question.

5 MR. NOVICK: Well, not at all.

6 COMMISSIONER WILLIAMSON: What you have to say
7 about it?

8 MR. NOVICK: I guess, not at all. Again, coming
9 back to the moment in time in which the question has to be
10 -- the question about threat of injury has to be asked is at
11 the time of the sale. Right?

12 It is not the case, and Mr. McAllister can speak
13 to this, that this industry is one in which every day people
14 are just changing their orders, you know, wildly, like,
15 we're gonna -- "Hey, forget that one. Hey, do this one."
16 Let's go up, let's go down. It happens. You work with your
17 customers.

18 Remember, these are, as you say, in other large
19 capital equipment good cases and is true here, these are
20 large, they are lumpy orders. People don't go buy these,
21 you know, do their fleet planning by 75 to 125 planes and
22 go, you know, "Never mind."

23 In some cases, new management might come in and
24 decide on a different strategy. Sure. But when you have an
25 airplane manufacturer with--and I know this sounds the

1 same--subsidiaries dumping its planes, making clear that the
2 U.S. market is critical, which no one disagrees with, making
3 a sale, it doesn't make it speculative that some customers
4 in the business, some customers eventually at some point may
5 wanna change which plane they actually buy. Every sale for
6 importation, every sale that's made, doesn't change over the
7 period between the order and delivery. Most of them go
8 exactly as planned with maybe a little tweaking. And --

9 COMMISSIONER WILLIAMSON: And in fact, that was
10 gonna be my question. Maybe post hearing, anything you have
11 --

12 MR. MC ALLISTER: If I could just -- we talk
13 about fluctuations, we're talking about small changes. In
14 the vast majority of airline orders, we deliver the airplane
15 in the timeframe that they contractually want the airplane,
16 that is when we deliver it. And you know, the issue really
17 is, right now, because we have a number of airlines who are
18 gonna go through a replenishment cycle or a fleeting cycle,
19 who are gonna make decisions on aircraft in the 100- to
20 150-seat market.

21 So obviously the impact for us in the very near
22 term is a decision that will impact not only the U.S.
23 market, but it's a seal of approval on an airplane, and it's
24 a pricing expectation that will move within the U.S. and
25 across customers, customers who are very important to us,

1 because they represent growth segments for us in the
2 industry.

3 COMMISSIONER WILLIAMSON: Okay. I was gonna
4 say, post hearing, if you have any data readily available or
5 something that you can substantiate -- 95%, 80% of the
6 orders are, you know, or orders originally ordered, but it'd
7 be helpful. I'm not asking you to create anything special,
8 but if there's something that's --

9 MR. NOVICK: We'll provide --

10 COMMISSIONER WILLIAMSON: -- available, that
11 might be --

12 MR. NOVICK: -- some information for you. We'll
13 provide some information, Commissioner.

14 COMMISSIONER WILLIAMSON: -- that would go to
15 this point. I'm sorry. Mr. Anderson?

16 MR. ANDERSON: Yeah, the only thing I'd like to
17 add is that, when you're considering imminence, I think you
18 should really focus on the situation in Mirabel, which is
19 what does a production skyline look like? How many orders
20 do they really need to get over the next five years to get
21 down the learning curve? If they don't do that, they're
22 gonna be saddled with higher costs permanently.

23 Given the importance of the U.S. market in this
24 segment, I think that provides the Commission with really
25 strong rationale as to why there's likely to be additional

1 sales in the imminent future. Plus we do have the fact that
2 these Delta planes are clearly in production and they have
3 been scheduled--if nothing happens with this case--to be
4 imported in the very near future.

5 COMMISSIONER WILLIAMSON: Okay. Thank you for
6 those answers.

7 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?

8 COMMISSIONER BROADBENT: Okay. Going to
9 negligibility, Mr. Novick, if there are no imports in the
10 next 18 to 24 months, but there are sales made in that
11 period, are subject imports negligible?

12 MR. NOVICK: I'm sorry? Could you repeat the
13 question? I apologize.

14 COMMISSIONER BROADBENT: Sure. If there are no
15 imports in the next 18 to 24 months, but there are sales
16 made in that period, are subject imports negligible?

17 MR. NOVICK: No. The statute speaks to
18 potential imports as well, and so to the extent there's a
19 sale, which is gonna provide for imports at some point in
20 the future. They're not negligible, because the statute
21 speaks not just to actual imports, but the potential for
22 imports when they're talking the negligibility standard. So
23 no, they wouldn't be negligible.

24 COMMISSIONER BROADBENT: But how do we measure
25 them?

1 MR. NOVICK: Well, in the abstract, I don't
2 know. In this case, it's easy. Because we're talking about
3 almost any order, certainly the Delta order would result in
4 imports that so far exceed the negligibility standard. As I
5 said in my opening testimony, as we put in our petition,
6 just the deliveries that are scheduled for next year would
7 take the market share and the percent of imports to 100
8 percent in 2018 and 61% from 2018 to 2021.

9 So could one construct a sale that -- I'm not
10 even sure what the effect of one plane would be -- it
11 probably would exceed negligibility as well. But in a
12 hypothetical world, maybe you could have a sale, and the
13 sale wouldn't be enough to trigger a volume that exceeds 3%,
14 but that's not the case here.

15 COMMISSIONER BROADBENT: Okay. Let's see. This
16 would be probably for Mr. McAllister. We got a statement on
17 the record from a Darryl Jenkins of the American Aviation
18 Institute saying, for years, Boeing has ignored the
19 smaller-sized aircraft, which the large network carriers did
20 not use due to scope-clause agreements with their pilot
21 unions, the labor contracts.

22 Basically the scope-clauses were used as
23 economic arbitrage to let smaller regional airlines, which
24 paid their pilots less, fly smaller aircraft from less
25 populated areas to their hubs. Delta Airlines was the first

1 major airline to have a 100-seat wages assigned to their
2 mainline pilots. Could you please explain how the
3 scope-clauses work in the airline industry, and if they have
4 any relevance to the conditions of competition in this case?

5 MR. MCALLISTER: In this case, we are talking
6 about an airplane that sits in the 100- to 150-seat
7 requirement. That is being used transcontinental. At the
8 extent of its network, I don't believe it -- it has no
9 relation to scope-clause.

10 And I'd also say that most importantly, it's
11 hard to say we ignore segments, where on the 700, we've had
12 more than 1,200 orders in our history. And if you look
13 around the world, there are a number of obviously very
14 important Boeing customers, not only today's Boeing
15 customers, but customers in growth markets of tomorrow, that
16 will require airplanes in the 100- to 150-seat category. So
17 I think the segment's very important to Boeing.

18 COMMISSIONER BROADBENT: Okay. On Page 43 of
19 Bombardier's brief, and Page 54 of Delta's brief, they
20 described as Boeing and Airbus as having abandoned the low
21 end of the single aisle market despite demand where for
22 these aircraft continuing as you would agree.

23 Can you comment on this characterization? Why
24 did Boeing and Airbus stop, at least for a while, the
25 production of aircraft in the low end of the 100- to

1 150-seat LCA market?

2 MR. MC ALLISTER: I would recognize that Boeing
3 showed its commitment to this segment by deciding to improve
4 the 700 with the Max 7. Obviously, we would not invest
5 monies, time and people to go make an airplane that's better
6 in that segment than its predecessor if we didn't intend,
7 obviously, to compete vigorously in that market, which we
8 are.

9 That segment is very important to Boeing for
10 customers who simply need that capacity of aircraft in the
11 market. We certainly haven't abandoned it. I think there
12 has been effect, obviously that as the Delta pricing becomes
13 known in the market and the dialogue we're having today,
14 people are waiting to see, before they make a decision
15 relative to their fleet decision, what happens.

16 Because it has a very big impact on our ability
17 to put Max 7, an airplane we absolutely believe in. This is
18 a terrific airplane with a strong value proposition in the
19 market, a large number of customers who will be considering
20 this airplane, some customers who have great growth
21 prospects where this airplane will be the heart of their
22 business. We obviously want to compete in that.

23 Besides that, it is a complex production line.
24 It is a different airplane coming down the production line
25 for mechanics. You know, we obviously work productivity

1 every day in the operation to be able to manage the ability
2 to increase rates when demand goes up. And the Max 7 is a
3 distinct aircraft coming down the line. It is a different
4 work package for our mechanics. It has differences in
5 things like wire bundling and mechanics' work scope, all
6 that impact the production system. So we invested in the
7 product. We invested significantly in the product because
8 we believe in the market. And we need a return on that
9 investment.

10 MR. NICKELSBURG: Commissioner, may I? Jerry
11 Nickelsburg speaking. May I follow up with just a little
12 historical context to your question? The notion of
13 abandonment, I think is incorrect. If you look at the
14 history of aircraft in this market, you'll see that, for
15 example, Boeing came out with a 737-500. It was to meet a
16 specific customer need. And that aircraft ran for a while
17 and then stopped.

18 They didn't abandon it. This was
19 customer-driven. Airbus, the same thing. And we see that
20 kind of historically, that manufacturers will enter the
21 lower end of the market with a smaller gauge aircraft to
22 meet specific customer needs, but the general market is
23 served by that aircraft that is really kind of optimized
24 for that market. That would be where the Boeing 737-700 and
25 Boeing 737, Max 7 is, and where the Airbus A319 is.

1 So these are aircraft that are sitting in the
2 middle of that market. And the manufacturer will, for a
3 period of time, produce a smaller version, depending on
4 specific customer demands for specific needs. And so that's
5 what it looks like over time, coming in and going out. It's
6 not abandonment. It's meeting customer needs in this 100-
7 to 150-seat market segment.

8 MR. ANDERSON: Commissioner Broadbent, I think
9 the answer to this one is pretty simple. If we had
10 abandoned this market, we would not have invested in the Max
11 7. We, Boeing, put out hundreds of millions of dollars to
12 create a successor airplane to the 737-700, where there is
13 an installed base of 1,200 aircraft. So to sort of suggest
14 that we're abandoning the 100- and 150-seat segment
15 entirely, I think is just incorrect.

16 COMMISSIONER BROADBENT: But I'm trying to get a
17 comparison between how your plane just performs, compared to
18 the C-series of Bombardier, in terms of quietness and
19 technological innovation, so forth. I mean it seems like
20 you've got sort of an older plane that you're kind of, you
21 know, buffing up maybe to try to sell in that market, but
22 Bombardier has come in with a whole new concept. And can
23 you kind of talk to me in layman terms about how the two
24 planes compare?

25 MR. MCALLISTER: We are obviously very proud of

1 the value proposition, the Max 7, as I said, we changed the
2 Max 7 from the 700 to be more competitive. The aircraft
3 provides incremental range to our customers. It provides
4 incremental seats to our customers. It provides world-class
5 emissions and fuel-burn capability, a generation of
6 improvement on the order of 16+ percent versus its
7 predecessor.

8 This is an airplane with a very strong value
9 proposition to compete. It is certainly not entire
10 technology. The aircraft has a compelling value. It has
11 customer interest, significant customer interest in the
12 market. And as you can appreciate, we would never, in the
13 Boeing Company, put a tired aircraft out into a market where
14 a decision we make has a 20-year implication. Boeing always
15 competes. It's a hallmark of the company to lead in
16 technology. And we're very proud to say that the Max 7
17 leads in technology. This is about the price of the
18 airplane and where it could naturally compete.

19 MR. ANDERSON: And I just go back to my
20 testimony and that is, nobody's denying that the C-series
21 has attracted performance characteristics to customers. But
22 the question is, how much does it cost to offer those
23 technological developments and are you pricing your products
24 so that you are recovering those costs?

25 Boeing chose a derivative route because it was

1 its assessment of the market that in this highly competitive
2 market, where low-ticket prices really compel the lowest
3 possible aircraft prices, that airlines just weren't willing
4 to pay for those technological improvements. Therefore,
5 they essentially thought that the most optimal solution is
6 to offer a derivative.

7 Now, if there's another airplane on the market
8 that has those technological improvements and they're not
9 basically adjusting the price accordingly, then of course,
10 that'll be attractive to U.S. airlines. But that's
11 essentially, I think, the essence of what the countervailing
12 duty law is all about, is that if there's essentially an
13 unfair comparative advantage, bestowed by subsidies, that
14 the law is intended to address that. And not to treat that
15 as a "non-price factor".

16 MR. NOVICK: And I'd like to just pick up on
17 that for a moment, if I might, Commissioner Broadbent. If
18 we go back to the preliminary and the timeline of what sort
19 of transpired here. Bombardier built this plane, it
20 struggled, it struggled, it struggled. It was on the verge
21 of bankruptcy by its own admission.

22 And then as the Commerce Department has
23 determined, as we said at the preliminary, the government
24 came in and bailed it out. Everyone, the U.K., Canada,
25 Quebec, Delta, all basically say, this plane wouldn't exist

1 but for the subsidies. Okay. Now, it's here. And as we
2 testified earlier, and as the CEO of Airbus made clear, that
3 this plane didn't sell even up until the point that it came
4 and it offered the price to Delta that it did.

5 It was on the verge of collapse. The company,
6 the plane, all of the money that the government's provided,
7 didn't get them far enough. The original money, the launch
8 that was provided to start the plane. The government's had
9 to come in one more time as they were on the brink of
10 bankruptcy to sort of give the plane the ability to sell at
11 the price point that they did at Delta. And it's only as a
12 result of that, that the plane has commercial momentum
13 today, and clearly whether if they sold it at a fair price,
14 they'd actually beat the Max 7 in the competition.

15 COMMISSIONER BROADBENT: Okay, thank you.

16 CHAIRMAN SCHMIDTLEIN: Okay. So I wanna go back
17 to this question of imminence and I wanna be careful that we
18 separate the discussion of injury and when the injury is
19 occurring from this question of when the imports may occur.
20 So I feel like it's been a little bit conflated at points.

21 But the question about whether or not there are
22 going to be subject imports from Canada imminently exceeding
23 the negligibility standard, if we accept, for the sake of
24 argument, that the Delta planes are going to be built in
25 Alabama, and they're not going to be imported from Canada,

1 regardless of the outcome of this case.

2 Let's say we accept that for the sake of
3 argument. What is the substantial evidence that there will
4 be other imports from Canada that will imminently exceed the
5 threshold, the negligibility threshold? So if you take
6 Delta off the table, what do you point to?

7 MR. NOVICK: So there are a couple of different
8 data points that I point to. One is the fact that they have
9 made clear, some is in their confidential response, some in
10 public statements, that they are engaging with other U.S.
11 airlines right now.

12 As Mr. McAllister said, many airlines are
13 waiting to see the outcome of this case, to decide what to
14 do. Because they wanna decide whether to get the Delta
15 price, or they have to pay a fair price. But they're
16 talking to other airlines. There's no reason to question
17 that they're gonna sell to another U.S. airline.

18 Obviously, if taking your proposition, if
19 they're gonna have a plant in Mobile to serve only U.S.
20 airlines, they're gonna sell to somebody, right? So they're
21 gonna sell to another U.S. airline. There's no reason that
22 a U.S. airline couldn't take the Delta planes that are now
23 coming off of the factory line in Mirabel, which are
24 certainly well along the way to production. So that's one
25 source of imminent imports if there's another

1 self-importation. Now, if you say to me --

2 CHAIRMAN SCHMIDTLEIN: But it's not a sale.

3 It's just they're discussing it. We don't have a --

4 MR. NOVICK: There's not a sale, yeah, but you
5 don't --

6 CHAIRMAN SCHMIDTLEIN: -- another sale then,
7 right?

8 MR. NOVICK: -- it's a likely -- the statute
9 looks to whether there's a likely sale for importation or a
10 sale for importation. So if you conclude there are likely
11 sales for importation, you can reach the affirmative
12 finding. So that's one possibility.

13 I'm not saying that there's a sale, but what
14 you're hearing is a discussion of sales with other U.S.
15 customers, other U.S. customers writing you saying, "Don't
16 impose orders," because they have an interest in this plant.
17 So there's a likely sale for importation.

18 And if you say to me, Mr. Novick, you know what,
19 let me take the hypothetical one step further, let me assume
20 for a moment that even those U.S. airlines won't take the
21 planes from Canada -- to supply the planes from Alabama that
22 they say they're gonna supply in a reasonable period, I
23 think -- I wanna be careful not to say anything that might
24 be confidential, but public statements, and I think even
25 today, they've talked about something in the two-year

1 range, they'd be up and running and selling planes.

2 Those planes will be sold with partially
3 assembled aircraft coming from Canada. The stuff fuselage
4 coming from Canada will be the import that will be necessary
5 to make that plane. So there'll be imports, even under your
6 scenario, even under a scenario you believe everything they
7 tell you, everything they tell you, what will come in will
8 be subject merchandise.

9 CHAIRMAN SCHMIDTLEIN: Still covered by an
10 order?

11 MR. NOVICK: Covered by this, covered by this
12 scope -- it's within the scope of --

13 CHAIRMAN SCHMIDTLEIN: Within the scope?

14 MR. NOVICK: Correct.

15 MR. MCLAIN: Chairman Schmidtlein. Pat McLain
16 for the record. I think also, I understand the
17 hypothetical, but even under that hypothetical, we have to
18 remember that there are planes being built for Delta right
19 now at Mirabel. So it's hard to take Delta totally off the
20 table. What's gonna happen to those planes?

21 And we see, you know, there's a published
22 Reuters report in our prehearing brief about maybe some
23 arrangement to give those to Aeromexico who have a
24 relationship with Delta. But that speaks to, you know,
25 certainly that's the potential for imports above a

1 negligible threshold in an imminent period of time when
2 you've got planes that they're trying to figure out what to
3 do with to not have them come and incur any dumping duty
4 liability.

5 CHAIRMAN SCHMIDTLEIN: How does the Airbus 319
6 fit in to this market? It's competing with C-series and the
7 700 Max 7, right?

8 MR. MCALLISTER: Yes, I mean --

9 CHAIRMAN SCHMIDTLEIN: So does that further --

10 MR. MCALLISTER: It has been the natural
11 competitor, the 319neo, the 319 have been the natural
12 competitors to the Boeing 737-700 and the Max 7, that's
13 correct.

14 CHAIRMAN SCHMIDTLEIN: So doesn't that add an
15 additional uncertainty, if you will, into what's going to
16 happen with regard to future sales? Since we have
17 non-subject essentially? I don't know where the A319 is
18 built. Is it built in the United States? It's not, right?

19 MR. NOVICK: No.

20 CHAIRMAN SCHMIDTLEIN: So they have to import.
21 So we have non-subject, potential imports that's competing.
22 So does that not introduce another factor of uncertainty in
23 terms of where, what, you know, who's going to win those
24 sales and where would those imports come from?

25 MR. NOVICK: You know, having announced this

1 joint venture, Airbus and Bombardier have suggested that
2 they're gonna compete with the C-series more than with the
3 A319. So they've, in a sense, signaled to the market that
4 the C-series is the plane they're gonna compete against
5 Boeing with. Both of them together. Now that's -- I would
6 take their word for that.

7 Having said that, you know, when you think about
8 the market power they have, as they have both planes
9 available, you're right. They could offer the 319 to Legacy
10 customers that want the plane. I think, and Mr. McLain,
11 who's got a better command of the facts, I have to confess,
12 there doesn't appear to be import -- I forget the numbers on
13 Airbus sales to the United States, and even if they're
14 confidential or not --

15 MR. MC LAIN: Madame Chairman, the petition
16 market share data, which is public, it shows that there are
17 some -- you know, we assume for purposes of the petition,
18 that those would not be imports, but there's some A319 sales
19 in the United States for future delivered.

20 CHAIRMAN SCHMIDTLEIN: Did Boeing compete for
21 those sales?

22 MR. MC ALLISTER: Boeing will compete vigorously
23 on a level playing field with the 319 and the C-series. We
24 obviously -- I can't speak for what Airbus and Bombardier
25 strategy might be. Our strategy is to compete vigorously on

1 a level playing field, bringing the value of the Max 7 or
2 the 737-700 brings our customer base, and the extent that
3 here are campaigns for 319 airplanes, it's my expectation
4 that Boeing will be asked to compete against the 319 as we
5 always have, and will be asked to be competing against the
6 C-series and will compete vigorously.

7 CHAIRMAN SCHMIDTLEIN: So for the 319s that are
8 scheduled to be delivered in the United States soon, I
9 suppose, and I know there's a chart and the staff might be
10 able to flip to it quickly, but did Boeing compete for this
11 sale?

12 MR. MC ALLISTER: Obviously without knowing which
13 specific airlines those 319s apply to, I don't have that top
14 of mind. But, look, Boeing has competed with Air Bus head
15 to head with the 319 in the U.S. market, and all over the
16 world. I expect that obviously if they're near-term
17 deliveries that are firm binding agreements with Air Bus,
18 that those airplanes will be delivered as 319s. We would of
19 course compete on any downstream follow-on orders for
20 aircraft in the 100- to 150-seat class.

21 MR. NOVICK: We'll provide the detail on that for
22 the Air Bus sale and what the campaign was in the
23 post-conference--in the post-hearing brief.

24 CHAIRMAN SCHMIDTLEIN: Okay. Alright, let me
25 shift gears with a minute left. Let me go back to this

1 question about price transmission.

2 And, Mr. McAllister, I think it would be helpful
3 if you could discuss how exactly does price transmission
4 occur in the context of the bid process and sales? I know
5 in the prelim, you know, we talked about the Delta price and
6 so forth, but just in general.

7 MR. MC ALLISTER: Sure.

8 CHAIRMAN SCHMIDTLEIN: And let me just point out
9 one other thing, just for the sake of efficiency. In the
10 staff report, right, we asked purchasers about this. And,
11 Mr. McLain, as you are aware, 10 purchasers stated they
12 generally are not aware of the prices other purchasers have
13 paid for the in-scope aircraft. Most purchasers reported
14 that the outcome of prior sales has little effect on their
15 purchase price expectations because they are not aware of
16 those prior sales prices. That's at staff report page
17 5-20.

18 So how does that square with your all's position
19 that there is price transmission, and that the Delta sale is
20 putting downward pressure?

21 MR. MC ALLISTER: Obviously in a very competitive
22 market like the U.S. market, price is a huge determination
23 in the net-present-value calculation of an acquisition, and
24 in the overall operating economics of an airplane.

25 Price transmission in this case is real. And

1 here's how price transmission, when price departs
2 dramatically from historical pricing or pricing in the 100-
3 to 150-seat market, it happens in a number of ways.
4 Obviously, word-of-mouth. Obviously with consultants who
5 have the opportunity to work with specific airlines. But it
6 also happens in more natural ways. Banks and leasing
7 companies do sale lease-backs. They finance airplanes.
8 And to the extent that they do that, they have visibility
9 into the acquisition pricing of the aircraft.

10 So there's a number of mechanisms that can happen
11 in the market. In addition, the ability to effectively take
12 publicly available information from analysts' reports, or
13 from their financial reports, and effectively reconstruct
14 where pricing was on an aircraft.

15 I understand why that happens in the market.
16 It's a hotly contested market, and price really matters.
17 The impact of that is felt very much in a head-to-head
18 competition in the U.S. amongst very large carriers. But
19 that transmission has an opportunity to pass beyond U.S.
20 borders to customers around the globe.

21 So it's real, and it happens. In this case, the
22 transmission was fast and readily visible to many customers.

23 CHAIRMAN SCHMIDTLEIN: So why do you think the
24 purchasers answered the questionnaires the way they did?

25 MR. ANDERSON: I'll take a shot at that. I think

1 almost anyone who's answering an ITC questionnaire gets a
2 little bit nervous when asked "do you know the prices of
3 competitors?" So the natural tendency is to click "no."
4 And the natural tendency also is, for "do prior prices
5 influence future prices?" to say, no. They want to shy away
6 from that. But we have concrete evidence in our prehearing
7 brief of actual news that got out in the market, or with
8 respect to the Delta price we were able to calculate it
9 based on Delta's quarterly 10Ks--10Qs, sorry.

10 So when there is a sea change in price, like
11 there was with the Delta, airlines cannot help but take
12 notice. And here's the reason why. They compete with each
13 other. The questionnaire responses also show that the price
14 of the aircraft, or essentially its price plus its
15 financing, over the useful life of the aircraft is a major
16 component of the airline's cost. They are competing with
17 each other.

18 If there is a sea change in price, they need to
19 know about it because they have to figure out what price
20 they are capable of paying for aircraft when they go to
21 negotiate the next time. Because the person who gets the
22 real low price can lower their ticket prices and therefore
23 gain a comparative advantage over that airline.

24 So for that reason, I know what the questionnaire
25 responses say, but based on what I hear from the industry

1 there is very close attention paid to pricing, competitive
2 pricing.

3 MR. MC ALLISTER: Just one last point. I think,
4 you know, if you looked at normal fluctuations in pricing,
5 not significant departures like we're talking about here, I
6 don't think airlines spend a lot of time, at least in my 20
7 years of being out in front of the airline customers around
8 the world, understanding the variance. Because there are
9 other factors that can help make the decision move towards
10 one air frame or another.

11 It's when the pricing is so vastly different than
12 the market where transmission occurs more frequently and to
13 this extent..

14 MR. NICKELSBURG: Let me make one further comment
15 in this regard. The purchasers may have been reacting to
16 the question in the following form: Do you know exactly what
17 the Delta price was? Did you see the price?

18 They don't need to see the price. The way asset
19 markets work, as Mr. McAllister has explained, is through
20 financiers and leasing companies. No, I didn't see the
21 Delta price. I did see the leasing company offer to me. I
22 did see the financier's valuation. And that's the way the
23 price transmission works. Because those same leasing
24 companies and financiers, they know what everyone is paying
25 for aircraft.

1 And asset markets will adjust in that way, and
2 they do in aircraft and they do in other large capital
3 goods. So that price transmission goes through natural
4 competitive markets, and you actually don't need to see the
5 contract that was signed.

6 CHAIRMAN SCHMIDTLEIN: Okay. Thank you. My time
7 is up.

8 Vice Chairman Johanson?

9 VICE CHAIRMAN JOHANSON: Thank you, Chairman
10 Schmidtlein.

11 And continuing with the issue of price
12 transmission, could you all please comment on the Government
13 of Canada's confidential discussion of price transmission at
14 pages 44 to 45 of its brief? It may be interesting to join
15 this discussion with a comparison of the material at page
16 101 of your own brief, which is also confidential. I assume
17 that you will want to address this in your post-hearing
18 brief, as opposed to in this public hearing, of course. But
19 that was just a good place to put that question, as I
20 wanted to follow up with Commissioner Schmidtlein.

21 Moving on to something else, I would like for
22 Boeing to comment on the figure on page 2 of Delta's brief
23 showing the production rates for the 737/700 model. In that
24 chart, Delta demonstrates that declines in deliveries of the
25 737/700 began in 2006.

1 What are your views as to why this decline began
2 in that year?

3 MR. MC ALLISTER: You know, obviously as you have
4 seen the market evolve, there has been an increased demand,
5 as you can see, on aircraft in a separate segment, a larger
6 seat capacity aircraft, and even larger seat capacity
7 aircraft on the--in the 737.

8 But that doesn't mean that there isn't a strong
9 replacement cycle coming for the existing airplanes in the
10 field in the size of the 100- to 150-seat market.

11 There are also--as city pairs change, as
12 economies grow, as GDP grows in markets, there are a number
13 of customers who will connect small city pairs as their
14 economy spread GDP across countries, where 100- to 150-seat
15 aircraft makes perfect sense.

16 So we see two things ahead of us. One, upon us
17 right now a replacement cycle for existing aircraft that are
18 out there today. And we see ahead of us now, and imminent,
19 an opportunity for other airlines who as they grow need
20 aircraft that fit exclusively in the 100- to 150-seat
21 market.

22 VICE CHAIRMAN JOHANSON: Thank you, Mr.
23 McAllister.

24 It appears that one of the biggest issues on
25 which the parties disagree is the topic of launch and/or

1 marquee pricing. Boeing seems to be arguing that launch
2 pricing creates expectations from customers that are
3 difficult to reverse.

4 In Bombardier's brief at page 63, Bombardier may
5 have provided some support for Boeing's view when it cites
6 the example of the 787. Is it true that Boeing had to
7 provide launch pricing to the 787?

8 MR. MC ALLISTER: There's a big difference between
9 what we would call a launch pricing and what we see at the
10 Bombardier C Series at Delta. Not remotely close in terms
11 of disparity between what a launch price would do.

12 Obviously while Boeing wants to put an aircraft
13 out in the market, we're very mindful of what the cost of
14 that airplane is within the Boeing Company. We're always
15 very mindful on what that future revenue stream returned to
16 the company.

17 So I don't think it's fair to make a comparison
18 between what we've seen at the Bombardier C Series at Delta
19 and what Boeing has done in its historical practices on
20 other--of this airplane or any other airplane.

21 MR. NICKELSBURG: Let me follow that up more
22 generally with launch pricing. Launch pricing is common in
23 this industry. It happens at the time of launch, or an
24 approval--or in close proximity to that, approval by the
25 board of the airline manufacturer to offer the aircraft for

1 sale.

2 What happens at that time is that the airlines
3 who are ordering that aircraft are assuming delivery risk.
4 They're assuming program risk because they don't know the
5 exact performance of the airplane. They're assuming
6 certification risks. So there are a number of risks that
7 the airline is taking on. And to compensate the airline for
8 taking on that risk, they get a lower price because risk is
9 valuable.

10 By the time you get to certification, which in
11 this case happened in the calendar year prior to the Delta
12 purchase, all of that was taken care of. So there was none
13 of the launch risk involved in the delta purchase.

14 And so the idea that the Delta price might have
15 been a launch price, that's just not the way the industry
16 historically works and it's not related to the kind of
17 program risk that you take at the launch of an aircraft.

18 VICE CHAIRMAN JOHANSON: Could you expand on that,
19 Mr. Nickelsburg? Because the whole issue launch pricing is
20 a major part of what Bombardier is arguing here. And how is
21 it not a launch of a new model?

22 MR. NICKELSBURG: So the aircraft was certified in
23 December 2015. The Delta purchase was in 2016. So the
24 aircraft was--Delta, and everyone else, knew the performance
25 characteristics of the airplane, knew when it was going to

1 be certified, and knew the delivery schedule.

2 So these are things that you don't know at
3 launch. You're given--right--and the launch was in 2008.
4 So eight years previously an airline that was ordering the C
5 Series, you would expect to get a discount called "launch
6 pricing" because they're taking considerable program risk.
7 Once an aircraft is certified, there's no program risk that
8 they're taking anymore, and so you wouldn't expect them to
9 get a discount to assume that risk because the risk doesn't
10 exist.

11 VICE CHAIRMAN JOHANSON: But have any major
12 airlines been flying this aircraft?

13 MR. NICKELSBURG: Let me be clear. The risk is at
14 time of launch you have a paper airplane. And when that
15 airplane is finally created for flight test, you find out
16 what the airplane really will do.

17 And there are invariably differences. We spoke
18 earlier about the Convair 990. This was a case where
19 American Airlines took launch risk and the aircraft couldn't
20 perform the mission that American Airlines wanted. So
21 there's risk when you first order an airplane that is
22 nothing more than some engineering drawings.

23 That is quite different than an airplane that has
24 been certified by an aviation authority that is flying and
25 whose characteristics you know, and that is going into

1 production. So those are very different times in the
2 development of an airplane.

3 MR. MC ALLISTER: I would like to reinforce that
4 point. Launch pricing typically--launch pricing is at the
5 point that you come up with an aircraft design, and you've
6 gone to the market with the aircraft, and you've refined the
7 airplane. At some point the company makes the decision, the
8 air framer makes the decision to go offer the airplane in
9 the market.

10 Now at that time the airplane is effectively on
11 paper. We have not built the airplane. There is no
12 airplanes in revenue service. That is called "the launch
13 period." It's a period well ahead of the final production
14 configuration. It is well ahead of the availability of
15 aircraft. It is done very early in the campaign in order to
16 generate market demand, commercial momentum for an airplane
17 across the market.

18 And that commercial momentum happens in the
19 launch phase by doing it with customers obviously who have a
20 lot of airplane knowledge, who have a lot of airplane
21 credibility. It creates momentum to other customers in the
22 industry.

23 MR. MC LAIN: Vice Chairman Johanson, just on the
24 chronology, to be clear, official launch of the C Series in
25 2008. Certification, 2015. The Delta sale goes firm April

1 2016. First deliveries to the first C Series customer in
2 Europe, Swiss Air, in mid-2016.

3 So the Delta sale is very close to the actual
4 airplane going to its first customer in Europe, very far
5 from launch. And you can see this in the arguments you're
6 citing. They're shading between, oh, it's kind of launch
7 pricing but it's kind of marquee pricing.

8 The problem with marquee pricing, and I think
9 Professor Nickelsburg can address this, is there's lots of
10 marquee customers in the U.S. market. That's accounting for
11 a huge chunk of demand. So there's no reason to believe
12 that marquee pricing to Delta is a confined one-off
13 situation that won't result in every other marquee customer
14 demanding similar pricing.

15 VICE CHAIRMAN JOHANSON: Still, I mean there's a
16 whole lot we could go with here--my time is about to expire--
17 -but getting back to the argument of Bombardier, page 63 of
18 its brief, it mentions problems that Boeing had with the
19 787. And they contend that Boeing had to lower prices to
20 attract initial customers.

21 MR. ANDERSON: Again, I think may have been a
22 world of difference at launch, which can be eight years
23 before the plane is actually delivered. And when there's a
24 really high degree of risk, where you're really buying a
25 paper airplane and not a real airplane.

1 So there's that situation. The other thing is,
2 if you look at the extent of the discount, we believe the
3 Delta price discount was far below what's typical for launch
4 pricing.

5 Mr. McAllister can confirm this, but my
6 understanding is even at launch Boeing ensures that it's
7 selling above its cost of production, long-term cost of
8 production.

9 When we calculated the--

10 VICE CHAIRMAN JOHANSON: Do you have anything
11 written to that effect?

12 MR. MC ALLISTER: No, but it is--obviously it's a
13 consideration we make when we bring an airplane to the
14 market. Obviously we want to be able to bring an airplane
15 to the market--we have to bring an airplane to the market at
16 pricing above its cost of goods sold.

17 VICE CHAIRMAN JOHANSON: Okay.

18 MR. ANDERSON: And just to conclude, when we
19 estimated the dumping margin for Bombardier, we calculated
20 it based on its average long-term cost or production, not
21 its cost of building the first unit. And based on our
22 estimates, that price was 80 percent below its long-term
23 average cost of production. That is over the whole useful
24 life of the aircraft.

25 That type of pricing is unprecedented. It is not

1 launch pricing. It is not marquee pricing. It is dumped
2 pricing.

3 MR. NICKELSBURG: Just to add a little anecdotal
4 evidence for this, when I was at McDonnell Douglas in the
5 late '80s and early '90s, we never brought an aircraft to
6 market where launch pricing was not above long-run average
7 cost. So it was always profitable. And in fact there were
8 a couple of variants of aircraft that we looked at bringing
9 to market, but they wouldn't bring a price even for the
10 launch customers that would cover costs, and we never
11 brought them to market.

12 So launch pricing is above costs, and it is
13 compensation for the risks that the initial orders take
14 because the program is still uncertain and it's still a
15 paper airplane.

16 VICE CHAIRMAN JOHANSON: Okay, thank you for your
17 responses. I wanted to remind you to look at page 63 of
18 their brief. And Bombardier does contend that the 787 was
19 sold below cost of production, at least in some instances.
20 And I don't mean to denigrate the 787. I've never even been
21 on one. But this is just something that they raised. Thank
22 you.

23 CHAIRMAN SCHMIDTLEIN: Commissioner Williamson.

24 COMMISSIONER WILLIAMSON: Thank you. Continuing
25 along that line, I guess they said they were going to

1 announce the C Series in 2008, and didn't get certified
2 until 2015. Was that an unusually long period of time? Or
3 is that kind of normal? And the reason I'm asking that is,
4 did that have any effect on what one might call the marquee
5 pricing, the fact that it took that length of time it took
6 before it got certified?

7 MR. NOVICK: Let us provide you information on the
8 time between launch and first delivery or certification in
9 the post-hearing brief.

10 COMMISSIONER WILLIAMSON: Okay, good. Because my
11 question was going to be on marquee pricing, if you've taken
12 a long time and it's been more uncertain might that mean
13 there is a lower marquee price than otherwise? I know
14 that's kind of speculative, but I'm just trying to think
15 about the different terms--

16 MR. ANDERSON: Right. Just to comment, you know,
17 with a clean-sheet airplane it does take a long time. It
18 does take a number of years to go from launch to
19 certification. But the reason why Bombardier absolutely
20 needed to make the sale was because they did not have a
21 sufficient order book at the time.

22 So they were getting desperate. They were
23 getting close to production. The economics of aircraft
24 production are such that you want to have a sufficient order
25 book at the type of certification, and at the time of entry

1 into service, so that you can rapidly move down that
2 learning curve over the first five years.

3 Bombardier didn't have those orders. It was
4 getting ready to start delivering, and it didn't. It
5 desperately needed to fill production slots, and that's the
6 real rationale, we believe, behind the sale, and not
7 so-called marquee pricing or launch pricing.

8 COMMISSIONER WILLIAMSON: Is that one of the
9 possible reasons why they didn't have those sales? Because
10 it looks like there was a traunch in the demand when people
11 were ordering this category of aircraft following the
12 recession, and talking about the replacement need is not--
13 it's coming up now; it wasn't in that 2008-2015 period.

14 MR. ANDERSON: Right. But in terms of Bombardier,
15 they was also the fact that they were out in the market
16 offering the plane at much higher prices and could not gain
17 traction at that higher price.

18 The only reason they were able to lower the price
19 and get that order is because the Governments of Quebec and
20 Canada stepped in and provided them with \$2.5 billion in
21 cash equity infusions that would enable them to lower their
22 price to get that order.

23 So that was essentially, we believe, just a
24 demonstration of how difficult it was to sell the C Series
25 at its real fair market value.

1 COMMISSIONER WILLIAMSON: Okay, thank you.

2 MR. NOVICK: Commissioner Williamson, just to
3 follow up, this line of questioning is interesting. I just
4 want to come back to what Mr. Anderson said. When we
5 calculated our Petition, the cost, we assumed a successful
6 program for them. We gave them the benefit of the doubt that
7 they'd had a successful program.

8 And notwithstanding that, the margins are 80
9 percent--79-and-change. The fact that there's a replacement
10 cycle coming doesn't excuse the fact that they dumped the
11 plane at that kind of a margin to take exact advantage of
12 the fact that there's a replacement cycle, and to lock in
13 one of the major U.S. airlines, a marquee airline, and maybe
14 they got a slight additional discount because they're
15 marquee. But there are other marquee airlines that they are
16 clearly looking to sell to who, as you have in the record
17 now, information that they're not going to take a different
18 price.

19 So the harm that you're looking at, the threat of
20 harm that you're looking at, is derived directly from the
21 fact that, whatever they want to call their pricing, it is
22 80 percent below what even their costs are over a fully
23 successful program.

24 COMMISSIONER WILLIAMSON: Okay, thank you. But it
25 was helpful in understanding the dynamics of what's going

1 on.

2 Let me switch to another line of questioning. If
3 Commerce changes the scope to include the components
4 Bombardier plans to import, how should this affect our
5 analysis?

6 MR. NOVICK: Let me make sure I understand the
7 question. The scope is--Sorry, let me make sure I
8 understand.

9 COMMISSIONER WILLIAMSON: Have you asked Commerce
10 to include components?

11 MR. NOVICK: No, the scope of the Order includes
12 partially assembled aircraft. That's what we--that's in
13 response to Chairman Schmidtlein's question, assuming that
14 there's an Alabama facility that's going to supply all U.S.
15 airlines in about two years. So therefore they have to get
16 parts in to actually deliver them. The scope of what we
17 hope will be an Order, those imports will be in-scope
18 products.

19 COMMISSIONER WILLIAMSON: But did you change--was
20 there a request to have certain components included as part
21 of in-the-scope?

22 MR. ANDERSON: Partially assembled was in the
23 scope from the beginning.

24 MR. NOVICK: I'm sorry. Maybe I'm missing--the
25 scope--we've not made a request. The scope that I talked

1 about, which includes partial assembly, was in the scope
2 from the beginning.

3 COMMISSIONER WILLIAMSON: My next question is:
4 What does "fully" or "partially" assembled mean?

5 MR. NOVICK: Well when there are Orders in place,
6 we will take that up with Customs and Commerce. We believe-
7 -we certainly believe it includes a fully stuffed fuselage.
8 Those of you who were in Renton saw the difference between
9 the shell and the work that goes into stuffing a fuselage.
10 And so if a fully stuffed fuselage from Mirabel makes its
11 way to Alabama, we believe that's in-scope merchandise
12 covered by what we hope will be the Orders.

13 COMMISSIONER WILLIAMSON: Okay. How one
14 transports that is another question, but that's not for us
15 today.

16 Okay, thank you. And this you will probably want
17 to do post-hearing. What number of orders do you need to
18 make the Mach 7 a viable ongoing production model? And
19 could those orders come primarily or overwhelmingly from
20 overseas?

21 MR. NOVICK: We will take that up in the
22 post-conference brief. Certainly the short answer is: More.

23 COMMISSIONER WILLIAMSON: (Laughing) Okay, that's
24 good.

25 Now it's argued at page 50 and 54 of its brief

1 that Mach 7 is not commercially viable and serves a narrow,
2 niche of the market. And Bombardier says there are
3 fundamental problems with design and operation and economies
4 of the smallest of the 737s.

5 I was wondering how you want to respond to that.
6 You may have already, somewhat, but--

7 MR. MC ALLISTER: Well it is simply not true. The
8 airplane, the Mach 7, like its predecessor, but improved
9 since its predecessor in terms of economics for customers,
10 it is a more fuel-efficient airplane. It's got lower
11 emissions. It has a better cost-per-seat-mile. It's got a
12 seat-count advantage in the market, and it's obviously got--

13 COMMISSIONER WILLIAMSON: You mean because of the
14 larger seat count?

15 MR. MC ALLISTER: It has an increase in seat
16 comparatively versus competitors. So it allows in that same
17 100 to 150-seat market, it allows our customers, we believe,
18 a competitive advantage versus the 319 versus the C Series
19 when priced at market-based pricing.

20 MR. NOVICK: I think the point we've made a couple
21 of times in our testimony is that its predecessor, the 700,
22 sold 1,200 units worth billions of dollars. The notion that
23 a plane that's even comparable to it is somehow a plane that
24 doesn't belong in this market, which is really the logical
25 extrapolation of what Bombardier is arguing, they're saying

1 basically give up that segment. Give up that segment. Let
2 us have it and you go off and do the things that we think
3 you want to do. Go build the Mach 8s, the Mach 9s, and the
4 Mach 10s. There are billions of dollars of revenue that
5 they're saying they should--that Boeing should just walk
6 away from because they have a nice new clean-sheet plane the
7 government paid for and are dumping it in the U.S. market.

8 That's the story they're telling you. This is a
9 huge market. Boeing has built a plane that is competitive
10 in that market. As Mr. McAllister said, one they believe is
11 better than the 700, and the 700 sold 1,200 units worth
12 billions of dollars over 20 years.

13 So the notion that this is a space that the plane
14 is wrong for, or that it is not an important market, is just
15 false. Both of those are false.

16 COMMISSIONER WILLIAMSON: Okay. How important is
17 this range, the 2900? Someone had talked about I guess only
18 16 airports in the U.S. that had--they're at a high
19 altitude, or hot conditions it's particularly use for, and I
20 was just wondering how significant that is. Someone said
21 there are only 16 airports in the U.S. that fit that
22 category.

23 MR. NICKELSBURG: So there may be a small number
24 of airports, and the transcontinental range may only apply
25 to a smaller number of routes, but that doesn't mean that

1 it's not important; that it's an important way in which the
2 airlines have defined that they want to run a network.

3 COMMISSIONER WILLIAMSON: Let me rephrase. Might
4 one expect that the overwhelming number of the flights that
5 one takes with the Mach 7 is going to be shorter than 2900?

6 MR. NICKELSBURG: Sure. And there's good reason
7 for that. So if you need an airplane to fly let's say Los
8 Angeles to Washington, D.C., then you need the range. But
9 once you get to Washington, D.C., are you going to let that
10 airplane which costs you tens of millions of dollars to sit
11 on the tarmac?

12 The answer is: No. You want to increase the
13 utilization. So you fly to Washington, and then you fly to
14 another local city on the East Coast, and another one, to
15 finish out the day and increase the utilization.

16 Well in that example, which is pretty common and
17 maybe too few tags relative to the average, you have
18 two-thirds of the flights were less than transcontinental.
19 But the mission you wanted that aircraft for was
20 transcontinental. So those numbers are really misleading,
21 that most of the--or the average stage length is not
22 transcontinental and therefore it's not important. No, the
23 long pole in the tent, the thing that makes that network
24 work, is the transcontinental. And so you can't look a that
25 average stage length, or the number of flights that are

1 transcontinental versus the number of flights the stage
2 length are shorter and conclude that transcontinental wasn't
3 important for the market.

4 It has for 60 years been a defining
5 characteristic of this market.

6 COMMISSIONER WILLIAMSON: But I assume you would
7 argue that the airplane was competitive on the shorter
8 flight routes, too?

9 MR. NICKELSBURG: The airplane needs to be
10 competitive on the network in order for the airplane to work
11 for the airline. That is true.

12 MR. NOVICK: Might I ask Professor NICKELSBURG to
13 address where the question started, which was the high hot?
14 Because the range of high hot are two completely different
15 things.

16 COMMISSIONER WILLIAMSON: Very briefly, though,
17 because I am going over.

18 MR. NOVICK: I just thought it would be useful for
19 the two different concepts.

20 MR. NICKELSBURG: So the high hot airport is one
21 that is high in elevation, and hot in temperature. And that
22 means that the air is thinner--

23 COMMISSIONER WILLIAMSON: No, I understand why. I
24 was just trying to think of what cities they were.

25 MR. NICKELSBURG: So sometimes Denver would

1 qualify as that. Mexico City certainly qualifies as that.
2 There are a small number of airplanes, but they're important
3 to a network, and those are both big cities.

4 COMMISSIONER WILLIAMSON: Good. Thanks. Thank
5 you.

6 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

7 COMMISSIONER BROADBENT: Okay. Mr. McAllister, is
8 it true that Southwest Airlines plans to configure the Mach
9 7 to seat 155 passengers?

10 MR. MC ALLISTER: Obviously you can appreciate
11 that any discussions we would have with Southwest on the
12 seat count they have in the airplane would be confidential
13 between us and Southwest Airlines.

14 Obviously this airplane is a very big part of
15 Southwest's history. If you look at the 700, it has been an
16 incredible aircraft for them that's spurred lots of
17 Southwest's growth. And arguably we absolutely believe, as
18 do they, that the Mach 7, an aircraft in the 100- 150-seat
19 requirement, will be an important part of Southwest's future
20 growth in the industry.

21 MR. NOVICK: Let me -- I can't speak to what
22 Southwest will or won't do. Just to so when we talk about
23 seats as our scope is defined, we talk about seat counts in
24 a standard two-class configuration. So when we talk about,
25 as Mr. Anderson in the beginning, 136 versus 162 versus

1 other seat counts, it's based on a two-class configuration
2 with particular seat pitches, so that we're comparing apples
3 to apples.

4 Air Force One looks a little different than,
5 you know, your big 747 otherwise. So you know, airlines
6 could decide to do something different with their number of
7 seats by different -- like one class configuration or
8 different pitches, but if you're going to ask that question,
9 then you have to compare apples to apples, and I don't know
10 what the import is. We can't speak to what Southwest will
11 do, but again just to come back, it's a seat count based on
12 a particular two class configuration with certain pitches to
13 the seats.

14 COMMISSIONER BROADBENT: Right, but so that
15 information won't be available to us. We don't know if
16 Southwest will configure?

17 DR. NICKELSBURG: Let me make a comment that
18 is relevant to this. When an airline evaluates an aircraft,
19 they have a particular seat count in mind, and we use here
20 the standard seat count for the airplanes. But that might
21 be different from the way the airline wants to use it.

22 But what the airline will do is it will
23 evaluate each airplane in the same way. So the airline
24 wants to evaluate the airplanes in an apples to apples way,
25 and one way to do it is with the seat counts that are

1 standard in the industry, that has been presented here. But
2 if Southwest has some different seating, they're going to
3 evaluate competitive aircraft in the same way across
4 aircraft.

5 MR. McALLISTER: And just to comment where I
6 can, to the extent that Southwest or any other airline is
7 looking at the Max 7 or the 700, their comparison base is
8 the A319. It is the C series aircraft, and whether they
9 decide to put more or less seats in, it's a consideration
10 that they would do to any of the aircraft competing in that
11 100 to 150 seat space.

12 COMMISSIONER BROADBENT: Okay. So no one --
13 but I won't have access to that information on the 100 to
14 150 seat --

15 MR. McALLISTER: You know, obviously seating
16 configuration in an airplane is very specific to an airline
17 and, you know --

18 COMMISSIONER BROADBENT: Yeah, but it's pretty
19 -- you know, it's a pretty fine line -- I mean a pretty dark
20 line you guys have drawn here on what a domestic like
21 product is.

22 MR. MC LAIN: Commissioner, just to be clear,
23 we haven't said that if you have an aircraft that meets the
24 scope language, but the actual number of seats that are put
25 in it are greater than 150 seats, it's out of scope. That's

1 not how the scope language works. It's about the
2 capability. But for instance let's say there is an airline
3 that takes a Max 7 and configures it for 153 seats.

4 COMMISSIONER BROADBENT: 155.

5 MR. MC LAIN: Or 155 seats. The proper way of
6 thinking about that, and Mr. McAllister or Professor
7 Nickelsburg can comment is not that that makes it very close
8 to a Max 8 at a standard 162 seats. It's if you have a
9 business model, which means you're willing to put passengers
10 in at a high density configuration in a 7, then you would
11 also think of doing that in an 8.

12 So you would think of an 8 as being still far
13 away from a 7, because you're talking about an 8 in the
14 170's in terms of seat count. So it's not that you're
15 thinking about I'm going to use a high density 7
16 interchangeably with a normal density 8, because you would
17 just be flying around a much heavier plane for that kind of
18 business model.

19 MR. NOVICK: Does that address your question
20 or should we ^^^^

21 COMMISSIONER BROADBENT: I think you're not
22 going to tell me right?

23 MR. NOVICK: Sorry.

24 COMMISSIONER BROADBENT: You're telling me
25 it's an irrelevant question.

1 MR. NOVICK: If the only -- no sorry. If the
2 only question is is Southwest going to put 155 seats in
3 whatever plane it flies, we're not in a position to tell you
4 that, no.

5 COMMISSIONER BROADBENT: Okay. Let's see.
6 Mr. McAllister, can you discuss the reasons why Boeing
7 abandoned its 717 and 737 600 programs, which were smaller
8 aircraft more akin to the Bombardier's C series aircraft?

9 MR. MC ALLISTER: I obviously wasn't at Boeing
10 at the time the decision on the 737 600 or 717 but
11 obviously, from my understanding, would be that when we
12 looked at what the market wanted, it wanted a broader
13 flexibility within the 100 to 150 seat market. It wanted
14 the capability of an aircraft that can serve a broader
15 mission, a broader set of customers, growth more growth
16 potential than, for example, the 600 provided and that
17 became the Max 700. That was the growth behind the Max 700.

18 COMMISSIONER BROADBENT: Okay. If the
19 Commission decides to define the domestic like product as
20 all single aisle large civil aircrafts, we'll have to look
21 at conditions of competition in that market as opposed to
22 the more narrow 100 to 150 seat market that you all have
23 proposed. What key distinctions would you draw between
24 demand conditions in the market for in-scope, 100 to 150
25 seat large civil aircraft and the market for all single

1 aisle large civil aircraft?

2 I know Mr. McAllister you addressed this a
3 little bit earlier, but if you could just summarize your
4 perspective on the demand conditions.

5 MR. MC ALLISTER: Yeah. Typically, as an
6 airline looks at its network, if it sees a large frequency
7 of city pairs that can handle a larger seating capacity of a
8 Max 8, a Max 9 or a Max 10 and fill the airplanes, those
9 airplanes would be considerations in their fleet plan.

10 But to the extent that an airline is expanding
11 a network, or to the extent that it's serving predominantly
12 city pairs, where you could not fill an airplane of that
13 size, then the operating cost penalty of the larger heavier
14 airplane would not make sense in the economics of their
15 fleet management.

16 Nor would it make sense on a pricing
17 standpoint. So an airline we spend a considerable amount of
18 time with customers understanding what they're trying to
19 fill. What is the network they want to serve and what
20 airplane size and range fits the model, the full model of
21 what they want to serve? Even if the extent transcon was a
22 smaller number of segments, it's still required in the fleet
23 strategy of what they want to sue.

24 Even if there are only 16 airports that hit
25 that hot high, still a very important consideration to a

1 customer who flies into one of those airports and either
2 carrier's passengers to that airport are beyond that airport
3 to other cities. So they're very distinct airplanes when it
4 comes down to a fleet strategy of our airline customers.

5 COMMISSIONER BROADBENT: Okay. Looking for a
6 minute at supply conditions, what key distinctions would you
7 draw between supply conditions and the market for the
8 in-scope 100 to 150 seat large civil aircraft and the market
9 for all single aisle large civil aircraft?

10 MR. ANDERSON: I'll circle back to demand, and
11 then I'll go on to supply. So demand for all commercial
12 aircraft really is a function of the demand for air travel,
13 which is a function mainly of GNP growth. So in that sense,
14 the demand curve for small single aisle and medium and large
15 single aisle have a similar long term profile.

16 There is a very different situation with
17 regard to the replacement cycle, however. That is, if you
18 look at the orders for the 8's and the 10's and the 9's,
19 there are many more orders right now for those planes than
20 the smaller 100/150 seat segments. That's a function of the
21 fact that there were a large volume of 100 to 150 seat
22 segment seat airplanes sold in the mid-2000's.

23 So the average age of the aircraft is still
24 relatively young, and so we are at a different spot really
25 in the replacement cycle for the 100/150 seat segment versus

1 LCA as a whole. With respect to supply, we have a lot of
2 the same issues, which is obviously they're a high capital
3 intensive product. They're extremely expensive to make and
4 basically on the supply side I would say they were
5 comparable.

6 COMMISSIONER BROADBENT: Okay. Then I had a
7 question on the bar graph that you had up here, Mr.
8 Anderson. Yeah, in the third blue bar, which is attributed
9 to the Max 7, why is that one so small?

10 MR. ANDERSON: I think that's the Max 9, the
11 third blue bar. Red or blue?

12 COMMISSIONER BROADBENT: Blue, Max 9.

13 MR. ANDERSON: Max 9.

14 COMMISSIONER BROADBENT: Excuse me, yeah.

15 MR. ANDERSON: Probably I'm not the one to
16 answer that. I'll turn it to Mr. McAllister.

17 MR. MC ALLISTER: Yeah. It's both the Max 9
18 and the Max 10 launched this year, represent larger
19 airplanes than the Max 8. So they serve customers who are
20 looking for an even larger seat count on that aircraft than
21 what they would typically have in the A320 or Max. You
22 would compare it versus the A321 Neo that you see on the
23 right side of the page. Those would be similar comparative
24 airplanes versus the Max 9 or the Max 10.

25 COMMISSIONER BROADBENT: Okay, and just out of

1 curiosity, what is the Max TBD on the last purple bar?

2 MR. NOVICK: Can I -- may I just interject for
3 a second? This is not -- this is their slide from Flight
4 Ascend. We didn't prepare this slide. We just used it --
5 we used it to demonstrate the point about the segments. So
6 we don't -- I mean Mr. McAllister may know. We don't know
7 what they've put into these categories.

8 MR. MC ALLISTER: Yeah, and we have no idea
9 what Max TBD means on the slide.

10 COMMISSIONER BROADBENT: Okay. My time has
11 expired. Sorry.

12 CHAIRMAN SCHMIDTLEIN: I had two more
13 questions. One is I wanted to come back to the question
14 about what is included in a partial assembly, and I know you
15 said it's the fuselage at the least. But since it sounds
16 like you have not gone back to Commerce to get a
17 clarification or a scope ruling on what that would be, I
18 presume you're waiting to see what they would bring in. Is
19 that why or am I wrong? Have you gone back to Commerce?

20 MR. NOVICK: No, we have not. We are -- we're
21 here first trying to secure the orders we think are
22 appropriate, and only then does it really become relevant
23 what they do. We certainly ^^^^ if orders are in place and
24 they bring in partially, I mean fully stocked fuselages and
25 suggest that they're not subject to the order, we'll have an

1 issue with them at Customs and Commerce as necessary.

2 But we've not -- not done that. No reason
3 from our perspective to do that at this stage. We look at
4 -- we look at -- I want to be careful because I submitted
5 some information confidentially. I'm going to leave it
6 there.

7 CHAIRMAN SCHMIDTLEIN: Well the reason I ask
8 --

9 MR. NOVICK: I'm sorry.

10 CHAIRMAN SCHMIDTLEIN: Well the reason I ask
11 is because of what you said earlier in terms of if we accept
12 everything they say is true, getting back to this question
13 about negligibility and the potential for imminent injuries,
14 that we could do that. We could assume all of that for the
15 sake of argument because the scope covers partially
16 assembled airplanes. So there's a question of what that
17 would mean.

18 So we're in this odd situation where we could
19 potentially try to base a determination in terms of whether
20 or not there are imports on something that's partially,
21 without knowing what that is? Wouldn't we need to know what
22 that is in order to be able to say that there is the
23 potential for an imminent increase?

24 MR. NOVICK: Well, we're in this -- we're in
25 this space, which I agree with you, is curious, only because

1 of this last minute announcement that there are going to be
2 no deliveries of airplanes from Canada, notwithstanding
3 everything that's on the record, notwithstanding the
4 questionnaire responses, notwithstanding economic logic.

5 So we find ourselves in a position where, you
6 know, we're accepting for argument's sake all of the
7 suppositions that have been -- they have put forward or the
8 suggestions they've put forward, and then your questions of
9 if we decide this, if we decide this, if we decide this. We
10 have had no reason to go to Commerce to get a ruling on
11 whether, what a -- or Customs.

12 I'm not even sure where you would actually go
13 to get a determination of what -- that confirms that a
14 stuffed fuselage is in fact a partially assembled aircraft.

15 So we do find ourselves in a curious position all of us at
16 this moment, based on this concoction of an Alabama
17 facility. So we do, and just while I have the microphone
18 and with apologies to you, your earlier question about the
19 United transaction that we --

20 If you look at Confidential Exhibit 101 to our
21 petition, it answers your question.

22 CHAIRMAN SCHMIDTLEIN: Okay, okay, good.

23 MR. NOVICK: Sorry about that. We didn't have
24 it at our fingertips. I apologize.

25 CHAIRMAN SCHMIDTLEIN: Okay, all right.

1 Shifting gears just a little bit to the injury question, and
2 you've talked about the fact that once the sale is made, the
3 injury is locked in or once the sale is lost, whatever, lost
4 revenue, lost sale, that the injury is locked in, right?

5 And so in terms of this Delta sale, what I'm trying to get
6 my head around is are you all arguing that there was injury
7 during the POI, right?

8 We didn't have imports during the POI, so you
9 couldn't go -- we couldn't go affirmative present. Are you
10 arguing that that injury itself is continuing and that's
11 what constitutes imminent injury, or is it that those sales
12 are indicative of what will happen with other sales? Do you
13 see what I'm saying? It's a bit of an abstract question but
14 --

15 MR. NOVICK: I do. No, I think I follow
16 Commissioner Schmidtlein, Chairman Schmidtlein. Both. We
17 had injury and your preliminary decision was correct in
18 terms of not being able to find present material injury,
19 which is why it's a threat case. But there was injury
20 caused by that sale both ^^^^ so I can talk about that
21 injury, and then the effect of that sale is now having
22 additional injurious effects, as demonstrated in some of the
23 confidential information that we've submitted as part of our
24 prehearing brief.

25 So there is harm caused at the moment that

1 that sale took place, and then the further effect of that
2 sale on the domestic industry, on Boeing is happening, is
3 continuing to happen.

4 CHAIRMAN SCHMIDTLEIN: The price effects?

5 MR. NOVICK: Well the -- so the price, right,
6 sorry. The price effects continue to happen. There were
7 demand effects at the moment at that time, price effects at
8 that time. The price effects are continuing to happen. To
9 the extent those price effects lead to sales that would
10 otherwise not happen other than at those price points, then
11 there are volume effects as well.

12 Separately, the impact of it is that the Max 7
13 orders are frozen. No one's buying the plane. Now it's
14 also true that, you know, a lot of this is an effect of the
15 petition, an effect of the investigation and everyone's
16 waiting to see what happens when this decision is reached.
17 If you were to go negative then we know what will happen.
18 If you go affirmative, we expect that we also know what will
19 happen.

20 So people are on the sidelines now waiting.
21 But what you see from what we've already submitted is that
22 even while many wait for your decision, there are injurious
23 effects that are happening right now as a result of the
24 Delta sale. So both.

25 CHAIRMAN SCHMIDTLEIN: On other negotiations

1 and so forth?

2 MR. NOVICK: Correct, correct. So we
3 experienced injury at the moment of the sale, both demand
4 and then the price effect that's happening through price
5 transmission that we've now documented clearly, and there
6 will be future volume effect and the impact is at best
7 reduced prices below what they should be, and at worst a
8 program that fails.

9 CHAIRMAN SCHMIDTLEIN: So are you -- this is a
10 little bit just, I guess, for my own curiosity. Are you
11 arguing that the injury they suffered at the time of that
12 sale is enough to constitute injury for threat purposes? In
13 other words because it's a bit of an odd case, again where
14 you're arguing there was injury in the POI. But to get to
15 threat, right, we go negative in the present because of --

16 MR. NOVICK: As a matter of law.

17 CHAIRMAN SCHMIDTLEIN: Right. So are you
18 arguing that that injury during the POI is enough to get us
19 to imminent injury in a threat case?

20 MR. NOVICK: Yes. That loss of opportunity
21 for that demand, for the next 20 years is an injury that was
22 established at that moment and will have a continuing effect
23 on the company. The price effect is one that the company is
24 experiencing and the domestic industry is experiencing right
25 now, and there's threat that every other airline that's in

1 the market for this plane will --

2 Boeing, as you said in the preliminary, will
3 either have to reduce its price to make the sale, or will
4 lose the sale.

5 CHAIRMAN SCHMIDTLEIN: Okay. If you could put
6 on the record, and maybe you already have and I just
7 haven't, I'm not recalling it, evidence of where other
8 airlines are using that sale. I know I recall in your brief
9 there's some. But if you have it already, if you could put
10 that on the record.

11 MR. NOVICK: We have, and we will. I mean we
12 have and we will make sure we point to it again in our
13 post-hearing brief.

14 CHAIRMAN SCHMIDTLEIN: Okay, all right. I
15 don't have any further questions. Vice Chairman Johanson.

16 VICE CHAIRMAN JOHANSON: Thank you, Chairman
17 Schmidtlein. On pages 10 to 12 of Delta's brief, Delta
18 addressed the longevity of the 737 program. From its design
19 inception almost six years ago, Boeing has sold almost
20 12,000 737s. What is it about the 737 that accounts for its
21 record of success?

22 MR. MC ALLISTER: The 737, obviously from our
23 viewpoint, provides an economic benefit to customers on a
24 cost per seat mile basis. It provides customers across the
25 -- in the 100 to 150 seat market and beyond, a lower cost

1 per seat mile. It provides customers a better fuel burn per
2 seat. It is an airplane that has the best residual value
3 retention in its space, and it has wide market acceptance
4 across the globe.

5 So the 737 program has earned its way, as
6 selected by airlines, because of the continual reinvestment
7 we make in the program to differentiate it and its economic
8 performance throughout its life cycle.

9 VICE CHAIRMAN JOHANSON: Thanks, Mr.
10 McAllister. In another related issue, I believe that
11 Southwest Airlines is the largest operator of 737s?

12 MR. MC ALLISTER: They are.

13 VICE CHAIRMAN JOHANSON: Yeah. I remember
14 Southwest well. I grew up in Austin, Texas. I think Austin
15 was the fourth city for Southwest to service, and I remember
16 my big sister saying this airline's a joke. They don't
17 serve meals, and they've done really well. I believe they
18 are -- they carry more people than any other airline in the
19 United States I believe.

20 MR. MC ALLISTER: You bet, and a lot of that
21 growth, a lot of that growth happened with 737/700s as a
22 backbone of Southwest Airlines?

23 VICE CHAIRMAN JOHANSON: Is that right? Okay.
24 This actually brings me to the question, it seems like
25 Southwest and also Alaska Airlines have shown a great amount

1 of loyalty to the 737. I believe that Alaska also just
2 flies the 737. What accounts for this unusual amount of
3 customer loyalty and do you believe that these airlines
4 would see the 737 as replaceable?

5 MR. MC ALLISTER: I can tell you from my
6 perspective, without discussing any airline in particular, I
7 have very significant concerns that airlines who have been
8 great Boeing customers, when faced with the opportunity to
9 pick a C series at the pricing of Delta or another Boeing
10 product would elect to pick an airplane of this price given
11 the magnitude of the difference.

12 You know, loyalty is not something given.
13 Airlines make decisions on hard economics, comparing one
14 airplane to another in a very well thought-out way, and that
15 decision is heavily driven by price. So we make no
16 assumption that an existing Boeing customer would
17 automatically pick a Boeing airplane as a successor
18 aircraft.

19 MR. NOVICK: And I might just add, you know,
20 sometimes we talk about sort of great prices like we're
21 going to Nieman-Marcus to get a sale. Here, as you know and
22 as you've heard and as we've put in the record, airplanes,
23 airlines are competing with other airlines, and they have to
24 get their cost down so the ticket price can be competitive
25 with the airline.

1 It's not just we want a better price. They
2 know Delta's going to be flying these planes on the same
3 routes with an installed cost that would be much lower than
4 theirs if they don't get that price. Their ability to sell
5 a ticket that competes with Delta is compromised. So it's
6 not just I want to get a great price, give me a great price.
7 It's I have to get a great price because I'm competing with
8 someone who just got that price.

9 So it's -- I mean that may be self-evident,
10 but oftentimes people talk about just getting what's the
11 best discount I can get. Here, it's not just what the best
12 discount I can get. It is I have to get the discount. I've
13 got to get the Delta price; otherwise, I can't compete with
14 Delta.

15 MR. MC ALLISTER: And the message from
16 airlines across me, which you've mentioned, has been very
17 clear. There will be acceptance for an airplane, the C
18 series of that pricing, or it will require us to make
19 dramatic changes in Max 7 pricing that we couldn't
20 contemplate.

21 VICE CHAIRMAN JOHANSON: Thank you for both --
22 thank you to both of you for your answers. On page three of
23 your brief, you mention that the joint venture between
24 Bombardier and Airbus is now backed by five governments.
25 Given that the petition is limited to Canada, does the

1 statute allow us to consider any support from the other four
2 countries you mentioned?

3 MR. NOVICK: Well the -- so the Commerce
4 Department certainly has already considered the support from
5 the UK, which was provided. In this proceeding, I think
6 that you can consider the combination of Airbus and
7 Bombardier as you know, increasing the threat of harm, given
8 that they've decided to collectively target Boeing and this
9 particular segment of the market.

10 I don't think as a legal matter that the
11 subsidies that Airbus has received from the other three
12 member governments, other than the UK, although they've
13 received money from the UK that's on top of the money that
14 the UK provided to this venture, to Airbus. But I don't
15 think that that Germany, France and Spain subsidies that
16 have been previously provided to Airbus are ones that would
17 be at least -- I think from a Commerce standpoint sort of
18 countervailable at this stage.

19 But I do think the fact that you now have
20 airbus and Bombardier teamed up with a concerted effort to
21 collectively price more aggressively, market more
22 aggressively, target this market as evidenced by their own
23 statements is relevant, but it's not -- it's not because of
24 the -- sort of the quantification of subsidies that Airbus
25 has received from its other member governments besides the

1 UK.

2 VICE CHAIRMAN JOHANSON: Thanks Mr. Novick, I
3 have just one more question. Could you all please comment
4 on the remark made by Boeing's CEO during the company's
5 quarter 3 earnings that called Boeing 737 production skyline
6 as being oversold through the end of the decade?

7 MR. MC ALLISTER: The comment was made to affect
8 open positions at the current rate forecast that we have
9 today. I would -- as we mentioned earlier, while a large
10 majority, the vast majority of those are orders that will --
11 we expect to happen in the year they happen, or that they've
12 been contracted, there is some slight flexibility that
13 occurs.

14 But it's also within the capability of Boeing,
15 and specifically our Renton facility, to go look at further
16 increases in rate should the demand materialize. Boeing has
17 the capability to do that at the Renton facility. Should
18 the Max 7 competitions emerge, we will of course look at
19 opportunities to grow rate beyond where we are today.

20 VICE CHAIRMAN JOHANSON: Thank you, Mr.
21 McAllister And thanks to all of you for your question -- for
22 your responses today. I have no more questions.

23 COMMISSIONER WILLIAMSON: Okay, thank you. Just
24 a few more questions. In regard to the thing you raised
25 earlier and Chairman Schmidlein raised about the scope and

1 what it is, I was wondering if post-hearing you could take a
2 look at footnote -- I'm sorry 37 on page 17 of Bombardier's
3 brief and if maybe they've got it wrong or something, or
4 just -- so if there's any clarification you think needs to
5 be -- needs.

6 MR. NOVICK: We'll take a look at it and address
7 it in the post-hearing brief.

8 COMMISSIONER WILLIAMSON: Great, thank you. I
9 was wondering, you argue that you need sales revenue from
10 the Max 7 to support, you know, R and D for the next
11 generation of aircraft. And I was just wondering, why
12 couldn't that revenue come at least in significant part from
13 the sales of other types of aircraft made by Boeing?

14 MR. NOVICK: Well, I'd like to jump in before
15 letting the fact witness address that.

16 COMMISSIONER WILLIAMSON: Okay.

17 MR. NOVICK: I think the Commission precedent is
18 I think clear that when you -- in an investigation like
19 this, you look at the domestic industry for the like
20 product, which we believe is the 100, 150-seat segment. And
21 so the notion that Boeing should have to, as the respondent
22 suggests, go take money from other parts of its business,
23 whether other -- the 737s or the 787 or maybe even its
24 defense business they think to support a plane in
25 competition with a dumped and subsidized product is --

1 would not be consistent with, I think, the way the
2 Commission looks at this question. Having said that --

3 COMMISSIONER WILLIAMSON: I'm sorry, this is
4 supposed to be a lightning round, so --

5 MR. NOVICK: Yeah, I know. I just want to make
6 sure we keep giving respondents more time to prepare, so.

7 COMMISSIONER WILLIAMSON: Okay. Good. Okay,
8 thank you. Unless anybody urgently needs -- okay.

9 MR. MC ALLISTER: Very well said. Obviously, we
10 want the 737 and the Max 7 to stand on their own and return
11 the investment in that 100, 150-seat market that we've made.

12 COMMISSIONER WILLIAMSON: Okay. Okay. I was
13 also wondering, if Delta had brought a seven seat, C-300s
14 rather than C-100s, how would that change your arguments?
15 Not a lot of detail, but just I was just wondering.

16 MR. NOVICK: Is the question had they bought the
17 300 and not the 100?

18 COMMISSIONER WILLIAMSON: In -- right, correct.

19 MR. NOVICK: It wouldn't change it much at all
20 from a -- I mean, and in fact --

21 COMMISSIONER WILLIAMSON: Would it intensify it?

22 MR. NOVICK: -- I would argue -- well, I would
23 argue that they did buy the 300. I mean, what they did is
24 they locked in pricing, low pricing for up to 90 CS-300s.
25 So the competition that started looking for some used

1 aircraft ended up with 125 planes in this segment with
2 pricing determined, including up to 90 of them the CS-300,
3 which they certainly don't argue, I hope don't argue, don't
4 compete with the Max 7 and the 700.

5 So the damage, and it's one of the things that I
6 mean, I should have addressed with Chairman Schmidtlein as
7 well, part of the damage isn't just -- is not just what
8 happened on the 100. It's that the pricing was locked in
9 for the 300 and there's a relationship between the pricing
10 between the 100 and the 300 such that the market knows
11 exactly or close to exactly what the price point is for the
12 300.

13 Delta can at any time convert and be flying
14 300s. So yes, the legal argument wouldn't have been
15 different. The -- and I push back only on the proposition
16 somewhat. They in fact did buy the 300 at the same time.

17 COMMISSIONER WILLIAMSON: Okay. Thank you. I
18 was also wondering, there hasn't been much discussion of
19 Embraer. I mean, I know they're not non-subject, but I was
20 just curious, how does that -- what is their role in this
21 market, this 100 to 150?

22 MR. MC ALLISTER: Just from my perspective,
23 obviously, we're talking about a segment here that has
24 transcon capability. And while Embraer makes airplanes in
25 the seat count, they're distinctly different in that they do

1 not offer the transcon capability of the 737, Max 7, 8
2 through 19, CS-100 and CS-300.

3 MR. NOVICK: Well, I just --

4 COMMISSIONER WILLIAMSON: Yeah.

5 MR. NOVICK: -- add to that. We do hear the
6 argument that respondents make about the planes competing.

7 COMMISSIONER WILLIAMSON: Uh-huh.

8 MR. NOVICK: The airplanes competing with the
9 Embraer airplane. They had a regional jet. They have a
10 regional jet. They could compete the regional jet, they
11 being Bombardier. They built. They built. They did a
12 clean sheet for the CS-100 and 300 so it has transcon range.

13 So the notion that somehow the competitions
14 between them and Embraer Air -- I'm not suggesting there's
15 not occasional overlap between a customer that might want a
16 plane that doesn't have transcon range. That's one thing,
17 but that's not why these planes exist. They were built with
18 the express -- well, they spent a lot of money, a lot of
19 good government money to get themselves a transcon plane
20 that could compete in the segment that we're talking about.

21 So I just -- it's important not to lose sight of
22 the fact that Bombardier has regional jets already. These
23 are not -- this is not that.

24 COMMISSIONER WILLIAMSON: So in terms of this
25 transcontinental range, it's more than just getting more

1 fuel tanks I take it or?

2 MR. NOVICK: Say that again. I apologize.

3 COMMISSIONER WILLIAMSON: It's more than just
4 getting --

5 MR. NOVICK: Yeah.

6 COMMISSIONER WILLIAMSON: -- larger fuel tanks?

7 MR. NOVICK: Yeah. Yes. I can let others speak
8 to that, but yes.

9 COMMISSIONER WILLIAMSON: Okay.

10 MR. MC ALLISTER: It's a fundamental change in
11 the architecture of the airplane. So that the architecture
12 of the airplane has the capability to carry passengers for a
13 longer distance than before. In this case, it was a
14 significant change in the architecture of the Bombardier
15 aircraft. And for us, it's obviously a big design
16 consideration. It was the design configuration in the 737
17 Max 7.

18 COMMISSIONER WILLIAMSON: Okay. Good. Thank
19 you for those answers. And thank everybody for their
20 testimony.

21 CHAIRMAN SCHMIDTLEIN: Okay. Commissioner
22 Broadbent?

23 COMMISSIONER BROADBENT: Yeah, I just had a
24 couple of random extra questions. For Mr. McAllister, once
25 more on this backlog oversold situation, you state on page

1 58 of your brief, the Boeing brief, that the primary
2 constraint of production and production capacity is the
3 number of orders or sales. If existing and anticipated
4 orders are sufficient to increase production rate, a
5 producer will do so whether through a faster throughput on
6 its existing production infrastructure or by establishing a
7 new production line.

8 So this is sort of this we'll make it work if we
9 get the order. But it sounds like it's easier said than
10 done. Given Boeing's very substantial backlog of orders for
11 737s, I think the number we have is 4431 aircraft, why
12 haven't we already seen Boeing expand its production line or
13 increase its through put in a manner that reduces the
14 significant backlog?

15 MR. MC ALLISTER: Boeing has. As a matter of
16 fact, Boeing, if you look back, Boeing's -- Boeing has made
17 a rate change this year to increase our rate in the Renton
18 factory. Boeing will make next year a change to increase
19 our rate. And Boeing will make a change in the following
20 year to increase or rate.

21 And as you've seen, having a chance to walk
22 through the factory, you know, we wake up every day in that
23 factory thinking about what we can do to take a few hours
24 out to get more -- to get less flow days for an airplane, to
25 be more efficient, so that we can increase the capacity in

1 the Renton facility.

2 One thing for certain, a responsible business
3 focuses on developing the capability so that it can match
4 its capacity to demand. And we believe that the Max 7 has a
5 real opportunity for demand growth and should in a level
6 playing field we have the opportunity to win big orders, we
7 will find the way to go fulfill those orders with an
8 increase in capacity at our facility.

9 MR. ANDERSON: Commissioner Broadbent, I
10 actually have some figures here. So I'll give you an idea
11 of what Boeing has done in the past. So in 2005, their
12 production rate was 21. It's currently 47. It'll be 52 in
13 2018 and 57 in 2019. So Boeing has demonstrated the
14 capability to increase capacity on a regular basis.

15 It's a little bit misleading to think about
16 being "oversold," et cetera. Aircraft manufacturers just
17 like airlines have a -- want to sell basically more planes
18 than they have existing slots, because orders do move around
19 a little bit and all the rest.

20 Boeing manages its skylines so that those things
21 are all settled within 12 months of beginning of production.
22 And Boeing is not supply constrained. If it were to get new
23 significant orders for a Max 7, they could move around their
24 skyline. They could increase their production rate. I
25 think the staff report's supply elasticity reflects this.

1 It's moderately elastic from 3 to 6. And I think the
2 history of Boeing supports the notion that supply can
3 basically increase to meet increased demand.

4 COMMISSIONER BROADBENT: Okay, thank you very
5 much. And then I just had one more question for the record.
6 Let's see for counsel. Please respond to Bombardier's
7 arguments on page 37 to 40 within your post-hearing brief.
8 These arguments concern whether the domestic industry
9 producing all single aisle large civil aircraft are
10 threatened with material injury.

11 MR. NOVICK: We will, thank you.

12 COMMISSIONER BROADBENT: And thank you for your
13 testimony. Very interesting.

14 CHAIRMAN SCHMIDTLEIN: Okay, I just had one last
15 question for Mr. McAllister. When you were just talking
16 about the Embraer and their -- they produce regional jets.
17 When during the Delta campaign, was that the reason that you
18 all were offering the refurbished jets to Delta because they
19 were looking for a regional jet? Or was it more a seat
20 configuration or was it a place point that you were trying
21 to meet?

22 MR. MC ALLISTER: You know, at the time, the --
23 I wasn't in that specific campaign on the Boeing side at the
24 time. But at the time, you know, it's very important in
25 this industry when you're competing is that you bring the

1 product that fits what the customer's looking for.

2 And in this case, the request to Boeing and to
3 others were for used aircraft. Now it's obviously in that
4 -- at that point, the 717 and the Embraer 190s used were the
5 aircraft that fit the request for Delta. But at the time
6 when the C Series came in as a new airplane, it introduced a
7 brand new aircraft effectively at used airplane pricing with
8 more capability than the aircraft that had been in
9 consideration at the time.

10 You know, at -- obviously that aircraft at that
11 pricing was vastly different than what we would have done
12 had we had a 737-700, the opportunity to bring a 737-700.

13 CHAIRMAN SCHMIDTLEIN: So those weren't
14 transcontinental planes that were -- you are -- the used
15 planes? They didn't have that capability? That you were
16 offering Delta?

17 MR. MC ALLISTER: The -- we were not offering
18 any new aircraft at that time. I don't know if there's any
19 comment here from --

20 MR. NICKELSBURG: So the offer of used aircraft
21 by Boeing was a combination of regional jets, which did not
22 have transcon capability and augmenting the 717 fleet --

23 CHAIRMAN SCHMIDTLEIN: I see.

24 MR. NICKELBURG: And those do have transcon
25 capability.

1 CHAIRMAN SCHMIDTLEIN: Okay.

2 MR. NICKELBURG: So it's a mixture to meet a
3 regional yet requirement and maybe a little bit more range.

4 CHAIRMAN SCHMIDTLEIN: I see. And so you
5 wouldn't -- Boeing wouldn't have tried this, you know, in
6 order to get some traction with the Max 7, try to have
7 convinced them to take a Max 7 instead of --

8 MR. MC ALLISTER: You know, one of the --

9 CHAIRMAN SCHMIDTLEIN: -- mix of these used
10 planes?

11 MR. MC ALLISTER: -- and I apologize for
12 getting 717 on -- as obviously transcon, but you know, one
13 of the things that's very different here is when a customer
14 looks for a solution that involves used airplanes, you win
15 in the off season. You provide what they're looking for
16 because it leaves the door open for an opportunity to bring
17 in a subsequent campaign a Max 7 or 73-700s.

18 In this case when a brand new C Series airplane
19 came down on the table, it effectively shut the door for an
20 opportunity for us to bring Max 7s to the table at Delta.

21 CHAIRMAN SCHMIDTLEIN: Okay. All right. I have
22 no further questions. Thank you all for your testimony
23 today.

24 Vice Chairman Johanson, do you have any
25 questions?

1 VICE CHAIRMAN JOHANSON: No.

2 CHAIRMAN SCHMIDTLEIN: No, okay. Do the staff
3 have any questions for this panel?

4 MR. CORKRAN: Douglas Corkran, Office of
5 Investigations. Thank you, Madam Chairman. The staff has
6 no additional questions.

7 CHAIRMAN SCHMIDTLEIN: All right. Do the
8 respondents have any questions for this panel?

9 MS. ARANOFF: No, we do not.

10 CHAIRMAN SCHMIDTLEIN: Okay, thank you. That
11 brings us to our lunch hour. My inclination is to keep the
12 lunch hour short. So we will reconvene at 2:15, so that we
13 don't go so late tonight, anticipating several rounds of
14 questions for the respondents.

15 So let me remind you that the hearing room is
16 not secure. Please take your confidential information and
17 your papers with you and we will stand in recess until 2:15.

18 (Whereupon a brief lunch recess was taken to
19 reconvene at 2:15 p.m. this same day.)

20

21

22

23

24

25

1 A F T E R N O O N S E S S I O N

2 MR. BISHOP: Will the room please come to order.

3 CHAIRMAN SCHMIDTLEIN: Good afternoon. Mr.
4 Secretary, are there any preliminary matters?

5 MR. BISHOP: Yes, Madam Chairman, with your
6 permission, we will add Maureen F. Browne of Covington &
7 Burling to page 3 of the witness list.

8 CHAIRMAN SCHMIDTLEIN: So ordered.

9 MR. BISHOP: I would also note that those in
10 opposition to the imposition of the anti-dumping and
11 countervailing duty orders have been seated. All witnesses
12 have been sworn and this panel has 60 minutes for their
13 direct testimony.

14 CHAIRMAN SCHMIDTLEIN: Very well. Ms. Aranoff,
15 you may begin when you're ready.

16 MS. ARANOFF: Thank you, Madam Chairman, members
17 of the Commission, in the interest of time, we will start
18 right off with Mr. Dewar.

19 STATEMENT OF ROBERT DEWAR

20 MR. DEWAR: Good afternoon. I'm Rob Dewar. I'm
21 responsible for the C Series program overall. I worked at
22 Bombardier for over 25 years and have been a part of the C
23 Series Program for its very inception.

24 The C Series development started back in 2004
25 when we conducted a marketing study that identified an

1 opportunity at the lower end of the single aisle market. At
2 that time, our products could not serve more than 100 seats
3 and Airbus and Boeing were really focused on the larger
4 segment of the market more than the 150 seats.

5 No modern aircraft were specifically designed
6 for this segment. All the jets, like the MD-80 and the
7 Boeing 717 were in service, but would require replacement
8 within 10 to 15-year time period. The lack of new aircraft
9 offerings wasn't for the lack of demand. Our market
10 research clearly the airlines were asking for a
11 cost-effective aircraft to serve the lower end of the
12 singular market. Customers told us that no aircraft
13 currently in production, neither at Boeing or at Airbus,
14 were meeting their needs.

15 We recognized that airlines were looking for
16 just a certain seat capacity, smaller single aisle aircraft
17 were not profitable to operate primarily because average
18 seat cost per trip were higher than for larger aircraft, so
19 airlines needed a breakthrough in operating efficiency to
20 offset these costs. They also wanted features that no
21 manufacturer to date had been able to integrate into a
22 single aircraft of this size. Most importantly, the fuel
23 efficient, cabin comfort, extended range, and of course,
24 most importantly, the operating costs.

25 The C Series we set all these features into our

1 design. So Bombardier not only saw an opportunity, but
2 believed we had unique capability to capture it. Our
3 experience in developing business and regional jets gave us
4 a helpful perspective on how to better build a small, single
5 aisle commercial aircraft. By contract, Boeing and Airbus
6 have focused on larger aircraft and neglected these small,
7 single aisle segment because it was not as profitable for
8 them.

9 Today the C Series is the most efficient and the
10 most technically advanced single aisle commercial aircraft
11 in service. The C Series family delivers a 15 percent cash
12 operating cost advantage and a 20 percent fuel burn
13 advantage over existing aircraft in the lower end of the
14 single aisle market.

15 Initial feedback from our customers and their
16 passengers has been very positive. This praise confirms the
17 aircraft is doing very well in service, in fact, better than
18 we expected in terms of fuel efficiency, cost savings, and
19 overall utilization. Passenger surveys also indicate the
20 cabin experience up to 20 percent better than other single
21 aircraft in service. Because the C Series is a truly
22 innovative product, we expect it will have a long-term
23 market success. As it continues to improve its
24 capabilities, airlines will rally to buy it. Imagine a
25 cabin that passengers actually like.

1 In our design of the C Series, we integrated the
2 most advance technologies. In fact, a major of our key
3 components, including the avionic system, flight control
4 systems, and engines were developed right here in the United
5 States and are provided and supplied by the U.S.
6 manufacturers. In fact, over 50 percent of our total
7 supplier spend goes to U.S. suppliers. These components
8 arrive at our production facilities in Mirabel, Quebec where
9 we assemble an aircraft in eight key steps.

10 This is a very sophisticated manufacturing
11 process, incorporating the latest technology in the industry
12 and we are very excited to replicate this high technology
13 manufacturing process and bring it here to the U.S. to our
14 plant facility in Alabama.

15 In the aircraft industry there is a learning
16 curve associated with the production of a clean seat design.
17 It can take years to optimize the production process and get
18 the production rate up facilities planning capacity. And
19 it's no secret that our production ramp up production at
20 Maribel has not always gone smoothly and we're still
21 operating well below our projected capacity levels.

22 In its preliminary decision, the Commission was
23 concerned that Maribel has open capacity and a shortage of
24 orders to fill. In fact, the opposite is true. The main
25 challenge for us remain in the reliability and timeliness of

1 our supply chain. Our production and our progress down the
2 production learning curve have been constrained by late
3 deliveries of Pratt & Whitney Engine and other supplies.

4 In 2016, we were only able to deliver 7 out of
5 15 planned deliveries and for 2017 we forecast making only
6 approximately 20 out of the 30 to 35 planned deliveries and
7 again, all to non-U.S. customers. So due to capacity
8 constraints at Maribel, we would not be able to produce any
9 additional aircraft for the United States in the imminent
10 future.

11 So far, you've heard what the C Series is. Now
12 I'll tell you what it isn't. It isn't the substitute for
13 the 737. The fundamental difference from a product
14 perspective is that the C Series is a brand new technology,
15 custom built from the ground up. It seats five abreast and
16 is optimized for the small, single aisle segment. The Mac
17 7, by contrast, is 30 percent bigger and is really just a
18 smaller version of the Mac 8, which, in turn, of course is a
19 version of the 737-800, which is based on multiple
20 iterations of the very original 1960's design.

21 The Mac 7 is Boeing's attempt to breathe new
22 life into an aging platform by using a new engine, but there
23 have been few takers and many customers have converted to
24 the Max 8, 9, or 10. Boeing argued today that the success
25 of the C Series would come at the expense of the Max 7. As

1 one of the people who convinced, conceived, and developed
2 the C Series, that doesn't make any sense to me.

3 Bombardier entered this space precisely because
4 Boeing and Airbus had no product optimized for this segment.
5 As a new entrant in the market for large civil aircraft,
6 even with a breakthrough technology, we would've been
7 foolish to set our sights on a part of the market well and
8 actively served by the two established giants.

9 Today we're proud that the C Series is
10 delivering on all its promises to airline customers and
11 passengers. And if you'd like to learn more about the C
12 Series, I'd be very pleased to host you for a visit in our
13 facilities in Maribel. Thank you. I will now pass it over
14 to Ross Mitchell.

15 STATEMENT OF ROSS MITCHELL

16 MR. MITCHELL: Good afternoon. My name is Ross
17 Mitchell and I am Vice President Commercial Operations of
18 Bombardier's commercial aircraft division. In this
19 position, which I have held since 2014, I run the overall
20 commercial aircraft sales and marketing team for the C
21 Series, regional jets and turbo props. As I will explain,
22 Boeing's depiction of the aircraft industry is very
23 different from my experience.

24 First, Boeing has presented a distorted view of
25 the market of the C Series and the C Series competition.

1 Boeing's narrow focus on aircraft with 100 to 150 seats, any
2 minimum range of 2,900 nautical miles accomplishes two
3 things. One, it allows Boeing to say that it's competing
4 aircraft are the 737-700 and Mac 7, which are far and away
5 the least successful models in the 737 family.

6 Two, it makes Embraer magically disappear from
7 this proceeding. Boeing argues that there is a recognized
8 100 to 150 seat aircraft market. There isn't. I know this
9 because I made up the concept of the 100 to 150-seat segment
10 for marketing purposes. The phrase did not exist in the
11 industry before then and it is not how the rest of the
12 industry defines segments in the single aisle market. Every
13 manufacturer and every airline has its own cutoffs at
14 different places in the seat continuum.

15 Embraer used to say that they serve a 70 to
16 130-seat segment, but now they call it the 70-seat plus
17 space. When it chose the CS-100, Delta was looking to
18 acquire aircraft in the 100 to 110-seat segment. Boeing
19 generally describes three LCA markets, a single aisle market
20 served by its 373 family, a twin aisle market served by its
21 Triple 7 and 787 families in the middle of the market
22 between the two. The bottom line is that Boeing presents
23 its 737 family as serving one single aisle market, not
24 several. As Boeing says, one airplane/four sizes.

25 It is also absurd for Boeing to limit the scope

1 of this proceeding to aircraft with a minimum range of 2,900
2 nautical miles. That range limit is completely artificial.
3 It conveniently takes Embraer out of the picture when
4 Embraer was the primary competition for the C Series in the
5 sales campaigns at United and Delta.

6 In sales campaigns, the C-100 may compete
7 against Embraer's E-190 and E-190E2, among other aircraft.
8 The CS-300 may compete against the 195 and 195-E2, among
9 other aircraft. Some airlines initially benchmark aircraft
10 from all four major OMEs because they have not yet defined
11 their aircraft needs. Aircraft are eliminated in early
12 rounds based on performance criteria and operating
13 economics. By the time an airline has focused on the need
14 for an efficient, small LCA, the Mac 7 is not under
15 consideration because it is not a suitable product for that
16 segment and serious price discussions don't start until
17 after that point.

18 Frankly, Boeing has never positioned itself as
19 competing with the C Series. Its eye has always been on
20 Airbus. It designed the Mac 7 MX-8 to compete with the
21 Airbus A-320. When Boeing's Vice President of Marketing
22 said that the enlarged 138-seat Mac 7 and the 160-seat Mac 8
23 pairing brackets our competition quite well, and I like that
24 part, he was referring to the A-320, not the C Series.
25 Meanwhile, Boeing has consistently denied that it is

1 interested in the C Series market.

2 When Boeing's Vice Chairman said that "We aren't
3 competing with those, with the Mac," he was referring to the
4 C Series. That quote is telling for my second topic. What
5 really happened in the United and Delta campaigns? Boeing's
6 accounts of these campaigns don't square with my experience,
7 but this is not a situation where you have to decide which
8 side to believe. Everything I am telling you is fully
9 consistent with public reports about United and with Delta's
10 account.

11 In the United sales campaign, Boeing had not
12 been on anyone's radar. Bombardier's competition from the
13 start was Embraer. We have said this before, but it seems
14 worth repeating, given Boeing's continued
15 mischaracterizations. United told us that the CS-100 was
16 too big for its needs. In response, we offered a smaller
17 version, the CS-110 Light. Embraer offered new 195s. The
18 customer told us we were competing with Embraer. Boeing was
19 nowhere in sight.

20 We believed we were in the lead and would be
21 selected. Then out of nowhere we heard that Boeing swooped
22 in and offered United a deal too good to refuse on 737-700s,
23 an older airplane far too large to satisfy United's request
24 for a 100-seater. Why did this happen? A Boeing executive
25 explained that it was very important to Boeing that United

1 not provide validation of this C Series in the marketplace.
2 United never wanted the 737-700.

3 Within months, it took it sweetheart deal and
4 converted the entire order to larger Boeing aircraft.
5 United met a different fleet need at a bargain price and
6 Boeing headed off a C Series sale to a marquee U.S. airline.

7 In the Delta sales campaign, Boeing was never
8 part of that competition simply because it could not offer
9 an aircraft that met Delta's needs. Delta was seeking
10 aircraft in the 100 to 110-seat segment. Boeing offered
11 Delta used Embraer 190s, the only aircraft, new or used,
12 that Boeing could offer in the right size. If Delta had not
13 chosen the CS-100, it would've likely purchased used Embraer
14 190s. Given that a new Boeing aircraft was not in the mix,
15 there was not and could not have been any loss sale to Delta
16 period.

17 Boeing also claims the Delta price will push
18 down Boeing's future prices through a so-called lighthouse
19 affect. This description of pricing dynamics defies logic.
20 First, Delta was a launch customer, so all other airlines
21 know they will not get the same price as Delta in future
22 sales. When Delta agreed to buy the CS-100, it had not been
23 certified by the FAA and had not entered service anywhere.

24 A major airline that buys a new aircraft in
25 quantity is taking a large risk on an unproven product. In

1 fact, the bigger the technological leap, the bigger the
2 risk, the bigger the discount that is expected. It is
3 widely understood in the industry that aircraft prices go up
4 as entry into service risks go down. Boeing knows this.
5 Most recently, they used launch pricing for the 787 and
6 reports indicate the raised price over time.

7 It is also a stretch for Boeing to claim that
8 airlines will insist on getting the same price as Delta in
9 order to compete for passengers. What matters to airlines
10 is the long-term operating cost of an airplane over its
11 lifetime. Boeing itself says the purchase price is only 20
12 percent of direct operating costs. A difference in purchase
13 price is, thus, a very small component of the economic
14 assessment that matters.

15 Finally, an update on the C Series in the
16 marketplace since the staff conference in May, after our
17 sale to Delta, we have not had any more orders from U.S.
18 customers. Boeing's petition created tremendous uncertainty
19 for our potential customers who made clear to us that they
20 would not proceed with an order until there was no risk of
21 tariffs. When we sell an aircraft, the airline is the
22 importer, not Bombardier. No airline wants to take the risk
23 of paying anti-dumping or countervailing duties. Even if
24 Boeing loses this case, the risk of duties would remain.

25 With long lead times between order and delivery,

1 Boeing could file a new petition as soon as there is a new
2 U.S. order. No airline wants to take the risk of a future
3 case either. That means the only way for us to reassure
4 potential U.S. customers is to make these C Series in the
5 United States. Now with the news of the Airbus deal, a few
6 U.S. airlines are excited to talk to us about planes that
7 will be made at the new U.S. final assembly line or FAL.

8 For many reason, as my colleague Sylvain
9 Levesque will explain, we are committed to producing at the
10 U.S. FAL as soon as possible. Thank you.

11 STATEMENT OF SYLAIN LEVESQUE

12 MR. LEVESQUE: My name is Sylvain Levesque. I
13 am Vice President of Corporate Strategy at Bombardier. In
14 this position, which I've held since 2010, I lead a
15 strategic planning process and key strategic initiatives.
16 I've worked at Bombardier for 19 years and held many other
17 positions.

18 In 2004, when I was Vice President of Strategy
19 at Bombardier Aerospace, I played a key role in developing
20 the strategy for the C Series. Today I will first address
21 the origins of Bombardier's recently announced C Series
22 partnership with Airbus. I was on the corporate team at
23 Bombardier that developed the strategy for approaching
24 Airbus. It is important to understand that when we
25 contacted Airbus earlier this year we were not starting

1 discussions from scratch.

2 Bombardier had realized for years that the
3 greatest value for the C Series program would come only
4 through a partnership. Over the past decade, we conducted
5 outreach to Boeing, Airbus, and others. Bombardier and
6 Airbus engaged in serious talk lasting more than six months
7 in 2015, long before Boeing filed a petition in this case.
8 I lead those negotiations, which were eventually derailed,
9 in part, because it became public.

10 When discussion resumed this year, both sides
11 picked up where we left off. The basic commercial logic
12 behind the proposed combination was the same this year as in
13 2015. For Bombardier, the advantages of a partnership are
14 obvious. Bombardier is a smaller player and a new entrant
15 in the market for large, civil aircraft. As my colleague,
16 Rob Dewar explained, we have made slower than anticipate
17 progress along the learning curve for C Series production
18 and faced a number of supplier difficulties. As a result,
19 we have not met our projected production numbers and many
20 deliveries have been delayed.

21 With Airbus, we will have additional
22 manufacturing resources and supply chain synergies. We,
23 thus, expect the new partnership to generate significant
24 production cost savings for the C Series. It will also
25 extend our production footprint to the United States where

1 Airbus is already located. Airbus also brings additional
2 marketing expertise, a global network of potential
3 customers, and extensive experience with ongoing products
4 report. We knew that access to such resources would help
5 instill confidence in the C Series program among potential
6 purchasers. The bottom line is that, from Bombardier's
7 perspective, the Airbus deal further validates the program
8 and will unlock the full value of the C Series.

9 On the Airbus side, the commercial advantages
10 are equally clear. As my colleagues have explained, the C
11 Series is an innovative, clean sheet design that's used the
12 most advanced technology. The C Series also complements the
13 existing A-320 family in terms of seating capacity. Through
14 this partnership, Airbus will be able to serve the entire
15 growing single aisle market from 100 seats to 240 seats.
16 The acquisition is well timed for Airbus because
17 Bombardier's development spending on the C Series is nearly
18 complete. Airbus is thus acquiring a cutting edge
19 technology in a program whose performance is now
20 demonstrated.

21 In summary, this combination is an ideal fit for
22 both companies independent of this case. It will have
23 significant advantages, not only for the partners, but also
24 for their customers and the flying public. The reaction has
25 been overwhelmingly positive.

1 There's also another big winner from this
2 combination, the U.S. aerospace industry. While the
3 existing assembly line will remain in Quebec, Bombardier and
4 Airbus will make a significant U.S. investment to build a
5 new final assembly line or FAL for the C Series at the
6 existing Airbus facility in Alabama. The plan is to build a
7 full-scale, high tech manufacturing facility. The
8 production process in Alabama will replicate the production
9 steps that Bombardier performed in Quebec, which my
10 colleague, Roy Dewar, described earlier.

11 We estimate that an investment of approximately
12 300 million will be required to establish the U.S. FAL. The
13 impact on U.S. jobs will also be substantial. The C Series
14 facility in Quebec is already expected to support more than
15 22,700 U.S. jobs based on 30 billion in business with U.S.
16 suppliers when it reaches full capacity. The new facility
17 in Alabama will only increase the program employment affects
18 in the United States. We estimate that the U.S. FAL will
19 contribute more than 2,000 permanent new U.S. jobs in the
20 United States.

21 In addition, when construction and other
22 activities are considered, we expect another 6,000-person
23 year jobs will be created. The new U.S. FAL will also have
24 significant positive affects on other U.S. aerospace
25 companies. At the existing C Series production line in

1 Quebec more than half of the total supply of span already
2 goes to U.S. suppliers. The overall U.S. count will only
3 increase at the new FAL in Alabama. In addition to U.S.
4 labor, industry analysts have emphasized that once the
5 partnership is finalized more U.S. companies in the
6 aerospace industry will have opportunities to contribute to
7 the C Series at the new final assembly line.

8 So through this partnership Bombardier is
9 excited to be adding to its already substantial presence in
10 the United States. As my colleague, Ross Mitchell,
11 explained our plan is to supply our U.S. customers from the
12 new U.S. FAL while continuing to supply customers outside
13 the U.S. from the Quebec facility. Bombardier expects the
14 long-term value of the C Series program to more than double
15 as a result of this partnership. The existing production
16 line in Quebec does not have the capacity to meet the
17 existing projection for long-term demand let alone the
18 increase in demand resulting from the partnership itself.

19 With Airbus, the new U.S. FAL meets both source
20 of expected demand. It is thus an integral part of our
21 long-term plans for the C Series. Co-location of the Airbus
22 and C Series production line also creates synergies and
23 opportunities for learning while adding a second production
24 location reduces risk. The fact that many C Series
25 suppliers are U.S. based is also an advantage.

1 CEO of Q Aviation and Aircraft leasing and lending with over
2 a billion and a half dollars in aircraft and aircraft loans.
3 Before that, I was Vice President of Purchasing and Aircraft
4 transactions for Northwest Airlines where I led Northwest
5 Fleet Campaigns and Corporate purchasing efforts. Prior to
6 that I spent eighteen years at United in various fleet,
7 technical and operational roles.

8 I appreciate the opportunity to talk to you this
9 afternoon about the aircraft acquisition process from
10 Delta's perspective. I think it's best this afternoon to
11 start out head on with explaining that Boeing did not lose a
12 sale to Bombardier. When we chose to add the CS100 aircraft
13 to our fleet Boeing simply did not, does not have the right
14 size aircraft.

15 We go to market and launch a campaign to
16 strengthen our fleet with aircraft to specific parameters.
17 A small gauge narrow body replacement campaign that began in
18 2015 and led Delta to the CS100 was driven by the need
19 identified by our network team led by Joe, we were looking
20 to acquire additional 100 to 110 seat aircraft.

21 To meet that need, Delta initially considered
22 used Brazilian Manufactured E190's and used Boeing 717s.
23 The E190 would seat 96. The Boeing 717 would seat 110. But
24 what we also considered were new Embraer E195s at about 100
25 seats and Bombardier CS100s at 109 seats. We did not need

1 and were not looking to buy a plane with a 106 or 138 seats,
2 but we considered buying used Boeing 717s.

3 Boeing no longer produces an aircraft in this
4 market space and hasn't for more than a decade. The closest
5 Boeing comes is the 126-seat 737-700, the Max 7 which isn't
6 in production yet is even bigger at 138 seats. Those
7 aircraft don't meet Delta's need for a 100 to 110-seat
8 aircraft. We did not need and we were not looking to
9 purchase additional 126 to 138-seat aircraft.

10 We ended up buying 19 used E190s from Boeing
11 while we were negotiating with Boeing for those aircraft
12 Boeing did not offer us any new Boeing aircraft produced
13 airplanes as an alternative to meet our needs. They
14 couldn't because as I noted earlier Boeing is not producing
15 a plan in the 100 to 110-seat gauge.

16 This is not about price, it's about size. Boeing
17 has had no new planes to offer us in the 100-seat space we
18 needed. Delta is not going to purchase a 126 or 138-seat
19 plane when we need a 109-seat plane.

20 We were also in talks with Bombardier about the
21 CS100. The CS100 is a clean sheet, new generation aircraft
22 that has compelling fuel efficiencies, maintenance costs and
23 passenger amenities and was designed to be in the 100 to
24 110-seat size that we were looking to fill.

25 To help you understand the compelling operating

1 costs please look at the slide. The graph shows the
2 relative seat cost without ownership cost of aircraft that
3 Delta operates or is acquiring. In other words, this
4 reflects the operating efficiency without reference to the
5 purchase price. As you can see, in general, larger aircraft
6 can have lower seat costs than smaller aircraft however what
7 you will also see is that newer technology aircraft such as
8 the CS100 have dramatically lower seat costs well below the
9 73700.

10 When we are making a 30-year asset commitment we
11 have to choose the more efficient option which also is
12 exactly the right size. I want to be clear, Boeing was not
13 competing for new orders when we were negotiating with
14 Bombardier. Boeing had no viable, competitive alternative
15 to the CS100 and we were not even considering any new Boeing
16 product as an alternative when we made the purchase that
17 Boeing challenges in the Petition.

18 Boeing offered us used Embraer 190s which we
19 purchased. At no time did Boeing even try to convince us to
20 consider the 73700. It'd be wrong to suggest that Boeing
21 lost sales to Bombardier because we purchased the CS100.
22 Boeing was simply was not in the mix because they did not
23 have a plan that satisfied our mission profile and needs.

24 From Delta's perspective as a purchaser the
25 737700 and Max7 did not meet our mission goals. The 73700

1 is well-suited for certain unique mission profiles such as
2 takeoff and landing at airports with short runways or at
3 high elevations. However it is not economical at the vast
4 majority of our routes. That's why we only have ten of
5 these aircraft in our 1300 aircraft fleet and that is all we
6 need. I can't emphasize enough, it is not a 100 to 110
7 seat aircraft.

8 This is not an instance where Boeing finished
9 second to Bombardier for Delta's Business. We would not
10 have purchased 737700s or placed orders for the Max7 if the
11 CS100 hadn't been available. Had the CS not been available
12 we would have instead satisfied our needs with used 717s and
13 used E190s.

14 Regardless of how Boeing is trying to
15 characterize it now, Boeing did not lose this order for 100
16 to 110-seat aircraft because Boeing does not make a 100 to
17 110-seat aircraft. In short this case to me seems absurd.
18 For its need Delta was never going to buy 73700s or Max7s
19 and Boeing is not in the position to say otherwise.

20 I've seen in the prehearing briefing that Boeing
21 has told the Commission that Boeing intends for the 138-seat
22 Max7 to be the only product between 100 and 150 seats for
23 the foreseeable future. If so, then Boeing will not compete
24 for orders of 100 to 110-seat aircraft for the foreseeable
25 future. Boeing decided to stop

1 manufacturing the aircraft that Delta needed, which is fine
2 but if Boeing is not going to manufacture the aircraft Delta
3 needs Boeing should not be allowed to use a trade case like
4 this to make it effectively impossible for Delta to get the
5 aircraft it needs from the manufacturer who actually makes
6 them.

7 Even if we had the interest in buying more
8 aircraft from Boeing 737 family, despite the lack of any 100
9 to 110-seat option in the family, Boeing made clear to us
10 that they did not have timely slots available in their
11 skyline. They make this clear to us because at the same
12 time we were looking to acquire the 100 to 110-seat aircraft
13 we also had a need to acquire some larger narrow body
14 aircraft and asked Boeing about their -900ER737 900 ER
15 180-seat aircraft, even for that larger aircraft that would
16 have been more profitable for Boeing to sell than a 700.

17 Boeing said it could not provide slots through
18 the end of the decade. That is why we ended up buying 37
19 191-seat A321s direct from Airbus who could deliver in that
20 timeframe. We ordered 75 CS100's with the delivery
21 positions that we were looking for at the time of the order.
22 Thanks to the recent announcement of the Airbus/Bombardier
23 partnership we now plan to receive American manufactured
24 CS100s.

25 Shortly after Delta learned of this opportunity

1 we began working to renegotiate our CS100 orders to allow
2 U.S. production, although the final details have not been
3 finalized Delta now does not intend to take delivery of any
4 Canadian-manufactured CS100 but will instead be taking
5 delivery of CS100s manufactured in Mobile, Alabama.

6 Delta has extensive experience with taking
7 delivery of aircraft both within the U.S. and abroad, for
8 example with Airbus A321s. Given the choice we would prefer
9 to take delivery of aircraft in Alabama. There are several
10 advantages. The logistics of arranging for buyer furnished
11 equipment, for installation into the delivered aircraft are
12 significant. It's much easier to ship seats and in-flight
13 entertainment equipment to Mobile, Alabama than Hamburg,
14 Germany. The logistics of aircraft inspections and the
15 involvement of senior management are made substantially
16 easier when we take delivery in Alabama.

17 It is also not particularly unusual for the terms
18 of purchase agreements to change and sometimes even
19 dramatically between when they are first executed and when
20 the aircraft are actually delivered. I cannot go into
21 details about specific examples Delta has provided to the
22 Commission but I would just note that shifting from Canadian
23 Manufactured CS100s to American manufactured CS100s, even
24 for firm orders, is consistent with the way that aircraft
25 purchase agreements are revised over time in response to

1 changing circumstances and new opportunities.

2 Delta is generally able to get favorable pricing
3 for aircraft. We are one of the world's largest airlines
4 which means we usually get good pricing. We can place large
5 orders as we did for the CS100s, placing an order for 75
6 aircraft is something few airlines can do. When you place
7 an order in that volume you can get volume pricing.

8 Likewise, while there are many airlines operating
9 globally there are only a handful with a depth of resources
10 that Delta has to fully evaluate a potential new aircraft.
11 As you can imagine, airlines are somewhat conservative by
12 nature and frequently cautious when it comes to inducting
13 new aircraft types into their fleet.

14 As a result, many smaller airlines will give
15 significant weight to the decision of a larger airline like
16 Delta before placing an order for a new design. Those other
17 airlines will then have greater confidence in placing their
18 own orders. What this means is that certain marquis
19 airlines like Delta can benefit from favorable pricing for
20 being the first one or one of the first airlines to place a
21 large order, thereby providing some market validation for
22 the new design. This has been true for the more than 30
23 years that I have been in the industry.

24 Let me also talk about the criteria that affect
25 price such as size and range. The 700 and Max7 are

1 significantly larger at 126 and 138 seats than 109-seat
2 CS100 and the range is more than double how Delta intends to
3 fly the CS100. Of course the larger plane with greater
4 range would generally command higher prices. We just
5 didn't need those capabilities so didn't need to pay for an
6 aircraft that has them.

7 In short, large volume orders that can help
8 validate a new design can achieve favorable pricing and
9 having the right-sized aircraft can lead to a sale. Thank
10 you.

11 STATEMENT OF JOE ESPOSITO

12 MR. ESPOSITO: Good afternoon. My name is Joe
13 Esposito. I am the Vice President of Network and schedule
14 planning for the Americas for Delta. I guess you are
15 already familiar with Delta. We serve more than 180 million
16 customers each year.

17 Delta, in addition with Delta connection
18 carriers, offer service to over 300 destinations and nearly
19 60 countries on 6 continents. In total, we offer more than
20 5,000 flights each day. I have been with Delta since 1990.
21 I started with Delta working with Airport Customer Service
22 in Orlando before moving to Atlanta in 1995 where I worked
23 in Strategic planning before joining the Network Planning
24 team.

25 I have filled various positions in Network

1 Planning with increasing levels of responsibility including
2 Director of International and most recently Managing
3 Director of Network and Schedule Planning. In my current
4 role I oversee our network planning operations which means I
5 am responsible for the economic, financial and capacity
6 planning for Delta's domestic and Latin America system as
7 well as schedule planning.

8 A key part of what Network planning does is to
9 design a network schedule that matches supply of seats to
10 passenger demand. We do that with a diverse fleet of twelve
11 aircraft types that range from 50 seats to 160 seats in
12 domestic operations. The fleet includes almost 1300
13 aircraft. We fly aircraft manufactured by each of the
14 world's major manufacturers including Boeing, Bombardier,
15 Airbus and Embraer.

16 Each of the aircraft we fly are suited for the
17 specific missions to which they are tasked. We fly to some
18 of the smallest communities in the country and also to all
19 the largest metropolitan areas. We operate over 30,000
20 flights per week in just our domestic operations.

21 Part of network planning is trying to assess how
22 much passenger demand there will be on every one of those
23 flights over the next three hundred and thirty-one days.
24 This demand will vary for each flight by time of day, day of
25 week and season. We will fly different types of aircraft on

1 the same routes at different times of day or different times
2 of year. A morning flight might be made using a smaller
3 aircraft while an evening flight to accommodate higher
4 demand might use a significantly larger aircraft.

5 In each case, the goal is to match the right size
6 aircraft to the anticipated passenger demand for the flight.
7 That is how we optimize the profitability of our network.
8 This means we almost always offer service with a variety of
9 aircraft types on the same route.

10 For example if I can turn your attention to the
11 slide, in 2016 Delta had 426 routes where it flew a 737700
12 or an Airbus 8319, which are the only two aircraft in our
13 current fleet that qualify as a 100 to 150-seat LCA as that
14 term is defined in this case.

15 Please turn to chart two as this chart reflects
16 on 66 percent of those 426 routes Delta also offered smaller
17 aircraft with less than 100 seats and as we turn to chart 3
18 which shows that on 68.5 percent of those 426 routes Delta
19 also operated 100 to 150-seat aircraft that doesn't meet the
20 scope definition of 100 to 150-seat LCA. These are either a
21 Boeing 717 or an MD88 which don't meet the arbitrary 2900
22 mile range picked by Boeing.

23 Please turn to chart 4. Here on chart 4 you can
24 see that we also operate our aircraft with more than 150
25 seats on 90 percent of those same 426 routes. Flipping to

1 chart 5, it shows that the 426 routes where Delta operated a
2 100 to 150-seat LCA we also flew both aircraft that were
3 larger than 150 seats as well as aircraft that were smaller
4 than 100 seats.

5 The fact of the matter is that on the vast
6 majority of our routes we fly a variety of aircraft types.
7 Please turn to chart 6. Of the 426 routes in which Delta
8 operate 100 to 150-seat LCA in 2016 there were only 6 where
9 a 100 to 160-seat LCA were the only aircraft we operated on
10 that route and in fact of the six routes, only three involve
11 year-round service and one of those was recently cancelled.

12 We do not need 75 CS100s just to fly those five
13 routes. We need those 109-seat aircraft to fill a specific
14 niche in our total network plan so it's important to
15 understand that we do not assign a particular sized aircraft
16 to a route. We develop a passenger demand profile for each
17 flight and that profile may vary even from the same route
18 depending on the time of day, day of week or time of year.

19 Ideally, we want to have seats available for our
20 customers when we want them so we try to ensure that the
21 aircraft assigned to that particular mission of the early
22 evening flight, for example, is large enough to accommodate
23 expected demand. This of course goes to our bottom line.
24 More seats we sell generally speaking, the better our
25 revenues but also meet the needs of our customers.

1 But if the plane's capacity exceeds passenger
2 demand we will have empty seats. Flying with empty seats
3 means a higher proceed cost which means a poor return for
4 our shareholders or an increased ticket price for our
5 customers. This is why flying a 138-seat plane on a flight
6 where there is demand for only 109 seats is not a viable
7 economic option for Delta. That is a 27 percent miss in
8 matching supply and demand. We cannot profitably fly a Max
9 7 on a flight with demand for a CS100.

10 One of Delta's strengths is its particularly
11 diversified fleet which allows us a great deal of
12 flexibility and how we serve markets and a greater ability
13 to calibrate the correct aircraft to a particular flight.
14 Other airlines use a different model and use a less
15 diversified fleet operating in the network within the
16 limitations imposed by that model.

17 But the key is regardless of which type of fleet
18 an airline chooses, a successful airline looks to acquire
19 aircraft that fits the airline's plans. In recent years
20 Delta has been pursuing the strategy of up-gauging its
21 fleet, shifting from flying regional jets to larger mainline
22 aircraft. This strategy allows us to serve our customers
23 with the larger aircraft product they prefer.

24 As a result, Delta has sought to expand a number
25 of aircraft in its fleet with 100 to 110 seats. To

1 accomplish this goal we ordered seventy-five 109-seat
2 aircraft in 2016. My understanding is that Boeing has
3 argued that we could have bought 737700s or that, had we
4 waited we could have bought the Max7. That was never a
5 viable option for Delta. The 700 is an inefficient aircraft
6 with the highest proceed cost in Delta's fleet.

7 We have ten of them because there are a handful
8 of airports we service where the high performance
9 characteristics of the 700s are required. For example,
10 airports with short runways are high altitudes that require
11 high performance airplanes but they are not fuel efficient
12 planes. Delta has no need or desire for additional 700s.
13 For purposes of our network and how we choose to serve our
14 customers the ten we have are more sufficient, thank you.

15 STATEMENT OF GEORGE DIMITROFF

16 MR. DIMITROFF: Good afternoon. My name is
17 George Dimitroff and I'm the head of Valuations at Flight
18 Ascend Consultancy. Flight Ascend is the aircraft
19 valuations and advisory division of our parent company
20 Flight Global and has clients across the aerospace and air
21 finance spectrum.

22 One of our most popular products is our fleet's
23 analyzing database which Boeing uses extensively and has
24 quoted in its Petition. I have been with Flight Ascend and
25 its predecessors for twelve years and was previously

1 employed by both Airbus and United Airlines.

2 For this proceeding, Flight Ascend prepared a
3 report which was attached to Bombardier's prehearing brief.
4 I would like to focus on three specific issues which were
5 addressed in that report. First, the reasons why Boeing's
6 737 Max7 aircraft has limited commercial appeal relative to
7 other product offerings in the market. Secondly, the
8 closely related phenomenon of "up-gauging" and finally the
9 issue of launch pricing.

10 Boeing has built its entire case against the
11 C-series around one aircraft, the Max7. What I'm about to
12 say applies just as much to the 737700 and also to Airbus'
13 A319. Both the Max and neo families were optimized around
14 the larger 160-seat models but the smaller A319 neo and Max
15 7 models were also included.

16 While re-engineering and shrinking a large
17 aircraft allowed Boeing and Airbus to get a new model onto
18 the market faster, it had a number of disadvantages.
19 Shrinking a larger design results in a heavier aircraft with
20 bigger engines which is not optimized for its size and this
21 in turn has a negative effect on seat/mile costs.

22 An airline's operating costs typically consist of
23 fuel, maintenance, crew costs, landing and navigation
24 charges and ownership costs. Ownership cost is by no means
25 the number one, number two or even further down the line

1 cost by order of magnitude. It is a relatively small
2 portion of the direct operating cost pie.

3 Airlines' biggest concerns when operating
4 aircraft are fuel burn, reliability, and maintenance costs.
5 Only then does ownership cost come into the equation. To
6 make a fair apples to apples comparison between different
7 aircraft types we set fixed parameters such as fuel price,
8 aircraft utilization, crew pay rates and maintenance labor
9 rates. We have used our own models that estimate aircraft
10 operating costs in the specific assumptions are in our
11 report.

12 Our analysis as you can see in slide 2 shows that
13 the 737700 and Max 7 are less efficient to operate than the
14 Bombardier C-series 100 or 300 on a cash/operating cost
15 basis. These unfavorable economics would push an airline
16 towards either a larger 737 Max model or the C-series. The
17 Max 7 was originally launched with 126 seats in a typical
18 layout but later stretched to 138 seats in order to improve
19 its per seat economics. This move made the Max 7 less
20 comparable to the C-series.

21 At the same time, there is also a new trend
22 toward up-gauging. This refers to airlines shifting the
23 composition of their fleet over time towards larger models.
24 Up-gauging brings several benefits, the most obvious being
25 that the larger aircraft with more seats have a lower

1 seat/mile cost, basic economies of scale.

2 We at Flight Ascent have seen up-gauging occur
3 throughout the market. We see carriers like Delta and
4 American up-gauging their 50-seat regional jets into 76-seat
5 regional jets and the 76-seat regional jets into the
6 110-seat segment. We have also seen carriers like United
7 up-gauging from 125-seat segment into the 150-seat segment
8 and even Southwest which is a Max7 customer has started to
9 do this. They now operate the larger 7377800 and the new
10 Max 8.

11 Most of the time the competition presented by
12 up-gauging doesn't come from other manufacturers but from
13 the same manufacturer. The United sale about which Boeing
14 complains is a good example. We understand that United has
15 converted the majority if not all of its orders that were
16 originally placed for the 73700 to Max9s and Max10s.

17 In effect, Boeing has cannibalized demand for its
18 own 737700 and Max7 by allowing and we suspect encouraging
19 its customers to up-gauge to bigger variants of the same
20 family. This makes sense for the manufacturers because they
21 can make better margins on the larger variants. Using our
22 own database we have compiled Boeing's sales of the 737MG
23 family which encompasses the 600 through 900ER and the Max
24 family of aircraft.

25 Slide 3 shows that the 73700 shown here in red

1 went from 60 percent MG deliveries in 1998 to barely 5
2 percent of annual deliveries by 2012. Slide 4 shows that
3 sales of the A319 Model from Airbus also in red have
4 similarly declined over time in favor of the larger A320 and
5 A321.

6 Since Boeing no longer breaks down sales of the
7 Max variant by variant we cannot perform the same analysis
8 but our impression is that the trend will be comparable to
9 what happened with the MG. Airbus on the other hand does
10 break down the orders by type and the data for the A320C and
11 A320 neo series shows nearly identical trends.

12 In fact, slide 5 shows in red that less than one
13 percent of the new orders on the books today are for the
14 A319 Neo model. The smallest members of the Boeing and
15 Airbus single-aisle families which show the 737600 and the
16 A318 both fail to secure meaningful orders. Largely because
17 the per-seat economics of each of these models were even
18 worse being twice shrunk from the core model. There is no
19 indications that unfair import competition played a part in
20 the demise of either of these models. They failed as a
21 result of their poor economics and the segment they were
22 trying to serve which was approximately 110 seats.

23 Finally, a few words about launch pricing
24 especially on clean sheet designs. Launch discounts are
25 necessary to encourage airlines to take the risk of working

1 with a new supplier or even to commit to an all new program
2 from an existing supplier. Bombardier's sale to Delta does
3 constitute a launch pricing situation, even if they were not
4 the first customer. Every airline that orders an aircraft
5 before it enters service or even before it is mature in
6 service requires launch pricing to offset the risks that
7 they are taking.

8 When evaluating orders, airlines want to see
9 in-service reliability data, performance data and fuel burn
10 data and clean sheet designs cannot produce such data up
11 front. Airlines take risks on the new technology including
12 potential delays to delivery and in-service problems that
13 could cause disruptions to the flight schedule, which comes
14 with a cost.

15 Airlines want to offset that cost up front by
16 paying less for the aircraft. Even then, the agreed prices
17 are subject to years of contract escalation which raise the
18 final flyaway price paid by the airline on delivery.
19 Although Bombardier had already sold some C-series aircraft
20 by the time the Delta sale was made they really needed
21 another large blue-chip customer besides the Lufthansa Group
22 to endorse the program.

23 The market has been well aware of the
24 circumstances surrounding the Delta sale but it is unlikely
25 that other airlines would realistically expect to obtain a

1 similar price on any subsequent orders they might place. We
2 have over the years observed equally advantageous if not
3 more advantageous pricing from both Boeing and Airbus on
4 various programs.

5 The most recent example being the Boeing 787.
6 The 787 experienced multiple delays and difficulties with
7 its suppliers. Even after entry into service initial
8 reliability and performance data was poor consequently
9 Boeing needed to offer launch-style pricing to multiple
10 airlines to counteract the risk. Once Boeing won more sales
11 and ultimately won the endorsement of the aircraft in the
12 market the pricing of the aircraft increased.

13 In summary, my three takeaways are these: One,
14 the Max 7's economics cannot compete with the C-series
15 because it's a bigger, heavier aircraft with more seats.
16 Two, the Max 7 is failing to sell mainly because the
17 airlines are up-gauging to larger Max models encouraged by
18 the manufacturer. Three, launch pricing has been common
19 practice in the industry for decades and has been exercised
20 by all manufacturers. It upsets new program risk and does
21 not set the bar for subsequent orders. Thank you.

22 STATEMENT OF SHARA ARANOFF

23 MS. ARANOFF: Good afternoon. I am Shara Aranoff
24 from Covington and Burling. I'll focus on four legal
25 issues, post-petition effects, like product, negligibility

1 and threat.

2 First, Boeing's argument that the Commission
3 should disregard the U.S. foul as a post-petition effect is
4 a misapplication of the statute. Section 16777i gives the
5 Commission discretion to reduce the weight according to
6 post-petition data if any change in the volume, price
7 effects or impact of imports of the Subject Merchandise
8 since the filing of the Petition is related to the
9 dependency of the investigation.

10 As Mr. Levec explained, the business case for the
11 Airbus partnership predates the Petition and is therefore
12 not a post-petition effect.

13 But even if it were, the establishment of the
14 U.S. FAL is a permanent change and not a short^^term volume
15 or pricing trend that could reverse after a negative
16 determination.

17 The Commission has never applied this provision
18 to construction of a new domestic production facility which
19 signals a permanent change in the pattern of trade. If the
20 Commission agrees that the U.S. FAL will be built regardless
21 of the outcome of this case, then it defies logic to
22 discount that facility as a post-petition effect. The U.S.
23 FAL will benefit the aerospace industry by increasing
24 domestic production and employment.

25 Now Boeing may not like new domestic

1 competition, but the mandate of this Commission is to
2 protect domestic industries from injury due to unfairly
3 traded imports, not from competition with another U.S.
4 producer.

5 Turning to like product, Boeing continues to
6 argue that the like product includes just the 737-700 and
7 Max 7 and not the larger family members.

8 In questionnaires and the pre-hearing report,
9 Commission staff have worked very hard to expand the record
10 with respect to like product factors and have collected
11 complete data for the larger domestic industry. At this
12 point, the record contains overwhelming evidence in favor of
13 the broader-like product.

14 As shown in Slide 1, the Max family is a classic
15 product continuum where differences arise from each model
16 being successfully larger. But the members of the Max
17 family share one design, one production process, common
18 employees, substantial parts commonality, and significantly
19 overlapping uses.

20 But petitioner keeps pointing to some
21 differences. And what differences did they highlight?
22 First, seat count. But seat count varies widely depending
23 on customer preferences. As the Commission pointed out this
24 morning, Southwest, the launch customer for Max 7 has been
25 publically reported that its plan is to configure the

1 aircraft with more than 150 seats. And airlines use planes
2 with different seat counts to serve the same routes at
3 different times of the day or year as Delta just testified.

4 Second, Boeing points to product specific
5 tooling. Please see the confidential record for why this
6 argument deserves no weight when considered against the
7 common production line used to assemble the entire 737 Max
8 family.

9 Third, Boeing pointed to the ability of the Max
10 7 to serve hot high airports. But that is a very small
11 minority of airports.

12 Fourth, Boeing points to the fact that you need
13 an extra flight attendant for an aircraft that seats over
14 150 passengers. But FAA regulations also require yet an
15 additional flight attendant when you go over 200 passengers.
16 So that means that the Max 10 would be need more flight
17 attendants than the Max 8 or 9.

18 For these reasons, the Commission should find
19 the domestic-like product includes all single aisle with at
20 least 100 seats. And in that case, the domestic industry
21 consists both of Boeing's production of the 737 family, as
22 well as Airbus America's production of the A-320 and A-321.

23 As the data in Table C-3 of the confidential
24 staff report demonstrate, this domestic industry is neither
25 injured nor threatened with material injury by reason of

1 subject imports.

2 Boeing's own public statements confirm that its
3 737 production is sold out for years. As the data in Slide
4 2 show, the 737 family represents 45 percent of Boeing's
5 \$424 billion commercial airplanes backlog and the average
6 profit margin across Boeing commercial airplanes for 2013 to
7 '15 was a healthy 9.8 percent. Therefore, if the like
8 product is properly defined, the record compels a negative
9 determination.

10 Even if the Commission opts for petitioner's
11 like product, however, it should terminate the investigation
12 based on a finding of negligibility. In the preliminary
13 phase, the Commission found that imports from Canada were
14 negligible, but that there was a reasonable indication
15 imports would imminently exceed negligible levels. This
16 conclusion has been overtaken by events. Because
17 Bombardier and Airbus plan to assemble planes for U.S.
18 customers at the U.S. FAL, there are no plans to import C
19 Series aircraft from Canada in the future. Under the
20 statute, the volume of subject imports will necessarily be
21 negligible.

22 Finally, a few words on threat. The Commission
23 only needs to reach this issue if it finds both that there
24 were will not be a U.S. FAL and that the domestic-like
25 product is limited to the 737-700 and Max 7. But if the

1 Commission in our view wrongly reaches this point, there's
2 still no threat of imminent material injury.

3 To determine whether injury is imminent, the
4 Commission normally looks to the end of the current year and
5 one additional year. Even in cases involving large capital
6 goods with long lead times, the most generous threat horizon
7 applied in any Commission or CIT decision set that imminence
8 period no longer than two years into the future.

9 Here, that means the Commission might look out
10 at most to the end of 2019, which is what it did in the
11 preliminary determination. In this industry, looking any
12 further into the future would be an exercise in pure
13 speculation because of long supplier lead times, aircraft
14 manufacturers typically require orders to be finalized 18 to
15 24 months prior to delivery.

16 Manufacturers can thus predict their production
17 18 to 24 months out with some certainty. Beyond the two
18 year mark by contrast, purchasers frequently exercise
19 options or deferral rights or make contract changes, which
20 can alter which aircraft will be delivered in what quantity,
21 and when.

22 Even for orders that have already been placed,
23 therefore, it would be speculative to base a threat
24 determination on imports that are scheduled for more than
25 two years out. It would be even more speculative to find a

1 threat based on the prospect of imports resulting from
2 orders that have yet to be placed.

3 It also would be inconsistent with the
4 unambiguous direction of the statute, which says that the
5 basis for the Commission's threat of injury determination is
6 whether further dumped or subsidized imports are imminent
7 and whether material injury by reason of imports would occur
8 absent relief. Orders and likely sales may be relevant to
9 the threat analysis only if they will lead to imminent
10 imports.

11 In the next two years, the only subject aircraft
12 Bombardier could deliver to a U.S. customer would be some of
13 the 75 CS-300s ordered by Delta. As Mr. Dewar explained,
14 there's no excess capacity at Mirabel from which additional
15 U.S. sales could be made in that time frame.

16 So even if the Commission were to conclude,
17 despite Delta's testimony to the contrary, that Delta will
18 import CS-100s from Canada, there could be no threat of
19 injury to Boeing. Boeing never saw it and so could not have
20 lost that sale. No other sales or imports qualify as
21 imminent.

22 Thank you for your time and your consideration.
23 This ends respondent's presentation and we look forward to
24 your questions.

25 CHAIRMAN SCHMIDTLEIN: All right, thank you very

1 much. I'd like to thank all of these witnesses on this
2 panel for being here today as well. This afternoon, we
3 begin with Commissioner Broadbent.

4 COMMISSIONER BROADBENT: Okay, thank you,
5 Chairman Schmidtlein.

6 This is for Delta, Mr. Esposito. On page 31 to
7 32 of its brief, Boeing provides a list of examples of
8 routes that are right-sized for 100 to 150-seat large civil
9 aircraft. Do you have any examples of airlines serving
10 those same routes with out of scope single aisle large civil
11 aircraft?

12 MR. ESPOSITO: I'm sorry, I'd have to -- I don't
13 have the page in front of me, but -- actually, I don't. I'm
14 sorry. Can you just repeat?

15 COMMISSIONER BROADBENT: Sure. Page 31 to 32 of
16 its brief, Boeing provides a list of examples of routes that
17 are rightsized in their paper "for 100 to 150-seat large
18 civil aircraft." Do you have any examples of airlines
19 serving those routes with out of scope single aisle large
20 aircraft?

21 MR. BAISBURD: So we don't -- Yohai Baisburd on
22 behalf of Delta Airlines. We don't have the brief right
23 here so we can review those airports and respond in the
24 post-hearing. But I think what Mr. Esposito testified to is
25 that on more than half the routes where they fly 100 to

1 150-seat aircraft, they fly aircraft that are smaller than
2 that and aircraft that are larger than 100 to 150-seat LCA.

3 COMMISSIONER BROADBENT: Okay. Mr. Mitchell
4 From Bombardier, do you consider your C Series aircraft or
5 your CRJ Series aircraft to be most competitive with
6 Embraer's E-series regional jets? I ask this because there
7 seems to be substantial overlap between the Bombardier CRJ
8 aircraft and the E-series in terms of seat count or as the C
9 Series has larger seat counts than even the largest E-series
10 jets.

11 MR. MITCHELL: Okay. Let me be clear. There's
12 not overlap between the CRJ and the C Series in our opinion.
13 They serve different customers.

14 In the United States, the CRJ family serves
15 regional carriers, strictly regional carriers. The Embraer
16 E-Jet family goes across those two different markets. The
17 Embraer 175, which is a smaller aircraft, competes with our
18 CRJ-900. The Embraer 190, 190 E-2, 195, and 195 E-2, do in
19 fact compete with the C Series because they are larger than
20 what is typically considered regional.

21 COMMISSIONER BROADBENT: Okay.

22 MR. BAISBURD: Commissioner Broadbent?

23 COMMISSIONER BROADBENT: Uh-huh.

24 MR. BAISBURD: Sorry, but if we could clarify
25 something. So that list of routes that Boeing has

1 identified in their brief, they treat it as proprietary.
2 And so there would not be -- we wouldn't be able to have a
3 Delta witness review that. It strikes me as perhaps we
4 could not treat those as proprietary since there geographic
5 airports, but it's not our decision to make.

6 And I would just point out again also from Mr.
7 Esposito's testimony that Delta itself has thousands of
8 flights a year and only six routes that it only flew 100 to
9 150-seat LCA as defined in this proceeding.

10 COMMISSIONER BROADBENT: Okay, fair enough.

11 Let's see for general question for respondents.
12 On page 6 of the Bombardier's brief, it states that the
13 primary assembly line for the CSALP will remain in Quebec.
14 Can you define primary assembly and describe exactly what
15 type of assembly will be occurring in Mobile, Alabama?

16 MR. DEWAR: Sure. So Rob Dewar from Bombardier.
17 So the -- of course, the primary manufacturing center, it
18 was always planned in Mirabell and started there. They
19 actually have two production lines in parallel. And our
20 plans are to take a replica, exact replica and have one of
21 those lines in the U.S. for U.S. customers.

22 COMMISSIONER BROADBENT: Okay. Will the C
23 Series fuselage be equipped with electrical or mechanical
24 systems before it's shipped to Mobile?

25 MR. DEWAR: So the C Series will have the same

1 configuration of components for both the Mirabel facility
2 and for the facility in Alabama. And yes, we do include
3 some of the systems in bracket, we are included into our
4 subsections. But there is no fully assembly fuselage.
5 Those are done in each of the manufacturing sites.

6 And it is in line, by the way, with modern
7 aircraft. The 737 of course, was really planned back in the
8 '60s. Although they have made some improvements, modern
9 aircraft actually used a standard. So whether you look at
10 an Airbus product, a 787, or our product, it is a modern way
11 to assemble aircraft.

12 COMMISSIONER BROADBENT: Okay. Mr. Dewar, how
13 is the C Series model distinct from the continuum of single
14 aisle LCA that you identify as characterizing Boeing's 737
15 family?

16 MR. DEWAR: I'll pass that question to Ross.

17 MS. ARANOFF: Well, before Mr. Mitchell answers,
18 Commissioner, I just want to ask for a little bit of a
19 clarification on that. If we're talking about domestic-like
20 product, the comparison would be between Boeing models. If
21 we're talking about, you know, more of an attenuated
22 competition, conditions of competition, then that would be
23 the type of comparison that Mr. Mitchell could make for you.

24 COMMISSIONER BROADBENT: Okay.

25 MS. ARANOFF: I'm not sure which you intended

1 the question.

2 COMMISSIONER BROADBENT: The latter.

3 MS. ARANOFF: Okay. You want to talk about what
4 some of the differences are between the C Series and the
5 Max?

6 MR. MITCHELL: Ross Mitchell from Bombardier. I
7 guess the first thing to note is that the airplane is a
8 clean sheet design. So our wings are composite wings. Our
9 fuselage is built out of aluminum lithium, rather than
10 standard aluminum. We have a five abreast configuration
11 inside the aircraft as opposed to a six abreast
12 configuration.

13 In terms of the inside of the aircraft, the
14 windows are larger, the bins are bigger, the aisle is wider,
15 the seats are wider. The aircraft has modern avionics that
16 are state-of-the-art. And it is significantly lighter than
17 the 737 aircraft simply because we have a composite wing and
18 we have the advantage of a clean sheet aircraft. So it is
19 -- it's significantly lighter. So there are a number of
20 differences between our airplane and theirs.

21 MR. DEWAR: Yeah, maybe I'll just add a few
22 points. So also in terms of sizing, comparing the CS-100,
23 and this is of course done by Bombardier, but it is an
24 apples to apples comparison using the same assumptions for
25 seat pitch and amenities. And you can see that the Max 7 is

1 30 percent larger than the CS-100.

2 And of course, it is customer selectable. And I
3 think Delta testified earlier on the sizing that they were
4 proposed and that they use, but really it is in a different
5 category, the CS-100 and the Max 7.

6 And it's different technology. It is really --
7 our aircraft is the actual latest technology in the
8 industry, where the 737 really is based on heritage of a
9 much older base design from the '60s.

10 COMMISSIONER BROADBENT: I think I heard in the
11 opening presentation that the customer experience in the
12 C-100 is 20 percent better. How do you measure that?

13 MR. DEWAR: Yes, we've had some direct feedback
14 from customers in terms of their feedback and their
15 experience on the aircraft. So when they get feedback
16 regarding the size of the cabin, the space of this, the size
17 of the bins, and the windows, and overall experience is 20
18 percent better than aircraft currently serving the market.

19 MS. ARANOFF: Commissioner Broadbent, we
20 actually have from one of Bombardier's customers that has
21 the aircraft in service, their passenger survey data. It's
22 confidential, but if you want to see it, we can submit it
23 post-hearing.

24 COMMISSIONER BROADBENT: Okay, yeah, that'd be
25 interesting.

1 On page 43 of Bombardier's brief and page 1 of
2 Delta's brief, they describe Boeing and Airbus as having
3 abandoned the low end of the single aisle market. Why do
4 you think that Boeing and Airbus did this? And why did
5 Bombardier see in this -- and what did Bombardier see in
6 this part of the market that Boeing and Airbus did not?

7 MR. DEWAR: So I --

8 MR. MITCHELL: Sure.

9 MR. DEWAR: So basically as I mentioned in my
10 testimony, you know, we've clearly seen that we did not
11 serve that market and Boeing and Airbus has products that
12 were sub-optimized.

13 And what do I mean by sub-optimized? They took
14 an aircraft of six abreast, much larger with larger wings
15 and engines as was presented in one of the slides earlier
16 today, and basically shrunk the fuselage to be able to serve
17 this market.

18 So with the older technology and oversized
19 aircraft in its category, of course, the economics were very
20 poor as was mentioned by Delta. And so, we saw an
21 opportunity to optimize an aircraft with the right sizing of
22 aircraft and engine of course with the latest technology.
23 And that's why the C Series has such a large operating
24 advantage against those products.

25 MR. MITCHELL: If I might add, Ross Mitchell for

1 Bombardier. When we say abandoned, one of the things we're
2 referring to is the fact that each of those manufacturers
3 built an airplane in the specific 100 to 110-seat segment.
4 In the case of Boeing, they built the 737-600, which they
5 stopped building. They built the Boeing 717, they also
6 stopped building. Airbus built the A-318 and they stopped
7 building that airplane.

8 Again, they stopped building those aircraft
9 because there was very little customer interest in them
10 because the aircraft were awfully heavy on a per seat basis.
11 So it didn't derive the right economics for the airlines.

12 So when we say they abandoned the market, we
13 mean they abandoned the market. They stopped building
14 airplanes that are in the space that the C Series occupies
15 today.

16 And in the case of Boeing, the 737-700 was
17 enlarged to make the Max 7. So that airplane was enlarged
18 to the point where at a Max density, they can carry 172
19 passengers. So again, the market that the C Series is in
20 was abandoned by the two main manufacturers.

21 MR. BAISBURD: I would add, they -- the answer
22 this morning was quite instructive when asked how are they
23 going to take care of the lower end of that range? The
24 response is we innovated with a Max 7, which of course 12
25 seats larger than what they had at the 700.

1 So you have Delta buying a plane at 109. Not
2 just a plane. They bought 75 planes at 109 seats. And the
3 response from Boeing is we're going to serve 100 to 150-seat
4 market by creating a plane at a 138 seats. When the 126 was
5 too big for you, well, guess what? Now you're going to have
6 to buy a plane at 138 seats, which is 27 percent greater
7 than the plane that Delta actually ordered.

8 COMMISSIONER BROADBENT: Okay. Thank you.

9 CHAIRMAN SCHMIDTLEIN: I want to go back to this
10 question about the like product. When we look at like
11 product, we're trying to decide what product is like or most
12 similar in characteristics and uses as the subject imports.
13 And so, is there not some tension or inconsistency in
14 arguing that there's on one hand, there's attenuated
15 competition between the Max 7 and the C Series because the
16 seating configuration or the number of seats is different in
17 that the C Series is smaller? But then on the other hand,
18 you all are arguing that larger aircraft than the Max 7,
19 namely the 8, 9, and 10 should be included in the domestic
20 like product because in your view, those products are like
21 or most similar in characteristics and uses as the C Series?
22 Isn't that an inconsistency?

23 MS. ARANOFF: It's a bit of a brain teaser,
24 admittedly, Madam Chairman, but I think the point -- the key
25 point to keep in mind here is the question you're asking

1 would make the most sense if we were telling you that the
2 700 and the Max 7 are not the like product. And we're not
3 telling you that the 700 and the Max 7 are not the like
4 product.

5 What we're asking you to do is envision the like
6 product as not being limited to the 700 and the Max 7. So
7 it's a little bit of a different -- the question you're
8 asking is how can the 700 and Max 7 not be the like product
9 if, you know, if you're arguing that there's attenuated
10 competition, how can you also say they're the like product.
11 But that isn't really the issue here, right?

12 CHAIRMAN SCHMIDTLEIN: Well, no, but you're
13 making the argument that not only is that the like product,
14 but that we should expand the product beyond the scope,
15 which I have a question about that. How many cases do we
16 actually take a like product and sweep in more products than
17 what is in the scope? I'm trying to think of some and it's
18 unusual.

19 So it's not just that you're not making the
20 argument that it's -- that the 7 is not, you know, 700 Max
21 7's not like. You're saying no, no, broaden it and bring in
22 planes that are much bigger than the 7, that those are like
23 products.

24 But on the other hand, you need to find that
25 there's attenuating competition. We don't compete at all

1 like the C Series is this small little plane and the Max 7
2 is big.

3 MS. ARANOFF: Right.

4 COMMISSIONER BROADBENT: Do you not see the
5 inconsistency?

6 MS. ARANOFF: The legal --

7 CHAIRMAN SCHMIDTLEIN: -- in those arguments?

8 MS. ARANOFF: It is a little bit hard, but the
9 legal test for like product is really focused on comparing
10 whether or not there is a reasonable line that can be drawn
11 around what the petitioner has identified as the domestic
12 like product versus the rest of their products. And in this
13 case, we really think that what you have here is a classic
14 continuum that you can't stop.

15 CHAIRMAN SCHMIDTLEIN: But you don't think those
16 bigger planes are competing with the C Series obviously?
17 You don't think 8, 9, and 10 compete with C-100, right, Mr.
18 Mitchell?

19 MS. ARANOFF: But --

20 CHAIRMAN SCHMIDTLEIN: Or 300?

21 MS. ARANOFF: But I think that that's because
22 that's the wrong question to be asking here. The question
23 is to be asking here is if the -- if as Boeing argues the
24 Max 8 -- the question is, is there a bigger difference
25 between the 7 and the 8 than there is between the 8 and the

1 9 or between the 9 and the 10 because that's the only way in
2 the world of a continuum product that you get to a clear
3 dividing line. But the Commission will frequently look --

4 CHAIRMAN SCHMIDTLEIN: But isn't the point of
5 the continuum to decide what's competing? We're trying to
6 decide like what's competing here, right?

7 MR. BAISBURD: Well, I think it goes -- Yohai
8 Baisburd for Delta. There's a question of causation and
9 then there's a question of a continuum and how you define
10 the like product. And so, at 100 and above, there are a
11 range of aircraft that are available to airlines who are
12 choosing how they're going to organize and operate their
13 fleet. And the record evidence is clear that airlines such
14 as Delta, who identify a niche, bought 75, 109 planes.

15 Other airlines, and I won't recall which are
16 proprietary, which are not, but they're on the record and
17 was cited in our brief, fluctuated on that artificial line
18 at 150 as they were looking at their own needs. But that
19 there's a continuum, I think, is based on the statutory
20 factors and that there's no clear dividing line.

21 I'll give you an example. The difference
22 between the Max 7 and the Max 8 is only 24 seats or about 17
23 percent. The difference between the CS-100 and the Max 7 is
24 29 seats. So there's a greater seat differential. And I
25 think it goes --

1 CHAIRMAN SCHMIDTLEIN: It's -- let me just
2 interrupt you. Isn't it true though that the airlines get
3 to decide what number of seats they want to put in the
4 plane? So while that's the typical number, that's not the
5 actual number that ends up going in. It all depends on what
6 the airline dictates when they buy that plane?

7 MR. BAISBURD: And I'll allow Delta to go into
8 the detail, but based on operating costs and economics of
9 profitably operating their airline, and Boeing in the
10 petition recognizes this. On page 44 of the petition, they
11 talked expressly about the economic impact of an airline
12 buying a plane that's too big for what they deemed the
13 demand to be, that they'll be empty seats and there's an
14 economic cost to them for doing so. And actually, we heard
15 it this morning about, you know, a responsible company
16 matches capacity to demand.

17 And so I think in any attenuated competition
18 situation, you have a like product. You just found that the
19 competition between subject imports and that like product
20 was attenuated. But it didn't mean that there's a dividing
21 line that didn't put together the entire production range --

22 CHAIRMAN SCHMIDTLEIN: Well --

23 MR. BAISBURD: Of the domestic industry.

24 CHAIRMAN SCHMIDTLEIN: -- usually, though, we
25 have a scope that's quite broad that sweeps in a number of

1 sizes of product say. So like in wire rod or in pipe or
2 something like that. And we have a like product that
3 usually supplies that range. And typically, they'll be an
4 argument that the vast majority of imports are coming in at
5 one part of that range and the domestic is selling at the
6 other half of that range and that the injury does not have
7 -- or like that's typically how attenuated competition --

8 MR. BAISBURD: Sure. And that's --

9 CHAIRMAN SCHMIDTLEIN: -- happens.

10 MR. BAISBURD: Yeah, and that's exactly what
11 happened here. And again, the factual witness can speak to
12 this, although they did in their testimony, they bought 109
13 seat plane. Like there's this fallacy and this
14 artificialness about talking about C Series, C Series, C
15 Series. On the record, there is one relevant order. It's
16 for 75, 109 seat planes. Kind of full stop there. And I
17 think that that --

18 CHAIRMAN SCHMIDTLEIN: But it's one thing to say
19 they didn't lose -- I guess you're saying that the C Series
20 never competes with Max 7, is that right or no?

21 MR. BAISBURD: No, what I'm saying that the
22 CS-100 is 109 seat plane and Joe and Greg can jump in, but
23 they'll tell you what they were looking for at the time that
24 they ordered the 75 C Series.

25 And this isn't the typical case. First, you

1 don't have subject imports during the POI. You have no
2 other orders. Like the record on this issue is
3 extraordinarily clear and quite limited. You have one order
4 for 109 planes, 109 seat plane, 75, 109 seat planes.

5 CHAIRMAN SCHMIDTLEIN: So does -- do you -- is
6 it the position of the respondents that the -- well, let me
7 back up. Let me ask. Does Bombardier compete with Boeing
8 in any area for any plane in your view?

9 MR. ESPOSITO: Not for the demand that we were
10 looking for.

11 CHAIRMAN SCHMIDTLEIN: At all, period? Does
12 Boeing compete with Bombardier at all in any product
13 offering?

14 MR. ESPOSITO: I would have to say no from my
15 chair.

16 CHAIRMAN SCHMIDTLEIN: Mr. Mitchell, what do you
17 think? Do you compete with Boeing in any -- with regard to
18 any plane that you make?

19 MR. MITCHELL: With respect to the C Series?

20 CHAIRMAN SCHMIDTLEIN: No, any plane?

21 MR. MITCHELL: Any plane?

22 CHAIRMAN SCHMIDTLEIN: Any plane.

23 MR. MITCHELL: Any plane. You will see
24 occasionally, Boeing 737 Max 7 in a competition, but it is
25 rare that it gets to the final step because it is not an

1 adequate airplane for the small single aisle segment. And
2 what I mean by that is as you saw in the chart that Mr.
3 Dimitroff put up, it is not a competitive economic airplane
4 with our C Series.

5 CHAIRMAN SCHMIDTLEIN: But there are some
6 campaigns that it competes in?

7 MR. MITCHELL: They may start out looking at a
8 broad spectrum of aircraft. As I pointed out in my
9 testimony, it is not unusual for an A-319 or a Max 7 to be
10 in the discussion early on. Usually, once you begin to talk
11 about the economics, those airplanes disappear fairly
12 quickly because the economics are poor.

13 CHAIRMAN SCHMIDTLEIN: So what do you think's
14 going on here? If you -- if they don't compete, right, why
15 are they -- why do they want to knock the C Series out?

16 MR. MITCHELL: Why does Boeing want to knock the
17 C Series out?

18 CHAIRMAN SCHMIDTLEIN: Uh-huh, yeah. Why -- if
19 they're not competing, right, like it's not -- and I notice,
20 you know, I think it was your testimony you talked about the
21 sweetheart deal that United got, right? And by sweetheart
22 deal, I assume you mean they got great pricing, right? So
23 Boeing took a little bit of a bath on the pricing to get
24 that deal.

25 MR. MITCHELL: Well --

1 CHAIRMAN SCHMIDTLEIN: Is that what you meant by
2 sweetheart deal?

3 MR. MITCHELL: What I meant by sweetheart deal
4 was it was widely reported that they had to give a good
5 deal. And I think you should ask Boeing why they stepped
6 into that transaction.

7 As I testified, and I was at the company, I was
8 working with the sales team on United when that happened.
9 So as a factual witness I can say that, you know, we believe
10 we had won the transaction. We did not see Boeing in this
11 transaction at that time. We were competing with the
12 Embraer aircraft --

13 CHAIRMAN SCHMIDTLEIN: So --

14 MR. MITCHELL: -- for a 100-seat aircraft.

15 CHAIRMAN SCHMIDTLEIN: So why did they do that
16 then, because they didn't want validation for the C-series
17 in the market, right?

18 MR. MITCHELL: Well, that's -- yes, that's --

19 CHAIRMAN SCHMIDTLEIN: But why do they care --

20 MR. DEWAR: I could explain.

21 CHAIRMAN SCHMIDTLEIN: -- whether C Series is
22 validated --

23 MR. DEWAR: Yeah.

24 CHAIRMAN SCHMIDTLEIN: -- if they don't compete
25 with it?

1 MR. DEWAR: Sure, because before this --

2 CHAIRMAN SCHMIDTLEIN: Why would -- right?

3 MR. DEWAR: Before the C Series existed, the
4 customers had no choice. They had to pick from two aircraft
5 that were economical, but that's all that was there. That's
6 what we identified --

7 CHAIRMAN SCHMIDTLEIN: What were the -- and what
8 were those aircraft?

9 MR. DEWAR: As you know, the -- as was mentioned
10 by Ross, the 737-600 was stopped. The 717 was stopped. So
11 there's no products in this segment. That's why we
12 identified the segment and developed the C Series for us to
13 have a product that customers were looking for, that was
14 economically viable in the segment.

15 What Boeing would like is that we go away and
16 the customers have to choose between their inefficient
17 product in the segment or the Airbus one.

18 CHAIRMAN SCHMIDTLEIN: But then aren't you
19 saying that they compete? I mean, if absence of product,
20 they're going to buy a Boeing product?

21 MR. MAY: If I can --

22 CHAIRMAN SCHMIDTLEIN: Aren't you competing at
23 that point then?

24 MR. MAY: Greg May from Delta.

25 CHAIRMAN SCHMIDTLEIN: Even though you have --

1 you say you have better economics, it's a better plane, but
2 aren't you competing?

3 MR. MAY: Greg May from Delta, if I can. I
4 mean, I was there during the competition for the C Series.
5 I ran it. And we heard the rumored price that United was
6 going to pay for the 700, but that price could not overcome
7 -- we did not understand why they were doing it because that
8 price could not overcome the operating economics that that
9 aircraft had, that chart that I showed you before
10 demonstrated that. If you look at ownership cost, for
11 Delta, ownership cost is maybe 20 percent of the overall
12 picture. So you have to cut a price in half to make a 10
13 percent impact.

14 CHAIRMAN SCHMIDTLEIN: So how did you at Delta
15 hear what United was paying?

16 MR. MAY: Just whispers in the market that we
17 cannot confirm with a case. And that's also another a good
18 factor as well, that Boeing is indicating there's this
19 transparency. One of their key examples being financing. I
20 can tell you it is common practice by all the airlines to
21 finance the aircraft at a different price than what they are
22 paying. I don't think we at Delta have done a sale
23 leaseback transaction at our price for a number of years.

24 CHAIRMAN SCHMIDTLEIN: So how do those -- like
25 for instance, how did that -- can you be a little more

1 specific in terms of the whispers in the market? Like
2 what --

3 MR. MAY: At a conference event, maybe
4 someone, you know, commenting on what they heard. It's
5 nothing more than that, and there's -- it is really that
6 invalid, you know. I can't tell you what for certain for
7 what United paid. I know what I heard for rumors on those
8 aircraft. I have no idea what United's paying on their Max
9 aircraft, not a clue, and I'm at Delta and this is my
10 responsibility. That's not to say there is -- transparency
11 is --

12 CHAIRMAN SCHMIDTLEIN: Transmission.

13 MR. MAY: Total transmission, yeah, is total
14 nonsense.

15 CHAIRMAN SCHMIDTLEIN: Okay, all right. My
16 time is over. I will -- we'll come back to this. Chairman
17 Johanson.

18 VICE CHAIRMAN JOHANSON: Thank you Chairman
19 Schmidtlein, and thank you all for appearing here today.
20 This is a question for Delta. Delta has described its view
21 that its launch price for the C series is compensating for a
22 degree of risk with a new aircraft. You all argue this at
23 pages 34 to 35 of your brief. With that said, why did Delta
24 decide to place an initial order for 75 aircraft? That
25 seems like a significant multiplier of risk. After all, if

1 there was indeed a degree of risk, why not order a smaller
2 initial number?

3 MR. MAY: Greg May for Delta Airlines. The
4 order that we placed was a negotiated order. We do
5 trade-offs looking at how much, you know, what are we going
6 to acquire the aircraft for, what are the operating costs,
7 what do all the various pieces look like in our NPV analysis
8 and make an informed decision. The risks, there's a lot of
9 discussion earlier today about the risks. The C series
10 aircraft had been certified, but there were definitely still
11 risks remaining.

12 Some of the key risks for an aircraft and that
13 a customer such as Delta, who is a launch customer will get
14 rewarded for is you don't know what the reliability
15 characteristics of the aircraft are going to be. You don't
16 know what your maintenance costs are going to be long term.
17 There are a lot of factors besides just how the airplane
18 initially flies. You don't know what performance retention
19 is going to look like.

20 So I'm answering multiple questions here, but
21 the question about, you know, whether or not we were a
22 launch. We were most definitely a launch customer because
23 we were, you know, a ten aircraft order from a small
24 European carrier does not get the -- gain the confidence
25 from the market that a large order from an airline like

1 Delta will. That is what it takes, is to really be a true
2 launch order that's going to get that launch pricing, is the
3 large reputable carrier and being really a first or one of
4 the very first movers on that aircraft.

5 MR. ESPOSITO: And also, Joe Esposito at
6 Delta. We were looking at our long-term plans, and at Delta
7 we only have one airplane at 100 to 110 seats, which is the
8 717. We needed to expand the size of that fleet
9 specifically. So 785, while it seems like a large number,
10 is what the demand is for our airline for the long term as
11 we serve 230 cities throughout the city. We have plenty of
12 demand in that category that was required for the long
13 term, to optimally match supply and demand.

14 VICE CHAIRMAN JOHANSON: Out of curiosity, how
15 many aircraft does Delta own? And if this proprietary, if
16 you could answer in a post-hearing.

17 MR. MAY: Yeah. Between the main line and
18 regional, it's approximately 1,300 aircraft that we operate.
19 Some are owned, some are leased and that's purely a
20 financing decision.

21 VICE CHAIRMAN JOHANSON: Okay. So this is
22 very big plan to buy these 75 aircraft?

23 MR. MAY: Well, it's large but it's spread
24 over time, you know. This is over a three to four year
25 period that we're taking the aircraft. To put it in

1 perspective Delta, because of the size of its fleet, just on
2 a steady state basis we need to be bringing 40 to 50
3 aircraft in every single year to address retirement of aging
4 aircraft and for modest growth of only two, two and a half
5 percent.

6 VICE CHAIRMAN JOHANSON: Okay, thanks Mr.
7 Esposito and Mr. May. On page 73 of Boeing's brief, Boeing
8 states that there's no plausible business justification for
9 moving production of the C series to Airbus' Alabama
10 facility. The idea of moving this plant from Quebec to
11 Alabama kind of struck me as being a major move, of course.

12 I would like to ask what has been the reaction
13 of the Canadian public to formation of the joint venture,
14 specifically given that the governments in Canada, the
15 Canadian government and the Quebec government had taken a
16 stake in this project, what has been the reaction to the
17 fact that some of the better jobs are being moved out of
18 Canada and to the United States?

19 MS. ARANOFF: I think we first need to clarify
20 that the production facility that already exists in Quebec
21 is not being moved. It's going to stay there to serve
22 customers outside the United States.

23 VICE CHAIRMAN JOHANSON: Okay, but some jobs
24 that were -- that were originally going to be in Mirabel
25 will be moved to Alabama; correct?

1 MS. ARANOFF: I don't think that's the
2 expectation.

3 MR. LEVESQUE: No. There's no jobs that are
4 going to be moved.

5 VICE CHAIRMAN JOHANSON: Well jobs might not
6 be moved, but jobs that would have otherwise been created in
7 Mirabel will instead be ^^^^ final assembly will be in
8 Alabama.

9 MR. LEVESQUE: So the government is okay with
10 that decision, and I'd like to keep in -- you to keep in
11 mind that we always had planned in our business plan to
12 invest to increase capacity to reach our business plan. So
13 this new final assembly line is in some ways a redirection
14 of capacity growth investment to manage the risk that we're
15 facing.

16 VICE CHAIRMAN JOHANSON: Okay. I assume you
17 will upset some folks in Canada?

18 MR. LEVESQUE: Well, they made the decision.
19 The decision is being made and is okay with -- is okay with
20 Quebec and Canada.

21 VICE CHAIRMAN JOHANSON: Okay. Mr.
22 Lichtenbaum.

23 MR. LICHTENBAUM: Peter Lichtenbaum for
24 Bombardier. I think one important point to keep in mind
25 here is that in order to preserve the overall program, the

1 joint venture is very important. So from the standpoint of
2 Quebec government, Quebec employees, it's better to maintain
3 a program and if doing the joint venture is what's necessary
4 to maintain the program, as has been the plan of the company
5 for many years, as Mr. Levesque testified, then I think
6 employees recognize that that's the right thing to do.

7 VICE CHAIRMAN JOHANSON: Okay, thanks for your
8 responses. Following up on that, and I'm being devil's
9 advocate here, if seating an aircraft is easy to change and
10 not important to airline customers, why not simply reduce
11 the design of the CS-100 seating to less than 100 seats?
12 Wouldn't that be easier than moving the production to
13 Alabama from Canada?

14 MR. DEWAR: Well, I guess first of all we
15 really need extra capacity. It was always planned as part
16 of our business plans to -- I guess there's two questions,
17 right.

18 MR. BAISBURD: So I will jump in here on a few
19 levels. First, Delta ordered 109 seat aircraft because
20 that's what they need, right, and second, the way the scope
21 is written, it's about the capability of the aircraft to
22 have a certain number of seats, not the actual number of
23 seats on the aircraft. So it wouldn't be a way to take
24 something out of scope just based on actual seat count, as
25 the scope is through now, I mean assuming that there's not a

1 major revision at the final.

2 But even before we get there, what Delta has
3 acquired is an 109 seat aircraft, which Boeing couldn't
4 provide now or in the future. So --

5 MR. MAY: Greg May at Delta. On the topic of
6 the U.S. production, I can tell you Delta is very pleased
7 that this is -- in this development and intending to wait
8 and will wait for those aircraft to be produced. Having the
9 U.S. production provides a number of advantages in the
10 delivery process and the manufacturing process.

11 The nearness of the plant enables more
12 frequent touch by our people including our senior
13 management. There are reduced costs from the standpoint of
14 there's this buyer-furnished equipment that we have to
15 deliver. There's ferrying costs that are now reduced and --

16 VICE CHAIRMAN JOHANSON: I'm sorry, what
17 costs?

18 MR. MAY: Ferrying of the aircraft. When we
19 take delivery of the aircraft, we have to ferry it to our
20 base. That's of course pilot and fuel costs, and then yes,
21 you know, the trade case, it's not this particular case but
22 just future risk of trade case. It makes us feel more
23 secure that we're buying a U.S. product, and then last but
24 not least, we would like the idea of increasing the U.S.
25 content beyond it's already 50 percent by having it made in

1 the U.S.

2 MS. ARANOFF: So Commissioner Johanson, just
3 to put this in perspective for you, Boeing testified this
4 morning, right, that they don't trust Bombardier and Airbus
5 to actually go ahead and build this out because they don't
6 think there's a business case. These gentlemen have
7 explained to you what the business case in that in does make
8 sense, irrespective of the outcome of the Commission's
9 decision in this case.

10 But just bear in mind, one important factor
11 here, they mentioned that too, we're calling it the Boeing
12 effect. U.S. airlines at this point do not believe that if
13 Boeing were to lose this case that they would fold up their
14 tents, go home and allow imports to come in from Canada.
15 What they believe is that as soon as any other U.S. airline
16 ordered another C series produced in Canada, Boeing would
17 bring a new petition.

18 That means that there is no way for Bombardier
19 to serve the U.S. market unless it moves its production to
20 the United States. Now Boeing then tells you that there's
21 something sinister about that, that somehow that defeats the
22 purpose of the trade remedy laws. But ask yourself how does
23 investment in U.S. production and U.S. employment defeat the
24 purpose of the trade remedy laws?

25 The trade remedy laws are built on three

1 possible outcomes. One is that you can import with the
2 duties. That works for some people. One is that you give
3 up the U.S. market, because the duties are too high and you
4 can't import and the third is that you decide to produce
5 domestically. Now Boeing would like Option 2. They'd like
6 Bombardier to just go away and stop selling in the U.S.
7 market.

8 But Option 3 is also viable, and that's the
9 one that has been chosen here. And once you do that, you're
10 out of the reach of the trade remedy laws because you're
11 producing a domestic product, and that's a good thing. That
12 should be celebrated.

13 MR. BAISBURD: I would just also add that the
14 trade remedy laws require an affirmative finding based on
15 substantial evidence that subject imports are causing
16 material injury or threat thereof to a U.S. producer of the
17 like product. Even without those other outcomes, which I
18 completely agree are the potential, there isn't a record
19 here that supports that affirmative finding, for very
20 specific reasons that are somewhat unique.

21 Almost everything about this case is unique.
22 But one of the most unique things is that they define the
23 subject merchandise range, and they don't supply nearly
24 three-quarters of it.

25 VICE CHAIRMAN JOHANSON: Okay. Thanks for

1 your response. I have a few more questions, but I'm going
2 to hand it over to Mr. Williamson. I think he doesn't want
3 to take his questions.

4 COMMISSIONER WILLIAMSON: Sure. Thank you. I
5 want to stress my appreciation to all the witnesses for your
6 testimony. I'm not quite sure where to begin, but on this
7 last subject of how are we -- what do we make of the
8 decision to start the production in Mobile, and I had based
9 a question this morning about the conjectures and
10 speculative, whether or not this was conjecture or
11 speculation and I said I ought to ask y'all this afternoon.

12 So I guess there are a number of questions to
13 ask about this. How many regulatory steps have to be taken?
14 If you want to do that post-hearing, you can. When actually
15 is production, you know, when is the first aircraft expected
16 to be delivered from Mobile?

17 MR. LEVESQUE: Well clearly part of -- Sylvain
18 Levesque. Part of JV being formed, we have to comply to
19 antitrust regulation. So we clearly are doing strictly
20 planning steps for investments, but clearly making plans for
21 the layout of the factory and so forth. So and then we're
22 making visits and so forth. So that's what we're doing
23 right now, and clearly that involve local permitting and so
24 forth. So these, the deal was approved two months ago. So
25 we are well into that process, going from a project with 50

1 lines of project to a thousand line to 2,000 lines. So
2 we're going ahead.

3 COMMISSIONER WILLIAMSON: Lines?

4 MR. LEVESQUE: Lines, I say that. It's a
5 large -- it's a factory that has a lot of activities to put
6 in place. So very detailed planning going on today. And
7 then it's really -- to close the transaction.

8 MR. LICHTENBAUM: Just on the regulatory
9 piece, I think the principle piece is, as Mr. Levesque said,
10 on the antitrust side. Sorry, Peter Lichtenbaum from
11 Bombardier, and as I said at the outset, the company has
12 engaged in detailed fashion with the relevant antitrust
13 authorities. The company's making good progress on that and
14 we would suggest that the Commission may want to ask the
15 staff to inquire with us in January as to the progress
16 that's been made with the antitrust authorities.

17 COMMISSIONER WILLIAMSON: Okay, because you
18 understand why I'm asking these questions, to sort of get to
19 what weight do we give to this deal.

20 MS. ARANOFF: Right. So there's -- yeah.
21 There are a number of steps that are being taken now. Those
22 are confidential and they're in our prehearing brief. There
23 are other steps that can be taken and are planned to be
24 taken as soon as the appropriate antitrust authorities sign
25 off on the transaction. They can't legally be undertaken

1 now.

2 As Mr. Levesque testified, what can be done
3 now is being done. There were site visits last week. You
4 know, there are ongoing conversations, and to the extent
5 that there are developments before we file our post-hearing
6 brief we will include those. But we do encourage you if you
7 want the latest information on which to base your
8 determination that this is changing by the day, ask us
9 before the recorded closes in January and we'll give you
10 everything that's gone on since.

11 COMMISSIONER WILLIAMSON: Good, okay. We
12 will.

13 MR. MAY: Greg May at Delta, just briefly.
14 Some negotiations that we have ongoing, we are looking for
15 Bombardier to guarantee our U.S. produced aircraft. So it's
16 not a just regardless of a ruling here today, we want
17 aircraft to be produced out of Mobile, Alabama. The only
18 possibility that I think we could see is if somehow there
19 was, you know, a trade commission ruling that was adverse
20 that would stop it.

21 Otherwise, our full expectation is that will
22 occur, and we'll begin taking those aircraft in 18 to 24
23 months.

24 COMMISSIONER WILLIAMSON: Okay. To the extent
25 you can say so here or post-hearing, the original schedule I

1 think there's been a change from what I guess when you
2 originally did the deal, and I was wondering what was the
3 business justification for that?

4 MR. MAY: The justification is the combination
5 of things. It's, as I indicated before, from Day 1 we would
6 have preferred to have U.S.-produced aircraft. Having this
7 development occur has made us shift. What it means we're
8 doing is we're going to be holding on to some older aircraft
9 a little bit longer in order to wait for these deliveries to
10 be produced out of the U.S. So regional aircraft that will
11 fly longer and some mainline aircraft.

12 COMMISSIONER WILLIAMSON: Okay. What can you
13 tell us about the, I guess there's been talk that I guess
14 the first orders of the Bombardier planes will be going to
15 Aero Mexico. I don't know what you can say here or
16 post-hearing on that.

17 MR. DEWAR: Yeah. The only thing I can say is
18 that we can, you know, they're not going to go to U.S.
19 customers that's clear, and we're in advanced negotiation
20 with non-U.S. customers.

21 COMMISSIONER WILLIAMSON: Okay. Anything you
22 can put on the record post-hearing I guess.

23 MR. DEWAR: It may be in the post, thank you,
24 post-briefing.

25 COMMISSIONER WILLIAMSON: Okay, thank you.

1 This is for Delta. This morning I asked Boeing how this
2 case might be different if you had bought CS-300s rather
3 than CS-100s, and they said you have bought CS-300s. You
4 have this option, and yet you've talked about the 100s and
5 the 100 to 110 seat market. So I was wondering if you could
6 address that.

7 MR. MAY: Sure. Having options to convert
8 between aircraft is something that we do in all of our
9 orders, where there are aircraft that with the changing in
10 environments and our situation could drive us to have
11 interest in that aircraft. What we have ordered though are
12 the CS-100s, and we currently have no plans to convert to
13 CS-300s.

14 These conversion rights, you know, I've been
15 doing aircraft deals since '93 and I can't think of a single
16 deal where we didn't have conversion rights between the
17 aircraft offerings that the particular manufacturer had. We
18 just completed a large narrow body deal where we've awarded
19 it and we've also got in there that we can convert to
20 mid-size narrow bodies.

21 In our wide bodies, we can convert between
22 Trans-Pacific aircraft and our Trans-Atlantic aircraft.
23 It's a very common occurrence and it's a recognition by the
24 more sophisticated airlines that things change, the
25 environment changes, but that has not occurred up until this

1 point.

2 COMMISSIONER WILLIAMSON: I assume that's not
3 free, that option to do that, but I take it you provide it?

4 MR. MAY: No. It's a larger aircraft, so it's
5 a more expensive aircraft.

6 COMMISSIONER WILLIAMSON: Okay.

7 MR. MAY: Yeah, and also there was no fee paid
8 to have that conversion, right. It was part of the overall
9 negotiation. So no fee and there's no deposit paid towards
10 those larger aircraft. The only commitments we have are to
11 the CS-100.

12 COMMISSIONER WILLIAMSON: Okay. I don't know
13 whether post-hearing you might be able to -- and I asked
14 this from Boeing this morning about how often do airlines
15 really change the original order. I mean it happens
16 frequently, but I'm not sure what percentage of --

17 MR. MAY: Greg May for Delta again. In my
18 experience, change is the rule not the exception. If I look
19 at our recent wide body order, we've already deferred
20 aircraft, negotiated other changes and that order was only
21 2015 that that was completed. We negotiated changes in
22 early orders. I mean the changes that you negotiate too are
23 not minor changes and tweaks as you were led to believe.

24 You know, in certain orders we've cancelled as
25 many of 40 percent of the aircraft without penalty. So once

1 you sign the purchase agreement, a good partner manufacturer
2 works with you, knowing when things have changed and that
3 you need to make a change, and that can be -- taking the
4 form of converting aircraft type, deferring aircraft,
5 accelerating aircraft or even cancelling aircraft.

6 COMMISSIONER WILLIAMSON: Okay. Now is there
7 sort of some cutoff period when you don't do this, or are
8 you -- it's more difficult to do that?

9 MR. MAY: It becomes more difficult from a
10 production standpoint when the aircraft is basically kind of
11 been very customized to be our aircraft, and that's
12 definitely within a 12 month window. But anything outside
13 of that, an aircraft is really not unique to us and can be
14 sold to someone else without incurring cost. Even then, if
15 it is within that window, you can still sell it to someone
16 else. There just may be some modification costs that are
17 incurred to move the aircraft to a different specification.

18 MR. MITCHELL: Ross Mitchell with Bombardier.
19 If I might, from a manufacturer's perspective, we certainly
20 see this as a relatively common occurrence. Airlines are
21 buying aircraft for many years out in advance, and they
22 can't always know exactly what seat count they will need for
23 an aircraft. So when you have a family you can move up and
24 down in the family. So it does happen.

25 We require a certain amount of notice, so we

1 know what airplane to build. On the C series line, for
2 example, we have two customers who have taken delivery and
3 one of those customers has converted airplanes from the 100
4 to the 300 in Swiss. So it does happen, and it's
5 interesting to think about that in the context of the United
6 order that we talked about earlier, where very quickly after
7 the order was placed, it was converted. So you have to ask
8 yourself how real the 737/700 order was when it was
9 converted so quickly thereafter.

10 MS. ARANOFF: I think that the point we're
11 making here is, you know, as Delta will probably tell you, I
12 mean airlines include conversion rights in their contracts,
13 especially because there often is a long time between order
14 and delivery and demand conditions in the market can change,
15 and airlines may change their minds about what their
16 requirements are to serve their routes.

17 So that's why you will -- you might see
18 conversions further on down the line as needs change. The
19 United deal that's being talked about in this case, very,
20 very different. Almost, you know, very shortly after United
21 ordered 700s, United converted to much larger planes. That
22 suggests it was not a change in demand conditions. It was
23 that United never wanted those planes. So sort of the flip
24 side of the question that you're asking.

25 COMMISSIONER WILLIAMSON: So I guess in

1 response to my question this morning, the fact that you can
2 build these planes soon at Mobile is not speculative. But
3 what's going to be ordered two years now is speculative?

4 MS. ARANOFF: What's going to be built two
5 years from now is speculative.

6 COMMISSIONER WILLIAMSON: Okay, okay. Thank
7 you. No further questions now.

8 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

9 COMMISSIONER BROADBENT: Ms. Aranoff, wait. I
10 didn't quite catch your point on the United thing. They
11 never wanted the particular model? They converted almost
12 immediately. What is your sense of what was going on there?

13 MS. ARANOFF: Right. Well you'll remember
14 that Boeing, from what Mr. Mitchell testified earlier this
15 afternoon, that when Bombardier went in to United, United
16 told them that they were looking for -- that the CS-100 was
17 too big, that they were looking for a 100 seater and
18 Bombardier offered a CS-100 light that was, you know,
19 configured with 100 seats and they were told that Embraer
20 was in the competition and all along that was what they
21 knew about, you know, what United said it wanted and who
22 United was seriously considering.

23 When they got all the way to the end and
24 thought that they were about to be successful, all of a
25 sudden the next thing they heard was that, you know, United

1 had swooped in -- I'm sorry, that Boeing had swooped in out
2 of nowhere, made a very low-priced offer, and that United
3 had signed a contract for 737/700s.

4 Only a few months after that happened, United
5 converted all of its orders to larger aircraft, and is
6 taking no 700s and no Max 7s. So I think the point that we
7 were making there is well sometimes airlines convert their
8 orders some time further out because demand conditions
9 changed. There was not enough time that passed here for
10 demand conditions to have changed, and therefore it seems to
11 us that there never was a desire on United's part to buy
12 737/700s. They did it because they got that sweetheart
13 deal, which allowed them to convert to larger aircraft and
14 Boeing publicly said at the time that they did it because
15 they didn't want the C series to gain a toehold at United.

16 So to the extent that Boeing is using that
17 transaction as evidence that there was a competition between
18 Bombardier and Boeing for that sale, it's the timing of
19 those conversions that proves that that was in fact never
20 the case.

21 MR. MAY: Greg May from Delta, just briefly.
22 Understanding the operating economics of the 737/700, I can
23 genuinely tell you we were much more surprised by United's
24 order for the aircraft, even at very depressed prices, than
25 we were about them cancelling it, because we made no sense

1 of them taking 700s, new 700s because of its operating cost
2 disadvantage, its seat cost disadvantage.

3 COMMISSIONER BROADBENT: Well then what
4 happened for their need for the smaller aircraft? How did
5 things go then?

6 MR. MAY: They are -- my understanding, and
7 it's true I don't know if they've consummated it. But
8 they've been out in the market looking at used aircraft,
9 much as we were in this case, used A319s in particular.

10 MR. BAISBURD: Yohai Baisburd on behalf of Delta.
11 Going back to the earlier point about the United Campaign,
12 Boeing went to extraordinary lengths to keep the C-100 out
13 of the U.S. market. And in our prehearing brief we
14 mentioned some of the last-second inducements that were
15 offered to Delta before it finalized the deal for the
16 CS-100. And its confidential, but we will highlight that
17 again in the posthearing brief, because they really they
18 didnt want to have the validation. Boeing did not want the
19 C-100 to be validated in the U.S. market because it provided
20 Bombardier, Im sure, a opportunity to sell more C-100s and
21 C-300s down the road potentially. And thats whats happening
22 here. And I think that if you look at it, what happened at
23 the United Campaign where they come in very low for a 700
24 and automatically gets converted effectively before the ink
25 is dry to a much larger aircraft, and the last-second

1 attempt to induce Delta not to take the CS-100, is the
2 record evidence that shows the steps that Boeing would go to
3 to try to keep Bombardier out of a major U.S. airline.

4 COMMISSIONER BROADBENT: But we still dont know
5 what United is going to do with its need for the smaller
6 aircraft.

7 MR. BAISBURD: I know theyre not going to buy a
8 plane from Boeing because Boeing doesnt offer a plane at
9 100- to 110 seats.

10 COMMISSIONER BROADBENT: Okay.

11 MR. DIMITROFF: George Dimitroff for the record.
12 As an independent industry observer, Unitedthere have been
13 media reports that United is looking at backing off
14 temporarily but in the longer term United will have to
15 reopen that competition, and I imagine it would reopen to
16 Bombardier and Embraer.

17 MR. MITCHELL: Ross Mitchell for Bombardier. Its
18 certainly the case that since the conversion of those 737
19 hundreds, United has been in the media discussing the
20 100-seat aircraft requirement. And they have had
21 discussions with the manufacturers, both us and Embraer,
22 about what they would like to do in that space.

23 And so the airplanes they ordered did not fill
24 the need in the first place. And then once they converted
25 them, they certainly did not fill the need. And so given

1 that they had stated a desired need for 100-seat aircraft,
2 that need is unmet today.

3 COMMISSIONER BROADBENT: Okay.

4 Mr. Levesque, whats Bombadiers perspective on
5 what Mr. May said from Delta that the sales contract depends
6 on the planes now being made in Alabama?

7 MR. LEVESQUE: I think the uncertainty in the
8 planning horizon today, were planning to deliver those
9 aircraft out of Alabama, and we are taking steps, as my
10 colleague said, to place the aircraft that were started
11 under a planning for Delta next year to be sold to non-U.S.
12 airlines. So thats the plan.

13 COMMISSIONER BROADBENT: Okay, but if you dont
14 deliver them from Alabama, does Delta still have to pay?

15 MS. ARANOFF: So now, Commissioner Broadbent, you
16 are getting into some commercial negotiations which are
17 ongoing between Bombardier and Delta, and thats another
18 reason why we hope you will ask us for an update in January.
19 Because we do expect the parties to resolve that at some
20 point.

21 Right now what you have is Deltas testimony that
22 they are only going to take aircraft that are produced in
23 the United States. The exact legal vehicle for that is
24 still under negotiations.

25 COMMISSIONER BROADBENT: Yeah. It makes a big

1 difference for us, as you know.

2 MR. MAY: Greg May for Delta again. It is true,
3 what Bombardier has indicated. We do not have a current
4 commercial right to refuse, but weve made it clear what our
5 desires are and it is an open negotiation.

6 COMMISSIONER BROADBENT: Okay. Lets see. On
7 domestic like-product, if we do decide to define the
8 domestic like-product as a single-aisle, large civil
9 aircraft, as all single-aisle large civil aircraft, will
10 need to look at conditions of competition. What key
11 distinctions would you draw between demand conditions in
12 the market for in-scope 100- 150-seat large civil aircraft
13 and the market for all single-aisle large civil aircraft?

14 MR. ESPOSITO: Joe Esposito with Delta. I can
15 only go into the details of how we look at supply and
16 demand. And what I mentioned in my opening comments, we
17 actually have 12 different discrete airplanes. And within
18 the 100- to 150 we actually use three different types of
19 airplanes. We use a 100- to 110, 124, and then in the 130
20 count. So we see very distinct levels of demand in there.

21 And if we didnt have thatand we see different
22 levels because we serve such a vast network within the U.S.
23 We serve such a vast network of 230 cities, and we serve
24 some of the smallest communities in the country to some of
25 the largest metropolitan areas where we fly 50-seaters, then

1 76. And if we didnt have that category at the 100 to 110,
2 we would go from 76 seats to the Boeing definition of 138,
3 which would be an 80 percent difference in supplying a
4 market. And we would find markets just unsustainable to
5 supply and most likely would not serve 230 cities at that
6 point because we wouldnt have the right airplane and we
7 would be uncompetitive in the marketplace.

8 So that is how we look at the marketplace from
9 different slices of demand. And any carrier or any person
10 can say its 100 to 150, and thats fine, but we do distinctly
11 look at it in many different cuts. And so from 50 seats of
12 an airplane to 260 seats is serving all of the different
13 stairstep in demand thats out there in the marketplace.

14 MR. MITCHELL: Ross Mitchell for Bombardier. I
15 think if you look at the entire single-aisle market as one
16 market, what you will see in terms of demand from an OEM
17 perspective is that the mid- to large-sized single-aisle has
18 significantly higher demand.

19 You saw the chart earlier that was flashed up
20 during the Boeing presentation. The Mach 8 and the A-320
21 neo have significant demand, significantly more demand than
22 aircraft in the lower end of the market.

23 And most recently the demand has shifted again up
24 to the A-321 neo as providing a lot of aircraft into the
25 market today. So if you decide that the single-aisle market

1 is in fact all of those aircraft, then the portion of the
2 market which we are talking about today has a much smaller
3 demand for aircraft today, and fewer orders certainly than
4 there is in that much larger segment that Boeing and Air Bus
5 supply exclusively.

6 MR. ESPOSITO: And I can actually add one more
7 comment, we are not the purpose of the airplane I know an
8 earlier comment said it was for a transcon base, but the
9 purpose of the 100-seater for Delta is really the size of
10 the airplane. We didn't buy the airplane to operate a
11 transcon. A transcon is defined as from the East Coast to
12 the U.S. to the West Coast of the U.S. It was designed to
13 fill a specific demand within our network that will fly to
14 our hubs, primarily, from smaller to medium-sized
15 communities of the 100-size demand.

16 MR. MITCHELL: Ross Mitchell from Bombardier. If
17 I may add one thing just on Mr. Epstein's comment, sorry, Mr.
18 Esposito's comment. We talked a lot this morning, there was
19 a lot of discussion about transcon. And I want to just
20 clarify something on transcon.

21 First of all, New York to Los Angeles is roughly
22 about 2200 nautical miles. And if you look at Washington,
23 D.C., you can see there 2550 nautical miles gets you
24 anywhere you want in North America and beyond.

25 And there's been an attempt to suggest that 2900

1 nautical miles is a relevant number. It isnt. Its only
2 relevant to the extent that one of our competitors goes
3 2850. They go 50 nautical miles less. Can they do
4 transcon? Yes, they can.

5 The Embraer 190 E-2 and the Embraer 195-E2, can
6 definitely do transcon. Theyve been excluded from this
7 hearing by the definition of the scope that has been given
8 by the Petitioner.

9 Do we see any fundamental difference there? No,
10 we dont. Do the airlines require transcon? Very rarely
11 they will ask for transcon. The majority of the flights
12 that they will fly with the C Series, and aircraft of its
13 size, will be around 500 to 1,000 nautical miles,
14 significantly below transcontinental.

15 COMMISSIONER BROADBENT: Okay, thank you very
16 much.

17 CHAIRMAN SCHMIDTLEIN: Alright, I just have a
18 couple more questions. If I understand you all, the Alabama
19 assembly line is going to happen regardless of the outcome
20 in this case. Thats what youve testified. Or at least
21 with, it sounded like, a bit of a caveat, which was there is
22 uncertainty in the planning horizon but today thats the
23 plan.

24 So can you elaborate on that, Mr. Levesque? What
25 did you mean?

1 MR. LEVESQUE: When I said, it depends on the
2 horizon, its about where the aircraft thats started to be
3 built for Delta, which airline they would go to.

4 CHAIRMAN SCHMIDTLEIN: I see. Okay.

5 MR. LEVESQUE: So that was the only uncertainty.
6 In terms of planning for the final assembly line, there is
7 no uncertainty.

8 CHAIRMAN SCHMIDTLEIN: Okay. And all U.S.
9 carriers will be served out of the Alabama assembly line.

10 MR. LEVESQUE: Exactly. And our plan is to do it
11 as fast as possible, as fast as we can do it.

12 CHAIRMAN SCHMIDTLEIN: Okay. So given that, why
13 not negotiate a suspension agreement, as was mentioned this
14 morning. You know, since youre not going to be importing
15 planes from Canada, why litigate this case and incur all the
16 attorneys fees? You could negotiate a suspension agreement
17 with Commerce Department, and youd be done, and start
18 delivering your planes out of Alabama.

19 MS. ARANOFF: There are two answers to that,
20 Commissioner. First of all, the deadline for requesting a
21 suspension agreement, I believe, had passed by the time that
22 the Air Bus-Bombardier partnership wasthe deal was completed
23 and announced. Theres a deadline to proceed to ask Commerce
24 for a suspension agreement, and it was passed. So thats
25 sort of the simple answer.

1 CHAIRMAN SCHMIDTLEIN: Okay

2 MS. ARANOFF: The broader--

3 CHAIRMAN SCHMIDTLEIN: You would have pursued a
4 suspension agreement, absent missing the deadline?

5 MS. ARANOFF: I dont know. Thats never been
6 discussed because it wasnt a possibility. So I cant tell
7 you what might have been done. I can tell you this, though,
8 havingBombardier having been brought into this proceeding
9 obviously unwillingly by Boeing, and having litigated it for
10 the last quite a few months, very hard at this point, feels
11 that we have a very strong case both legally and factually
12 before this Commission and would like to be vindicated with
13 a final determination.

14 CHAIRMAN SCHMIDTLEIN: Okay.

15 MR. BAISBURD: Yohai Baisburd from Delta. I dont
16 want to sound naive here, but I feel compelled to say this,
17 which is: We still believe in the rule of law. And theres a
18 statute that applies both here and at Commerce. And we tell
19 our clients that you have a basis for winning these cases,
20 whether youre on the Petitioners side or the Respondents
21 side when theres substantial evidence that meet the
22 requirements of the statute, whether youre on the
23 Petitioners side or the Respondents side.

24 And I would echo what Shara said, which is we
25 think that this case that Boeing brought is not warranting

1 of relief. And the fact that there is ayeah, there are
2 developments that have occurred that have changed the
3 industry. Im sure Greg will say that when he negotiated
4 this deal in 2016 he wasnt thinking about antidumping and
5 countervailing duty risks in the United States.

6 Well thats changed, and that has changed forever
7 now. So businessese these are large, smart, sophisticated
8 risk-adverse enterprises on both sides of all these of the
9 table, and theyre going to act accordingly because there has
10 been a new risk factor injected into this industry.

11 But that doesnt change the fact that Boeing
12 abandoned this segment of the 100- to 150-seat market. And
13 because of that, and their actions, and the statements
14 theyve made, and their approach to this case, doesnt mean
15 that they should be rewarded because they just filed the
16 Petition.

17 The evidence does not warrant it, and that is why
18 we are here defending it because we think the Commission
19 will reach the appropriate decision based on the record and
20 the statute.

21 CHAIRMAN SCHMIDTLEIN: Okay. Yeah, I didnt know
22 that there was a deadline. Suspension agreements are
23 basically settlement agreements, so Im surprised to hear
24 theres a deadline that shuts you out from trying to do that.
25 But I believe you. And we have a lot of cases that settle,

1 not on the Title VII side, but on the 337 side which is a
2 different area but somewhat analogous.

3 Alright, there was also talk of the parts that
4 are included within the scope. Partially assembled is what
5 the language is.

6 So I wonder if you could address that and give us
7 an idea of what parts would be imported from Canada to
8 Alabama to be assembled into the completed plane, and
9 whether or not you believe those would be subject to an
10 Order.

11 MR. LICHTENBAUM: Sure. I'll start off, but
12 perhaps Rob will follow. Peter Lichtenbaum for Bombardier.

13
14 So I guess the first thing to say here is that
15 certainly we have a very different understanding of the
16 scope of the Order than Boeing articulated this morning.
17 The scope, as you correctly point out, Chairman, is aircraft
18 fully or partially assembled.

19 In many Commerce Department scope determinations
20 there is, for scope language, there's reference to
21 components because that's something that Petitioners have
22 requested, and parts and components thereof. Boeing never
23 requested parts and components thereof to be included in the
24 scope. And so our understanding from the beginning of this
25 case has been that what Boeing targeted were aircraft,

1 fully or partially assembled aircraft. And what partially
2 assembled aircraft are are green aircraft that have not been
3 they're not ready to fly passengers on. They dont have all
4 the interior fittings and kitchen and whatnot, but theyre an
5 aircraft.

6 And so an engine is not an aircraft. An aft
7 fuselage is not an aircraft. Whether fully or partially
8 assembled. So we will see potentially tomorrow when the
9 Commerce Department issues its final determination, whether
10 they address the scope issue. They have three possibilities
11 before them.

12 One is to address the scope issue and rule that
13 an aircraft means aircraft and not components. One is to
14 rule that aircraft means aircraft and components. And one
15 is simply not to address the issue whatsoever. So we will
16 see what the Commerce Department does tomorrow, but our
17 position is that they should rule. They should address the
18 issue, and they should rule that aircraft means aircraft.

19 You know, Bombardier, like Boeing, has a global
20 supply chain, and so parts come in to Mirabel from all over,
21 just like they come into Renton from all over. There are
22 certain items that are currently sourced from Mirabel in
23 Canada, but as to whether those would bewhether those
24 sourcing patterns would continue exactly as they are, you
25 know, I don't know. It might depend onthats the Boeing one

1 you have up there (indicating a slide) showing how
2 everything in the Boeing plant comes from elsewhere.

3 But whether the patterns that exist today in
4 Mirabel would continue, particularly if Commerce were to
5 include components in the scope, you know, that remains to
6 be seen. And so that is an important point for you. This
7 morning you had the exchange with Mr. Novick about imminent
8 imports, and Mr. Novick suggested that the potential for
9 parts to be imported from Canada to fulfill the Mobile
10 production would be sufficient to meet the statutory
11 requirement for imminent imports. I would have to say our
12 view is that's incredibly speculative.

13 There's no data that the Commission has been able
14 to collect on the record because Boeing never said that they
15 were interested in covering parts. This is very late in the
16 game. And so we really don't think that there would be data
17 that you would need to be able to point to substantial
18 evidence on the record as to imminent imports based on parts
19 that frankly we don't even know yet what we would be
20 importing from Canada for the Mobile facility.

21 CHAIRMAN SCHMIDTLEIN: Well that was the next
22 question. Do you know what you plan to assemble in Alabama?

23

24 MR. LEVESQUE: Well it's exactly the same that were
25 doing in Mirabel. So components, as just explained, is they

1 come from all over the world. Some components come
2 currently from our own factory in Canada.

3 CHAIRMAN SCHMIDTLEIN: Well would you beyou know,
4 youll be making the fuselage in Canada, I assume?

5 MR. DEWAR: Maybe Ill explain. So its exact
6 sameour plan in Mobile is exactly the same replica of
7 Mirabel. So we have the parts coming from all around the
8 world coming to Mirabel. It would be the same thing coming
9 to Mobile. The fuselage comes from China--

10 CHAIRMAN SCHMIDTLEIN: Okay.

11 MR. DEWAR: and from other parts of the world.
12 In fact, the content of Canada for the fuselage is really
13 just a cockpit and a small section of the aft fusel, very
14 minor components comparted to the scope of the whole--

15 CHAIRMAN SCHMIDTLEIN: So the planes that are
16 finally assembled in Alabama, will they be worked on in
17 Mirabel before coming to Alabama? No?

18 MR. DEWAR: No. Zero.

19 CHAIRMAN SCHMIDTLEIN: Okay. So this morning the
20 Canadian Ambassador referred to the U.S. suppliers that
21 right now provide parts to Mirabel, and said that this would
22 put these jobs in jeopardy. And I was a little bit confused
23 by that, because why wouldnt those suppliers then just ship
24 the parts to Alabama to be assembled?

25 MR. DEWAR: Absolutely. So maybe a few things to

1 clarify. So its the same scope of work exactly. The same
2 suppliers. In fact we believe that we will need increased
3 capacity, and that in fact will actually be creating more
4 U.S. jobs than exist today.

5 CHAIRMAN SCHMIDTLEIN: So was heI mean I have his
6 statement. He provided it in writing. He says, U.S.-made
7 components contribute over half of the value to the C Series
8 aircraft. These components were supplied by American
9 companies directly supporting roughly 23,000 well-paying
10 jobs in many U.S. states, including Connecticut, Florida,
11 New Jersey, Washington, da, da, da, da. Simply put, an
12 affirmative determination would put U.S. jobs in jeopardy.

13 So I was confused by that.

14 MR. LEVESQUE: Let me see if maybe I can answer
15 that. I think basically what he was referring to is that
16 Boeing basically wants the C Series to disappear, and the C
17 Series jobs in the U.S. would disappear.

18 CHAIRMAN SCHMIDTLEIN: I see. Okay. Okay,
19 Alright, I don't have any further questions. Who is next?
20 Vice Chairman Johanson.

21 VICE CHAIRMAN JOHANSON: Thank you, Chairman
22 Schmidtlein.

23 Given that it is Bombardiers argument that the
24 Alabama plant will negate the need for subject imports,
25 thereby triggering negligibility under the statute and

1 eliminating any potential threat of injury, what evidence
2 can you provide that the Alabama plant would not be
3 withdrawn or dissolved if the Commission were to reach a
4 negative determination?

5 MS. ARANOFF: Well we have given you two different
6 kinds of evidence to that effect. And because this is such
7 a new development, and because we dont have the full
8 regulatory approval yet to go forward, its a little bit
9 difficult to go further than that.

10 But weve given you, number one, the business
11 case, which Mr. Leveque testified to, about why it makes
12 sense for the partnership between Bombardier and Air Bus to
13 have this production facility in the United States, and the
14 partnership is something that, discussions of which certain
15 predate the filing of the Petition in this case.

16 So one reason is the fact that there are business
17 reasons to go forward.

18 The second reason that weve discussed and that
19 our colleagues from Delta were also talking about earlier,
20 is that the entire competitive landscape was changed by
21 Boeing bringing this Petition. Prior to Boeing bringing
22 this Petition, a U.S. airline looking to buy an aircraft
23 would never have thought that they might face the risk of
24 antidumping and countervailing duties.

25 But now that that genie is out of the bottle, it

1 is not going back in. And U.S. airlines now want assurance
2 that they will not have to face that risk. And in the case
3 of the C Series, that means they like the aircraft, they're
4 interested in the aircraft, but they don't want to take the
5 risk of ordering them from production in Canada.

6 MR. MAY: Greg May for Delta. I just want to
7 confirm what Shara is saying. It's a different world and it's
8 not a risk that we want to take. We've made clear our
9 intentions to only take deliveries out of the U.S.

10 VICE CHAIRMAN JOHANSON: Okay, thanks, Ms. Aranoff
11 and Mr. May.

12 Do you have any idea what the value added to a
13 finished C Series aircraft through the final assembly alone
14 in Alabama, do you know what the value added to that would
15 be?

16 MR. DEWAR: Of course we do, and it's confidential
17 so we'll provide that in the postbriefing.

18 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.
19 Dewar. I look forward to seeing that.

20 At the prehearing conference Bombardier stressed
21 that adhering to its production ramp up schedule at its
22 plant in Quebec is very important, and Bombardier stated,
23 quote, we are forced to achieve that rate. End quote. This
24 can be found in the conference transcript at page 214.

25 How will Bombardier adhere to its production ramp

1 up schedule if the C Series is sold to U.S. customers
2 through the plant in Alabama? Are you just giving that up?

3 MR. DEWAR: No. So as we mentioned earlier, a
4 ramp up in Mirabel would be for non-U.S. customers. So
5 we'll continue to ramp up the program in line with those
6 customers and that demand, and we mentioned that Mobile of
7 course will be used for deliveries to the U.S. market.

8 MS. ARANOFF: I think Mr. Dewar can maybe just
9 talk a little bit more. Mr. Mullots comment from the prelim
10 was taken significantly out of context, and I think we want
11 to rectify that a little bit.

12 MR. DEWAR: So I said in my testimony earlier this
13 afternoon, its no secret that weve had a lot of challenge in
14 the ramp up in Mirabel. And so I did testify that last year
15 we had planned to deliver 15 aircraft, and in fact we
16 delivered 7. This year our plans were to deliver between 30
17 and 35 aircraft, and as I testified this morning it will be
18 approximately 20. So we have had a number of challenges
19 with our supply chain that I referred to at Pratt & Whitney,
20 and some other suppliers.

21 And it is a clean-sheet design with high
22 technologies, so there is a learning curve that we have to
23 get through. So those are the capacity reasons that I spoke
24 about.

25 MS. ARANOFF: But just to clarify it a little bit

1 further, Mr. Mullett, like Mr. Dewar, are operations people.
2 They are looking at the production line. And so when they
3 talk about getting up the learning curve and increasing
4 production, they are talking about they are talking from a
5 technical perspective about getting enough production
6 experience under their belts so that they can feel confident
7 that the line can operate efficiently.

8 They are not marketing people, and they were
9 not Mr. Mullett was not making a statement about the marketing
10 intentions of the company. So really when he said that,
11 that there was a need to get up the learning curve, he was
12 talking from sort of a technical perspective about what he
13 was trying to achieve.

14 He was not talking about any sort of imperative
15 to sell the product. Maybe Mr. Mitchell can comment on
16 that.

17 MR. MITCHELL: Ross Mitchell for Bombardier.
18 Certainly that's the case. Sebastian Mullett is not in the
19 marketing department.

20 From our perspective, we will use Mirabel now to
21 supply the rest of the world, and Mobile to supply the U.S.
22 The U.S. market does make up a significant portion of the
23 world market, roughly about 20 percent, perhaps 25 percent.
24 It's been declining over time simply because other markets
25 are now becoming more important: India, China, Asia, are

1 becoming more important in the overall aerospace market.

2 We believe that there is significant untapped
3 need for an aircraft like the C Series in a number of these
4 markets, China being a significant potential customer. And
5 the Mirabel plant will fulfill that. And we believe that
6 the Air Bus transaction once completed will generate more
7 interest in those markets because Air Bus has a global
8 reach. So I think the Mirabel plant will continue to supply
9 the rest of the world. Mobile will supply the U.S. market.
10 And I think that's definitely our plan moving forward.

11 VICE CHAIRMAN JOHANSON: Okay, thanks for your
12 responses.

13 In its brief on page 3, Bombardier argues that
14 the current launch or marquee C Series pricing sets no
15 reference point for future sales. At what volume of market
16 share do you believe that the C Series will no longer need
17 to compete on the basis of this type of pricing, mainly the
18 launch or marquee pricing?

19 MR. MITCHELL: Well I think as we testified
20 earlier Mr. Mitchell for Bombardier as I testified earlier,
21 one of the reasons you would have launch pricing is to deal
22 with the risk of entry into service in the early stages of
23 an aircraft program. And so as the aircraft begins to gain
24 acceptance in the market, as you begin to get the feedback
25 from the airlines that says the airplane is terrific, its

1 doing what bombardier says it should, then the need for this
2 type of pricing diminishes significantly.

3 As we testified earlier, Boeing themselves have
4 used this. The 787 encountered significant issues on entry
5 into service. In fact, to a certain extent because our
6 aircraft has advance technology the experiences of the 787
7 affected us, because it went out into the market and had a
8 number of entry-into-service problems that airlines had to
9 deal with.

10 And not just dealt with back then at the entry
11 into service, but continue to deal with. And so certainly
12 our aircraft has had a smooth entry into service if you
13 compare it to some of those other newer generation aircraft.
14 And so now that that has happened, the airlines see that the
15 risk is significantly diminished and there will be less need
16 for this sort of thing in the future. And certainly I think
17 we can demonstrate to the views of our customers in the
18 postconference brief and what they think, and how the
19 airplane is performing in service, and you will see this for
20 yourself.

21 MS. ARANOFF: I saw you squinting a little bit
22 at this chart up here, which looks a little bit confusing
23 and comes from an outside source, Leeham News. But what
24 this is basically showing you is a pricing curve. The curve
25 hasn't been drawn in, but it shows you how the prices start

1 out low, the launch pricing, and then they go up over time
2 for the models that are on the chart.

3 VICE CHAIRMAN JOHANSON: Okay, thanks, Ms.
4 Aranoff and Mr. Mitchell. And just to clarify, has there
5 been any movement of machines or dirt yet in Mobile as a
6 result of the joint venture? Or any ribbon-cutting
7 ceremonies?

8 MR. LEVESQUE: No, there hasn't been. Just
9 planning steps.

10 VICE CHAIRMAN JOHANSON: Okay.

11 MS. ARANOFF: They can't do that, Commissioner,
12 until they get any trust approval that they would need.

13 VICE CHAIRMAN JOHANSON: Yeah, okay, that makes
14 sense. So, but you're still awaiting antitrust approval?
15 Okay. That's kind of a big step.

16 MS. ARANOFF: It needs to be sought in a number
17 of countries, and if you take a look at our prehearing
18 brief, you'll see that there's been some progress, but the
19 process isn't over.

20 VICE CHAIRMAN JOHANSON: Okay. And then I think
21 I had just one more question for you. On Page 9 of Boeing's
22 brief, it mentions that Bombardier did not cooperate in
23 Commerce's antidumping investigation, which resulted in
24 duties of almost 80%. Is there any relevant background to
25 that decision, for you all not to cooperate in the

1 investigation, which you wouldn't mind sharing here?

2 MR. LICHTENBAUM: I think it's somewhat of a
3 mischaracterization. You know, essentially, without going
4 into too much detail about dumping calculations, they were
5 seeking information that is really not in existence, and
6 therefore, Bombardier was not in a position to provide.

7 The nature of a dumping calculation involves
8 comparison of costs and if you haven't got an airplane yet,
9 that is, sufficiently produced in order to calculate what
10 the costs are, then it's not really possible to answer these
11 questions. And so we felt, the company felt that it was
12 being asked to speculate and provide a number of different
13 scenarios as to cost that it really couldn't stand behind
14 what the answers might be.

15 They would really be hypothetical answers. And
16 so, in our view, frankly, this is a direct result of Boeing
17 bringing a case that is very unusual from a dumping
18 standpoint. You know, normally because it's -- you're only
19 talking about one sale about a plane that hasn't been built
20 yet, and no imports into the U.S. -- and so trying to come
21 up with dumping numbers that you can certify to, to the
22 Commerce Department, we in the company felt it was really
23 not possible. So we've explained that in abundant detail at
24 the Commerce Department, and if you'd like, we can provide
25 you those filings as an attachment to our post-hearing.

1 VICE CHAIRMAN JOHANSON: I'll just take your
2 word.

3 MR. LICHTENBAUM: I thought you might.

4 VICE CHAIRMAN JOHANSON: We've got plenty else
5 to get through. And that was my last question. So, it's
6 not my most important one. But I'd like to thank y'all for
7 appearing here today.

8 COMMISSIONER WILLIAMSON: Thank you. Just a few
9 more questions. What is the status of Republic? And is
10 there any reason why expectation of Republic will take
11 delivery of the aircraft they ordered from Bombardier within
12 the next few years?

13 MR. MITCHELL: The Republic order is still on
14 our books. Republic ordered the aircraft a number of years
15 ago. As you may know, they went through a bankruptcy
16 proceeding and have emerged on the other side. So we
17 continue to have discussions with Republic about the
18 aircraft. As to when it will deliver and in what form,
19 that's not been determined yet.

20 MS. ARANOFF: I should just add, Commissioner
21 Williamson, that back at the staff conference in the
22 preliminary part of this investigation, Mr. Novick did tell
23 the staff at that time that they didn't base their petition
24 on the Republic sale. They weren't concerned about the
25 Republic sale and didn't consider it injurious. I may not

1 be quoting him exactly, but please do check the transcript.

2 COMMISSIONER WILLIAMSON: Okay, thank you. You
3 might want to do this post-hearing. What number of orders
4 do you need to make the C-100, C-300 viable? On ongoing
5 production models? And I guess I would like, when you
6 answer that question, if it's just Mirabel and Mobile, and
7 does that make a difference in what your answer is? As I
8 said, you may want to address it post-hearing.

9 MR. DEWAR: Yeah, exactly. So I guess it's in
10 line with what a standard number of aircraft in the industry
11 would be and we can provide that again in a post-briefing.

12 COMMISSIONER WILLIAMSON: Okay, thank you. No,
13 there are public estimates that Delta purchased the CS100s
14 for \$19.6 million and \$23 million for aircraft. Why
15 wouldn't other airlines that compete with Delta, demand
16 similar pricing? And I know this is statement about that
17 they don't know, but if there's speculation out there, I'm
18 sure there's no harm in asking for low price. So why
19 wouldn't they?

20 MR. MITCHELL: I think there's a general
21 recognition that launch customers get different pricing than
22 everyone else. And I testified earlier that the actual
23 price of the aircraft is a small determinant of the cost of
24 the airline, and it makes up roughly -- ownership cost makes
25 up roughly 20% and price is only one component of ownership

1 cost.

2 Remember that some airlines have better credit
3 ratings than others, so they'll get different interest
4 rates. They'll get different deals from lessors. So it's a
5 very complex process to come up with exactly what the
6 ownership cost differential is. And I must say, there are a
7 lot of public reports out there about pricing. And you see
8 them often and they're almost always wrong. In fact,
9 they're always wrong.

10 And so, you know, for an airline to come in to
11 see me and suggest that they saw a price in a particular
12 article in a newspaper or magazine, and that's the price
13 they want, that's a rather unsophisticated way to do a
14 negotiation. I think what we try to do when we negotiate
15 prices with customers is we talk about the value of our
16 airplane and determine a price with the customer that works
17 for them, that makes their business work.

18 Because that's what they're most concerned about
19 anyways. They're not necessarily concerned about what the
20 last airline may have got on a deal, or what has been
21 reported. What they're most interested in is making sure
22 they can make money based on their business model, given the
23 fares that their customers will pay.

24 MR. MAY: A different campaign that I would
25 comment on is, Delta, a few years ago, bought the Airbus

1 A350. We were not a launch customer. I'm very confident we
2 did not get launch pricing, but the pricing we got was fair.
3 It made our business case for going after the aircraft. We
4 were looking at that aircraft to replace our 747-400s, as
5 has been stated here multiple times, ownership is just a
6 minor piece of the overall equation.

7 I've seen a few drafts that concern me a little
8 bit on what's being shown as far as overall costs. When we
9 buy an aircraft, we keep an aircraft generally at least 25
10 years, 30 years. So if you're looking at your total
11 maintenance costs -- of your costs, maintenance costs
12 outweigh the ownership cost. Fuel outweighs the ownership
13 cost, and it's all about comparing what is my next best
14 option when I'm making the decision. Not what is
15 potentially rumored in the press or elsewhere that somebody
16 else got.

17 MR. BAISBURD: Yohai Baisburd with Delta. This
18 morning, Boeing talked about looking at city pairs. But
19 that's only a very small part of the analysis that the
20 airline does when it builds out its network. So Joe
21 testified this afternoon that he projects a schedule out for
22 331 days. And if an airline that only flies a Max 7, every
23 time it goes from Point A to Point B has to put a 138,
24 roughly, people in that plane.

25 Well, Delta has greater flexibility. So at the

1 same time, because there's less demand on that day, Delta
2 can fly a smaller aircraft. Or if there's great demand,
3 they can fly a bigger aircraft. But what they have out
4 there in the market is an inventory of seats. And those
5 seats are set with a projection out for 300 or so days.

6 And whatever fare is charged on an airline at
7 any given time is based on supply and demand and we all
8 know, because we're all consumers of airline tickets, is
9 that they can fluctuate widely and they're not tied to the
10 underlying aircraft. They're tied to demand, when you
11 bought it, why you bought it, where you're going, early in
12 the morning, late in the afternoon, in September.

13 But Boeing doesn't offer that. I mean it's so
14 fundamental to this case. Like, Boeing does not give a U.S.
15 airline the capability to buy something with less than 138
16 seats. In fact, they told you -- they were proud of it this
17 morning. They said, in a 100- to 150-seat space, how we're
18 gonna supply this market is we're going even bigger. We're
19 gonna max out at the Max 7 at 138. And fares are
20 independent. They're set by supply and demand.

21 MR. DIMITROFF: George Dimitroff, if I may, I'm
22 from Flight Ascend. As an appraiser, this is one issue I
23 really want to comment on. As appraisers, we hear a lot of
24 rumor. I mean, it's our job to find out what aircraft are
25 really worth in the market, right? And we hear a lot of

1 rumors. We hear rumors all the time, and the interesting
2 thing is that, as appraisers, we get a view of the market
3 from many different angles.

4 But if you're an airline or a manufacturer, you
5 only see the angle of the build that you're negotiating.
6 And one thing we do see all the time is how different -- we
7 often see different prices rumored for the same deal. So
8 even for the Delta deal and for the 737-700 deal, we've
9 actually seen or heard rumors for several different levels
10 of pricing.

11 And even if people claim it's scientifically
12 calculated from a 10Q or from a financial report, when we do
13 our calculation, when somebody else does their calculation,
14 we actually get different results, because there's so many
15 assumptions that have to be made, like, so they -- have
16 reported this amount, so if we assume that they paid 1%
17 deposit on signing, but what if they didn't pay 1%? What if
18 they paid 2%? Because that can make a huge difference.

19 So the prices rumored are not fact. And I think
20 airlines know that. And I think they can try to ask for
21 that rumored price jokingly in a sort of cordial
22 conversation with the manufacturer. But manufacturers will
23 stick to their guns, especially once the order book is now
24 much more filled and has the endorsement of a few solid
25 airlines.

1 COMMISSIONER WILLIAMSON: Okay, thank you. I
2 was interested in that chart that Delta had, showing the, I
3 guess it was the cost of the CS100 compared to the other
4 airline. And I noticed there has been very little talk
5 about the weight of the different planes. And I guess,
6 which translate also into fuel efficiency, but I know
7 engines are a factor. So the question I'm asking is, is it
8 possible, and I guess petitioners to comment on this, to get
9 an impression of where the CS100 and 300 fit with basis to
10 737-700? In terms of relative cost -- the things that are
11 important to the airline when they decide to --

12 MR. MAY: Yeah, we'd be happy to, as part of our
13 post-hearing brief to give you numbers and details that give
14 the exact, marry up with these, this is a precise graph of
15 how we evaluate the economics of each of the aircraft.
16 We're not showing the numbers for confidentiality reasons,
17 but we'd be happy to share those. But you can see the
18 magnitude of the difference, how much lower cost the CS100
19 is, even though it has fewer seats.

20 So this, again, generally, more seats, on an
21 airplane, you're spreading those costs across a bigger
22 denominator. But the 700 is vastly inferior to the CS100.
23 The manufacturers' jobs and my job as a buyer is, you see
24 there's a new line kind of forming. It's to keep bringing
25 that line down. And that 700 is now in the history books.

1 It's no an aircraft that you would to acquire now.

2 COMMISSIONER WILLIAMSON: And you're partially
3 saying that's because of the weight of the --

4 MR. MAY: Yes, it's heavier, and so it has
5 greater fuel burn, higher landing fees, all those things go
6 into our analyses.

7 COMMISSIONER WILLIAMSON: Even with more
8 efficient --

9 MR. MAY: The NPV analyses, it's true is what is
10 done. And all those various costs are included.

11 MR. MITCHELL: Commissioner, I think you raise a
12 good point. You know, we've talked a lot about seats, but
13 we haven't talked a lot about weight. But weight can be
14 used to show the differences between aircraft. So I did jot
15 down the weights of a few aircraft, which I could give you
16 now.

17 The Max 7 max takeoff weight is 177,000 pounds.
18 The CS100 is 134,000 pounds. So that's a significant
19 difference between those two airplanes. The CS300 is
20 149,000 pounds. So again, it's a significant difference.
21 The difference between the Max 7 and the Max 8 is small.
22 It's 177,000 pounds to 181,200.

23 So when you look at the weights, you can see
24 what airplanes are kind of grouped together and what
25 airplanes are more efficient and less efficient. And the

1 weight of the Max 7 is what precludes it from ever being
2 considered in a competition with our aircraft which are
3 significantly lighter and have more advanced technology.
4 And so the weight is an important consideration, and it does
5 show you the difference between our family of aircraft and
6 their family of aircraft.

7 COMMISSIONER WILLIAMSON: Okay, thank you. I'm
8 assuming you might wanna comment on that post-hearing.

9 MR. ESPOSITO: And Commissioner Williamson, just
10 wanted to point out that, you know, when you look at where
11 that falls in the costs, that's the reason we only have ten
12 of those airplanes. And we bought them for very specific
13 mission reasons, for hot and high type airports. And that's
14 why we would never purchase anymore than what we have today,
15 because of the cost profile of that airplane.

16 Because we already have it. We already know
17 what it costs us to operate. And then when you look at,
18 also, where the cost line, where the curve of that cost is,
19 that's also, falls very similar to how consumer ticketing
20 falls, and where the profitability of an aircraft within our
21 family, meets the line because we can't charge a premium to
22 the consumer because they got on a different type of
23 airplane. The market determines the pricing, so a different
24 -- so that's why it has to be fluid along that curve,
25 because pricing to the consumer doesn't recognize the

1 different type of airplane.

2 COMMISSIONER WILLIAMSON: Okay. I don't want to
3 get too much into this, because it's getting late. But, in
4 thinking about the discussion about the range of these
5 different aircraft and how they'll be used. And I think
6 it's true that planes are flying fuller than they were, say,
7 ten years ago, and I assume this is a phenomenon that's
8 everybody accepts now, you're gonna pack more of us into the
9 plane.

10 So I wonder what implications that has for the
11 importance of this, like, 100, 110 segment, versus the
12 larger planes.

13 MR. ESPOSITO: Well, you know, when you look at
14 our fleet, we, again, have a wide range of airplane types
15 and we just purchased the largest of the narrow bodies, the
16 739s and the 321s, and we also operate 50-seaters. So it
17 does come down, even though planes are fuller today, we
18 still do fly to markets like Augusta and Duluth, Minnesota,
19 that are very small and aren't growing as quickly as other
20 metropolitan areas, and so they still have a need in our
21 network to be serviced the proper way.

22 And that's why we look at ourselves as a
23 full-service airline to the U.S., where, for example, other
24 carriers have not elected to go into those types of markets.
25 It's like Southwest Airlines. We fly 230 cities, Southwest

1 has been very successful at only operating to about 85
2 cities in the U.S. Because they only fly to the biggest
3 cities. And therefore, they had not a need to buy smaller
4 than the 737-700 in their 40-year plus history.

5 But that's the business model that we've
6 selected, and that's why it is critically important to get
7 each one right and if we miss that critical gap between 76
8 seats and then jump right to 138 seats, that's an 80%
9 increase in supply to the marketplace. And there we would
10 find a very uneconomical flying, or we would not be able to
11 serve some communities.

12 COMMISSIONER WILLIAMSON: Okay. And when you
13 talk of --

14 MR. BAISBURD: It's also -- planes are flying
15 fuller if you get the right size for the demand for that
16 flight on that day at that time. And so that is, I think,
17 critical, just some quick math. If you buy 75 Max 7s,
18 that's 29 extra seats per plane, or 2,175 extra seats.
19 That's the equivalent of 20 additional CS100s. So the seats
20 get filled and the plane flies full if you have the right
21 demand for the right capacity that you're offering at any
22 given point in time.

23 COMMISSIONER WILLIAMSON: Okay, thank you. And
24 when you talk about -- you're talking about Delta and Delta
25 Connection?

1 MR. ESPOSITO: Yes, sir.

2 COMMISSIONER WILLIAMSON: Okay, good. I just
3 wanted -- okay. That's all the questions I have. Thank
4 you.

5 COMMISSIONER BROADBENT: Okay. If there's
6 potential that Bombardier's Canadian exports to Delta will
7 occur within the next several years as planned, then subject
8 imports are not negligible for purposes of threat. Given
9 that Bombardier's brief has argued that these deliveries
10 will not occur, can you provide stronger evidence to this
11 effect in your post-hearing brief? Could we get sworn
12 statements from Bombardier? That would be helpful.

13 MS. ARANOFF: We'll give you what we can in our
14 post-hearing brief.

15 COMMISSIONER BROADBENT: Okay.

16 MR. BAISBURD: Can I make a clarification? Just
17 conceptual. There's a difference between delivering a plane
18 and it being imported into the United States. And I think
19 that that's a distinction that is relevant, right? Because
20 the threat analysis and imminence and negligibility is based
21 on imports into the United States.

22 COMMISSIONER BROADBENT: Right, yeah, that's
23 what I meant. Yeah. All right, let's see. For Bombardier,
24 did you state to the Commerce Department that the proposed
25 transaction between Bombardier and Airbus has not been

1 finalized and determinations based on it would be
2 speculative, as asserted by Boeing on Page 75 of their
3 prehearing brief?

4 MR. LICHTENBAUM: I want to be clear about what
5 we said at Commerce, so thank you for asking that,
6 Commissioner Broadbent. We were explicit at the Commerce
7 Department, that the transaction uncertainty related to the
8 regulatory requirements, i.e., the anti-trust approvals that
9 we talked about earlier this afternoon. So it has nothing
10 to do with commercial decisions.

11 If you'd like, the proposed transaction has not,
12 due to regulatory requirements, been finalized. And so,
13 that was the uncertainty that we spoke of to the Commerce
14 Department. We've made, of course, significant headway on
15 those lines since that was a month ago. And we expect to
16 make more headway on it on the regulatory requirements by
17 mid-January.

18 The other thing I wanna emphasize is that the
19 Commerce Department's task is very different than the
20 Commission's. We were emphasizing to them that it was a
21 forward-looking question that they were asking us, which is
22 not appropriate for them because their focus is on a POI
23 that occurs in the past.

24 And there's many cases which are cited in our
25 submission to the Commerce Department, that they focus in a

1 particular POI and disregard events that happen after that
2 POI, whereas the Commission's determination is in a threat
3 context. Obviously, it's inherently looking forward, and so
4 with all respect to counsel, I think they're taking
5 statements that are made in one legal context completely out
6 of context, to present them to you here.

7 In any case, the uncertainty that we are
8 referencing was relating to the regulatory issues rather
9 than any commercial uncertainty.

10 COMMISSIONER BROADBENT: Right. But we're just
11 trying to figure out what's gonna happen and what we can
12 depend on and not. And this regulatory process seems to
13 give you guys a huge out.

14 MR. LICHTENBAUM: Well, I guess it doesn't feel
15 that way, but you know, we've stated in our prehearing brief
16 already that we received a certain approval, which is a very
17 significant approval. And so I would refer you to that.
18 We're receiving more approvals, so it's not like this is a
19 hypothetical process that could go on for years and
20 therefore may not happen.

21 This is something where we're receiving
22 approvals practically on a daily basis. So that's -- when
23 we say, checking back us in January, we expect to have some
24 very significant information to report.

25 MR. BAISBURD: I would add that you've heard

1 today from Delta the importance they place on getting
2 deliveries in the United States, and the economics that are
3 tied to the benefit of having U.S.-produced aircraft, and
4 the expansion of the U.S. aerospace industry.

5 I'd also point out, it's not the first time that
6 the United States economy has seen this kind of impact,
7 right? There was a case on passenger vans from Japan. And
8 there was also significant Japanese, Korean, and German
9 investment in auto manufacturing in the U.S., which puts
10 them beyond the reach of dumping and countervailing duties
11 brought in the United States.

12 So this phenomena where you have large
13 capital-intensive investments that are long-term, which
14 long-term customer relationship can lead and has led in the
15 past to significant U.S. manufacturing expansion. And
16 that's exactly what's happening here, and it's happening for
17 good, solid reasons, and building an ecosystem and eco
18 structure in Alabama and the rest of the supply chain.
19 Today, right?

20 Absent this case, that CS100 still had more than
21 50% U.S. content. Now that content is gonna be even higher,
22 and a lot of that content doesn't have to cross the border
23 into Canada and then come back to the United States. It'll
24 stay in the United States, presumably, and if I understand
25 correctly what I've heard here today.

1 So I think that there are examples,
2 historically, of how the chilling effect that bring a
3 petition can have on an industry, even when the petition's
4 unsuccessful. There is no order on passenger vans from
5 Japan. And you've heard the compelling benefits for a U.S.
6 carrier of taking delivery in the United States for aircraft
7 that are manufactured here.

8 MR. MC LAIN: I just want to emphasize on that
9 point again, the extraordinary disruption that the threat,
10 just the threat of filing one of these petitions causes the
11 carrier and the fleet-planning process, that's why the
12 manufacturer in the United States -- that's why the trade
13 risk that none of us ever really gave much thought to before
14 now is so important.

15 If you can't plan your fleet, you can't run your
16 airline, and you can't do it, you can't enter into these
17 agreements if you face the risk that Boeing will file
18 another petition, whether or not it's meritless, you spend
19 18 months of uncertainty trying to figure out how it's all
20 gonna come out. That's why Delta will not import any of
21 these aircraft into the United States.

22 COMMISSIONER BROADBENT: Okay well, I was just
23 trying to get to Mr. Lichtenbaum's use of the word
24 speculative, and you can just clarify that for the record,
25 that would be helpful.

1 MR. LICHTENBAUM: Yeah, we're glad to.

2 COMMISSIONER BROADBENT: Okay. For Bombardier,
3 are you currently producing the aircraft that you owe to
4 Delta under the 2016 agreement for first delivery in 2018?
5 If so, what is your current plan for those aircraft?

6 MR. DEWAR: Yes, as I testified earlier, those
7 aircraft will be delivered now to non-U.S. customers and we
8 are in advanced discussion with non-U.S. customers for those
9 aircraft.

10 COMMISSIONER BROADBENT: Okay. This would be
11 for probably Delta. Boeing asserts that customers are
12 easily able to past pricing information, interpret news
13 reports and financial statements, as well as other business
14 intelligence reports in order to discern the most recent
15 price paid for an airplane in a particular market segment.

16 In this manner, prices are relatively
17 transparent in a market with few relatively sophisticated
18 market participants. Given that you have stated the pricing
19 is opaque, do you disagree with Boeing that firms can use
20 these methods to discern market pricing?

21 MR. MAY: Very strongly disagree with Boeing on
22 this point. And just further -- this isn't just my
23 experience at Delta -- I've been involved in acquiring
24 aircraft, selling and buying aircraft since 1993, and it
25 really has not changed a lot. It's people maybe hear

1 rumors, but you hear conflicting rumors.

2 It's not like automobiles, where you've got
3 Bluebooks that people can rely on, or anything like that.
4 There are appraisers that estimate values, it would be maybe
5 interesting for you to look at the difference in appraisers,
6 one appraiser versus another appraiser will have a 20% value
7 difference in what they think an aircraft is worth their
8 cost.

9 MR. BAISBURD: If I can add, the purchaser
10 questionnaires, I think, are pretty clear on the value that
11 purchasers place on price relative to other factors in
12 making their decision to acquire a particular aircraft,
13 right? We've heard it multiple times today. The
14 acquisition price is less than, or around 20% of the total
15 operating costs.

16 And you saw the curve. That curve was without
17 taking into account purchase price. We did it that way on
18 purpose, so it could be on an even level. And so I would
19 say that it's not just whether you know the price or not,
20 which Greg was very clear that there's no clear source of
21 actual pricing information, but the impact of whether you
22 know that price or not is limited and the purchaser
23 questionnaires themselves, I think, clearly show that.

24 MR. MITCHELL: If I may, the purchase price of
25 an aircraft is quite complicated, too, and I think maybe

1 that hasn't had enough attention. There are a number of
2 factors that can change what the end price is, including the
3 optional features you put on the aircraft, which can be
4 several million dollars in difference between one customer
5 and another.

6 The requirements of the customer vary widely.
7 The requirements for training and other support that we
8 might give them as a part of that purchase can also vary
9 widely. And so accurately saying what the price is on any
10 one transaction and comparing it to another, is very
11 difficult.

12 COMMISSIONER BROADBENT: Okay. Ms. Aranoff,
13 about a year has passed between Bombardier's Delta purchase
14 agreement in 2016, and the filing of this petition in 2017.
15 Why was Bombardier unable to get additional U.S. sales and
16 what does this suggest about commercial momentum?

17 MR. MITCHELL: I think, first of all, on
18 commercial momentum, I think it's a word that gets tossed
19 around here a lot. I'm not sure it's a defined term
20 exactly. I think you saw the answers that the folks gave
21 earlier, which were not clear to me, and I'm in the
22 industry.

23 I think why we didn't sell an airplane from the
24 time of Delta until the petition was filed, is simply that
25 these things are complicated. They take a long time to work

1 through and we are certainly out there marketing the
2 airplane. But remember, from '16 to '17 was our first year
3 of service with the airplane with the CS100 at SWISS. And a
4 number of customers would've been looking at the entry into
5 service process.

6 How did we do? As I mentioned before, other
7 manufacturers have had difficult entry into service, which
8 has cost early airlines a lot of money, and has been
9 difficult for them in their systems. So for us, we continue
10 to market the airplane, but it's not uncommon in a
11 geographical area for us not to have sold the airplane
12 within one year while we're in the entry into service
13 process.

14 MS. ARANOFF: So let me just circle back from
15 what Mr. Mitchell has said, and say, you know, we heard a
16 lot of reference this morning from Boeing about commercial
17 momentum and as Mr. Mitchell said, it's not clear that
18 everybody knows what that means.

19 But one important takeaway, you cannot buy
20 commercial momentum no matter how low you set your price.
21 Because customers are looking, with the new aircraft, for
22 performance and service. So you might give out launch
23 pricing, get a customer, put the aircraft into service, but
24 then the aircraft has to perform, and subsequent customers
25 are gonna be looking for that.

1 So if you're just gonna tie commercial momentum
2 as something that you can go out in the marketplace and buy,
3 it doesn't really work that way in practice.

4 MR. BAISBURD: Also on this commercial momentum
5 point the Max 7 hasn't had an order since 2013. So from
6 2013 to 2016 when Delta made its order you can't argue that
7 the CS100's stole or took or somehow took away commercial
8 momentum because the Max 7 didn't make a sale for three
9 years for this Delta purchase and hasn't made an order, as I
10 understand it since then.

11 CHAIRMAN SCHMIDTLEIN: I just had one last
12 question -- can you put on the record the agreement between
13 Bombardier and Airbus? I presume there is a written
14 agreement between you being that you're seeking regulatory
15 approvals and you've asserted here that this is definitely
16 going to happen?

17 I believe that is already on the record, okay --
18 including all Addendums, Appendix, side letters, anything --
19 MS. ARANOFF: As far as I understand yes but we'll double
20 check and if there's anything missing we'll add it.

21 CHAIRMAN SCHMIDTLEIN: All right, all right thank
22 you very much. Vice Chairman Johanson -- okay, Commissioner
23 Williamson?

24 COMMISSIONER WILLIAMSON: Just one quick question
25 for our post-hearing Miss Aranoff. Boeing cites the I guess

1 1984 Act about purchasing for importation and you know, this
2 definitely implied here no matter when the plane was
3 imported -- I was wondering if you might want to comment on
4 that post-hearing and your views of that -- what we should
5 make of that provision?

6 MS. ARANOFF: Yes, absolutely.

7 COMMISSIONER WILLIAMSON: Good, okay, thank you.

8 MR. MORAN: Madam Chair if I could -- Mark Moran
9 for the Government of Canada. If I could follow-up on that
10 --

11 MR. BISHOP: Pull your mic a little closer Mark
12 please.

13 MR. MORAN: Sure. As Commissioner Williamson
14 pointed out, Petitioner's counsel directed you to the 84
15 amendments and most prominently the legislative history. I
16 think you need to fast-forward 10 years to the 1994
17 amendments, the most recent amendments to the most specific
18 provision before the threat provision and the plain language
19 of the statute not the legislative history.

20 So the plain language of the statute which was
21 designed to implement the WGO AD and SEM Agreement's
22 language on threat which unambiguously require a finding of
23 threat to be based on a finding of further dumped or
24 subsidized imports being imminent -- imports must be
25 imminent not just the injury, it's both injury and imports.

1 That requirement was faithfully implemented into
2 the provision of the statute 771-7F2 called "Basis for
3 Determination" after the list of the mandatory factors and
4 it says, "The Commission shall consider the factors set
5 forth in clause one as a whole in making a determination of
6 whether further dumped, or subsidized imports are imminent
7 -- the imports are imminent and whether material injury by
8 reason of imports, would occur unless an order is issued."

9 The focus is unambiguously on whether future
10 imports are imminent and so when the other side suggests
11 that you can ignore that language and make a threat
12 determination on the basis of sales, that's plainly
13 inconsistent with the unambiguous language of the statute.

14 This is Chevron step one. Now, at the same time
15 that they amended the threat provision for basis of
16 determination, they didn't alter the language that they
17 referred to involving sales for importation even if the
18 imports have not yet occurred. So how do you reconcile
19 that?

20 You're still entitled to take into account sales
21 and future sales for importation but you have to then take
22 that information and evaluate it for what purpose -- to
23 determine whether future dumped or subsidized imports are
24 imminent.

25 So yes you can examine sales and orders in your

1 analysis, they do not replace the statutory basis for a
2 threat finding which is that imports are imminent.

3 COMMISSIONER WILLIAMSON: Excuse me, okay, thank
4 you for that. So anything that can be added post-hearing on
5 this from both sides I would appreciate, thank you.

6 CHAIRMAN SCHMIDTLEIN: Okay, that concludes
7 Commissioner questions. Do staff have any questions for
8 this panel?

9 MR. CORKRAN: Douglas Corkran, Office of
10 Investigations. Thank you Madam Chairman, staff has no
11 additional questions.

12 CHAIRMAN SCHMDITLEIN: Okay do Petitioners have
13 any questions for this panel?

14 MR. NOVICK: We don't.

15 CHAIRMAN SCHMIDTLEIN: Okay thank you very much.
16 All right, thank you all again for your testimony today. I
17 will dismiss you at this time as we move to closing
18 statements.

19 MS. ARANOFF: Madame Chairman could we request a
20 five minute restroom break before closings?

21 CHAIRMAN SCHMDITLEIN: Of course, yes.

22 MR. BISHOP: Would the room please come to order.

23 CHAIRMAN SCHMIDTLEIN: For closing statements
24 those in support of duties have 3 minutes from direct plus 5
25 minutes for closing for a total of 8 minutes. Those in

1 opposition have a total of 7 minutes.

2 MR. BISHOP: Rebuttal and closing remarks on
3 behalf of Petitioner will be given by Robert T. Novak of
4 Wilmer, Cutler, Pickering, Hale and Dorr. Mr. Novak you
5 have 8 minutes.

6 CLOSING STATEMENT OF ROBERT T. NOVICK

7 MR. NOVICK: Thank you. So I'd like to start by
8 observing that what you heard a lot this afternoon was from
9 Delta. Delta's one airline, it has one perspective on how
10 it manages its fleet and what it wants to buy on any given
11 day.

12 It is not representative of the airline industry
13 and its testimony should be taken in exactly that context.
14 The fact that it might choose a different approach to how it
15 buys planes in the 100 - 150 seat segment is something that
16 you have to take into account as you pay attention to their
17 testimony.

18 Having said that it's interesting that Delta when
19 they talked about its purchase from Bombardier seems to walk
20 away from the idea that it has conversion right for 90 CS
21 300's. It talks about having bought just the 100.

22 And when asked about the 75 to 120 planes -- why
23 it was such a big order, it doesn't seem to recognize that
24 it has these conversion rights that they got a price on at
25 that time.

1 The other thing that's interesting about Mr. May
2 -- both at the preliminary and here today he first says I
3 knew that price at United or I had a good instinct and then
4 when pressed there's no such thing as price transmission.

5 We heard from Flight Ascend that they spend their
6 career -- he's here because his career is to try and figure
7 out what the price of planes are but there is no price
8 transmission. Just to remind the Commission of Mr.
9 McAllister's testimony this morning -- we're not suggesting
10 that every time a plane is sold anywhere in the world
11 everyone knows exactly what the price of that plane is, but
12 where you have a seismic development like there was at Delta
13 with the C series, the market does now.

14 And you have confidential information in the
15 record that tells you that the market knows, knows how to
16 calculate it and then reacts to it. So the issue of price
17 transmission is one that we could hopefully stop talking
18 about.

19 I have to say Mr. Mitchell I believe it was, the
20 inventor of the 100 and 150-seat market. Well the ITC might
21 be surprised when it looks back at its 1993 report on page
22 4-3 that it used the 100 and 150-seat market to talk about a
23 segment that Boeing competed in.

24 I hope Mr. Mitchell's not suggesting he invented
25 that market before 1993 for marketing purposes.

1 Let me spend a minute on United. We learned a
2 lot today about the United sale that Boeing was actually
3 directly involved in. There is some suggestion it appears,
4 that somehow United colluded with Boeing to set a low price
5 to keep the C series out so that -- what? So that it could
6 then convert them the next day?

7 Well there was a change in management at United
8 and management at United made a different decision about
9 what it wanted in its fleet. And we have on the record
10 detail about the United campaign which you can look at
11 separately from this -- my closing here.

12 But what's more important that we learned about
13 United was in response to the questions about what they're
14 going to do to fill the demand that they had for that 100 to
15 150-seat segment -- we learned that they are in the market.
16

17 We learned from Flight Ascend that they're going
18 to be replacing those planes at some time and we learned
19 from Mr. Mitchell that he's actually talking to them. That
20 was news that we learned today.

21 The suspension agreement point -- technically the
22 date that the deal was announced -- I believe it was October
23 16th would have been too late to do suspension agreements,
24 that's correct.

25 They've been talking about this deal according to

1 counsel since 2015 and they certainly started talking about
2 it long before October 16th. And if one of the concepts was
3 to never import a plane from Canada for a U.S. airline, they
4 certainly could have asked themselves what about doing a
5 suspension agreement instead.

6 So the idea that the only reason they didn't
7 think about that was because it was too late, it was not
8 credible.

9 Let's talk a bit about the Alabama plant one more
10 time or three more times. There is no plant, there is an
11 agreement, there are regulatory approvals being sought,
12 there's a concept -- it's legally irrelevant to your
13 decision. It is legally irrelevant.

14 And let me say -- let me add, what was
15 interesting today is we heard on one hand from Bombardier we
16 have a struggling plane maker to ramp up the production
17 levels in Mirabel. They're having trouble with deliveries,
18 they're having trouble with supply, they're having a whole
19 host of trouble.

20 And on the other hand they're going to put up
21 this new facility and breeze planes out of it in a couple of
22 years to all of these U.S. airlines. I don't know how those
23 two are squared.

24 But let's assume for a moment they can be
25 squared. What you have is them telling you that there's

1 enough demand for the 100 - 150-set segment, enough demand
2 for the C series that they can run two separate facilities
3 -- one dedicated for the foreign market and one dedicated
4 for the U.S. market.

5 Now, presumably they're making planes in Mirabel
6 that could go to a U.S. customer, maybe Delta decided
7 definitively that it doesn't want the planes from Canada but
8 that doesn't mean somebody else wouldn't want the planes
9 from Canada.

10 And the notion that Boeing would come in every
11 two months to file a Petition is just not real. There's
12 enough planes apparently in this production that they are
13 going to have in both places that if a U.S. customer wants a
14 plane in a couple of months coming off of their Mirabel
15 site, they can deliver it.

16 Boeing will have no time to bring a Petition, go
17 through the process and resolve the case before there's any
18 jeopardy attached to those planes -- so that doesn't really
19 add up.

20 So from a legal standpoint it's irrelevant. From
21 an economic standpoint it makes absolutely no sense and it's
22 really quite at odds with the story we hear about the
23 challenge they've had in Mirabel and the testimony they gave
24 at the preliminary that they have to do this.

25 It's part of getting down the learning curve.

1 You can't succeed -- the program can't succeed over time if
2 you don't get down the learning curve. So now they're going
3 to try to get down two separate learning curves in two
4 separate facilities. It's just not believable.

5 The jobs issue came up. And I said this I think
6 earlier today that their basic supposition is -- or
7 proposition is Boeing should exit this space, the jobs that
8 can be created by building these planes, whether in Mirabel
9 or now they're saying in the United States should go to
10 them.

11 Well why is that? Why is the domestic industry
12 that exists today, that's been building these planes for
13 years and years and years supposed to relent in the face of
14 unfair trade so some other jobs can be created -- they say
15 in the U.S. but also they're going to ramp up in Mirabel.

16 They've got to ramp up to meet all of that
17 foreign demand that they say they have. Why is it that
18 those jobs should be jobs that Boeing doesn't have? Boeing
19 is basically being frustrated in its ability to develop the
20 Max 7, produce the Max 7, create all the jobs that would
21 come from that so that Bombardier can have them -- the
22 Bombardier Airbus can have them.

23 That's not really what the trade laws were
24 intended to do. I see my time is up and I appreciate the
25 Commission's attention today. It's been a long day. I'll

1 just close by saying the question you have to ask is what
2 will happen absent orders and it is clear what will happen
3 absent orders.

4 They will continue to use their subsidized dumped
5 product and now with the support of Airbus to push Boeing
6 out of the 100 and 150-seat market which exists, which many
7 customers look for planes in and with Mr. Mitchell did not
8 create for marketing purposes.

9 It's real, it's where these plane-makers compete.
10 Thank you.

11 COMMISSIONER SCHMIDTLEIN: Thank you.

12 MR. BISHOP: Rebuttal and closing remarks on
13 behalf of Respondents will be given by Shara L. Aranoff of
14 Covington and Burling. Miss Aranoff you have 7 minutes.

15 CLOSING STATEMENT OF SHARA ARANOFF

16 MS. ARANOFF: Thank you all. The factual record
17 in this case is challenging but the story that it tells is
18 quite simple. The C Series is a fantastic product with a
19 bright future. As witnesses today confirmed its prospects
20 are bright because the C Series gives airlines the operating
21 efficiency performance and passenger comfort that they need
22 but have long been unable to obtain in the smaller single
23 aisle aircraft.

24 Mr. Novak just said that Bombardier's argument in
25 this case is that Boeing should exit this space. The

1 opposite is of course true. Boeing exited this space a long
2 time ago and that's the reason that the C Series exists.

3 The Max 7 does not and cannot satisfy these same
4 requirements. As a result there is no trade remedy that
5 will make the Max 7 an efficient solution for airlines such
6 as Delta. This is the whole attenuated competition argument
7 in this case and it really goes to non-attribution.

8 If there were no C Series, Delta still wouldn't
9 be able to use the Max 7 and the Max 7 would not become a
10 success in the market because it can't compete in this part
11 of the market. It doesn't offer the performance and value
12 that airlines need at that bottom end of the single aisle
13 segment.

14 Given the advantages such as incumbency and
15 commonality that Boeing has, it simply cannot attribute the
16 Max 7 struggles to the C Series.

17 Mr. Novak also mentioned that you had heard a lot
18 from Delta today but that you should actually disregard
19 everything that Delta told you. In fact, in many cases
20 where the Commission faces a situation where it's hearing
21 about a competition for a product and it's heard from the
22 U.S. supplier and it's heard from the foreign supplier and
23 they're not telling the same story, it's the customer the
24 Commission wants to hear from.

25 It's the customer that the Commission usually

1 believes about what really went on in that competition.
2 It's very rare that you have a customer as forthcoming as
3 Delta who comes here and puts it all out on the public
4 record and so I hope you will not disregard what Delta said
5 because it's really what the Commission wants to encourage
6 in every case where this sort of situation arises.

7 Mr. Novak also just referenced the fact that
8 United might be in the market. Did you notice that he
9 cleverly said because United didn't buy smaller, single
10 aisle aircraft back in 2015, it must be in the market now
11 for 100 to 150-seat LCA's.

12 Well that's kind of a sneaky thing to put in
13 there because that's not right at all. What United said it
14 was in the market for in 2015 and what it might want to
15 reconsider at some point in the future was not 100 to 150
16 seat LCA, it was 100-seater plane -- that's what they were
17 competing back in 2015 before they got diverted by the deal
18 with Boeing for the 700 that they didn't end up taking.

19 So please don't let that slip and let you think
20 they're back in the market and might be interested in
21 something at the upper end of that 100 to 150 spectrum
22 because there's no evidence of that.

23 What this comes down to is that although Boeing
24 asserts that the Max 7 competes directly with the C Series
25 it can't identify a single lost sale. It tells you that the

1 Max 7 is a distinct-like product but it tells its customers
2 that the 737 family is "one airplane in four sizes."

3 Boeing claims that imports of the C Series from
4 Canada are imminent but the record makes clear that there
5 are no planned deliveries on the horizon and at the same
6 time they dismiss the strategic partnership with Airbus and
7 the new U.S. Foul as little more than self-serving
8 speculation.

9 Now we recognize that the timing of all of this
10 puts the Commission in an unenviable position because the
11 events regarding the new Foul and Mobile are moving fast and
12 they're not final.

13 But here's what you do have -- two public blue
14 chip companies and their Boards of Directors committed to
15 the project, a business case that the partnership will
16 unlock C Series demand and create the business case for the
17 second final assembly line and of course the fact that U.S.
18 airlines are now unwilling to take the risk of purchasing
19 the C Series if it has to be imported from Canada for fear
20 of another case.

21 When you add those things up, there's simply
22 nothing speculative about it. It is unfortunate that
23 because of the anti-trust process the plans can't be more
24 advanced right now. But it really is not reasonable at all
25 to say that that makes them legally irrelevant.

1 They're as definite as they can be and getting
2 more so by the day. Because of the unusual posture of this
3 case and because the Commission is legally obligated to make
4 its determination based on circumstances at the time that
5 that determination is made -- we hope you will request that
6 we update the record with anything that happens between now
7 and the record closing date in the middle of January because
8 we would be pleased to do that.

9 Madam Chairman and members of the Commission we
10 are extremely grateful for your thoughtful attention through
11 this long day. We know very well the demands that have been
12 placed on you and on the staff of late with things being as
13 busy as they are.

14 The tireless efforts of the staff to compile such
15 a complete record on a compressed timetable have been
16 particularly impressive and doing so amid the holiday season
17 makes the accomplishment even more notable, especially given
18 the novelty and the complexity of the facts presented in
19 this case.

20 So with that I will simply say thank you for all
21 of your attention today.

22 CHAIRMAN SCHMITLEIN: All right thank you very
23 much Ms. Aranoff. We will be back here tomorrow at 11 a.m.
24 with wire rod if you would like to join us because it never
25 stops.

1 All right post-hearing briefs, statements
2 responsive to questions in request of the Commission and
3 corrections to the transcript must be filed by December
4 27th, 2017. Closing of the record and final release of data
5 to parties is January 19, 2018 and final comments are due
6 January 23, 2018.

7 Again, thank you to all the witnesses for your
8 testimony today for helping us understand this very
9 interesting case and we wish you all a very happy holiday.
10 This hearing is adjourned.

11 (Whereupon the meeting was adjourned at 5:36
12 p.m.)

13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: 100-To 150-Seat Large Civil Aircraft From Canada

INVESTIGATION NOS.: 701-TA-578 and 731-TA-1368

HEARING DATE: 12-18-17

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 12-18-17

SIGNED: Mark A. Jagan

Signature of the Contractor or the
Authorized Contractor's Representative

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

SIGNED: Duane Rice
Proofreader

I hereby certify that I reported the above-referenced proceedings of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceedings.

SIGNED: Gaynell Catherine
Court Reporter

Ace-Federal Reporters, Inc.
202-347-3700