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.
APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Chairman Rhonda K. Schmidtlein
Vice Chairman David S. Johanson
Commissioner Irving A. Williamson
Commissioner Meredith M. Broadbent

Staff:

William R. Bishop, Supervisory Hearings and Information Officer
Tyrell Burch, Program Support Specialist
Andrew Dushkes, Investigator
Jennifer Powell, Investigator
Justin Enck, Investigator
John Benedetto, International Economist
Charles Yost, Accountant/Auditor
Karl von Schriltz, Attorney/Advisor
Douglas Corkran, Supervisory Investigator
APPEARANCES (Continued):

Embassy Witnesses:

The Embassy of the United Kingdom
Washington, DC

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

The Embassy of Canada
Washington, DC

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

Delegation Witness:

Delegation of the European Union to the United States
Washington, DC

   Damien Levie, Minister Counselor and Head of Trade
   Section

Opening Remarks:

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

Respondents (Peter Lichtenbaum, Covington & Burling LLP)
APPEARANCES (Continued):

In Support of the Imposition of Antidumping and Countervailing Duty Orders:
Wilmer Cutler Pickering Hale and Dorr LLP
Washington, DC
on behalf of
The Boeing Company ("Boeing")
  Kevin McAllister, Executive Vice President, The Boeing Company; President and Chief Executive Officer, Boeing Commercial Airplanes
  Jerry Nickelsburg, Ph.D., Adjunct Professor of Economics, University of California, Los Angeles ("UCLA"); Senior Economist, UCLA Anderson Forecast
  Charles Anderson, Principal, Capital Trade
  Robert T. Novick, Patrick J. McLain and Stephanie Hartmann - Of Counsel
APPEARANCES (Continued):

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

Dentons US LLP
Washington, DC
on behalf of
Delta Air Lines, Inc.

Scott McClain, Associate General Counsel, Delta Air Lines, Inc.
Joe Esposito, Vice President, Network Planning, Americas, Delta Air Lines, Inc.
Greg May, Senior Vice President, Supply Chain Management & Fleet, Delta Air Lines, Inc.
Yohai Baisburd and Daniel Morris - Of Counsel

Covington & Burling LLP
Washington, DC
on behalf of
Bombardier Inc.
Ross Mitchell, Vice President, Commercial Operations, Commercial Aircraft Division, Bombardier Inc.
Robert Dewar, Vice President, C Series Program,
Commercial Aircraft Division, Bombardier Inc. and C Series Aircraft Limited Partnership
APPEARANCES (Continued):

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

George Dimitroff, Flight Ascend Consultancy

Shara L. Aranoff, Peter Lichtenbaum and James M. Smith – Of Counsel

Steptoe & Johnson
Washington, DC
on behalf of
Government of Canada

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

Steptoe & Johnson
Law Office of Gary N. Horlick
Washington, DC
on behalf of
Government of the United Kingdom

Gary N. Horlick – Of Counsel

Rebuttal/Closing Remarks:

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

Respondents (Shara L. Aranoff, Covington & Burling LLP)
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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
questions to business proprietary information. Please speak clearly into the microphones and state your name for the record for the benefit of the court reporter. If you will be submitting documents that contain information you wish classified as business confidential your request should comply with commission rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: No, Madam Chairman.

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

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

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

STATEMENT OF AMBASSADOR SIR KIM DARROCH

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

Their actions are not what we would expect from a
long-term partner. We are clear that no aircraft have been exported from the UK to the U.S. Market. In addition, the UK programs to Short Brothers in Belfast for outside the scope of countervailing duty investigation as a matter of U.S. and WTO Law. However, due to the close and cordial relationship between the UK and the United States we have voluntarily chosen to participate in this investigation.

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

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

On the question of material injury, the UK says that first, despite Boeing's argument, this is not a case where dumped or subsidized imports or sales of 100 to 150 seat large civil aircraft have caused material injury to domestic production. This is because following the end of production of the Boeing 717 there is no U.S. Domestic production of a like-product.
Second, the import or sale of C-series aircraft could not threaten material injury to future Domestic production of the like-product and is not preventing the establishment of a Domestic Industry producing the like-product. This is because Boeing has presented no evidence of attempts to invest any time or money in the design, manufacture or sale of a new competing type of a 100 to 150 seat LCA in the 1-2 years' time frame required by U.S. Law.

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

At United, Boeing persuaded the customer that it was commercially advantageous to accept a larger aircraft than originally requested. The UK Government is concerned that Boeing is arguing that the ITC should come to a determination that comes to the imposition of commercially damaging duties. This determination would be based merely on a competitor's entry into a new market, a market in which Boeing does not at present compete and in which it has no eminent plan to compete.
Such a determination damages international trade, competition and in this case ultimately damages American Airlines customers and American businesses in the C-series supply chain. For these reasons, I, on behalf of the UK Government ask the ITC to reject Boeing's argument and recognize that there is no threat of material injury to U.S. Industry. Thank you.

CHAIRMAN SCHMIDTLEIN: Thank you very much.

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

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

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

STATEMENT OF AMBASSADOR DAVID MCNAUGHTON

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

Under the relevant WTO agreements to which both
the United States and Canada are parties, a determination of threat of material injury cannot be based on allegation, conjecture or remote possibility. I understand that a similar admonition is contained in the U.S. Statute that the Commission is obliged with administering.

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

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

Here, too, Canada expects the Commission will follow both the U.S. Statute and its relevant, international, legal obligations. Stepping back from the issue of the United States' obligations under international law, the facts of the case are perplexing. Boeing did not
compete against the plane that Bombardier sold to Delta because it does not have a plane in that size.

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

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

These components are supplied by American companies directly supporting roughly 23,000 well-paying jobs in many U.S. states including Connecticut, Florida, New Jersey, Washington, New York, Ohio, Kansas, Pennsylvania and Colorado. Simply put, an affirmative determination would put U.S. jobs in jeopardy. There is no reason to believe that an affirmative determination would lead Boeing to
create any more jobs to compensate for this loss in the United States' work force, particularly given its current massive back log.

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

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

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

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

CHAIRMAN SCHMIDTLEIN: Welcome Minister Levie.

STATEMENT OF DAMIEN LEVIE

MINISTER LEVIE: Thank you, good morning. On
behalf of the European Commission I would like to thank the ITC for the opportunity to present comments in the framework of this hearing. To begin with, the European Commission wishes to express its deepest concerns that these investigations were initiated and provisional determinations were made on such weak grounds.

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

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

However, a threat of injury can only emanate from actual and not potential imports which are not yet causing material injury but will cause such injury in the imminent future. In this context, I wish to recall that according Article 3-7 of the WTO Antidumping Agreement "a determination of a threat for material injury shall be
based on facts and not merely allegation, conjecture or remote possibility".

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

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

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

Second, while the demand for small airplanes of 100-110 seats remains this demand cannot be satisfied by the
Domestic Industry because it does not have the smaller type of aircraft in its portfolio and this explains why the Domestic Industry was not able to bid for the one order from Delta Airlines, the only evidence that this case is based on.

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

Any resulting impact on the situation of the Domestic Industry can in no way be attributed to imports of the product concerned. Therefore in view of these elements we believe the imposition of measures in this case would clearly be unjustified particularly there are no imports of the product concerned in the United States therefore there can be no threat of injury. In any event, the Domestic Industry is in a comfortable position, which is unlikely to change in an imminent time period and any possible future difficulties are due to factors other than imports. To conclude, the European Commission expects that the U.S. Authorities terminate this investigation to avoid further delay and without the imposition of any measures.
The other course of action would clearly be breach of the WTO obligations of the United States of America. Thank you.

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

We will now move to opening statements.

OPENING STATEMENT OF ROBERT T. NOVICK

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

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

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

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

I will address this "trust us" defense further
when our Panel is seated but for now I will demonstrate that
each broad area of inquiry: Volume, price and impact. The
Commission has detailed information on the record about what
will transpire absent orders.

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

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

So where will the remaining airplanes go that
they're going to produce? Here. There is broad agreement
that the United States is the most important market for the
100 to 150 seat large civil aircraft and Bombardier is
determined to repeat the scenario like Delta with other
major U.S. Airline customers. Just two months ago
Bombardier's CEO stated that Bombardier is in talks with
several potential U.S. customers for the C-series and
Airbus' President COO confirmed that Jet Blue was such a customer.

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

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

First, the historically high countervailing and antidumping duty margins in Congress' preliminary determination show just how low Bombardier's prices really are. They are not launch or marquis pricing, they are dumped and subsidized pricing. A 79 percent dumping margin which is based on adverse facts available as Bombardier refused to cooperate rather than reveal the full extent of dumping means that Bombardier is selling the C-series to the United States at half its market value.
Second, the joint venture has stated that it will market and price the C-series even more aggressively; and that's a quote. Third, the very price transmitting effect we have identified in the Staff Conference has operated as we said it would to Boeing's detriment as you can see from confidential information in the record.

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

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

Boeing simply cannot sell aircraft at Bombardier's irrationally low price point. The Max 7 is suffering from an order drought. The current orders are
inadequate to sustain the program. Respondents agree with all of that. We told you the C-series was having this impact and since then Airbus' CEO, Bombardier's new partner has confirmed it.

Citing the 5-year order drought for the 8319, Mr. Anders stated and I quote "that was the last time we sold the plane. That tells you something about the competition between the A319 and the C-series. It tells you the same thing about the competition between the Max 7 and the C-series as they stand in the same competitive position."

There is a real threat, confirmed by Airbus that Boeing could be forced out of the 100 to 150 seat market, absent orders.

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

There is no doubt what would happen to the Domestic Industry absent orders. Only you can stop that.

Thank you very much.

CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Novick.

MR. BISHOP: Opening remarks on behalf of respondents will be given by Peter Lichtenbaum of Covington
Mr. Lichtenbaum, you have five minutes.

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

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

CHAIRMAN SCHMIDTLEIN: Thank you.

Welcome, Mr. Lichtenbaum.

OPENING STATEMENT OF PETER LICHTENBAUM

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

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

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

Indeed, there will not be any imports for the Delta order. CSALP plans to supply its U.S. customers not from Quebec, but from a new assembly line at the Airbus
facility in Alabama. The line will have the same production steps as
CSALP performs in Quebec. The parties will invest about
$300 million and support thousands of U.S. jobs. The C
Series will be made in America for delivery to U.S. airlines
that want this innovative and efficient aircraft.

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

While Boeing may not want another domestic
competitor, that's not the role of the trade laws. In its
brief, Boeing has two responses, both misguided. First,
Boeing argues that the investment is a sham. Boeing asks
the Commission to speculate that the U.S. line will not be
built if the Commission makes a negative determination.
This is false. Given the demand for single aisle aircraft,
the partnership synergies and customer concern about future
trade cases, compelling reasons mandate a U.S. line for the
C Series regardless of how this case ends. And the parties
are moving ahead quickly. They've engaged the relevant
anti-trust authorities in detail and are taking other
concrete steps explained in our confidential filings.
They're planning for the volume and timing of deliveries, the necessary production equipment, the organizational structure, the tasks to be executed, local permitting, and budgeting.

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

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

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

The only thing distinctive about the Max 7 is how poorly it's done in the market compared to the Max 8, because it fails to deliver the efficiency that airlines
require in the size range.

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

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

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

So as you listen to Boeing, here are four
questions to bear in mind. First, what specific evidence
does Boeing have that the U.S. line is a sham, given the
concrete information that we have provided? Second, why should the Commission disregard the Bombardier and Airbus decision to make a major investment in the United States? Third, what's the evidence that the Max 7 is a distinct-like product, i.e. that the differences between the Max 7 and the Max 8 are greater than the differences between other 737 aircraft? And fourth, how does Boeing respond to the critical role of Embraer aircraft in the market, including the United and Delta transactions?

The Commission should reach a negative determination. We look forward to completing our presentation and answering your questions later today.

Thank you.

CHAIRMAN SCHMIDTLEIN: Thank you.

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

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

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

CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Secretary.

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

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

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

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

First, based on the respondent’s submissions, we will hear a fair amount about the "solution to the trade case, the trust us defense." It is essential to their negligibility and injury arguments for the Commission to accept that there is no potential that there will be deliveries from Canada to Delta or sales for importation or deliveries to any U.S. carrier because Bombardier may build an assembly line in Alabama to serve that customer base.
They admit that this notion is an effect of the petition and the insurmountable duty or -- duties orders will lead to. And on top of asking you to accept their factual assertions, they then want you to believe a statutory construction that would as a legal matter deprive the large commercial airplanes industry and other industries with long lead times between sale and delivery from using the trade remedies laws.

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

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

In other words, according to the respondents, even without duties, everyone will act as though the duties were in place. This is nonsense. More than not, the record
evidence is at odds with their representations.
Bombardier's questionnaire response told you how many C
Series aircraft it will export from Canada to the U.S.
beginning in 2018.

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

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

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

Bombardier itself equivocates on whether Alabama
will really happen in the absence of orders as evidenced in
its brief, as do Bombardier and Delta in their confidential
questionnaire responses. Bombardier's brief uses words like "there may be a delay in its deliveries at page 1" and "the market share of subject imports is zero, and will remain there until at least" and there's bracketed language. And indefinitely, if Delta planes are produced at the U.S. FAL at page 82, to be fair, they do occasionally use the word "will". So as of last week, the question is will they serve U.S. airlines exclusively from a client in Alabama? Not if you reach a negative determination.

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

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

To allow the Alabama contrivance to support a negative determination would be at odds with the statute, legislative intent, and would eviscerate key statutory provisions. It would provide exporters and importers a roadmap to secure negative determinations only then to turn around the next day, inflict -- and inflict the injury with
impunity. Congress did not add the sale for importation provisions so that foreign exporter could avoid the consequences of their actions.

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

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

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

Alternatively, Bombardier could avoid the Boeing effect with orders in place by simply not importing. But what you can't do is get massive subsidies, dump your product, refuse to cooperate with Commerce in its investigation, receive almost 300 percent margins, retaliate
against Boeing for availing itself of the U.S. trade laws as
Canada has done, and then come to the Commission and say do
nothing, trust us.

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

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

And just last week, just last week, two days
after Bombardier filed the pre-hearing brief in which they
continued to argue that there's no 100 to 150-seat segment,
Bombardier at their Investor Day in New York, speaking about
the virtues of the joint venture said this, and I quote, "It
is a recognition of the market potential that we for years
at Bombardier have been talking about in that 100 to
150-seat category."
And at that same investor conference, when asked about whether the joint venture would compromise Bombardier's ability to produce an airplane in a larger market segment, Bombardier said, and I quote again, "I mean, there's a great strategic fit right now between the C Series, the 100 and 300, and the A-320 and A-321."

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

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

STATEMENT OF KEVIN MCALLISTER

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

They have already injured Boeing and our injury is certain to increase unless you ensure that Bombardier
competes on a level playing field. Since your preliminary
determination, customers are continuing to demand
significant price cuts drive by Bombardier's pricing at
Delta. Our Max 7 is at extreme risk.

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

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

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

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

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

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

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

A sale to Delta, United, or another big U.S. airline generates commercial momentum, making it more likely that other airlines will purchase the airplane. Orders lead
to more orders. Securing commercial momentum with key campaigns provides important credibility and helps determine whether a new airplane with thrive or die.

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

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

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

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

Secondly, the subsidized pricing Bombardier offered at United and especially at Delta lowered the pricing benchmark for the 100 to 150-seat market. And we're suffering the predictable result. Other U.S. customers are demanding that we significantly lower our Max 7 pricing.
Look, I understand why customers are doing this. Bombardier's subsidized price gives Delta an operating cost advantage. To remain competitive, other airlines need similar pricing, but the only way to get those prices is to buy from Bombardier at dumped prices or pressure Boeing to sell its airplanes at irrationally low prices. Either way is devastating to the Max 7 program.

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

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

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

If this case ends with no duties, the signal will be clear, those airlines will have no choice but to buy dumped, subsidized C Series airplanes at the Delta price or
else demand that Boeing cut its prices drastically.

    Be assured of one thing. Boeing loves to

compete. We wake up every day excited to work -- to come to
work focused on finding new ways to provide value to our
customers so we can compete and win. And in a fair
competition, I'll bet on Boeing, our U.S. employees, and the
U.S. industry every time.

    But we should only have to compete against

private companies, not governments and the airplanes they
create and produce through endless subsidies. Subsidized
competitors don't face the same market realities that we do.
Our fortunes rise and fall, based on the business decisions
we make. There's no other -- there's no one there to bail
us out if we misstep.

    But because of its massive government subsidies,

Bombardier doesn't have to worry about these market
realities. It used those subsidies to create and sell
airplanes for millions of dollars under cost in the United
States.

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

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

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

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

But that's exactly what's happening. And it's only gotten worse for the domestic industry since you made your preliminary determination. Bombardier announced in October that it's joining forces with Airbus perhaps the world's most notorious recipient of illegal government subsidies. In some ways, this is d j v u for Boeing. From
Airbus' very inception, we've lived with the Airbus threat and suffered the Airbus injury.

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

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

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

This left a lasting impression on me. And in my office, I keep a painting of the old Bethlehem Steel plant. It reminds me each and every day as a leader of the country's largest exporter, how important it is for us to focus and find new ways to compete in the global marketplace.
But it's also a reminder that even the strongest industries in the communities they sustain can be devastated by unfair trade, a lesson I take to heart as a veteran of the aerospace industry.

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

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

Before I close, there are two arguments I understand Bombardier is making that I'd like to address. First, Bombardier claims that Boeing doesn't care about the 100 to 150-seat market in the Max 7. I assure you this is completely false. We have spent significant resources in dollars and time and in energy developing the Max 7. It is a great airplane and it's improvement over the 700, which secured more than 1200 orders. We anticipate that the Max
7, assuming a level playing field, will generate billions in additional revenue for Boeing over the next 20 years. We absolutely care about this airplane and this market.

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

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

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

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

STATEMENT OF DR. JERRY NICKELSBURG

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

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

Second, I will briefly address the report by Flight Ascend Consultancy attached to Bombardier's prehearing brief, a report which largely validates my views but arrives at erroneous conclusions. Third, I'll discuss the Airbus Bombardier C series partnership announced in October 2017, and how Bombardier's announcement that it plans to establish a second production line in Mobile,
Alabama has no economic justification other than avoiding duties that might be imposed in this case.

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

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

This is intended to signal to confidence in the product to both the board and to potential customers. These orders can spur more orders. Another important characteristic related to competition in this industry is the high cost and long life of each individual aircraft. The price tag for each new build aircraft is tens of millions of dollars.
Once in use, an aircraft will normally remain in service for two decades or more. Indeed, the original purchasers of aircraft typically keep them more than a decade before releasing them into the secondary market. Because planning for the operating of the aircraft years in the future is critically important, orders by other customers send an important signal to potential purchasers. They build confidence in the viability of the aircraft as a competitive capital good in the future.

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

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

This idea is not particularly controversial,
as both Airbus and Bombardier explicitly recognize the importance of commercial momentum in numerous statements regarding their JV and Delta sale, as shown in the slide to your left. Just as commercial momentum is crucial in spurring more sales, negative commercial momentum can significantly harm the prospect of future sales. If a model is unable to attract large orders for a long period of time, especially when another product of the same type is gaining market share, the market confidence in that model begins to wane.

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

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

Not only does it buy commercial momentum but
it also saps commercial momentum from competing 100 to 150 seat LCA such as the Boeing 737 Max 7. Historical examples from the aerospace industry clearly demonstrate this point. Most recently, Airbus' CEO acknowledged that the C series sapped commercial momentum from the A319, another competing airplane in the 100 to 150 seat market. As well there are a number of other historical cases of aircraft whose production termination also illustrates the role of commercial momentum in creating a death spiral of aircraft orders.

These examples show that once lost, commercial momentum is difficult, often impossible to regain. I would be happy to discuss these historical cases in Q and A.

Before leaving this topic, I'd like to point out that there are several developments since my testimony at the preliminary phase that have confirmed key points I made about conditions of competition in this market.

First, notwithstanding the fact that Bombardier's own web site touts the C series as, and I quote "Optimized for the 100 to 150 seat market segment," at the preliminary Bombardier argued that there was in fact no 100 to 150 seat LCA market all. However since then, Bombardier and Airbus have repeatedly issued press releases highlighting the existence of the 100 to 150 seat LCA market and the C series as existing in that market, and they
distinguish the 100 to 150 seat market from the market for
larger single aisle LCA, such as those served by the A320,
the 737, 800 and the Max 8. So this is an area where we
apparently no longer disagree.

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

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

      Turning to my second topic, let me respond to
the report by the Consultancy Flight Ascend, which was
attached to Bombardier's prehearing brief. At the outset, I
want to note that Flight Ascend's conclusions are based on
data that are not in the record and therefore neither I nor
the Commission can verify Flight Ascend's quantitative
analysis. As to its substance, the report arrives at four
key conclusions.

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

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

But Boeing, Bombardier and Airbus are all
competing in this market, and in announcing their new JV
Bombardier and Airbus touted the strength of this market.
So their actions and statements put that argument to rest. Third, Flight Ascend states that Boeing has no incentive to sell the Max 7 because the Max 8, 9 and 10 command higher prices. But this assumes a false choice. Boeing can and does produce all four. Production rates may and do increase when demand dictates, as evidenced by the recent increases in rates at both Boeing and Airbus. Thus, a Max 7 order would be additive not substitutive to the production line. Fourth, Flight Ascend states that launch pricing is typically offered, and I quote, at the outset of the commercial aircraft program for a finite period of time. True. The Delta sale was eight years after the launch of the C series program, confirming that it was not launch pricing but rather abnormally low dumped and subsidized pricing. Flight Ascend asserts that Delta is a marquee or strategic customer, one who obtains price discounts in consideration of the quantity of aircraft they purchase and the influence their purchase has on smaller aircraft acquisitions. True. However, strategic pricing is not below production cost pricing, and it is not dumped pricing. Rather, it is the pricing that all other large airlines will demand as the confidential evidence and as history confirms. Now let me turn to my third topic, the C series partnership that Airbus and Bombardier announced in
October. When it closes, the transaction would transfer
majority ownership and control of the C series from
Bombardier and the Government of Quebec to Airbus for $1.

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

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

So the backlog is not great enough to task the
current production plan at Mirabel. Looking past today's
firm orders, Bombardier's expert Flight Ascend estimates
that the total worldwide deliveries of C series aircraft, including those delivered to airlines in the United States, is less than the planned production of the Mirabel Canada factory.

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

With respect to the proposed Mobile facility, Bombardier also argues that it will move forward even if there's a negative ITC determination in this case because "U.S. airlines will likely remain extremely reluctant to place any orders for the C series manufactured in Canada."

However, I would expect the opposite, namely that the market will interpret a negative ITC determination as a green light to import C series aircraft from Canada.

So if the ITC determination is negative, I would not expect the production facility in Mobile to be built. Let me close with one final observation with this JV. Bombardier has now joined forces with Airbus on the C
series aircraft. They announced that the JV would exploit Airbus' marketing and sales power to aggressively market and sell the C series in the United States.

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

STATEMENT OF CHARLES ANDERSON

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

As you will see based on the record, I believe that the case for an affirmative threat finding is overwhelming. Bombardier argues that the Boeing 737 family is a continuum with no clear dividing lines, and asks the Commission to include the whole 737 family in the domestic like product. The dictionary definition of the word
"continuum" is "a coherent whole characterized as a
collection, sequence or progression of values or elements
varying by minute degrees."

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

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

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

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

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

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

The staff report confirms that customers consider price to be a clear differentiating factor between
scope and non-scope LCA. The ITC rarely sees price gaps this large. These gaps loom even larger in purchasing decisions when you consider that a $10 million difference between smaller and larger LCAs balloons to 100 million for a ten aircraft order and a billion dollars for 100 aircraft order.

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

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

Visually, you would expect to see bars that only gradually change across all models. Instead, you see
from the graph that demand for single aisle LCA falls into three distinct groups: small, which corresponds exactly to the scope of these investigations, medium and large. The enormous step changes in demand between the three groupings is compelling additional evidence of three different markets for three distinct products.

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

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

Indeed, as shown in the excerpt before you now, Airbus champions the commonality of its single aisle 100 seat A318 with its twin aisle A380, a plane that typically carries over 500 passengers. Notwithstanding
commonality between these two airplanes pictured on the slide, absolutely no one I think would claim that they are interchangeable.

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

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

Thus, non-price factors unlike other cases that the Commission has seen are factored into price, and therefore do not overwrite price and purchasing decisions. Bombardier and Delta tout the fuel efficiencies and other operational cost benefits of the C series as the real reason
why airlines choose this aircraft over Boeing's 700 and Max 7. No doubt these factors are attractive to airlines.

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

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

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

The level of predictability over multiple years simply does not exist with most industries before the Commission, where typically there are no commercial
commitments regarding future volumes, prices or input costs beyond a year.

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

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

On to price effects. The customer questionnaire responses almost universally reflect the importance of price in purchasing decisions. Given their market power, there's no doubt that customers will use Bombardier to force lower prices in the U.S. market. As the staff report states, with only a few potential 100 to 150 LCA customers worldwide, sales are concentrated in a few
transactions with a few customers placing very large orders. So in sales campaigns, airlines have leverage.

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

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

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

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

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

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

STATEMENT OF PATRICK J. MCCLAIN

MR. MCCLAIN: Good morning. I'm Pat McLain at Wilmer Hale. The ultimate question for the Commission is
whether material injury would occur unless an Order is issued.

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

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

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

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

On page 14 of its brief, Bombardier refers to the, quote, "unique importance of the U.S. market," and
states that, quote, "no manufacturer of LCAs can expect to
build a successful program without access to the United
States."

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

Second, Bombardier low-price strategy, the Delta
sale for importation, and the imports for Delta are causing
adverse price effects and will continue to do so. There is
no dispute that Bombardier pricing at Delta was low.
Bombardier admits on page 64 of its brief that it offered,
quote, "Particularly favorable pricing."

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

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

Finally, Boeing and Bombardier agree that the
Mach 7 is in bad shape. On page 13 of its brief Bombardier
states that perspective purchasers, quote, "fear orphan aircraft and low residual values." Indeed they do.

On page 94 of its brief, Bombardier refers to the Mach 7's, quote, "failure to achieve commercial success."

We agree that this has happened. The Mach 7's total order book is less than the C Series 75 firm orders from Delta.

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

What matters for this case is the C Series is a low-priced airplane that suppresses and depresses prices for the domestic like product, even after accounting for nonprice differences. The evidence discussed on pages 95 to 104 of our brief confirms this.
In sum, the Mach 7 is on the verge of failure because it is competing against subsidy created and dumped C Series airplanes in the U.S. market. This constitutes a threat of material injury.

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

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

Bombardier's solution, as stated on page 93 of its brief, is for Boeing to use sales revenues from out-of-scope products to, quote, "finance further research and development of the Mach 7 or another aircraft. By this logic, the Commission should ignore the fact that the Mach 7's viability is at risk even before it enters service, and force Boeing to go right back to the drawing board to compete against the C Series. Never mind that subsidies created the C Series. Never mind the C Series' low prices,
its commanding share of the U.S. market, the harm it is
causing now, or the U.S. sales it is likely to take in the
imminent future.

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

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

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

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

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

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

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

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

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

    And the campaign that you're referring to involved a competition between the CS-100 and the 737/700. Those were the planes that competed. The customer makes a decision about each plane based on what it's looking for at that moment. It might decide that a plane with 119 seats,
or 117 seats, or 125 seats is the one it wants, versus 128
because—I mean who knows why? That's a customer question.
But the way the airplane manufacturers work is they build
planes to serve a segment of the market—in this case, the
100, 150-seat market—and the question is: What planes are
they competing with?

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

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

MR. Mc ALLISTER: Well regarding the Delta
campaign, the request from Delta and the commercial solution
we were working on involved used aircraft. That was the
solution that we were heading down. And it wasn't until the
C Series came in and offered the pricing that it offered
below $20 million that a new aircraft entered the market into that competition.

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

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

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

MR. NOVICK: And, Commissioner Williamson, if I might add—Bob Novick, for the record again—if you look at what Delta actually purchased, it purchased 75 to 125
planes, C Series 100s, with the option to take C Series
300s. They could take up to 90 CS 300s as part of the
purchase that they made.

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

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

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

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

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

So it's just not simply the number of seats.

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

MR. NICKELSBURG: Jerry Nickelsburg. The 100- to 150-seat market segment defined by the number of seats--
COMMISSIONER WILLIAMSON: I'm talking about the lower end of it. I know the scope is 100 to 150, but that lower end of it. Why would somebody want or need a plane to fly transcontinental for that?

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

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

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

COMMISSIONER WILLIAMSON: No, I understand. I used to work --

MR. NICKELSBURG: Yes--
COMMISSIONER WILLIAMSON: --interested in the
subject.

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

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

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

MR. NICKELSBURG: The Convair?

COMMISSIONER WILLIAMSON: Yes.

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

COMMISSIONER WILLIAMSON: Okay, thank you. Thank
you for those answers.

CHAIRMAN SCHMIDTLEIN: Thank you. Commissioner
Broadbent?
COMMISSIONER BROADBENT: Thank you. I want to thank Mr. McAllister for giving us a great tour. You have a really impressive staff out there in Renton and we enjoyed it.

MR. McALLISTER: Thank you very much.

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

MR. McALLISTER: In scope?

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

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

COMMISSIONER BROADBENT: Okay.

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

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

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

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

Again, I think the Ascend Data is very compelling evidence, the graph, that these are in fact distinct markets. Because if the--yeah, can you put that back up, Will? There's the orders for the Mach 7 down there. I
don't know if you can see it or not. And here's the orders
for the Mach 8.

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

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

clean break.

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

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

MR. MC LAIN: That there is just an extremely well
defined mid-size single-aisle market segment, and that's the
8 versus the Air Bus A-320, or this 800 versus the A-320.

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

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

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

So for that reason, basically, you know, these are different models that cost airlines different amounts to
run, and they're very different.

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

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

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

And as you mentioned, price is obviously a very
significant consideration in this airline's decision. And
while operating cost is a factor, it occurs over time versus
price which occurs at point of order or sale.

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

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

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

COMMISSIONER BROADBENT: Okay. This is, I
guess, would be for Mr. McAllister or for Mr. Nickelburg.
Given the success of the larger 737s, as well as the
hundreds of historical sales of 737s, 700s, wouldn't this
generate the type of commercial momentum for all 737s that
you say is critical for the success of any model?

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

If you look at what's happening in the market today is there is a strong replacement cycle needed for aircraft of that size in the market. The pricing Bombardier put at Delta creates an immediate pricing pressure in the market. It sets the pricing in the market, no only for the CS-100, but sets the pricing in the market for the CS-300 and sets the pricing in the 100 to 150-seat market.

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

COMMISSIONER BROADBENT: Okay. I guess -- and I guess Mr. Nickelburg, can you just help me on commercial momentum here? I'm trying to understand this concept and whether you've sort of developed it for this case or this is something that you teach in your business school and how you
would balance that against Boeing's strong reputation, it's
success with the larger 737 Mac products and just it's long
history and really superior performance in the U.S. economy
and globally.

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

If you have a small production run, those costs
go up because you have fewer aircraft to spread the original
capital cost of those support services over. Moreover, if
you have a thin market for the aircraft, that is, there's
not many aircraft in the market, larger customers are not
going to be able to find sufficient numbers to satisfy their
fleet, so you have less demand when the aircraft are turned
into the secondary market. That affects the residual value.
So the residual value is lower if the lifetime operating
costs are higher then the net present value of the aircraft
goes down and that means that the price has to fall in
order to create a value proposition for the airline. So
that's kind of the calculus that goes into it.

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

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

And just, if I might add, which I probably
should be clear about from my earlier testimony, we don't
for a minute question the logic of the joint venture. We
understand why Airbus and Bombardier would get together to
target Boeing further in this segment. We question the
economic logic of another line and particularly the logic of
that if there are no orders in place. I want no ambiguity
as whether we're questioning why they might've done this
joint venture. Bringing the two companies together with
all the government backing they have is a powerful
combination.

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

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

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

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

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

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

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

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

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

MR. ANDERSON: So when that happens the airline voluntarily agrees to pay millions of dollars more. If it's a multi-aircraft order, it's in maybe the hundreds of millions of dollars more. If it were truly indifferent, why would they pay that additional money for that larger aircraft? It's because the airlines projected mission needs have changed since the time of the original order. They're
now looking for a larger aircraft because they either
project demand on certain routes to be greater or they're
changing their ideas of what routes they're going to fly
to, but they're not just -- they're just not indifferently
saying, oh, we want the bigger one because it can serve the
same need. It's got very different operating economics
which means that their projected mission needs have changed
since the time of the original order.

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

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

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

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

CHAIRMAN SCHMIDTLEIN: Can we come back to that
so I don't forget what I'm trying to ask? I'd just like Mr. McAllister since he's the fact witness.

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

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

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

CHAIRMAN SCHMIDTLEIN: Right.

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

CHAIRMAN SCHMIDTLEIN: Yes. Was there an affect? Your allegation is there was loss revenue, right? You had to reduce the price for that sale. They then
converted to a larger plane. So my question is was there an
affect from that original downward pressure on that larger
plane price? Can you answer that? I mean most of this is
all public? I'd like Mr. McAllister to answer. He's the
head of commercial aircraft at Boeing. You don't know
whether or not in this case -- you have two allegations.
One is revenue and one is sales.

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

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

CHAIRMAN SCHMIDTLEIN: So to your knowledge --
MR. MC ALLISTER: It's sensitive pricing information of United and I'd rather not provide it in this open forum.

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

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

CHAIRMAN SCHMIDTLEIN: Okay.

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

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

MR. MC ALLISTER: I've very worried, as you pointed out, obviously, very weary as to commercial airplanes that we don't discuss specific commercial negotiations with any individual customer. I again want to point out, though, that the decision to make the bigger airplane, which is relative to a very separate need for a larger aircraft in a different network use in the airline. And I would also point out that I expect that as they look at the need in the 100 to 150-seat market any airline would come back at the pricing of the C Series and compete or re-compete that market.

CHAIRMAN SCHMIDTLEIN: Does this happen -- how often does this happen that airlines convert their orders to
different airplanes.

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

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

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

CHAIRMAN SCHMIDTLEIN: But the option to convert.

MR. MC ALLISTER: The option to convert there are minimal -- there are conversion opportunities for customers, but obviously, we have a 20-year partnership with a customer when they select their airframe. To the extent that there are opportunities to sit down and discuss varying fleet needs, varying aircraft needs we will always sit down and work with them. It doesn't in any way suggest that that
100 to 150-seat market could be served by a larger airplane or that their fleet plans they were no longer of considerable importance to them.

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

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

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

MR. NOVICK: The concept of imminence as you know, is one that is tied to the conditions of competition in a particular industry and the Commission has in many cases looked at the conditions of competition and seen periods that are longer than two years. There's no statutory or other condition that places a two-year limit on imminence. It is tied to the condition of the industry. I think that the argument that you're referring to that they made suggests that if you have a sale for importation -- like you're going to have the imports within a two-year period somehow that precludes the Commission from reaching
an affirmative finding. That's simply wrong. The law is
quite clear the sale for importation provision is the harm
comes from the sale for importation, not from the import.

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

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

Congress added the sale for importation
provision so that you would be in that position, in fact,
quite to the contrary. They instructed you that where
there's a sale for importation or even a potential sale for importation it's that event that you look at and the injury is determined based on the sale for importation and not on the imports. So we don't accept the argument that there's a fixed imminence period of two years and that if the imports don't come in within that somehow the Commission can't vote affirmative.

That said; we don't even come up to that issue. We have imports that are imminent from the Delta sale. The Connants by Bombardier that some how their questionnaire response was not -- you know they weren't aware of the expectation of the new joint venture that -- you know that the questionnaire response came in a month after the announcement of the joint venture. Separately, as I said earlier, that we have comments by the CEOs of both Airbus and Bombardier that they're in discussions with other U.S. airlines, so you have a potential sale for importation and so we don't even get to that question; but you asked what I think is the legal question and that the answer to that is it can't be. An imminence period is defined in such a way that if sales for importation occur and the deliveries from that sale for importation are outside some arbitrarily picked period the Commission can't find an affirmative injury or threat of injury determination -- may a threat of injury determination. It can't be the way the statute is
read, but we will certainly provide in our post-hearing
brief an analysis of the statutory construction that was
presented by Canada, in particular, and Bombardier.

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

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

MR. NOVICK: Of course, we will

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

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

MR. NOVICK: We will do so.

VICE CHAIRMAN JOHANSON: Thank you, Mr. Novick.
When considering imminence, how should we take into account the cutoff period for changing a manufacturer's skyline? That is, the last date for which flexibility for any conversion cease? Does Bombardier's estimate of 18 to 24 months mentioned at page 69 of their brief seem correct?

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

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

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

What 18 to 24-month supplies do is in the event that we had larger orders we would do what we routinely have done over decades, which is look at a capacity increase at
rent. We would make the decision to go increase our
capacity on the Mac line in rent and raise that capacity and
make the capability to provide airplanes to that customer in
that period of time. That is a typical lead time in order
to get ourselves and the supply chain ready to deliver, but
it doesn't mean we can't serve demand prior to that within
the skyline or within other modes like lease availability.

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

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

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

VICE CHAIRMAN JOHANSON: Thank you, Mr. Anderson
and others. The yellow light is on, so I'd better stop
there, but thank you for your responses.

CHAIRMAN SCHMIDTLEIN: Commissioner Williamson.

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

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

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

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

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

MR. NOVICK: Or at least try to.

COMMISSIONER WILLIAMSON: Okay.

MR. NOVICK: So Sections 101(A)(2) and (b), amended Section 701(A) and 705(B)(1) of the Tariff Act of
1930 of the Act "To explicitly permit countervailing duty investigations when there are present sales for future delivery, but no present imports. The Administration supports this proposal. As the CBD investigation" -- and we're back to Canada and Bombardier -- "investigation of railcars from Canada demonstrated the situation where the sale occurs years before actual importation the loss of the bid (sale to the foreign competitor) is the point at which injury occurs."

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

It's not a question what happens two years later or six months later or three years later. It happens at the moment of the sale. You can't -- in a large capital goods case where you're going to have deliveries long after the order is made the question of whether there's injury or
threat of injury is determined then, not when imports come
in, not if there's a subject or change. The harm occurs at
that moment. Certainly, there's a price harm that occurs at
that moment. If the sale continues through, as most do,
you have a volume impact as well.

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

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

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

COMMISSIONER WILLIAMSON: Yeah.

MR. NOVICK: What I'm saying is, you can't
construe the statutes, you can't read the statute to
essentially, as a matter of law, take industries out of its
ambet because the time between order and delivery exceeds
some period, some period that Canada would like to say is
two years. Why is it two years?

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

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

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

The fact that they say they're gonna build a
facility in Alabama tells you how critical the U.S. market
is. So against the weight of all that, which I don't think
requires a lot of speculation to include that there's a
potential -- it's all they have to find, there's a potential
or likely -- you don't have to find that there are --
against the speculation that there's gonna be this big, new
shiny plant in Alabama that's gonna come online and sell all
the planes -- they're gonna sell to all these American
Airlines?

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

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

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

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

MR. NOVICK: Then I do apologize, Commissioner
Williamson. I missed the respective question where --

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

MR. NOVICK: Well, not at all.

COMMISSIONER WILLIAMSON: What you have to say about it?

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

It is not the case, and Mr. McAllister can speak to this, that this industry is one in which every day people are just changing their orders, you know, wildly, like, we're gonna -- "Hey, forget that one. Hey, do this one."

Let's go up, let's go down. It happens. You work with your customers.

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

In some cases, new management might come in and decide on a different strategy. Sure. But when you have an airplane manufacturer with--and I know this sounds the
same--subsidies dumping its planes, making clear that the U.S. market is critical, which no one disagrees with, making a sale, it doesn't make it speculative that some customers in the business, some customers eventually at some point may wanna change which plane they actually buy. Every sale for importation, every sale that's made, doesn't change over the period between the order and delivery. Most of them go exactly as planned with maybe a little tweaking. And --

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

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

So obviously the impact for us in the very near term is a decision that will impact not only the U.S. market, but it's a seal of approval on an airplane, and it's a pricing expectation that will move within the U.S. and across customers, customers who are very important to us,
because they represent growth segments for us in the
industry.

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

MR. NOVICK: We'll provide --

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

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

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

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

Given the importance of the U.S. market in this
segment, I think that provides the Commission with really
strong rationale as to why there's likely to be additional
sales in the imminent future. Plus we do have the fact that these Delta planes are clearly in production and they have been scheduled--if nothing happens with this case--to be imported in the very near future.

COMMISSIONER WILLIAMSON: Okay. Thank you for those answers.

CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?

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


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

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

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

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

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

Basically the scope-clauses were used as economic arbitrage to let smaller regional airlines, which paid their pilots less, fly smaller aircraft from less populated areas to their hubs. Delta Airlines was the first
major airline to have a 100-seat wages assigned to their mainline pilots. Could you please explain how the scope-clauses work in the airline industry, and if they have any relevance to the conditions of competition in this case?

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

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

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

Can you comment on this characterization? Why did Boeing and Airbus stop, at least for a while, the production of aircraft in the low end of the 100- to
MR. MC ALLISTER: I would recognize that Boeing showed its commitment to this segment by deciding to improve the 700 with the Max 7. Obviously, we would not invest monies, time and people to go make an airplane that's better in that segment than its predecessor if we didn't intend, obviously, to compete vigorously in that market, which we are.

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

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

Besides that, it is a complex production line. It is a different airplane coming down the production line for mechanics. You know, we obviously work productivity
every day in the operation to be able to manage the ability
to increase rates when demand goes up. And the Max 7 is a
distinct aircraft coming down the line. It is a different
work package for our mechanics. It has differences in
things like wire bundling and mechanics' work scope, all
that impact the production system. So we invested in the
product. We invested significantly in the product because
we believe in the market. And we need a return on that
investment.

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

They didn't abandon it. This was
customer-driven. Airbus, the same thing. And we see that
kind of historically, that manufacturers will enter the
lower end of the market with a smaller gauge aircraft to
meet specific customer needs, but the general market is
served by that aircraft that is really kind of optimized
for that market. That would be where the Boeing 737-700 and
Boeing 737, Max 7 is, and where the Airbus A319 is.
So these are aircraft that are sitting in the
middle of that market. And the manufacturer will, for a
period of time, produce a smaller version, depending on
specific customer demands for specific needs. And so that's
what it looks like over time, coming in and going out. It's
not abandonment. It's meeting customer needs in this 100-
to 150-seat market segment.

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

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

MR. MCALLISTER: We are obviously very proud of
the value proposition, the Max 7, as I said, we changed the Max 7 from the 700 to be more competitive. The aircraft provides incremental range to our customers. It provides incremental seats to our customers. It provides world-class emissions and fuel-burn capability, a generation of improvement on the order of 16+ percent versus its predecessor.

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

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

Boeing chose a derivative route because it was
its assessment of the market that in this highly competitive
market, where low-ticket prices really compel the lowest
possible aircraft prices, that airlines just weren't willing
to pay for those technological improvements. Therefore,
they essentially thought that the most optimal solution is
to offer a derivative.

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

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

And then as the Commerce Department has
determined, as we said at the preliminary, the government
came in and bailed it out. Everyone, the U.K., Canady,
Quebec, Delta, all basically say, this plane wouldn't exist
but for the subsidies. Okay. Now, it's here. And as we testified earlier, and as the CEO of Airbus made clear, that this plane didn't sell even up until the point that it came and it offered the price to Delta that it did.

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

COMMISSIONER BROADBENT: Okay, thank you.

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

But the question about whether or not there are going to be subject imports from Canada imminently exceeding the negligibility standard, if we accept, for the sake of argument, that the Delta planes are going to be built in Alabama, and they're not going to be imported from Canada,
regardless of the outcome of this case.

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

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

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

Obviously, if taking your proposition, if they're gonna have a plant in Mobile to serve only U.S. airlines, they're gonna sell to somebody, right? So they're gonna sell to another U.S. airline. There's no reason that a U.S. airline couldn't take the Delta planes that are now coming off of the factory line in Mirabel, which are certainly well along the way to production. So that's one source of imminent imports if there's another
self-importation. Now, if you say to me --

CHAIRMAN SCHMIDTLEIN: But it's not a sale.

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

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

CHAIRMAN SCHMIDTLEIN: -- another sale then, right?

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

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

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

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

CHAIRMAN SCHMIDTLEIN: Still covered by an order?

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

CHAIRMAN SCHMIDTLEIN: Within the scope?

MR. NOVICK: Correct.

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

And we see, you know, there's a published Reuters report in our prehearing brief about maybe some arrangement to give those to Aeromexico who have a relationship with Delta. But that speaks to, you know, certainly that's the potential for imports above a
negligible threshold in an imminent period of time when
you've got planes that they're trying to figure out what to
do with to not have them come and incur any dumping duty
liability.

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

MR. MCALLISTER: Yes, I mean --

CHAIRMAN SCHMIDTLEIN: So does that further --

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

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

MR. NOVICK: No.

CHAIRMAN SCHMIDTLEIN: So they have to import.

So we have non-subject, potential imports that's competing.
So does that not introduce another factor of uncertainty in
terms of where, what, you know, who's going to win those
sales and where would those imports come from?

MR. NOVICK: You know, having announced this
joint venture, Airbus and Bombardier have suggested that they're gonna compete with the C-series more than with the A319. So they've, in a sense, signaled to the market that the C-series is the plane they're gonna compete against Boeing with. Both of them together. Now that's -- I would take their word for that.

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

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

CHAIRMAN SCHMIDTLEIN: Did Boeing compete for those sales?

MR. MC ALLISTER: Boeing will compete vigorously on a level playing field with the 319 and the C-series. We obviously -- I can't speak for what Airbus and Bombardier strategy might be. Our strategy is to compete vigorously on
a level playing field, bringing the value of the Max 7 or the 737-700 brings our customer base, and the extent that here are campaigns for 319 airplanes, it's my expectation that Boeing will be asked to compete against the 319 as we always have, and will be asked to be competing against the C-series and will compete vigorously.

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

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

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

CHAIRMAN SCHMIDTLEIN: Okay. Alright, let me shift gears with a minute left. Let me go back to this
question about price transmission.

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

MR. MC ALLISTER: Sure.

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

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

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

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

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

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

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

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

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

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

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

So for that reason, I know what the questionnaire responses say, but based on what I hear from the industry
there is very close attention paid to pricing, competitive
pricing.

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

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

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

They don't need to see the price. The way asset markets work, as Mr. McAllister has explained, is through financiers and leasing companies. No, I didn't see the Delta price. I did see the leasing company offer to me. I did see the financier's valuation. And that's the way the price transmission works. Because those same leasing companies and financiers, they know what everyone is paying for aircraft.
And asset markets will adjust in that way, and they do in aircraft and they do in other large capital goods. So that price transmission goes through natural competitive markets, and you actually don't need to see the contract that was signed.

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

Vice Chairman Johanson?

VICE CHAIRMAN JOHANSON: Thank you, Chairman Schmidtlein.

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

Moving on to something else, I would like for Boeing to comment on the figure on page 2 of Delta's brief showing the production rates for the 737/700 model. In that chart, Delta demonstrates that declines in deliveries of the 737/700 began in 2006.
What are your views as to why this decline began in that year?

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

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

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

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

VICE CHAIRMAN JOHANSON: Thank you, Mr. McAllister.

It appears that one of the biggest issues on which the parties disagree is the topic of launch and/or
marquee pricing. Boeing seems to be arguing that launch
pricing creates expectations from customers that are
difficult to reverse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

That is quite different than an airplane that has
been certified by an aviation authority that is flying and
whose characteristics you know, and that is going into
production. So those are very different times in the
development of an airplane.

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

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

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


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

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

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

MR. ANDERSON: Again, I think may have been a world of difference at launch, which can be eight years before the plane is actually delivered. And when there's a really high degree of risk, where you're really buying a paper airplane and not a real airplane.
So there's that situation. The other thing is, if you look at the extent of the discount, we believe the Delta price discount was far below what's typical for launch pricing.

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

When we calculated the--

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

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

VICE CHAIRMAN JOHANSON: Okay.

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

That type of pricing is unprecedented. It is not
launch pricing. It is not marquee pricing. It is dumped pricing.

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

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

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

CHAIRMAN SCHMIDTLEIN: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. Continuing along that line, I guess they said they were going to
announce the C Series in 2008, and didn't get certified until 2015. Was that an unusually long period of time? Or is that kind of normal? And the reason I'm asking that is, did that have any effect on what one might call the marquee pricing, the fact that it took that length of time it took before it got certified?

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

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

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

So they were getting desperate. They were getting close to production. They economics of aircraft production are such that you want to have a sufficient order book at the type of certification, and at the time of entry
into service, so that you can rapidly move down that
learning curve over the first five years.

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

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

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

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

  So that was essentially, we believe, just a
demonstration of how difficult it was to sell the C Series
at its real fair market value.
COMMISSIONER WILLIAMSON: Okay, thank you.

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

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

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

COMMISSIONER WILLIAMSON: Okay, thank you. But it was helpful in understanding the dynamics of what's going
Let me switch to another line of questioning. If Commerce changes the scope to include the components Bombardier plans to import, how should this affect our analysis?

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

COMMISSIONER WILLIAMSON: Have you asked Commerce to include components?

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

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

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

MR. NOVICK: I'm sorry. Maybe I'm missing--the scope--we've not made a request. The scope that I talked
about, which includes partial assembly, was in the scope from the beginning.

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

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

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

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

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

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

Now it's argued at page 50 and 54 of its brief
that Mach 7 is not commercially viable and serves a narrow, niche of the market. And Bombardier says there are fundamental problems with design and operation and economies of the smallest of the 737s.

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

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

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

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

MR. NOVICK: I think the point we've made a couple of times in our testimony is that its predecessor, the 700, sold 1,200 units worth billions of dollars. The notion that a plane that's even comparable to it is somehow a plane that doesn't belong in this market, which is really the logical extrapolation of what Bombadier is arguing, they're saying
basically give up that segment. Give up that segment. Let
us have it and you go off and do the things that we think
you want to do. Go build the Mach 8s, the Mach 9s, and the
Mach 10s. There are billions of dollars of revenue that
they're saying they should--that Boeing should just walk
away from because they have a nice new clean-sheet plane the
government paid for and are dumping it in the U.S. market.

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

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

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

MR. NICKELSBURG: So there may be a small number
of airports, and the transcontinental range may only apply
to a smaller number of routes, but that doesn't mean that
it's not important; that it's an important way in which the airlines have defined that they want to run a network.

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

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

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

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

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

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

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

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

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

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

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

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

MR. NICKELSBURG: So sometimes Denver would
qualify as that. Mexico City certainly qualifies as that.
There are a small number of airplanes, but they're important
to a network, and those are both big cities.

COMMISSIONER WILLIAMSON: Good. Thanks. Thank you.

CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

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

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

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

MR. NOVICK: Let me -- I can't speak to what Southwest will or won't do. Just to so when we talk about seats as our scope is defined, we talk about seat counts in a standard two-class configuration. So when we talk about, as Mr. Anderson in the beginning, 136 versus 162 versus
other seat counts, it's based on a two-class configuration with particular seat pitches, so that we're comparing apples to apples.

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

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

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

But what the airline will do is it will evaluate each airplane in the same way. So the airline wants to evaluate the airplanes in an apples to apples way, and one way to do it is with the seat counts that are
standard in the industry, that has been presented here. But
if Southwest has some different seating, they're going to
evaluate competitive aircraft in the same way across
aircraft.

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

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

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

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

MR. MC LAIN: Commissioner, just to be clear,
we haven't said that if you have an aircraft that meets the
scope language, but the actual number of seats that are put
in it are greater than 150 seats, it's out of scope. That's
not how the scope language works. It's about the
capability. But for instance let's say there is an airline
that takes a Max 7 and configures it for 153 seats.

COMMISSIONER BROADBENT: 155.

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

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

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

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

MR. NOVICK: Sorry.

COMMISSIONER BROADBENT: You're telling me
it's an irrelevant question.
MR. NOVICK: If the only -- no sorry. If the only question is is Southwest going to put 155 seats in whatever plane it flies, we're not in a position to tell you that, no.

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

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

COMMISSIONER BROADBENT: Okay. If the Commission decides to define the domestic like product as all single aisle large civil aircrafts, we'll have to look at conditions of competition in that market as opposed to the more narrow 100 to 150 seat market that you all have proposed. What key distinctions would you draw between demand conditions in the market for in-scope, 100 to 150 seat large civil aircraft and the market for all single
I know Mr. McAllister you addressed this a little bit earlier, but if you could just summarize your perspective on the demand conditions.

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

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

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

Even if there are only 16 airports that hit that hot high, still a very important consideration to a
customer who flies into one of those airports and either
carrier's passengers to that airport are beyond that airport
to other cities. So they're very distinct airplanes when it
comes down to a fleet strategy of our airline customers.

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

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

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

So the average age of the aircraft is still
relatively young, and so we are at a different spot really
in the replacement cycle for the 100/150 seat segment versus
LCA as a whole. With respect to supply, we have a lot of
the same issues, which is obviously they're a high capital
intensive product. They're extremely expensive to make and
basically on the supply side I would say they were
comparable.

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

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

COMMISSIONER BROADBENT: Blue, Max 9.

MR. ANDERSON: Max 9.

COMMISSIONER BROADBENT: Excuse me, yeah.

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

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

COMMISSIONER BROADBENT: Okay, and just out of
curiosity, what is the Max TBD on the last purple bar?

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

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

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

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

MR. NOVICK: No, we have not. We are -- we're here first trying to secure the orders we think are appropriate, and only then does it really become relevant what they do. We certainly ^^^^ if orders are in place and they bring in partially, I mean fully stocked fuselages and suggest that they're not subject to the order, we'll have an
issue with them at Customs and Commerce as necessary.

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

CHAIRMAN SCHMIDTLEIN: Well the reason I ask --

MR. NOVICK: I'm sorry.

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

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

MR. NOVICK: Well, we're in this -- we're in this space, which I agree with you, is curious, only because
of this last minute announcement that there are going to be
no deliveries of airplanes from Canada, notwithstanding
everything that's on the record, notwithstanding the
questionnaire responses, notwithstanding economic logic.

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

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

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

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

CHAIRMAN SCHMIDTLEIN: Okay, okay, good.

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

CHAIRMAN SCHMIDTLEIN: Okay, all right.
Shifting gears just a little bit to the injury question, and you've talked about the fact that once the sale is made, the injury is locked in or once the sale is lost, whatever, lost revenue, lost sale, that the injury is locked in, right? And so in terms of this Delta sale, what I'm trying to get my head around is are you all arguing that there was injury during the POI, right?

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

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

So there is harm caused at the moment that
that sale took place, and then the further effect of that
sale on the domestic industry, on Boeing is happening, is
continuing to happen.

CHAIRMAN SCHMIDTLEIN: The price effects?

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

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

So people are on the sidelines now waiting.

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

CHAIRMAN SCHMIDTLEIN: On other negotiations
and so forth?

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

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

MR. NOVICK: As a matter of law.

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

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

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

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

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

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

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

    MR. MC ALLISTER: The 737, obviously from our
viewpoint, provides an economic benefit to customers on a
cost per seat mile basis. It provides customers across the
-- in the 100 to 150 seat market and beyond, a lower cost
per seat mile. It provides customers a better fuel burn per
seat. It is an airplane that has the best residual value
retention in its space, and it has wide market acceptance
across the globe.

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

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

MR. MC ALLISTER: They are.

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

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

VICE CHAIRMAN JOHANSON: Is that right? Okay.
This actually brings me to the question, it seems like
Southwest and also Alaska Airlines have shown a great amount
of loyalty to the 737. I believe that Alaska also just
flies the 737. What accounts for this unusual amount of
customer loyalty and do you believe that these airlines
would see the 737 as replaceable?

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

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

MR. NOVICK: And I might just add, you know,
sometimes we talk about sort of great prices like we're
going to Nieman-Marcus to get a sale. Here, as you know and
as you've heard and as we've put in the record, airplanes,
airlines are competing with other airlines, and they have to
get their cost down so the ticket price can be competitive
with the airline.
It's not just we want a better price. They know Delta's going to be flying these planes on the same routes with an installed cost that would be much lower than theirs if they don't get that price. Their ability to sell a ticket that competes with Delta is compromised. So it's not just I want to get a great price, give me a great price. It's I have to get a great price because I'm competing with someone who just got that price.

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

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

VICE CHAIRMAN JOHANSON: Thank you for both -- thank you to both of you for your answers. On page three of your brief, you mention that the joint venture between Bombardier and Airbus is now backed by five governments. Given that the petition is limited to Canada, does the
statute allow us to consider any support from the other four countries you mentioned?

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

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

But I do think the fact that you now have Airbus and Bombardier teamed up with a concerted effort to collectively price more aggressively, market more aggressively, target this market as evidenced by their own statements is relevant, but it's not -- it's not because of the -- sort of the quantification of subsidies that Airbus has received from its other member governments besides the
VICE CHAIRMAN JOHANSON: Thanks Mr. Novick, I have just one more question. Could you all please comment on the remark made by Boeing's CEO during the company's quarter 3 earnings that called Boeing 737 production skyline as being oversold through the end of the decade?

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

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

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

COMMISSIONER WILLIAMSON: Okay, thank you. Just a few more questions. In regard to the thing you raised earlier and Chairman Schmidtlein raised about the scope and
what it is, I was wondering if post-hearing you could take a
look at footnote -- I'm sorry 37 on page 17 of Bombardier's
brief and if maybe they've got it wrong or something, or
just -- so if there's any clarification you think needs to
be -- needs.

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

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

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

COMMISSIONER WILLIAMSON: Okay.

MR. NOVICK: I think the Commission precedent is
I think clear that when you -- in an investigation like
this, you look at the domestic industry for the like
product, which we believe is the 100, 150-seat segment. And
so the notion that Boeing should have to, as the respondent
suggests, go take money from other parts of its business,
whether other -- the 737s or the 787 or maybe even its
defense business they think to support a plane in
competition with a dumped and subsidized product is --
would not be consistent with, I think, the way the Commission looks at this question. Having said that --

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

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

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

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

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

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

COMMISSIONER WILLIAMSON: In -- right, correct.

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

COMMISSIONER WILLIAMSON: Would it intensify it?

MR. NOVICK: -- I would argue -- well, I would argue that they did buy the 300. I mean, what they did is they locked in pricing, low pricing for up to 90 CS-300s. So the competition that started looking for some used
aircraft ended up with 125 planes in this segment with
pricing determined, including up to 90 of them the CS-300,
which they certainly don't argue, I hope don't argue, don't
compete with the Max 7 and the 700.

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

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

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

MR. MC ALLISTER: Just from my perspective,
obviously, we're talking about a segment here that has
transcon capability. And while Embraer makes airplanes in
the seat count, they're distinctly different in that they do
not offer the transcon capability of the 737, Max 7, 8
through 19, CS-100 and CS-300.

MR. NOVICK: Well, I just --
COMMISSIONER WILLIAMSON: Yeah.

MR. NOVICK: -- add to that. We do hear the argument that respondents make about the planes competing.
COMMISSIONER WILLIAMSON: Uh-huh.

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

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

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

COMMISSIONER WILLIAMSON: So in terms of this transcontinental range, it's more than just getting more
MR. NOVICK: Say that again. I apologize.

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

MR. NOVICK: Yeah.

COMMISSIONER WILLIAMSON: -- larger fuel tanks?

MR. NOVICK: Yeah. Yes. I can let others speak to that, but yes.

COMMISSIONER WILLIAMSON: Okay.

MR. MC ALLISTER: It's a fundamental change in the architecture of the airplane. So that the architecture of the airplane has the capability to carry passengers for a longer distance than before. In this case, it was a significant change in the architecture of the Bombardier aircraft. And for us, it's obviously a big design consideration. It was the design configuration in the 737 Max 7.

COMMISSIONER WILLIAMSON: Okay. Good. Thank you for those answers. And thank everybody for their testimony.

CHAIRMAN SCHMIDTLEIN: Okay. Commissioner Broadbent?

COMMISSIONER BROADBENT: Yeah, I just had a couple of random extra questions. For Mr. McAllister, once more on this backlog oversold situation, you state on page
58 of your brief, the Boeing brief, that the primary
constraint of production and production capacity is the
number of orders or sales. If existing and anticipated
orders are sufficient to increase production rate, a
producer will do so whether through a faster throughput on
its existing production infrastructure or by establishing a
new production line.

So this is sort of this we'll make it work if we
get the order. But it sounds like it's easier said than
done. Given Boeing's very substantial backlog of orders for
737s, I think the number we have is 4431 aircraft, why
haven't we already seen Boeing expand its production line or
increase its throughput in a manner that reduces the
significant backlog?

MR. MC ALLISTER: Boeing has. As a matter of
fact, Boeing, if you look back, Boeing's -- Boeing has made
a rate change this year to increase our rate in the Renton
factory. Boeing will make next year a change to increase
our rate. And Boeing will make a change in the following
year to increase or rate.

And as you've seen, having a chance to walk
through the factory, you know, we wake up every day in that
factory thinking about what we can do to take a few hours
out to get more -- to get less flow days for an airplane, to
be more efficient, so that we can increase the capacity in
the Renton facility.

One thing for certain, a responsible business
focuses on developing the capability so that it can match
its capacity to demand. And we believe that the Max 7 has a
real opportunity for demand growth and should in a level
playing field we have the opportunity to win big orders, we
will find the way to go fulfill those orders with an
increase in capacity at our facility.

MR. ANDERSON: Commissioner Broadbent, I
actually have some figures here. So I'll give you an idea
of what Boeing has done in the past. So in 2005, their
production rate was 21. It's currently 47. It'll be 52 in
2018 and 57 in 2019. So Boeing has demonstrated the
capability to increase capacity on a regular basis.

It's a little bit misleading to think about
being "oversold," et cetera. Aircraft manufacturers just
like airlines have a -- want to sell basically more planes
than they have existing slots, because orders do move around
a little bit and all the rest.

Boeing manages its skylines so that those things
are all settled within 12 months of beginning of production.
And Boeing is not supply constrained. If it were to get new
significant orders for a Max 7, they could move around their
skyline. They could increase their production rate. I
think the staff report's supply elasticity reflects this.
It's moderately elastic from 3 to 6. And I think the history of Boeing supports the notion that supply can basically increase to meet increased demand.

COMMISSIONER BROADBENT: Okay, thank you very much. And then I just had one more question for the record. Let's see for counsel. Please respond to Bombardier's arguments on page 37 to 40 within your post-hearing brief. These arguments concern whether the domestic industry producing all single aisle large civil aircraft are threatened with material injury.

MR. NOVICK: We will, thank you.

COMMISSIONER BROADBENT: And thank you for your testimony. Very interesting.

CHAIRMAN SCHMIDTLEIN: Okay, I just had one last question for Mr. McAllister. When you were just talking about the Embraer and their -- they produce regional jets. When during the Delta campaign, was that the reason that you all were offering the refurbished jets to Delta because they were looking for a regional jet? Or was it more a seat configuration or was it a place point that you were trying to meet?

MR. MC ALLISTER: You know, at the time, the -- I wasn't in that specific campaign on the Boeing side at the time. But at the time, you know, it's very important in this industry when you're competing is that you bring the
product that fits what the customer's looking for.

And in this case, the request to Boeing and to others were for used aircraft. Now it's obviously in that -- at that point, the 717 and the Embraer 190s used were the aircraft that fit the request for Delta. But at the time when the C Series came in as a new airplane, it introduced a brand new aircraft effectively at used airplane pricing with more capability than the aircraft that had been in consideration at the time.

You know, at -- obviously that aircraft at that pricing was vastly different than what we would have done had we had a 737-700, the opportunity to bring a 737-700.

CHAIRMAN SCHMIDTLEIN: So those weren't transcontinental planes that were -- you are -- the used planes? They didn't have that capability? That you were offering Delta?

MR. MC ALLISTER: The -- we were not offering any new aircraft at that time. I don't know if there's any comment here from --

MR. NICKELSBURG: So the offer of used aircraft by Boeing was a combination of regional jets, which did not have transcon capability and augmenting the 717 fleet --

CHAIRMAN SCHMIDTLEIN: I see.

MR. NICKELSBURG: And those do have transcon capability.
CHAIRMAN SCHMIDTLEIN: Okay.

MR. NICKELBURG: So it's a mixture to meet a regional yet requirement and maybe a little bit more range.

CHAIRMAN SCHMIDTLEIN: I see. And so you wouldn't -- Boeing wouldn't have tried this, you know, in order to get some traction with the Max 7, try to have convinced them to take a Max 7 instead of --

MR. MC ALLISTER: You know, one of the --

CHAIRMAN SCHMIDTLEIN: -- mix of these used planes?

MR. MC ALLISTER: -- and I apologize for getting 717 on -- as obviously transcon, but you know, one of the things that's very different here is when a customer looks for a solution that involves used airplanes, you win in the off season. You provide what they're looking for because it leaves the door open for an opportunity to bring in a subsequent campaign a Max 7 or 73-700s.

In this case when a brand new C Series airplane came down on the table, it effectively shut the door for an opportunity for us to bring Max 7s to the table at Delta.

CHAIRMAN SCHMIDTLEIN: Okay. All right. I have no further questions. Thank you all for your testimony today.

Vice Chairman Johanson, do you have any questions?
VICE CHAIRMAN JOHANSON: No.

CHAIRMAN SCHMIDTLEIN: No, okay. Do the staff have any questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Madam Chairman. The staff has no additional questions.

CHAIRMAN SCHMIDTLEIN: All right. Do the respondents have any questions for this panel?

MS. ARANOFF: No, we do not.

CHAIRMAN SCHMIDTLEIN: Okay, thank you. That brings us to our lunch hour. My inclination is to keep the lunch hour short. So we will reconvene at 2:15, so that we don't go so late tonight, anticipating several rounds of questions for the respondents.

So let me remind you that the hearing room is not secure. Please take your confidential information and your papers with you and we will stand in recess until 2:15.

(Whereupon a brief lunch recess was taken to reconvene at 2:15 p.m. this same day.)
AFTERNOON SESSION

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

CHAIRMAN SCHMIDTLEIN: Good afternoon. Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Yes, Madam Chairman, with your permission, we will add Maureen F. Browne of Covington & Burling to page 3 of the witness list.

CHAIRMAN SCHMIDTLEIN: So ordered.

MR. BISHOP: I would also note that those in opposition to the imposition of the anti-dumping and countervailing duty orders have been seated. All witnesses have been sworn and this panel has 60 minutes for their direct testimony.

CHAIRMAN SCHMIDTLEIN: Very well. Ms. Aranoff, you may begin when you're ready.

MS. ARANOFF: Thank you, Madam Chairman, members of the Commission, in the interest of time, we will start right off with Mr. Dewar.

STATEMENT OF ROBERT DEWAR

MR. DEWAR: Good afternoon. I'm Rob Dewar. I'm responsible for the C Series program overall. I worked at Bombardier for over 25 years and have been a part of the C Series Program for its very inception.

The C Series development started back in 2004 when we conducted a marketing study that identified an
opportunity at the lower end of the single aisle market. At that time, our products could not serve more than 100 seats and Airbus and Boeing were really focused on the larger segment of the market more than the 150 seats.

No modern aircraft were specifically designed for this segment. All the jets, like the MD-80 and the Boeing 717 were in service, but would require replacement within 10 to 15-year time period. The lack of new aircraft offerings wasn't for the lack of demand. Our market research clearly the airlines were asking for a cost-effective aircraft to serve the lower end of the singular market. Customers told us that no aircraft currently in production, neither at Boeing or at Airbus, were meeting their needs.

We recognized that airlines were looking for just a certain seat capacity, smaller single aisle aircraft were not profitable to operate primarily because average seat cost per trip were higher than for larger aircraft, so airlines needed a breakthrough in operating efficiency to offset these costs. They also wanted features that no manufacturer to date had been able to integrate into a single aircraft of this size. Most importantly, the fuel efficient, cabin comfort, extended range, and of course, most importantly, the operating costs.

The C Series we set all these features into our
design. So Bombardier not only saw an opportunity, but believed we had unique capability to capture it. Our experience in developing business and regional jets gave us a helpful perspective on how to better build a small, single aisle commercial aircraft. By contract, Boeing and Airbus have focused on larger aircraft and neglected these small, single aisle segment because it was not as profitable for them.

Today the C Series is the most efficient and the most technically advanced single aisle commercial aircraft in service. The C Series family delivers a 15 percent cash operating cost advantage and a 20 percent fuel burn advantage over existing aircraft in the lower end of the single aisle market.

Initial feedback from our customers and their passengers has been very positive. This praise confirms the aircraft is doing very well in service, in fact, better than we expected in terms of fuel efficiency, cost savings, and overall utilization. Passenger surveys also indicate the cabin experience up to 20 percent better than other single aircraft in service. Because the C Series is a truly innovative product, we expect it will have a long-term market success. As it continues to improve its capabilities, airlines will rally to buy it. Imagine a cabin that passengers actually like.
In our design of the C Series, we integrated the most advance technologies. In fact, a major of our key components, including the avionic system, flight control systems, and engines were developed right here in the United States and are provided and supplied by the U.S. manufacturers. In fact, over 50 percent of our total supplier spend goes to U.S. suppliers. These components arrive at our production facilities in Mirabel, Quebec where we assemble an aircraft in eight key steps.

This is a very sophisticated manufacturing process, incorporating the latest technology in the industry and we are very excited to replicate this high technology manufacturing process and bring it here to the U.S. to our plant facility in Alabama.

In the aircraft industry there is a learning curve associated with the production of a clean seat design. It can take years to optimize the production process and get the production rate up facilities planning capacity. And it's no secret that our production ramp up production at Maribel has not always gone smoothly and we're still operating well below our projected capacity levels.

In its preliminary decision, the Commission was concerned that Maribel has open capacity and a shortage of orders to fill. In fact, the opposite is true. The main 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 
5 In 2016, we were only able to deliver 7 out of
6 15 planned deliveries and for 2017 we forecast making only
7 approximately 20 out of the 30 to 35 planned deliveries and
8 again, all to non-U.S. customers. So due to capacity
9 constraints at Maribel, we would not be able to produce any
10 additional aircraft for the United States in the imminent
11 future.
12 
13 So far, you've heard what the C Series is. Now
14 I'll tell you what it isn't. It isn't the substitute for
15 the 737. The fundamental difference from a product
16 perspective is that the C Series is a brand new technology,
17 custom built from the ground up. It seats five abreast and
18 is optimized for the small, single aisle segment. The Mac
19 7, by contrast, is 30 percent bigger and is really just a
20 smaller version of the Mac 8, which, in turn, of course is a
21 version of the 737-800, which is based on multiple
22 iterations of the very original 1960's design.
23 
24 The Mac 7 is Boeing's attempt to breathe new
25 life into an aging platform by using a new engine, but there
26 have been few takers and many customers have converted to
27 the Max 8, 9, or 10. Boeing argued today that the success
28 of the C Series would come at the expense of the Max 7. As
one of the people who convinced, conceived, and developed
the C Series, that doesn't make any sense to me.

Bombardier entered this space precisely because
Boeing and Airbus had no product optimized for this segment.
As a new entrant in the market for large civil aircraft,
even with a breakthrough technology, we would've been
foolish to set our sights on a part of the market well and
actively served by the two established giants.

Today we're proud that the C Series is
delivering on all its promises to airline customers and
passengers. And if you'd like to learn more about the C
Series, I'd be very pleased to host you for a visit in our
facilities in Maribel. Thank you. I will now pass it over
to Ross Mitchell.

STATEMENT OF ROSS MITCHELL

MR. MITCHELL: Good afternoon. My name is Ross
Mitchell and I am Vice President Commercial Operations of
Bombardier's commercial aircraft division. In this
position, which I have held since 2014, I run the overall
commercial aircraft sales and marketing team for the C
Series, regional jets and turbo props. As I will explain,
Boeing's depiction of the aircraft industry is very
different from my experience.

First, Boeing has presented a distorted view of
the market of the C Series and the C Series competition.
Boeing's narrow focus on aircraft with 100 to 150 seats, any minimum range of 2,900 nautical miles accomplishes two things. One, it allows Boeing to say that it's competing aircraft are the 737-700 and Mac 7, which are far and away the least successful models in the 737 family.

Two, it makes Embraer magically disappear from this proceeding. Boeing argues that there is a recognized 100 to 150 seat aircraft market. There isn't. I know this because I made up the concept of the 100 to 150-seat segment for marketing purposes. The phrase did not exist in the industry before then and it is not how the rest of the industry defines segments in the single aisle market. Every manufacturer and every airline has its own cutoffs at different places in the seat continuum.

Embraer used to say that they serve a 70 to 130-seat segment, but now they call it the 70-seat plus space. When it chose the CS-100, Delta was looking to acquire aircraft in the 100 to 110-seat segment. Boeing generally describes three LCA markets, a single aisle market served by its 373 family, a twin aisle market served by its Triple 7 and 787 families in the middle of the market between the two. The bottom line is that Boeing presents its 737 family as serving one single aisle market, not several. As Boeing says, one airplane/four sizes.

It is also absurd for Boeing to limit the scope
of this proceeding to aircraft with a minimum range of 2,900 nautical miles. That range limit is completely artificial. It conveniently takes Embraer out of the picture when Embraer was the primary competition for the C Series in the sales campaigns at United and Delta.

In sales campaigns, the C-100 may compete against Embraer's E-190 and E-190E2, among other aircraft. The CS-300 may compete against the 195 and 195-E2, among other aircraft. Some airlines initially benchmark aircraft from all four major OEMs because they have not yet defined their aircraft needs. Aircraft are eliminated in early rounds based on performance criteria and operating economics. By the time an airline has focused on the need for an efficient, small LCA, the Mac 7 is not under consideration because it is not a suitable product for that segment and serious price discussions don't start until after that point.

Frankly, Boeing has never positioned itself as competing with the C Series. Its eye has always been on Airbus. It designed the Mac 7 MX-8 to compete with the Airbus A-320. When Boeing's Vice President of Marketing said that the enlarged 138-seat Mac 7 and the 160-seat Mac 8 pairing brackets our competition quite well, and I like that part, he was referring to the A-320, not the C Series. Meanwhile, Boeing has consistently denied that it is
interested in the C Series market.

When Boeing's Vice Chairman said that "We aren't competing with those, with the Mac," he was referring to the C Series. That quote is telling for my second topic. What really happened in the United and Delta campaigns? Boeing's accounts of these campaigns don't square with my experience, but this is not a situation where you have to decide which side to believe. Everything I am telling you is fully consistent with public reports about United and with Delta's account.

In the United sales campaign, Boeing had not been on anyone's radar. Bombardier's competition from the start was Embraer. We have said this before, but it seems worth repeating, given Boeing's continued mischaracterizations. United told us that the CS-100 was too big for its needs. In response, we offered a smaller version, the CS-110 Light. Embraer offered new 195s. The customer told us we were competing with Embraer. Boeing was nowhere in sight.

We believed we were in the lead and would be selected. Then out of nowhere we heard that Boeing swooped in and offered United a deal too good to refuse on 737-700s, an older airplane far too large to satisfy United's request for a 100-seater. Why did this happen? A Boeing executive explained that it was very important to Boeing that United
not provide validation of this C Series in the marketplace.

United never wanted the 737-700.

Within months, it took it sweetheart deal and converted the entire order to larger Boeing aircraft.

United met a different fleet need at a bargain price and Boeing headed off a C Series sale to a marquee U.S. airline.

In the Delta sales campaign, Boeing was never part of that competition simply because it could not offer an aircraft that met Delta's needs. Delta was seeking aircraft in the 100 to 110-seat segment. Boeing offered Delta used Embraer 190s, the only aircraft, new or used, that Boeing could offer in the right size. If Delta had not chosen the CS-100, it would've likely purchased used Embraer 190s. Given that a new Boeing aircraft was not in the mix, there was not and could not have been any loss sale to Delta period.

Boeing also claims the Delta price will push down Boeing's future prices through a so-called lighthouse affect. This description of pricing dynamics defies logic. First, Delta was a launch customer, so all other airlines know they will not get the same price as Delta in future sales. When Delta agreed to buy the CS-100, it had not been certified by the FAA and had not entered service anywhere.

A major airline that buys a new aircraft in quantity is taking a large risk on an unproven product. In
fact, the bigger the technological leap, the bigger the risk, the bigger the discount that is expected. It is widely understood in the industry that aircraft prices go up as entry into service risks go down. Boeing knows this. Most recently, they used launch pricing for the 787 and reports indicate the raised price over time.

It is also a stretch for Boeing to claim that airlines will insist on getting the same price as Delta in order to compete for passengers. What matters to airlines is the long-term operating cost of an airplane over its lifetime. Boeing itself says the purchase price is only 20 percent of direct operating costs. A difference in purchase price is, thus, a very small component of the economic assessment that matters.

Finally, an update on the C Series in the marketplace since the staff conference in May, after our sale to Delta, we have not had any more orders from U.S. customers. Boeing's petition created tremendous uncertainty for our potential customers who made clear to us that they would not proceed with an order until there was no risk of tariffs. When we sell an aircraft, the airline is the importer, not Bombardier. No airline wants to take the risk of paying anti-dumping or countervailing duties. Even if Boeing loses this case, the risk of duties would remain.

With long lead times between order and delivery,
Boeing could file a new petition as soon as there is a new U.S. order. No airline wants to take the risk of a future case either. That means the only way for us to reassure potential U.S. customers is to make these C Series in the United States. Now with the news of the Airbus deal, a few U.S. airlines are excited to talk to us about planes that will be made at the new U.S. final assembly line or FAL.

For many reason, as my colleague Sylvain Levesque will explain, we are committed to producing at the U.S. FAL as soon as possible. Thank you.

STATEMENT OF SYLAIN LEVESQUE

MR. LEVESQUE: My name is Sylvain Levesque. I am Vice President of Corporate Strategy at Bombardier. In this position, which I've held since 2010, I lead a strategic planning process and key strategic initiatives. I've worked at Bombardier for 19 years and held many other positions.

In 2004, when I was Vice President of Strategy at Bombardier Aerospace, I played a key role in developing the strategy for the C Series. Today I will first address the origins of Bombardier's recently announced C Series partnership with Airbus. I was on the corporate team at Bombardier that developed the strategy for approaching Airbus. It is important to understand that when we contacted Airbus earlier this year we were not starting
discussions from scratch.

Bombardier had realized for years that the greatest value for the C Series program would come only through a partnership. Over the past decade, we conducted outreach to Boeing, Airbus, and others. Bombardier and Airbus engaged in serious talk lasting more than six months in 2015, long before Boeing filed a petition in this case. I lead those negotiations, which were eventually derailed, in part, because it became public.

When discussion resumed this year, both sides picked up where we left off. The basic commercial logic behind the proposed combination was the same this year as in 2015. For Bombardier, the advantages of a partnership are obvious. Bombardier is a smaller player and a new entrant in the market for large, civil aircraft. As my colleague, Rob Dewar explained, we have made slower than anticipate progress along the learning curve for C Series production and faced a number of supplier difficulties. As a result, we have not met our projected production numbers and many deliveries have been delayed.

With Airbus, we will have additional manufacturing resources and supply chain synergies. We, thus, expect the new partnership to generate significant production cost savings for the C Series. It will also extend our production footprint to the United States where
Airbus is already located. Airbus also brings additional marketing expertise, a global network of potential customers, and extensive experience with ongoing products report. We knew that access to such resources would help instill confidence in the C Series program among potential purchasers. The bottom line is that, from Bombardier's perspective, the Airbus deal further validates the program and will unlock the full value of the C Series.

On the Airbus side, the commercial advantages are equally clear. As my colleagues have explained, the C Series is an innovative, clean sheet design that's used the most advanced technology. The C Series also complements the existing A-320 family in terms of seating capacity. Through this partnership, Airbus will be able to serve the entire growing single aisle market from 100 seats to 240 seats. The acquisition is well timed for Airbus because Bombardier's development spending on the C Series is nearly complete. Airbus is thus acquiring a cutting edge technology in a program whose performance is now demonstrated.

In summary, this combination is an ideal fit for both companies independent of this case. It will have significant advantages, not only for the partners, but also for their customers and the flying public. The reaction has been overwhelmingly positive.
There's also another big winner from this combination, the U.S. aerospace industry. While the existing assembly line will remain in Quebec, Bombardier and Airbus will make a significant U.S. investment to build a new final assembly line or FAL for the C Series at the existing Airbus facility in Alabama. The plan is to build a full-scale, high tech manufacturing facility. The production process in Alabama will replicate the production steps that Bombardier performed in Quebec, which my colleague, Roy Dewar, described earlier.

We estimate that an investment of approximately $300 million will be required to establish the U.S. FAL. The impact on U.S. jobs will also be substantial. The C Series facility in Quebec is already expected to support more than 22,700 U.S. jobs based on $30 billion in business with U.S. suppliers when it reaches full capacity. The new facility in Alabama will only increase the program employment affects in the United States. We estimate that the U.S. FAL will contribute more than 2,000 permanent new U.S. jobs in the United States.

In addition, when construction and other activities are considered, we expect another 6,000-person year jobs will be created. The new U.S. FAL will also have significant positive affects on other U.S. aerospace companies. At the existing C Series production line in
Quebec more than half of the total supply of span already
goes to U.S. suppliers. The overall U.S. count will only
increase at the new FAL in Alabama. In addition to U.S.
labor, industry analysts have emphasized that once the
partnership is finalized more U.S. companies in the
aerospace industry will have opportunities to contribute to
the C Series at the new final assembly line.

So through this partnership Bombardier is
excited to be adding to its already substantial presence in
the United States. As my colleague, Ross Mitchell,
explained our plan is to supply our U.S. customers from the
new U.S. FAL while continuing to supply customers outside
the U.S. from the Quebec facility. Bombardier expects the
long-term value of the C Series program to more than double
as a result of this partnership. The existing production
line in Quebec does not have the capacity to meet the
existing projection for long-term demand let alone the
increase in demand resulting from the partnership itself.

With Airbus, the new U.S. FAL meets both source
of expected demand. It is thus an integral part of our
long-term plans for the C Series. Co-location of the Airbus
and C Series production line also creates synergies and
opportunities for learning while adding a second production
location reduces risk. The fact that many C Series
suppliers are U.S. based is also an advantage.
Boeing is completely wrong when it claims that
U.S. FAL will be built -- will not be built unless the
Commission makes an affirmative decision. To the contrary,
the U.S. FAL will be built regardless of what the Commission
decides for the reason my colleagues and I have explained.
We are moving ahead with planning step as permitted under
Antitrust law, including, for example, planning for the
volume and timing of deliveries, the necessary production
equipment, the organizational structure, the task to be
executed, local permitting and budgeting. To facilitate
this planning, site visits have already occurred. I would
be glad to answer any questions. Thank you.

STATEMENT OF GREG MAY

MR. MAY: Good afternoon. My name is Greg May, I'm
the Senior Vice President for Fleet and Supply Chain
management for Delta Airlines. My department manages the
global supply chain for the billions of dollars of goods and
services that Delta consumes each year. This includes the
acquisition of aircraft.

I've worked in the airline industry for over 30
years since getting my degree in aerospace engineering.
Over the course of my career I've worked in various areas
including aircraft acquisition, treasury, maintenance,
engineering and front line operational roles.

Before joining Delta in 2014 I was President and
CEO of Q Aviation and Aircraft leasing and lending with over a billion and a half dollars in aircraft and aircraft loans. Before that, I was Vice President of Purchasing and Aircraft transactions for Northwest Airlines where I led Northwest Fleet Campaigns and Corporate purchasing efforts. Prior to that I spent eighteen years at United in various fleet, technical and operational roles.

I appreciate the opportunity to talk to you this afternoon about the aircraft acquisition process from Delta's perspective. I think it's best this afternoon to start out head on with explaining that Boeing did not lose a sale to Bombardier. When we chose to add the CS100 aircraft to our fleet Boeing simply did not, does not have the right size aircraft.

We go to market and launch a campaign to strengthen our fleet with aircraft to specific parameters. A small gauge narrow body replacement campaign that began in 2015 and led Delta to the CS100 was driven by the need identified by our network team led by Joe, we were looking to acquire additional 100 to 110 seat aircraft.

To meet that need, Delta initially considered used Brazilian Manufactured E190's and used Boeing 717s. The E190 would seat 96. The Boeing 717 would seat 110. But what we also considered were new Embraer E195s at about 100 seats and Bombardier CS100s at 109 seats. We did not need
and were not looking to buy a plane with a 106 or 138 seats, but we considered buying used Boeing 717s.

Boeing no longer produces an aircraft in this market space and hasn't for more than a decade. The closest Boeing comes is the 126-seat 737-700, the Max 7 which isn't in production yet is even bigger at 138 seats. Those aircraft don't meet Delta's need for a 100 to 110-seat aircraft. We did not need and we were not looking to purchase additional 126 to 138-seat aircraft.

We ended up buying 19 used E190s from Boeing while we were negotiating with Boeing for those aircraft Boeing did not offer us any new Boeing aircraft produced airplanes as an alternative to meet our needs. They couldn't because as I noted earlier Boeing is not producing a plan in the 100 to 110-seat gauge.

This is not about price, it's about size. Boeing has had no new planes to offer us in the 100-seat space we needed. Delta is not going to purchase a 126 or 138-seat plane when we need a 109-seat plane.

We were also in talks with Bombardier about the CS100. The CS100 is a clean sheet, new generation aircraft that has compelling fuel efficiencies, maintenance costs and passenger amenities and was designed to be in the 100 to 110-seat size that we were looking to fill.

To help you understand the compelling operating
costs please look at the slide. The graph shows the
relative seat cost without ownership cost of aircraft that
Delta operates or is acquiring. In other words, this
reflects the operating efficiency without reference to the
purchase price. As you can see, in general, larger aircraft
can have lower seat costs than smaller aircraft however what
you will also see is that newer technology aircraft such as
the CS100 have dramatically lower seat costs well below the
73700.

When we are making a 30-year asset commitment we
have to choose the more efficient option which also is
exactly the right size. I want to be clear, Boeing was not
competing for new orders when we were negotiating with
Bombardier. Boeing had no viable, competitive alternative
to the CS100 and we were not even considering any new Boeing
product as an alternative when we made the purchase that
Boeing challenges in the Petition.

Boeing offered us used Embraer 190s which we
purchased. At no time did Boeing even try to convince us to
consider the 73700. It'd be wrong to suggest that Boeing
lost sales to Bombardier because we purchased the CS100.
Boeing was simply not in the mix because they did not
have a plan that satisfied our mission profile and needs.

From Delta's perspective as a purchaser the
737700 and Max7 did not meet our mission goals. The 73700
is well-suited for certain unique mission profiles such as
takeoff and landing at airports with short runways or at
high elevations. However it is not economical at the vast
majority of our routes. That's why we only have ten of
these aircraft in our 1300 aircraft fleet and that is all we
need. I can't emphasize enough, it is not a 100 to 110
seat aircraft.

This is not an instance where Boeing finished
second to Bombardier for Delta's Business. We would not
have purchased 737700s or placed orders for the Max7 if the
CS100 hadn't been available. Had the CS not been available
we would have instead satisfied our needs with used 717s and
used E190s.

Regardless of how Boeing is trying to
characterize it now, Boeing did not lose this order for 100
to 110-seat aircraft because Boeing does not make a 100 to
110-seat aircraft. In short this case to me seems absurd.
For its need Delta was never going to buy 73700s or Max7s
and Boeing is not in the position to say otherwise.

I've seen in the prehearing briefing that Boeing
has told the Commission that Boeing intends for the 138-seat
Max7 to be the only product between 100 and 150 seats for
the foreseeable future. If so, then Boeing will not compete
for orders of 100 to 110-seat aircraft for the foreseeable
future. Boeing decided to stop
manufacturing the aircraft that Delta needed, which is fine but if Boeing is not going to manufacture the aircraft Delta needs Boeing should not be allowed to use a trade case like this to make it effectively impossible for Delta to get the aircraft it needs from the manufacturer who actually makes them.

Even if we had the interest in buying more aircraft from Boeing 737 family, despite the lack of any 100 to 110-seat option in the family, Boeing made clear to us that they did not have timely slots available in their skyline. They make this clear to us because at the same time we were looking to acquire the 100 to 110-seat aircraft we also had a need to acquire some larger narrow body aircraft and asked Boeing about their -900ER737 900 ER 180-seat aircraft, even for that larger aircraft that would have been more profitable for Boeing to sell than a 700.

Boeing said it could not provide slots through the end of the decade. That is why we ended up buying 37 191-seat A321s direct from Airbus who could deliver in that timeframe. We ordered 75 CS100’s with the delivery positions that we were looking for at the time of the order. Thanks to the recent announcement of the Airbus/Bombardier partnership we now plan to receive American manufactured CS100s.

Shortly after Delta learned of this opportunity
we began working to renegotiate our CS100 orders to allow
U.S. production, although the final details have not been
finalized Delta now does not intend to take delivery of any
Canadian-manufactured CS100 but will instead be taking
delivery of CS100s manufactured in Mobile, Alabama.

Delta has extensive experience with taking
delivery of aircraft both within the U.S. and abroad, for
example with Airbus A321s. Given the choice we would prefer
to take delivery of aircraft in Alabama. There are several
advantages. The logistics of arranging for buyer furnished
equipment, for installation into the delivered aircraft are
significant. It's much easier to ship seats and in-flight
entertainment equipment to Mobile, Alabama than Hamburg,
Germany. The logistics of aircraft inspections and the
involvement of senior management are made substantially
easier when we take delivery in Alabama.

It is also not particularly unusual for the terms
of purchase agreements to change and sometimes even
dramatically between when they are first executed and when
the aircraft are actually delivered. I cannot go into
details about specific examples Delta has provided to the
Commission but I would just note that shifting from Canadian
Manufactured CS100s to American manufactured CS100s, even
for firm orders, is consistent with the way that aircraft
purchase agreements are revised over time in response to
changing circumstances and new opportunities.

Delta is generally able to get favorable pricing for aircraft. We are one of the world's largest airlines which means we usually get good pricing. We can place large orders as we did for the CS100s, placing an order for 75 aircraft is something few airlines can do. When you place an order in that volume you can get volume pricing.

Likewise, while there are many airlines operating globally there are only a handful with a depth of resources that Delta has to fully evaluate a potential new aircraft. As you can imagine, airlines are somewhat conservative by nature and frequently cautious when it comes to inducting new aircraft types into their fleet.

As a result, many smaller airlines will give significant weight to the decision of a larger airline like Delta before placing an order for a new design. Those other airlines will then have greater confidence in placing their own orders. What this means is that certain marquis airlines like Delta can benefit from favorable pricing for being the first one or one of the first airlines to place a large order, thereby providing some market validation for the new design. This has been true for the more than 30 years that I have been in the industry.

Let me also talk about the criteria that affect price such as size and range. The 700 and Max7 are
significantly larger at 126 and 138 seats than 109-seat
CS100 and the range is more than double how Delta intends to
fly the CS100. Of course the larger plane with greater
range would generally command higher prices. We just
didn't need those capabilities so didn't need to pay for an
aircraft that has them.

In short, large volume orders that can help
validate a new design can achieve favorable pricing and
having the right-sized aircraft can lead to a sale. Thank
you.

STATEMENT OF JOE ESPOSITO

MR. ESPOSITO: Good afternoon. My name is Joe
Esposito. I am the Vice President of Network and schedule
planning for the Americas for Delta. I guess you are
already familiar with Delta. We serve more than 180 million
customers each year.

Delta, in addition with Delta connection
carriers, offer service to over 300 destinations and nearly
60 countries on 6 continents. In total, we offer more than
5,000 flights each day. I have been with Delta since 1990.
I started with Delta working with Airport Customer Service
in Orlando before moving to Atlanta in 1995 where I worked
in Strategic planning before joining the Network Planning
team.

I have filled various positions in Network
Planning with increasing levels of responsibility including Director of International and most recently Managing Director of Network and Schedule Planning. In my current role I oversee our network planning operations which means I am responsible for the economic, financial and capacity planning for Delta's domestic and Latin America system as well as schedule planning.

A key part of what Network planning does is to design a network schedule that matches supply of seats to passenger demand. We do that with a diverse fleet of twelve aircraft types that range from 50 seats to 160 seats in domestic operations. The fleet includes almost 1300 aircraft. We fly aircraft manufactured by each of the world's major manufacturers including Boeing, Bombardier, Airbus and Embraer.

Each of the aircraft we fly are suited for the specific missions to which they are tasked. We fly to some of the smallest communities in the country and also to all the largest metropolitan areas. We operate over 30,000 flights per week in just our domestic operations.

Part of network planning is trying to assess how much passenger demand there will be on every one of those flights over the next three hundred and thirty-one days. This demand will vary for each flight by time of day, day of week and season. We will fly different types of aircraft on
the same routes at different times of day or different times
of year. A morning flight might be made using a smaller
aircraft while an evening flight to accommodate higher
demand might use a significantly larger aircraft.

In each case, the goal is to match the right size
aircraft to the anticipated passenger demand for the flight.
That is how we optimize the profitability of our network.
This means we almost always offer service with a variety of
aircraft types on the same route.

For example if I can turn your attention to the
slide, in 2016 Delta had 426 routes where it flew a 737700
or an Airbus 8319, which are the only two aircraft in our
current fleet that qualify as a 100 to 150-seat LCA as that
term is defined in this case.

Please turn to chart two as this chart reflects
on 66 percent of those 426 routes Delta also offered smaller
aircraft with less than 100 seats and as we turn to chart 3
which shows that on 68.5 percent of those 426 routes Delta
also operated 100 to 150-seat aircraft that doesn't meet the
scope definition of 100 to 150-seat LCA. These are either a
Boeing 717 or an MD88 which don't meet the arbitrary 2900
mile range picked by Boeing.

Please turn to chart 4. Here on chart 4 you can
see that we also operate our aircraft with more than 150
seats on 90 percent of those same 426 routes. Flipping to
chart 5, it shows that the 426 routes where Delta operated a 100 to 150-seat LCA we also flew both aircraft that were larger than 150 seats as well as aircraft that were smaller than 100 seats.

The fact of the matter is that on the vast majority of our routes we fly a variety of aircraft types. Please turn to chart 6. Of the 426 routes in which Delta operate 100 to 150-seat LCA in 2016 there were only 6 where a 100 to 160-seat LCA were the only aircraft we operated on that route and in fact of the six routes, only three involve year-round service and one of those was recently cancelled.

We do not need 75 CS100s just to fly those five routes. We need those 109-seat aircraft to fill a specific niche in our total network plan so it's important to understand that we do not assign a particular sized aircraft to a route. We develop a passenger demand profile for each flight and that profile may vary even from the same route depending on the time of day, day of week or time of year. Ideally, we want to have seats available for our customers when we want them so we try to ensure that the aircraft assigned to that particular mission of the early evening flight, for example, is large enough to accommodate expected demand. This of course goes to our bottom line. More seats we sell generally speaking, the better our revenues but also meet the needs of our customers.
But if the plane's capacity exceeds passenger demand we will have empty seats. Flying with empty seats means a higher proceed cost which means a poor return for our shareholders or an increased ticket price for our customers. This is why flying a 138-seat plane on a flight where there is demand for only 109 seats is not a viable economic option for Delta. That is a 27 percent miss in matching supply and demand. We cannot profitably fly a Max 7 on a flight with demand for a CS100.

One of Delta's strengths is its particularly diversified fleet which allows us a great deal of flexibility and how we serve markets and a greater ability to calibrate the correct aircraft to a particular flight. Other airlines use a different model and use a less diversified fleet operating in the network within the limitations imposed by that model.

But the key is regardless of which type of fleet an airline chooses, a successful airline looks to acquire aircraft that fits the airline's plans. In recent years Delta has been pursuing the strategy of up-gauging its fleet, shifting from flying regional jets to larger mainline aircraft. This strategy allows us to serve our customers with the larger aircraft product they prefer.

As a result, Delta has sought to expand a number of aircraft in its fleet with 100 to 110 seats. To
accomplish this goal we ordered seventy-five 109-seat aircraft in 2016. My understanding is that Boeing has argued that we could have bought 737700s or that, had we waited we could have bought the Max7. That was never a viable option for Delta. The 700 is an inefficient aircraft with the highest proceed cost in Delta's fleet.

We have ten of them because there are a handful of airports we service where the high performance characteristics of the 700s are required. For example, airports with short runways are high altitudes that require high performance airplanes but they are not fuel efficient planes. Delta has no need or desire for additional 700s. For purposes of our network and how we choose to serve our customers the ten we have are more sufficient, thank you.

STATEMENT OF GEORGE DIMITROFF

MR. DIMITROFF: Good afternoon. My name is George Dimitroff and I'm the head of Valuations at Flight Ascend Consultancy. Flight Ascend is the aircraft valuations and advisory division of our parent company Flight Global and has clients across the aerospace and air finance spectrum.

One of our most popular products is our fleet's analyzing database which Boeing uses extensively and has quoted in its Petition. I have been with Flight Ascend and its predecessors for twelve years and was previously
employed by both Airbus and United Airlines.

For this proceeding, Flight Ascend prepared a report which was attached to Bombardier's prehearing brief. I would like to focus on three specific issues which were addressed in that report. First, the reasons why Boeing's 737 Max7 aircraft has limited commercial appeal relative to other product offerings in the market. Secondly, the closely related phenomenon of "up-gauging" and finally the issue of launch pricing.

Boeing has built its entire case against the C-series around one aircraft, the Max7. What I'm about to say applies just as much to the 737700 and also to Airbus' A319. Both the Max and neo families were optimized around the larger 160-seat models but the smaller A319 neo and Max 7 models were also included.

While re-engineering and shrinking a large aircraft allowed Boeing and Airbus to get a new model onto the market faster, it had a number of disadvantages. Shrinking a larger design results in a heavier aircraft with bigger engines which is not optimized for its size and this in turn has a negative effect on seat/mile costs.

An airline's operating costs typically consist of fuel, maintenance, crew costs, landing and navigation charges and ownership costs. Ownership cost is by no means the number one, number two or even further down the line
cost by order of magnitude. It is a relatively small
portion of the direct operating cost pie.

Airlines' biggest concerns when operating
aircraft are fuel burn, reliability, and maintenance costs. Only then does ownership cost come into the equation. To
make a fair apples to apples comparison between different
aircraft types we set fixed parameters such as fuel price,
aircraft utilization, crew pay rates and maintenance labor
rates. We have used our own models that estimate aircraft
operating costs in the specific assumptions are in our
report.

Our analysis as you can see in slide 2 shows that
the 737700 and Max 7 are less efficient to operate than the
Bombardier C-series 100 or 300 on a cash/operating cost
basis. These unfavorable economics would push an airline
towards either a larger 737 Max model or the C-series. The
Max 7 was originally launched with 126 seats in a typical
layout but later stretched to 138 seats in order to improve
its per seat economics. This move made the Max 7 less
comparable to the C-series.

At the same time, there is also a new trend
toward up-gauging. This refers to airlines shifting the
composition of their fleet over time towards larger models.
Up-gauging brings several benefits, the most obvious being
that the larger aircraft with more seats have a lower
seat/mile cost, basic economies of scale.

We at Flight Ascent have seen up-gauging occur throughout the market. We see carriers like Delta and American up-gauging their 50-seat regional jets into 76-seat regional jets and the 76-seat regional jets into the 110-seat segment. We have also seen carriers like United up-gauging from 125-seat segment into the 150-seat segment and even Southwest which is a Max7 customer has started to do this. They now operate the larger 7377800 and the new Max 8.

Most of the time the competition presented by up-gauging doesn't come from other manufacturers but from the same manufacturer. The United sale about which Boeing complains is a good example. We understand that United has converted the majority if not all of its orders that were originally placed for the 73700 to Max9s and Max10s.

In effect, Boeing has cannibalized demand for its own 737700 and Max7 by allowing and we suspect encouraging its customers to up-gauge to bigger variants of the same family. This makes sense for the manufacturers because they can make better margins on the larger variants. Using our own database we have compiled Boeing's sales of the 737MG family which encompasses the 600 through 900ER and the Max family of aircraft.

Slide 3 shows that the 73700 shown here in red
went from 60 percent MG deliveries in 1998 to barely 5 percent of annual deliveries by 2012. Slide 4 shows that sales of the A319 Model from Airbus also in red have similarly declined over time in favor of the larger A320 and A321.

Since Boeing no longer breaks down sales of the Max variant by variant we cannot perform the same analysis but our impression is that the trend will be comparable to what happened with the MG. Airbus on the other hand does break down the orders by type and the data for the A320C and A320 neo series shows nearly identical trends.

In fact, slide 5 shows in red that less than one percent of the new orders on the books today are for the A319 Neo model. The smallest members of the Boeing and Airbus single-aisle families which show the 737600 and the A318 both fail to secure meaningful orders. Largely because the per-seat economics of each of these models were even worse being twice shrunk from the core model. There is no indications that unfair import competition played a part in the demise of either of these models. They failed as a result of their poor economics and the segment they were trying to serve which was approximately 110 seats.

Finally, a few words about launch pricing especially on clean sheet designs. Launch discounts are necessary to encourage airlines to take the risk of working
with a new supplier or even to commit to an all new program
from an existing supplier. Bombardier's sale to Delta does
constitute a launch pricing situation, even if they were not
the first customer. Every airline that orders an aircraft
before it enters service or even before it is mature in
service requires launch pricing to offset the risks that
they are taking.

When evaluating orders, airlines want to see
in-service reliability data, performance data and fuel burn
data and clean sheet designs cannot produce such data up
front. Airlines take risks on the new technology including
potential delays to delivery and in-service problems that
could cause disruptions to the flight schedule, which comes
with a cost.

Airlines want to offset that cost up front by
paying less for the aircraft. Even then, the agreed prices
are subject to years of contract escalation which raise the
final flyaway price paid by the airline on delivery.
Although Bombardier had already sold some C-series aircraft
by the time the Delta sale was made they really needed
another large blue-chip customer besides the Lufthansa Group
to endorse the program.

The market has been well aware of the
circumstances surrounding the Delta sale but it is unlikely
that other airlines would realistically expect to obtain a
similar price on any subsequent orders they might place. We have over the years observed equally advantageous if not more advantageous pricing from both Boeing and Airbus on various programs.

The most recent example being the Boeing 787. The 787 experienced multiple delays and difficulties with its suppliers. Even after entry into service initial reliability and performance data was poor consequently Boeing needed to offer launch-style pricing to multiple airlines to counteract the risk. Once Boeing won more sales and ultimately won the endorsement of the aircraft in the market the pricing of the aircraft increased.

In summary, my three takeaways are these: One, the Max 7's economics cannot compete with the C-series because it's a bigger, heavier aircraft with more seats. Two, the Max 7 is failing to sell mainly because the airlines are up-gauging to larger Max models encouraged by the manufacturer. Three, launch pricing has been common practice in the industry for decades and has been exercised by all manufacturers. It upsets new program risk and does not set the bar for subsequent orders. Thank you.

STATEMENT OF SHARA ARANOFF

MS. ARANOFF: Good afternoon. I am Shara Aranoff from Covington and Burling. I'll focus on four legal issues, post-petition effects, like product, negligibility
and threat.

First, Boeing's argument that the Commission should disregard the U.S. foul as a post-petition effect is a misapplication of the statute. Section 16777i gives the Commission discretion to reduce the weight according to post-petition data if any change in the volume, price effects or impact of imports of the Subject Merchandise since the filing of the Petition is related to the dependency of the investigation.

As Mr. Levec explained, the business case for the Airbus partnership predates the Petition and is therefore not a post-petition effect.

But even if it were, the establishment of the U.S. FAL is a permanent change and not a short-term volume or pricing trend that could reverse after a negative determination.

The Commission has never applied this provision to construction of a new domestic production facility which signals a permanent change in the pattern of trade. If the Commission agrees that the U.S. FAL will be built regardless of the outcome of this case, then it defies logic to discount that facility as a post-petition effect. The U.S. FAL will benefit the aerospace industry by increasing domestic production and employment.

Now Boeing may not like new domestic
competition, but the mandate of this Commission is to protect domestic industries from injury due to unfairly traded imports, not from competition with another U.S. producer.

Turning to like product, Boeing continues to argue that the like product includes just the 737-700 and Max 7 and not the larger family members.

In questionnaires and the pre-hearing report, Commission staff have worked very hard to expand the record with respect to like product factors and have collected complete data for the larger domestic industry. At this point, the record contains overwhelming evidence in favor of the broader-like product.

As shown in Slide 1, the Max family is a classic product continuum where differences arise from each model being successfully larger. But the members of the Max family share one design, one production process, common employees, substantial parts commonality, and significantly overlapping uses.

But petitioner keeps pointing to some differences. And what differences did they highlight? First, seat count. But seat count varies widely depending on customer preferences. As the Commission pointed out this morning, Southwest, the launch customer for Max 7 has been publically reported that its plan is to configure the
aircraft with more than 150 seats. And airlines use planes with different seat counts to serve the same routes at different times of the day or year as Delta just testified.

Second, Boeing points to product specific tooling. Please see the confidential record for why this argument deserves no weight when considered against the common production line used to assemble the entire 737 Max family.

Third, Boeing pointed to the ability of the Max 7 to serve hot high airports. But that is a very small minority of airports.

Fourth, Boeing points to the fact that you need an extra flight attendant for an aircraft that seats over 150 passengers. But FAA regulations also require yet an additional flight attendant when you go over 200 passengers. So that means that the Max 10 would be need more flight attendants than the Max 8 or 9.

For these reasons, the Commission should find the domestic-like product includes all single aisle with at least 100 seats. And in that case, the domestic industry consists both of Boeing's production of the 737 family, as well as Airbus America's production of the A-320 and A-321.

As the data in Table C-3 of the confidential staff report demonstrate, this domestic industry is neither injured nor threatened with material injury by reason of
subject imports.

Boeing's own public statements confirm that its 737 production is sold out for years. As the data in Slide 2 show, the 737 family represents 45 percent of Boeing's $424 billion commercial airplanes backlog and the average profit margin across Boeing commercial airplanes for 2013 to '15 was a healthy 9.8 percent. Therefore, if the like product is properly defined, the record compels a negative determination.

Even if the Commission opts for petitioner's like product, however, it should terminate the investigation based on a finding of negligibility. In the preliminary phase, the Commission found that imports from Canada were negligible, but that there was a reasonable indication imports would imminently exceed negligible levels. This conclusion has been overtaken by events. Because Bombardier and Airbus plan to assemble planes for U.S. customers at the U.S. FAL, there are no plans to import C Series aircraft from Canada in the future. Under the statute, the volume of subject imports will necessarily be negligible.

Finally, a few words on threat. The Commission only needs to reach this issue if it finds both that there were will not be a U.S. FAL and that the domestic-like product is limited to the 737-700 and Max 7. But if the
Commission in our view wrongly reaches this point, there's still no threat of imminent material injury.

To determine whether injury is imminent, the Commission normally looks to the end of the current year and one additional year. Even in cases involving large capital goods with long lead times, the most generous threat horizon applied in any Commission or CIT decision set that imminence period no longer than two years into the future.

Here, that means the Commission might look out at most to the end of 2019, which is what it did in the preliminary determination. In this industry, looking any further into the future would be an exercise in pure speculation because of long supplier lead times, aircraft manufacturers typically require orders to be finalized 18 to 24 months prior to delivery.

Manufacturers can thus predict their production 18 to 24 months out with some certainty. Beyond the two year mark by contrast, purchasers frequently exercise options or deferral rights or make contract changes, which can alter which aircraft will be delivered in what quantity, and when.

Even for orders that have already been placed, therefore, it would be speculative to base a threat determination on imports that are scheduled for more than two years out. It would be even more speculative to find a
threat based on the prospect of imports resulting from orders that have yet to be placed.

It also would be inconsistent with the unambiguous direction of the statute, which says that the basis for the Commission's threat of injury determination is whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur absent relief. Orders and likely sales may be relevant to the threat analysis only if they will lead to imminent imports.

In the next two years, the only subject aircraft Bombardier could deliver to a U.S. customer would be some of the 75 CS-300s ordered by Delta. As Mr. Dewar explained, there's no excess capacity at Mirabel from which additional U.S. sales could be made in that time frame.

So even if the Commission were to conclude, despite Delta's testimony to the contrary, that Delta will import CS-100s from Canada, there could be no threat of injury to Boeing. Boeing never saw it and so could not have lost that sale. No other sales or imports qualify as imminent.

Thank you for your time and your consideration. This ends respondent's presentation and we look forward to your questions.

CHAIRMAN SCHMIDTLEIN: All right, thank you very
much. I'd like to thank all of these witnesses on this panel for being here today as well. This afternoon, we begin with Commissioner Broadbent.

COMMISSIONER BROADBENT: Okay, thank you, Chairman Schmidtlein.

This is for Delta, Mr. Esposito. On page 31 to 32 of its brief, Boeing provides a list of examples of routes that are right-sized for 100 to 150-seat large civil aircraft. Do you have any examples of airlines serving those same routes with out of scope single aisle large civil aircraft?

MR. ESPOSITO: I'm sorry, I'd have to -- I don't have the page in front of me, but -- actually, I don't. I'm sorry. Can you just repeat?

COMMISSIONER BROADBENT: Sure. Page 31 to 32 of its brief, Boeing provides a list of examples of routes that are right-sized in their paper "for 100 to 150-seat large civil aircraft." Do you have any examples of airlines serving those routes with out of scope single aisle large aircraft?

MR. BAISBURD: So we don't -- Yohai Baisburd on behalf of Delta Airlines. We don't have the brief right here so we can review those airports and respond in the post-hearing. But I think what Mr. Esposito testified to is that on more than half the routes where they fly 100 to
150-seat aircraft, they fly aircraft that are smaller than that and aircraft that are larger than 100 to 150-seat LCA.

COMMISSIONER BROADBENT: Okay. Mr. Mitchell From Bombardier, do you consider your C Series aircraft or your CRJ Series aircraft to be most competitive with Embraer's E-series regional jets? I ask this because there seems to be substantial overlap between the Bombardier CRJ aircraft and the E-series in terms of seat count or as the C Series has larger seat counts than even the largest E-series jets.

MR. MITCHELL: Okay. Let me be clear. There's not overlap between the CRJ and the C Series in our opinion. They serve different customers.

In the United States, the CRJ family serves regional carriers, strictly regional carriers. The Embraer E-Jet family goes across those two different markets. The Embraer 175, which is a smaller aircraft, competes with our CRJ-900. The Embraer 190, 190 E-2, 195, and 195 E-2, do in fact compete with the C Series because they are larger than what is typically considered regional.

COMMISSIONER BROADBENT: Okay.

MR. BAISBURD: Commissioner Broadbent?

COMMISSIONER BROADBENT: Uh-huh.

MR. BAISBURD: Sorry, but if we could clarify something. So that list of routes that Boeing has
identified in their brief, they treat it as proprietary. And so there would not be -- we wouldn't be able to have a Delta witness review that. It strikes me as perhaps we could not treat those as proprietary since there geographic airports, but it's not our decision to make.

And I would just point out again also from Mr. Esposito's testimony that Delta itself has thousands of flights a year and only six routes that it only flew 100 to 150-seat LCA as defined in this proceeding.

COMMISSIONER BROADBENT: Okay, fair enough.

Let's see for general question for respondents.

On page 6 of the Bombardier's brief, it states that the primary assembly line for the CSALP will remain in Quebec. Can you define primary assembly and describe exactly what type of assembly will be occurring in Mobile, Alabama?

MR. DEWAR: Sure. So Rob Dewar from Bombardier. So the -- of course, the primary manufacturing center, it was always planned in Mirabell and started there. They actually have two production lines in parallel. And our plans are to take a replica, exact replica and have one of those lines in the U.S. for U.S. customers.

COMMISSIONER BROADBENT: Okay. Will the C Series fuselage be equipped with electrical or mechanical systems before it's shipped to Mobile?

MR. DEWAR: So the C Series will have the same
configuration of components for both the Mirabel facility and for the facility in Alabama. And yes, we do include some of the systems in bracket, we are included into our subsections. But there is no fully assembly fuselage. Those are done in each of the manufacturing sites.

And it is in line, by the way, with modern aircraft. The 737 of course, was really planned back in the '60s. Although they have made some improvements, modern aircraft actually used a standard. So whether you look at an Airbus product, a 787, or our product, it is a modern way to assemble aircraft.

COMMISSIONER BROADBENT: Okay. Mr. Dewar, how is the C Series model distinct from the continuum of single aisle LCA that you identify as characterizing Boeing's 737 family?

MR. DEWAR: I'll pass that question to Ross.

MS. ARANOFF: Well, before Mr. Mitchell answers, Commissioner, I just want to ask for a little bit of a clarification on that. If we're talking about domestic-like product, the comparison would between Boeing models. If we're talking about, you know, more of an attenuated competition, conditions of competition, then that would be the type of comparison that Mr. Mitchell could make for you.

COMMISSIONER BROADBENT: Okay.

MS. ARANOFF: I'm not sure which you intended
the question.

COMMISSIONER BROADBENT: The latter.

MS. ARANOFF: Okay. You want to talk about what some of the differences are between the C Series and the Max?

MR. MITCHELL: Ross Mitchell from Bombardier. I guess the first thing to note is that the airplane is a clean sheet design. So our wings are composite wings. Our fuselage is built out of aluminum lithium, rather than standard aluminum. We have a five abreast configuration inside the aircraft as opposed to a six abreast configuration.

In terms of the inside of the aircraft, the windows are larger, the bins are bigger, the aisle is wider, the seats are wider. The aircraft has modern avionics that are state-of-the-art. And it is significantly lighter than the 737 aircraft simply because we have a composite wing and we have the advantage of a clean sheet aircraft. So it is -- it's significantly lighter. So there are a number of differences between our airplane and theirs.

MR. DEWAR: Yeah, maybe I'll just add a few points. So also in terms of sizing, comparing the CS-100, and this is of course done by Bombardier, but it is an apples to apples comparison using the same assumptions for seat pitch and amenities. And you can see that the Max 7 is
30 percent larger than the CS-100.

And of course, it is customer selectable. And I think Delta testified earlier on the sizing that they were proposed and that they use, but really it is in a different category, the CS-100 and the Max 7.

And it's different technology. It is really -- our aircraft is the actual latest technology in the industry, where the 737 really is based on heritage of a much older base design from the '60s.

COMMISSIONER BROADBENT: I think I heard in the opening presentation that the customer experience in the C-100 is 20 percent better. How do you measure that?

MR. DEWAR: Yes, we've had some direct feedback from customers in terms of their feedback and their experience on the aircraft. So when they get feedback regarding the size of the cabin, the space of this, the size of the bins, and the windows, and overall experience is 20 percent better than aircraft currently serving the market.

MS. ARANOFF: Commissioner Broadbent, we actually have from one of Bombardier's customers that has the aircraft in service, their passenger survey data. It's confidential, but if you want to see it, we can submit it post-hearing.

COMMISSIONER BROADBENT: Okay, yeah, that'd be interesting.
On page 43 of Bombardier's brief and page 1 of Delta's brief, they describe Boeing and Airbus as having abandoned the low end of the single aisle market. Why do you think that Boeing and Airbus did this? And why did Bombardier see in this -- and what did Bombardier see in this part of the market that Boeing and Airbus did not?

MR. DEWAR: So I --

MR. MITCHELL: Sure.

MR. DEWAR: So basically as I mentioned in my testimony, you know, we've clearly seen that we did not serve that market and Boeing and Airbus has products that were sub-optimized.

And what do I mean by sub-optimized? They took an aircraft of six abreast, much larger with larger wings and engines as was presented in one of the slides earlier today, and basically shrunk the fuselage to be able to serve this market.

So with the older technology and oversized aircraft in its category, of course, the economics were very poor as was mentioned by Delta. And so, we saw an opportunity to optimize an aircraft with the right sizing of aircraft and engine of course with the latest technology. And that's why the C Series has such a large operating advantage against those products.

MR. MITCHELL: If I might add, Ross Mitchell for
Bombardier. When we say abandoned, one of the things we're referring to is the fact that each of those manufacturers built an airplane in the specific 100 to 110-seat segment. In the case of Boeing, they built the 737-600, which they stopped building. They built the Boeing 717, they also stopped building. Airbus built the A-318 and they stopped building that airplane.

Again, they stopped building those aircraft because there was very little customer interest in them because the aircraft were awfully heavy on a per seat basis. So it didn't derive the right economics for the airlines.

So when we say they abandoned the market, we mean they abandoned the market. They stopped building airplanes that are in the space that the C Series occupies today.

And in the case of Boeing, the 737-700 was enlarged to make the Max 7. So that airplane was enlarged to the point where at a Max density, they can carry 172 passengers. So again, the market that the C Series is in was abandoned by the two main manufacturers.

MR. BAISBURD: I would add, they -- the answer this morning was quite instructive when asked how are they going to take care of the lower end of that range? The response is we innovated with a Max 7, which of course 12 seats larger than what they had at the 700.
So you have Delta buying a plane at 109. Not just a plane. They bought 75 planes at 109 seats. And the response from Boeing is we're going to serve 100 to 150-seat market by creating a plane at a 138 seats. When the 126 was too big for you, well, guess what? Now you're going to have to buy a plane at 138 seats, which is 27 percent greater than the plane that Delta actually ordered.

COMMISSIONER BROADBENT: Okay. Thank you.

CHAIRMAN SCHMIDTLEIN: I want to go back to this question about the like product. When we look at like product, we're trying to decide what product is like or most similar in characteristics and uses as the subject imports. And so, is there not some tension or inconsistency in arguing that there's on one hand, there's attenuated competition between the Max 7 and the C Series because the seating configuration or the number of seats is different in that the C Series is smaller? But then on the other hand, you all are arguing that larger aircraft than the Max 7, namely the 8, 9, and 10 should be included in the domestic like product because in your view, those products are like or most similar in characteristics and uses as the C Series? Isn't that an inconsistency?

MS. ARANOFF: It's a bit of a brain teaser, admittedly, Madam Chairman, but I think the point -- the key point to keep in mind here is the question you're asking
would make the most sense if we were telling you that the
700 and the Max 7 are not the like product. And we're not
telling you that the 700 and the Max 7 are not the like
product.

What we're asking you to do is envision the like
product as not being limited to the 700 and the Max 7. So
it's a little bit of a different -- the question you're
asking is how can the 700 and Max 7 not be the like product
if, you know, if you're arguing that there's attenuated
competition, how can you also say they're the like product.

But that isn't really the issue here, right?

CHAIRMAN SCHMIDTLEIN: Well, no, but you're
making the argument that not only is that the like product,
but that we should expand the product beyond the scope,
which I have a question about that. How many cases do we
actually take a like product and sweep in more products than
what is in the scope? I'm trying to think of some and it's
unusual.

So it's not just that you're not making the
argument that it's -- that the 7 is not, you know, 700 Max
7's not like. You're saying no, no, broaden it and bring in
planes that are much bigger than the 7, that those are like
products.

But on the other hand, you need to find that
there's attenuating competition. We don't compete at all
like the C Series is this small little plane and the Max 7
is big.

MS. ARANOFF: Right.

COMMISSIONER BROADBENT: Do you not see the
inconsistency?

MS. ARANOFF: The legal --

CHAIRMAN SCHMIDTLEIN: -- in those arguments?

MS. ARANOFF: It is a little bit hard, but the
legal test for like product is really focused on comparing
whether or not there is a reasonable line that can be drawn
around what the petitioner has identified as the domestic
like product versus the rest of their products. And in this
case, we really think that what you have here is a classic
continuum that you can't stop.

CHAIRMAN SCHMIDTLEIN: But you don't think those
bigger planes are competing with the C Series obviously?
You don't think 8, 9, and 10 compete with C-100, right, Mr.
Mitchell?

MS. ARANOFF: But --

CHAIRMAN SCHMIDTLEIN: Or 300?

MS. ARANOFF: But I think that that's because
that's the wrong question to be asking here. The question
is to be asking here is if the -- if as Boeing argues the
Max 8 -- the question is, is there a bigger difference
between the 7 and the 8 than there is between the 8 and the
9 or between the 9 and the 10 because that's the only way in
the world of a continuum product that you get to a clear
dividing line. But the Commission will frequently look --

CHAIRMAN SCHMIDTLEIN: But isn't the point of
the continuum to decide what's competing? We're trying to
decide like what's competing here, right?

MR. BAISBURD: Well, I think it goes -- Yohai
Baisburd for Delta. There's a question of causation and
then there's a question of a continuum and how you define
the like product. And so, at 100 and above, there are a
range of aircraft that are available to airlines who are
choosing how they're going to organize and operate their
fleet. And the record evidence is clear that airlines such
as Delta, who identify a niche, bought 75, 109 planes.

Other airlines, and I won't recall which are
proprietary, which are not, but they're on the record and
was cited in our brief, fluctuated on that artificial line
at 150 as they were looking at their own needs. But that
there's a continuum, I think, is based on the statutory
factors and that there's no clear dividing line.

I'll give you an example. The difference
between the Max 7 and the Max 8 is only 24 seats or about 17
percent. The difference between the CS-100 and the Max 7 is
29 seats. So there's a greater seat differential. And I
think it goes --
CHAIRMAN SCHMIDTLEIN: It's -- let me just interrupt you. Isn't it true though that the airlines get to decide what number of seats they want to put in the plane? So while that's the typical number, that's not the actual number that ends up going in. It all depends on what the airline dictates when they buy that plane?

MR. BAISBURD: And I'll allow Delta to go into the detail, but based on operating costs and economics of profitably operating their airline, and Boeing in the petition recognizes this. On page 44 of the petition, they talked expressly about the economic impact of an airline buying a plane that's too big for what they deemed the demand to be, that they'll be empty seats and there's an economic cost to them for doing so. And actually, we heard it this morning about, you know, a responsible company matches capacity to demand.

And so I think in any attenuated competition situation, you have a like product. You just found that the competition between subject imports and that like product was attenuated. But it didn't mean that there's a dividing line that didn't put together the entire production range --

CHAIRMAN SCHMIDTLEIN: Well --

MR. BAISBURD: Of the domestic industry.

CHAIRMAN SCHMIDTLEIN: -- usually, though, we have a scope that's quite broad that sweeps in a number of
sizes of product say. So like in wire rod or in pipe or something like that. And we have a like product that usually supplies that range. And typically, they'll be an argument that the vast majority of imports are coming in at one part of that range and the domestic is selling at the other half of that range and that the injury does not have -- or like that's typically how attenuated competition --

MR. BAISBURD: Sure. And that's --

CHAIRMAN SCHMIDTLEIN: -- happens.

MR. BAISBURD: Yeah, and that's exactly what happened here. And again, the factual witness can speak to this, although they did in their testimony, they bought 109 seat plane. Like there's this fallacy and this artificialness about talking about C Series, C Series, C Series. On the record, there is one relevant order. It's for 75, 109 seat planes. Kind of full stop there. And I think that that --

CHAIRMAN SCHMIDTLEIN: But it's one thing to say they didn't lose -- I guess you're saying that the C Series never competes with Max 7, is that right or no?

MR. BAISBURD: No, what I'm saying that the CS-100 is 109 seat plane and Joe and Greg can jump in, but they'll tell you what they were looking for at the time that they ordered the 75 C Series.

And this isn't the typical case. First, you
don't have subject imports during the POI. You have no
other orders. Like the record on this issue is
extraordinarily clear and quite limited. You have one order
for 109 planes, 109 seat plane, 75, 109 seat planes.

CHAIRMAN SCHMIDTLEIN: So does -- do you -- is
it the position of the respondents that the -- well, let me
back up. Let me ask. Does Bombardier compete with Boeing
in any area for any plane in your view?

MR. ESPOSITO: Not for the demand that we were
looking for.

CHAIRMAN SCHMIDTLEIN: At all, period? Does
Boeing compete with Bombardier at all in any product
offering?

MR. ESPOSITO: I would have to say no from my
chair.

CHAIRMAN SCHMIDTLEIN: Mr. Mitchell, what do you
think? Do you compete with Boeing in any -- with regard to
any plane that you make?

MR. MITCHELL: With respect to the C Series?

CHAIRMAN SCHMIDTLEIN: No, any plane?

MR. MITCHELL: Any plane?

CHAIRMAN SCHMIDTLEIN: Any plane.

MR. MITCHELL: Any plane. You will see
occasionally, Boeing 737 Max 7 in a competition, but it is
rare that it gets to the final step because it is not an
adequate airplane for the small single aisle segment. And what I mean by that is as you saw in the chart that Mr. Dimitroff put up, it is not a competitive economic airplane with our C Series.

CHAIRMAN SCHMIDTLEIN: But there are some campaigns that it competes in?

MR. MITCHELL: They may start out looking at a broad spectrum of aircraft. As I pointed out in my testimony, it is not unusual for an A-319 or a Max 7 to be in the discussion early on. Usually, once you begin to talk about the economics, those airplanes disappear fairly quickly because the economics are poor.

CHAIRMAN SCHMIDTLEIN: So what do you think's going on here? If you -- if they don't compete, right, why are they -- why do they want to knock the C Series out?

MR. MITCHELL: Why does Boeing want to knock the C Series out?

CHAIRMAN SCHMIDTLEIN: Uh-huh, yeah. Why -- if they're not competing, right, like it's not -- and I notice, you know, I think it was your testimony you talked about the sweetheart deal that United got, right? And by sweetheart deal, I assume you mean they got great pricing, right? So Boeing took a little bit of a bath on the pricing to get that deal.

MR. MITCHELL: Well --
CHAIRMAN SCHMIDTLEIN: Is that what you meant by sweetheart deal?

MR. MITCHELL: What I meant by sweetheart deal was it was widely reported that they had to give a good deal. And I think you should ask Boeing why they stepped into that transaction.

As I testified, and I was at the company, I was working with the sales team on United when that happened. So as a factual witness I can say that, you know, we believe we had won the transaction. We did not see Boeing in this transaction at that time. We were competing with the Embraer aircraft --

CHAIRMAN SCHMIDTLEIN: So --

MR. MITCHELL: -- for a 100-seat aircraft.

CHAIRMAN SCHMIDTLEIN: So why did they do that then, because they didn't want validation for the C-series in the market, right?

MR. MITCHELL: Well, that's -- yes, that's --

CHAIRMAN SCHMIDTLEIN: But why do they care --

MR. DEWAR: I could explain.

CHAIRMAN SCHMIDTLEIN: -- whether C Series is validated --

MR. DEWAR: Yeah.

CHAIRMAN SCHMIDTLEIN: -- if they don't compete with it?
MR. DEWAR: Sure, because before this --

CHAIRMAN SCHMIDTLEIN: Why would -- right?

MR. DEWAR: Before the C Series existed, the customers had no choice. They had to pick from two aircraft that were economical, but that's all that was there. That's what we identified --

CHAIRMAN SCHMIDTLEIN: What were the -- and what were those aircraft?

MR. DEWAR: As you know, the -- as was mentioned by Ross, the 737-600 was stopped. The 717 was stopped. So there's no products in this segment. That's why we identified the segment and developed the C Series for us to have a product that customers were looking for, that was economically viable in the segment.

What Boeing would like is that we go away and the customers have to choose between their inefficient product in the segment or the Airbus one.

CHAIRMAN SCHMIDTLEIN: But then aren't you saying that they compete? I mean, if absence of product, they're going to buy a Boeing product?

MR. MAY: If I can --

CHAIRMAN SCHMIDTLEIN: Aren't you competing at that point then?

MR. MAY: Greg May from Delta.

CHAIRMAN SCHMIDTLEIN: Even though you have --
you say you have better economics, it's a better plane, but aren't you competing?

MR. MAY: Greg May from Delta, if I can. I mean, I was there during the competition for the C Series. I ran it. And we heard the rumored price that United was going to pay for the 700, but that price could not overcome -- we did not understand why they were doing it because that price could not overcome the operating economics that that aircraft had, that chart that I showed you before demonstrated that. If you look at ownership cost, for Delta, ownership cost is maybe 20 percent of the overall picture. So you have to cut a price in half to make a 10 percent impact.

CHAIRMAN SCHMIDTLEIN: So how did you at Delta hear what United was paying?

MR. MAY: Just whispers in the market that we cannot confirm with a case. And that's also another a good factor as well, that Boeing is indicating there's this transparency. One of their key examples being financing. I can tell you it is common practice by all the airlines to finance the aircraft at a different price than what they are paying. I don't think we at Delta have done a sale leaseback transaction at our price for a number of years.

CHAIRMAN SCHMIDTLEIN: So how do those -- like for instance, how did that -- can you be a little more
specific in terms of the whispers in the market? Like
what --

MR. MAY: At a conference event, maybe
someone, you know, commenting on what they heard. It's
nothing more than that, and there's -- it is really that
invalid, you know. I can't tell you what for certain for
what United paid. I know what I heard for rumors on those
aircraft. I have no idea what United's paying on their Max
aircraft, not a clue, and I'm at Delta and this is my
responsibility. That's not to say there is -- transparency
is --

CHAIRMAN SCHMIDTLEIN: Transmission.

MR. MAY: Total transmission, yeah, is total
nonsense.

CHAIRMAN SCHMIDTLEIN: Okay, all right. My
time is over. I will -- we'll come back to this. Chairman
Johanson.

VICE CHAIRMAN JOHANSON: Thank you Chairman
Schmidtlein, and thank you all for appearing here today.
This is a question for Delta. Delta has described its view
that its launch price for the C series is compensating for a
degree of risk with a new aircraft. You all argue this at
pages 34 to 35 of your brief. With that said, why did Delta
decide to place an initial order for 75 aircraft? That
seems like a significant multiplier of risk. After all, if
there was indeed a degree of risk, why not order a smaller initial number?

MR. MAY: Greg May for Delta Airlines. The order that we placed was a negotiated order. We do trade-offs looking at how much, you know, what are we going to acquire the aircraft for, what are the operating costs, what do all the various pieces look like in our NPV analysis and make an informed decision. The risks, there's a lot of discussion earlier today about the risks. The C series aircraft had been certified, but there were definitely still risks remaining.

Some of the key risks for an aircraft and that a customer such as Delta, who is a launch customer will get rewarded for is you don't know what the reliability characteristics of the aircraft are going to be. You don't know what your maintenance costs are going to be long term. There are a lot of factors besides just how the airplane initially flies. You don't know what performance retention is going to look like.

So I'm answering multiple questions here, but the question about, you know, whether or not we were a launch. We were most definitely a launch customer because we were, you know, a ten aircraft order from a small European carrier does not get the -- gain the confidence from the market that a large order from an airline like
Delta will. That is what it takes, is to really be a true
launch order that's going to get that launch pricing, is the
large reputable carrier and being really a first or one of
the very first movers on that aircraft.

MR. ESPOSITO: And also, Joe Esposito at
Delta. We were looking at our long-term plans, and at Delta
we only have one airplane at 100 to 110 seats, which is the
717. We needed to expand the size of that fleet
specifically. So 785, while it seems like a large number,
is what the demand is for our airline for the long term as
we serve 230 cities throughout the city. We have plenty of
demand in that category that was required for the long
term, to optimally match supply and demand.

VICE CHAIRMAN JOHANSON: Out of curiosity, how
many aircraft does Delta own? And if this proprietary, if
you could answer in a post-hearing.

MR. MAY: Yeah. Between the main line and
regional, it's approximately 1,300 aircraft that we operate.
Some are owned, some are leased and that's purely a
financing decision.

VICE CHAIRMAN JOHANSON: Okay. So this is
very big plan to buy these 75 aircraft?

MR. MAY: Well, it's large but it's spread
over time, you know. This is over a three to four year
period that we're taking the aircraft. To put it in
perspective Delta, because of the size of its fleet, just on a steady state basis we need to be bringing 40 to 50 aircraft in every single year to address retirement of aging aircraft and for modest growth of only two, two and a half percent.

VICE CHAIRMAN JOHANSON: Okay, thanks Mr. Esposito and Mr. May. On page 73 of Boeing's brief, Boeing states that there's no plausible business justification for moving production of the C series to Airbus' Alabama facility. The idea of moving this plant from Quebec to Alabama kind of struck me as being a major move, of course.

I would like to ask what has been the reaction of the Canadian public to formation of the joint venture, specifically given that the governments in Canada, the Canadian government and the Quebec government had taken a stake in this project, what has been the reaction to the fact that some of the better jobs are being moved out of Canada and to the United States?

MS. ARANOFF: I think we first need to clarify that the production facility that already exists in Quebec is not being moved. It's going to stay there to serve customers outside the United States.

VICE CHAIRMAN JOHANSON: Okay, but some jobs that were -- that were originally going to be in Mirabel will be moved to Alabama; correct?
MS. ARANOFF: I don't think that's the expectation.

MR. LEVESQUE: No. There's no jobs that are going to be moved.

VICE CHAIRMAN JOHANSON: Well jobs might not be moved, but jobs that would have otherwise been created in Mirabel will instead be final assembly will be in Alabama.

MR. LEVESQUE: So the government is okay with that decision, and I'd like to keep in mind that we always had planned in our business plan to invest to increase capacity to reach our business plan. So this new final assembly line is in some ways a redirection of capacity growth investment to manage the risk that we're facing.

VICE CHAIRMAN JOHANSON: Okay. I assume you will upset some folks in Canada?

MR. LEVESQUE: Well, they made the decision. The decision is being made and is okay with Quebec and Canada.

VICE CHAIRMAN JOHANSON: Okay. Mr. Lichtenbaum.

MR. LICHTENBAUM: Peter Lichtenbaum for Bombardier. I think one important point to keep in mind here is that in order to preserve the overall program, the
joint venture is very important. So from the standpoint of
Quebec government, Quebec employees, it's better to maintain
a program and if doing the joint venture is what's necessary
to maintain the program, as has been the plan of the company
for many years, as Mr. Levesque testified, then I think
employees recognize that that's the right thing to do.

VICE CHAIRMAN JOHANSON: Okay, thanks for your
responses. Following up on that, and I'm being devil's
advocate here, if seating an aircraft is easy to change and
not important to airline customers, why not simply reduce
the design of the CS-100 seating to less than 100 seats?
Wouldn't that be easier than moving the production to
Alabama from Canada?

MR. DEWAR: Well, I guess first of all we
really need extra capacity. It was always planned as part
of our business plans to -- I guess there's two questions,
right.

MR. BAISBURD: So I will jump in here on a few
levels. First, Delta ordered 109 seat aircraft because
that's what they need, right, and second, the way the scope
is written, it's about the capability of the aircraft to
have a certain number of seats, not the actual number of
seats on the aircraft. So it wouldn't be a way to take
something out of scope just based on actual seat count, as
the scope is through now, I mean assuming that there's not a
major revision at the final.

But even before we get there, what Delta has acquired is an 109 seat aircraft, which Boeing couldn't provide now or in the future. So --

MR. MAY: Greg May at Delta. On the topic of the U.S. production, I can tell you Delta is very pleased that this is -- in this development and intending to wait and will wait for those aircraft to be produced. Having the U.S. production provides a number of advantages in the delivery process and the manufacturing process.

The nearness of the plant enables more frequent touch by our people including our senior management. There are reduced costs from the standpoint of there's this buyer-furnished equipment that we have to deliver. There's ferrying costs that are now reduced and --

VICE CHAIRMAN JOHANSON: I'm sorry, what costs?

MR. MAY: Ferrying of the aircraft. When we take delivery of the aircraft, we have to ferry it to our base. That's of course pilot and fuel costs, and then yes, you know, the trade case, it's not this particular case but just future risk of trade case. It makes us feel more secure that we're buying a U.S. product, and then last but not least, we would like the idea of increasing the U.S. content beyond it's already 50 percent by having it made in
the U.S.

MS. ARANOFF: So Commissioner Johanson, just to put this in perspective for you, Boeing testified this morning, right, that they don't trust Bombardier and Airbus to actually go ahead and build this out because they don't think there's a business case. These gentlemen have explained to you what the business case in that in does make sense, irrespective of the outcome of the Commission's decision in this case.

But just bear in mind, one important factor here, they mentioned that too, we're calling it the Boeing effect. U.S. airlines at this point do not believe that if Boeing were to lose this case that they would fold up their tents, go home and allow imports to come in from Canada. What they believe is that as soon as any other U.S. airline ordered another C series produced in Canada, Boeing would bring a new petition.

That means that there is no way for Bombardier to serve the U.S. market unless it moves its production to the United States. Now Boeing then tells you that there's something sinister about that, that somehow that defeats the purpose of the trade remedy laws. But ask yourself how does investment in U.S. production and U.S. employment defeat the purpose of the trade remedy laws?

The trade remedy laws are built on three
possible outcomes. One is that you can import with the duties. That works for some people. One is that you give up the U.S. market, because the duties are too high and you can't import and the third is that you decide to produce domestically. Now Boeing would like Option 2. They'd like Bombardier to just go away and stop selling in the U.S. market.

But Option 3 is also viable, and that's the one that has been chosen here. And once you do that, you're out of the reach of the trade remedy laws because you're producing a domestic product, and that's a good thing. That should be celebrated.

MR. BAISBURD: I would just also add that the trade remedy laws require an affirmative finding based on substantial evidence that subject imports are causing material injury or threat thereof to a U.S. producer of the like product. Even without those other outcomes, which I completely agree are the potential, there isn't a record here that supports that affirmative finding, for very specific reasons that are somewhat unique.

Almost everything about this case is unique. But one of the most unique things is that they define the subject merchandise range, and they don't supply nearly three-quarters of it.

VICE CHAIRMAN JOHANSON: Okay. Thanks for
your response. I have a few more questions, but I'm going
to hand it over to Mr. Williamson. I think he doesn't want
to take his questions.

COMMISSIONER WILLIAMSON: Sure. Thank you. I
want to stress my appreciation to all the witnesses for your
testimony. I'm not quite sure where to begin, but on this
last subject of how are we -- what do we make of the
decision to start the production in Mobile, and I had based
a question this morning about the conjectures and
speculative, whether or not this was conjecture or
speculation and I said I ought to ask y'all this afternoon.

So I guess there are a number of questions to
ask about this. How many regulatory steps have to be taken?
If you want to do that post-hearing, you can. When actually
is production, you know, when is the first aircraft expected
to be delivered from Mobile?

MR. LEVESQUE: Well clearly part of -- Sylvain
Levesque. Part of JV being formed, we have to comply to
antitrust regulation. So we clearly are doing strictly
planning steps for investments, but clearly making plans for
the layout of the factory and so forth. So and then we're
making visits and so forth. So that's what we're doing
right now, and clearly that involve local permitting and so
forth. So these, the deal was approved two months ago. So
we are well into that process, going from a project with 50
lines of project to a thousand line to 2,000 lines. So we're going ahead.

COMMISSIONER WILLIAMSON: Lines?

MR. LEVESQUE: Lines, I say that. It's a large -- it's a factory that has a lot of activities to put in place. So very detailed planning going on today. And then it's really -- to close the transaction.

MR. LICHTENBAUM: Just on the regulatory piece, I think the principle piece is, as Mr. Levesque said, on the antitrust side. Sorry, Peter Lichtenbaum from Bombardier, and as I said at the outset, the company has engaged in detailed fashion with the relevant antitrust authorities. The company's making good progress on that and we would suggest that the Commission may want to ask the staff to inquire with us in January as to the progress that's been made with the antitrust authorities.

COMMISSIONER WILLIAMSON: Okay, because you understand why I'm asking these questions, to sort of get to what weight do we give to this deal.

MS. ARANOFF: Right. So there's -- yeah. There are a number of steps that are being taken now. Those are confidential and they're in our prehearing brief. There are other steps that can be taken and are planned to be taken as soon as the appropriate antitrust authorities sign off on the transaction. They can't legally be undertaken
As Mr. Levesque testified, what can be done now is being done. There were site visits last week. You know, there are ongoing conversations, and to the extent that there are developments before we file our post-hearing brief we will include those. But we do encourage you if you want the latest information on which to base your determination that this is changing by the day, ask us before the recorded closes in January and we'll give you everything that's gone on since.

COMMISSIONER WILLIAMSON: Good, okay. We will.

MR. MAY: Greg May at Delta, just briefly. Some negotiations that we have ongoing, we are looking for Bombardier to guarantee our U.S. produced aircraft. So it's not a just regardless of a ruling here today, we want aircraft to be produced out of Mobile, Alabama. The only possibility that I think we could see is if somehow there was, you know, a trade commission ruling that was adverse that would stop it.

Otherwise, our full expectation is that will occur, and we'll begin taking those aircraft in 18 to 24 months.

COMMISSIONER WILLIAMSON: Okay. To the extent you can say so here or post-hearing, the original schedule I
think there's been a change from what I guess when you
originally did the deal, and I was wondering what was the
business justification for that?

MR. MAY: The justification is the combination
of things. It's, as I indicated before, from Day 1 we would
have preferred to have U.S.-produced aircraft. Having this
development occur has made us shift. What it means we're
doing is we're going to be holding on to some older aircraft
a little bit longer in order to wait for these deliveries to
be produced out of the U.S. So regional aircraft that will
fly longer and some mainline aircraft.

COMMISSIONER WILLIAMSON: Okay. What can you
tell us about the, I guess there's been talk that I guess
the first orders of the Bombardier planes will be going to
Aero Mexico. I don't know what you can say here or
post-hearing on that.

MR. DEWAR: Yeah. The only thing I can say is
that we can, you know, they're not going to go to U.S.
customers that's clear, and we're in advanced negotiation
with non-U.S. customers.

COMMISSIONER WILLIAMSON: Okay. Anything you
can put on the record post-hearing I guess.

MR. DEWAR: It may be in the post, thank you,
post-briefing.

COMMISSIONER WILLIAMSON: Okay, thank you.
This is for Delta. This morning I asked Boeing how this case might be different if you had bought CS-300s rather than CS-100s, and they said you have bought CS-300s. You have this option, and yet you've talked about the 100s and the 100 to 110 seat market. So I was wondering if you could address that.

MR. MAY: Sure. Having options to convert between aircraft is something that we do in all of our orders, where there are aircraft that with the changing in environments and our situation could drive us to have interest in that aircraft. What we have ordered though are the CS-100s, and we currently have no plans to convert to CS-300s.

These conversion rights, you know, I've been doing aircraft deals since '93 and I can't think of a single deal where we didn't have conversion rights between the aircraft offerings that the particular manufacturer had. We just completed a large narrow body deal where we've awarded it and we've also got in there that we can convert to mid-size narrow bodies.

In our wide bodies, we can convert between Trans-Pacific aircraft and our Trans-Atlantic aircraft. It's a very common occurrence and it's a recognition by the more sophisticated airlines that things change, the environment changes, but that has not occurred up until this
point.

COMMISSIONER WILLIAMSON: I assume that's not free, that option to do that, but I take it you provide it?

MR. MAY: No. It's a larger aircraft, so it's a more expensive aircraft.

COMMISSIONER WILLIAMSON: Okay.

MR. MAY: Yeah, and also there was no fee paid to have that conversion, right. It was part of the overall negotiation. So no fee and there's no deposit paid towards those larger aircraft. The only commitments we have are to the CS-100.

COMMISSIONER WILLIAMSON: Okay. I don't know whether post-hearing you might be able to -- and I asked this from Boeing this morning about how often do airlines really change the original order. I mean it happens frequently, but I'm not sure what percentage of --

MR. MAY: Greg May for Delta again. In my experience, change is the rule not the exception. If I look at our recent wide body order, we've already deferred aircraft, negotiated other changes and that order was only 2015 that that was completed. We negotiated changes in early orders. I mean the changes that you negotiate too are not minor changes and tweaks as you were led to believe.

You know, in certain orders we've cancelled as many of 40 percent of the aircraft without penalty. So once
you sign the purchase agreement, a good partner manufacturer
works with you, knowing when things have changed and that
you need to make a change, and that can be -- taking the
form of converting aircraft type, deferring aircraft,
accelerating aircraft or even cancelling aircraft.

COMMISSIONER WILLIAMSON: Okay. Now is there
sort of some cutoff period when you don't do this, or are
you -- it's more difficult to do that?

MR. MAY: It becomes more difficult from a
production standpoint when the aircraft is basically kind of
been very customized to be our aircraft, and that's
definitely within a 12 month window. But anything outside
of that, an aircraft is really not unique to us and can be
sold to someone else without incurring cost. Even then, if
it is within that window, you can still sell it to someone
else. There just may be some modification costs that are
incurred to move the aircraft to a different specification.

MR. MITCHELL: Ross Mitchell with Bombardier.
If I might, from a manufacturer's perspective, we certainly
see this as a relatively common occurrence. Airlines are
buying aircraft for many years out in advance, and they
can't always know exactly what seat count they will need for
an aircraft. So when you have a family you can move up and
down in the family. So it does happen.

We require a certain amount of notice, so we
know what airplane to build. On the C series line, for example, we have two customers who have taken delivery and one of those customers has converted airplanes from the 100 to the 300 in Swiss. So it does happen, and it's interesting to think about that in the context of the United order that we talked about earlier, where very quickly after the order was placed, it was converted. So you have to ask yourself how real the 737/700 order was when it was converted so quickly thereafter.

MS. ARANOFF: I think that the point we're making here is, you know, as Delta will probably tell you, I mean airlines include conversion rights in their contracts, especially because there often is a long time between order and delivery and demand conditions in the market can change, and airlines may change their minds about what their requirements are to serve their routes.

So that's why you will -- you might see conversions further on down the line as needs change. The United deal that's being talked about in this case, very, very different. Almost, you know, very shortly after United ordered 700s, United converted to much larger planes. That suggests it was not a change in demand conditions. It was that United never wanted those planes. So sort of the flip side of the question that you're asking.

COMMISSIONER WILLIAMSON: So I guess in
response to my question this morning, the fact that you can
build these planes soon at Mobile is not speculative. But
what's going to be ordered two years now is speculative?

MS. ARANOFF: What's going to be built two
years from now is speculative.

COMMISSIONER WILLIAMSON: Okay, okay. Thank
you. No further questions now.

CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

COMMISSIONER BROADBENT: Ms. Aranoff, wait. I
didn't quite catch your point on the United thing. They
never wanted the particular model? They converted almost
immediately. What is your sense of what was going on there?

MS. ARANOFF: Right. Well you'll remember
that Boeing, from what Mr. Mitchell testified earlier this
afternoon, that when Bombardier went in to United, United
told them that they were looking for -- that the CS-100 was
too big, that they were looking for a 100 seater and
Bombardier offered a CS-100 light that was, you know,
configured with 100 seats and they were told that Embraer
was in the competition and all along that was what they
knew about, you know, what United said it wanted and who
United was seriously considering.

When they got all the way to the end and
thought that they were about to be successful, all of a
sudden the next thing they heard was that, you know, United
had swooped in -- I'm sorry, that Boeing had swooped in out
of nowhere, made a very low-priced offer, and that United
had signed a contract for 737/700s.

Only a few months after that happened, United
converted all of its orders to larger aircraft, and is
taking no 700s and no Max 7s. So I think the point that we
were making there is well sometimes airlines convert their
orders some time further out because demand conditions
changed. There was not enough time that passed here for
demand conditions to have changed, and therefore it seems to
us that there never was a desire on United's part to buy
737/700s. They did it because they got that sweetheart
deal, which allowed them to convert to larger aircraft and
Boeing publicly said at the time that they did it because
they didn't want the C series to gain a toehold at United.

So to the extent that Boeing is using that
transaction as evidence that there was a competition between
Bombardier and Boeing for that sale, it's the timing of
those conversions that proves that that was in fact never
the case.

MR. MAY: Greg May from Delta, just briefly.

Understanding the operating economics of the 737/700, I can
genuinely tell you we were much more surprised by United's
order for the aircraft, even at very depressed prices, than
we were about them cancelling it, because we made no sense
of them taking 700s, new 700s because of its operating cost
disadvantage, its seat cost disadvantage.

COMMISSIONER BROADBENT: Well then what
happened for their need for the smaller aircraft? How did
things go then?

MR. MAY: They are -- my understanding, and
it's true I don't know if they've consummated it. But
they've been out in the market looking at used aircraft,
much as we were in this case, used A319s in particular.

MR. BAISBURD: Yohai Baisburd on behalf of Delta.

Going back to the earlier point about the United Campaign,
Boeing went to extraordinary lengths to keep the C-100 out
of the U.S. market. And in our prehearing brief we
mentioned some of the last-second inducements that were
offered to Delta before it finalized the deal for the
CS-100. And its confidential, but we will highlight that
again in the posthearing brief, because they really they
didn't want to have the validation. Boeing did not want the
C-100 to be validated in the U.S. market because it provided
Bombardier, I'm sure, an opportunity to sell more C-100s and
C-300s down the road potentially. And that's what's happening
here. And I think that if you look at it, what happened at
the United Campaign where they come in very low for a 700
and automatically gets converted effectively before the ink
is dry to a much larger aircraft, and the last-second
attempt to induce Delta not to take the CS-100, is the record evidence that shows the steps that Boeing would go to to try to keep Bombardier out of a major U.S. airline.

COMMISSIONER BROADBENT: But we still don't know what United is going to do with its need for the smaller aircraft.

MR. BAISBURD: I know they're not going to buy a plane from Boeing because Boeing doesn't offer a plane at 100- to 110 seats.

COMMISSIONER BROADBENT: Okay.

MR. DIMITROFF: George Dimitroff for the record. As an independent industry observer, United there have been media reports that United is looking at backing off temporarily but in the longer term United will have to reopen that competition, and I imagine it would reopen to Bombardier and Embraer.

MR. MITCHELL: Ross Mitchell for Bombardier. It's certainly the case that since the conversion of those 737 hundreds, United has been in the media discussing the 100-seat aircraft requirement. And they have had discussions with the manufacturers, both us and Embraer, about what they would like to do in that space. And so the airplanes they ordered did not fill the need in the first place. And then once they converted them, they certainly did not fill the need. And so given
that they had stated a desired need for 100-seat aircraft, that need is unmet today.

COMMISSIONER BROADBENT: Okay.

Mr. Levesque, what's Bombadier's perspective on what Mr. May said from Delta that the sales contract depends on the planes now being made in Alabama?

MR. LEVESQUE: I think the uncertainty in the planning horizon today, we were planning to deliver those aircraft out of Alabama, and we are taking steps, as my colleague said, to place the aircraft that were started under a planning for Delta next year to be sold to non-U.S. airlines. So that's the plan.

COMMISSIONER BROADBENT: Okay, but if you don't deliver them from Alabama, does Delta still have to pay?

MS. ARANOFF: So now, Commissioner Broadbent, you are getting into some commercial negotiations which are ongoing between Bombardier and Delta, and that's another reason why we hope you will ask us for an update in January. Because we do expect the parties to resolve that at some point.

Right now what you have is Delta's testimony that they are only going to take aircraft that are produced in the United States. The exact legal vehicle for that is still under negotiations.

COMMISSIONER BROADBENT: Yeah. It makes a big
difference for us, as you know.

MR. MAY: Greg May for Delta again. It is true, what Bombardier has indicated. We do not have a current commercial right to refuse, but we've made it clear what our desires are and it is an open negotiation.

COMMISSIONER BROADBENT: Okay. Let's see. On domestic like-product, if we do decide to define the domestic like-product as a single-aisle, large civil aircraft, as all single-aisle large civil aircraft, will need to look at conditions of competition. What key distinctions would you draw between demand conditions in the market for in-scope 100-150-seat large civil aircraft and the market for all single-aisle large civil aircraft?

MR. ESPOSITO: Joe Esposito with Delta. I can only go into the details of how we look at supply and demand. And what I mentioned in my opening comments, we actually have 12 different discrete airplanes. And within the 100- to 150 we actually use three different types of airplanes. We use a 100- to 110, 124, and then in the 130 count. So we see very distinct levels of demand in there.

And if we didn't have that and we see different levels because we serve such a vast network within the U.S. We serve such a vast network of 230 cities, and we serve some of the smallest communities in the country to some of the largest metropolitan areas where we fly 50-seaters, then
76. And if we didn't have that category at the 100 to 110, we would go from 76 seats to the Boeing definition of 138, which would be an 80 percent difference in supplying a market. And we would find markets just unsustainable to supply and most likely would not serve 230 cities at that point because we wouldn't have the right airplane and we would be uncompetitive in the marketplace.

So that is how we look at the marketplace from different slices of demand. And any carrier or any person can say its 100 to 150, and that's fine, but we do distinctly look at it in many different cuts. And so from 50 seats of an airplane to 260 seats is serving all of the different stairstep in demand that's out there in the marketplace.

MR. MITCHELL: Ross Mitchell for Bombardier. I think if you look at the entire single-aisle market as one market, what you will see in terms of demand from an OEM perspective is that the mid- to large-sized single-aisle has significantly higher demand.

You saw the chart earlier that was flashed up during the Boeing presentation. The Mach 8 and the A-320 neo have significant demand, significantly more demand than aircraft in the lower end of the market.

And most recently the demand has shifted again up to the A-321 neo as providing a lot of aircraft into the market today. So if you decide that the single-aisle market
is in fact all of those aircraft, then the portion of the market which we are talking about today has a much smaller demand for aircraft today, and fewer orders certainly than there is in that much larger segment that Boeing and Air Bus supply exclusively.

MR. ESPOSITO: And I can actually add one more comment, we are not the purpose of the airplane I know an earlier comment said it was for a transcon base, but the purpose of the 100-seater for Delta is really the size of the airplane. We didn’t buy the airplane to operate a transcon. A transcon is defined as from the East Coast to the U.S. to the West Coast of the U.S. It was designed to fill a specific demand within our network that will fly to our hubs, primarily, from smaller to medium-sized communities of the 100-size demand.

MR. MITCHELL: Ross Mitchell from Bombardier. If I may add one thing just on Mr. Epstein’s comment sorry, Mr. Esposito’s comment. We talked a lot this morning, there was a lot of discussion about transcon. And I want to just clarify something on transcon.

First of all, New York to Los Angeles is roughly about 2200 nautical miles. And if you look at Washington, D.C., you can see there 2550 nautical miles gets you anywhere you want in North America and beyond.

And there’s been an attempt to suggest that 2900
nautical miles is a relevant number. It isn’t. It’s only relevant to the extent that one of our competitors goes 2,850. They go 50 nautical miles less. Can they do transcon? Yes, they can.

The Embraer 190 E-2 and the Embraer 195-E2, can definitely do transcon. They’ve been excluded from this hearing by the definition of the scope that has been given by the Petitioner.

Do we see any fundamental difference there? No, we don’t. Do the airlines require transcon? Very rarely they will ask for transcon. The majority of the flights that they will fly with the C Series, and aircraft of its size, will be around 500 to 1,000 nautical miles, significantly below transcontinental.

COMMISSIONER BROADBENT: Okay, thank you very much.

CHAIRMAN SCHMIDTLEIN: Alright, I just have a couple more questions. If I understand you all, the Alabama assembly line is going to happen regardless of the outcome in this case. That’s what you’ve testified. Or at least with, it sounded like, a bit of a caveat, which was there is uncertainty in the planning horizon but today that’s the plan.

So can you elaborate on that, Mr. Levesque? What did you mean?
MR. LEVESQUE: When I said, it depends on the horizon, its about where the aircraft thats started to be built for Delta, which airline they would go to.

CHAIRMAN SCHMIDTLEIN: I see. Okay.

MR. LEVESQUE: So that was the only uncertainty. In terms of planning for the final assembly line, there is no uncertainty.

CHAIRMAN SCHMIDTLEIN: Okay. And all U.S. carriers will be served out of the Alabama assembly line.

MR. LEVESQUE: Exactly. And our plan is to do it as fast as possible, as fast as we can do it.

CHAIRMAN SCHMIDTLEIN: Okay. So given that, why not negotiate a suspension agreement, as was mentioned this morning. You know, since youre not going to be importing planes from Canada, why litigate this case and incur all the attorneys fees? You could negotiate a suspension agreement with Commerce Department, and youd be done, and start delivering your planes out of Alabama.

MS. ARANOFF: There are two answers to that, Commissioner. First of all, the deadline for requesting a suspension agreement, I believe, had passed by the time that the Air Bus-Bombardier partnership was the deal was completed and announced. Theres a deadline to proceed to ask Commerce for a suspension agreement, and it was passed. So thats sort of the simple answer.
CHAIRMAN SCHMIDTLEIN: Okay

MS. ARANOFF: The broader--

CHAIRMAN SCHMIDTLEIN: You would have pursued a

suspension agreement, absent missing the deadline?

MS. ARANOFF: I don't know. That's never been
discussed because it wasn't a possibility. So I can't tell
you what might have been done. I can tell you this, though,
having Bombardier having been brought into this proceeding
obviously unwillingly by Boeing, and having litigated it for
the last quite a few months, very hard at this point, feels
that we have a very strong case both legally and factually
before this Commission and would like to be vindicated with
a final determination.

CHAIRMAN SCHMIDTLEIN: Okay.

MR. BAISBURD: Yohai Baisburd from Delta. I don't
want to sound naive here, but I feel compelled to say this,
which is: We still believe in the rule of law. And there's a
statute that applies both here and at Commerce. And we tell
our clients that you have a basis for winning these cases,
whether you're on the Petitioners side or the Respondents
side when there's substantial evidence that meet the
requirements of the statute, whether you're on the
Petitioners side or the Respondents side.

And I would echo what Shara said, which is we
think that this case that Boeing brought is not warranting
of relief. And the fact that there is ayeah, there are
developments that have occurred that have changed the
industry. I'm sure Greg will say that when he negotiated
this deal in 2016 he wasn't thinking about antidumping and
countervailing duty risks in the United States.

Well that's changed, and that has changed forever
now. So businesses these are large, smart, sophisticated
risk-adverse enterprises on both sides of all these of the
table, and they're going to act accordingly because there has
been a new risk factor injected into this industry.

But that doesn't change the fact that Boeing
abandoned this segment of the 100- to 150-seat market. And
because of that, and their actions, and the statements
they've made, and their approach to this case, doesn't mean
that they should be rewarded because they just filed the
Petition.

The evidence does not warrant it, and that is why
we are here defending it because we think the Commission
will reach the appropriate decision based on the record and
the statute.

CHAIRMAN SCHMIDTLEIN: Okay. Yeah, I didn't know
that there was a deadline. Suspension agreements are
basically settlement agreements, so I'm surprised to hear
there's a deadline that shuts you out from trying to do that.
But I believe you. And we have a lot of cases that settle,
not on the Title VII side, but on the 337 side which is a
different area but somewhat analogous.

Alright, there was also talk of the parts that
are included within the scope. Partially assembled is what
the language is.

So I wonder if you could address that and give us
an idea of what parts would be imported from Canada to
Alabama to be assembled into the completed plane, and
whether or not you believe those would be subject to an
Order.

MR. LICHTENBAUM: Sure. I'll start off, but
perhaps Rob will follow. Peter Lichtenbaum for Bombardier.

So I guess the first thing to say here is that
certainly we have a very different understanding of the
scope of the Order than Boeing articulated this morning.
The scope, as you correctly point out, Chairman, is aircraft
fully or partially assembled.

In many Commerce Department scope determinations
there is, for scope language, there's reference to
components because that's something that Petitioners have
requested, and parts and components thereof. Boeing never
requested parts and components thereof to be included in the
scope. And so our understanding from the beginning of this
case has been that what Boeing targeted were aircraft,
fully or partially assembled aircraft. And what partially assembled aircraft are are green aircraft that have not been they're not ready to fly passengers on. They don't have all the interior fittings and kitchen and whatnot, but they're an aircraft.

And so an engine is not an aircraft. An aft fuselage is not an aircraft. Whether fully or partially assembled. So we will see potentially tomorrow when the Commerce Department issues its final determination, whether they address the scope issue. They have three possibilities before them.

One is to address the scope issue and rule that an aircraft means aircraft and not components. One is to rule that aircraft means aircraft and components. And one is simply not to address the issue whatsoever. So we will see what the Commerce Department does tomorrow, but our position is that they should rule. They should address the issue, and they should rule that aircraft means aircraft.

You know, Bombardier, like Boeing, has a global supply chain, and so parts come in to Mirabel from all over, just like they come into Renton from all over. There are certain items that are currently sourced from Mirabel in Canada, but as to whether those would be whether those sourcing patterns would continue exactly as they are, you know, I don't know. It might depend on that, the Boeing one
you have up there (indicating a slide) showing how
everything in the Boeing plant comes from elsewhere.

But whether the patterns that exist today in
Mirabel would continue, particularly if Commerce were to
include components in the scope, you know, that remains to
be seen. And so that is an important point for you. This
morning you had the exchange with Mr. Novick about imminent
imports, and Mr. Novick suggested that the potential for
parts to be imported from Canada to fulfill the Mobile
production would be sufficient to meet the statutory
requirement for imminent imports. I would have to say our
view is that's incredibly speculative.

There's no data that the Commission has been able
to collect on the record because Boeing never said that they
were interested in covering parts. This is very late in the
game. And so we really don't think that there would be data
that you would need to be able to point to substantial
evidence on the record as to imminent imports based on parts
that frankly we don't even know yet what we would be
importing from Canada for the Mobile facility.

CHAIRMAN SCHMIDTLEIN: Well that was the next
question. Do you know what you plan to assemble in Alabama?

MR. LEVESQUE: Well it's exactly the same that we're
doing in Mirabel. So components, as just explained, is they
come from all over the world. Some components come
currently from our own factory in Canada.

CHAIRMAN SCHMIDTLEIN: Well would you beyou know,
you'll be making the fuselage in Canada, I assume?

MR. DEWAR: Maybe Ill explain. So its exact
sameour plan in Mobile is exactly the same replica of
Mirabel. So we have the parts coming from all around the
world coming to Mirabel. It would be the same thing coming
to Mobile. The fuselage comes from China--

CHAIRMAN SCHMIDTLEIN: Okay.

MR. DEWAR: and from other parts of the world.

In fact, the content of Canada for the fuselage is really
just a cockpit and a small section of the aft fusel, very
minor components comparted to the scope of the whole--

CHAIRMAN SCHMIDTLEIN: So the planes that are
finally assembled in Alabama, will they be worked on in
Mirabel before coming to Alabama? No?

MR. DEWAR: No. Zero.

CHAIRMAN SCHMIDTLEIN: Okay. So this morning the
Canadian Ambassador referred to the U.S. suppliers that
right now provide parts to Mirabel, and said that this would
put these jobs in jeopardy. And I was a little bit confused
by that, because why wouldn't those suppliers then just ship
the parts to Alabama to be assembled?

MR. DEWAR: Absolutely. So maybe a few things to
clarify. So its the same scope of work exactly. The same suppliers. In fact we believe that we will need increased capacity, and that in fact will actually be creating more U.S. jobs than exist today.

CHAIRMAN SCHMIDTLEIN: So was he I mean I have his statement. He provided it in writing. He says, U.S.-made components contribute over half of the value to the C Series aircraft. These components were supplied by American companies directly supporting roughly 23,000 well-paying jobs in many U.S. states, including Connecticut, Florida, New Jersey, Washington, da, da, da, da. Simply put, an affirmative determination would put U.S. jobs in jeopardy.

So I was confused by that.

MR. LEVESQUE: Let me see if maybe I can answer that. I think basically what he was referring to is that Boeing basically wants the C Series to disappear, and the C Series jobs in the U.S. would disappear.

CHAIRMAN SCHMIDTLEIN: I see. Okay. Okay, Alright, I don't have any further questions. Who is next? Vice Chairman Johanson.

VICE CHAIRMAN JOHANSON: Thank you, Chairman Schmidtlein.

Given that it is Bombardiers argument that the Alabama plant will negate the need for subject imports, thereby triggering negligibility under the statute and
eliminating any potential threat of injury, what evidence
can you provide that the Alabama plant would not be
withdrawn or dissolved if the Commission were to reach a
negative determination?

MS. ARANOFF: Well we have given you two different
kinds of evidence to that effect. And because this is such
a new development, and because we dont have the full
regulatory approval yet to go forward, its a little bit
difficult to go further than that.

But weve given you, number one, the business
case, which Mr. Leveque testified to, about why it makes
sense for the partnership between Bombardier and Air Bus to
have this production facility in the United States, and the
partnership is something that, discussions of which certain
predate the filing of the Petition in this case.

So one reason is the fact that there are business
reasons to go forward.

The second reason that weve discussed and that
our colleagues from Delta were also talking about earlier,
is that the entire competitive landscape was changed by
Boeing bringing this Petition. Prior to Boeing bringing
this Petition, a U.S. airline looking to buy an aircraft
would never have thought that they might face the risk of
antidumping and countervailing duties.

But now that that genie is out of the bottle, it
is not going back in. And U.S. airlines now want assurance
that they will not have to face that risk. And in the case
of the C Series, that means they like the aircraft, they're
interested in the aircraft, but they don't want to take the
risk of ordering them from production in Canada.

MR. MAY: Greg May for Delta. I just want to
confirm what Shara is saying. It's a different world and its
not a risk that we want to take. We've made clear our
intentions to only take deliveries out of the U.S.

VICE CHAIRMAN JOHANSON: Okay, thanks, Ms. Aranoff
and Mr. May.

Do you have any idea what the value added to a
finished C Series aircraft through the final assembly alone
in Alabama, do you know what the value added to that would
be?

MR. DEWAR: Of course we do, and it's confidential
so we'll provide that in the postbriefing.

VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.
Dewar. I look forward to seeing that.

At the prehearing conference Bombardier stressed
that adhering to its production ramp up schedule at its
plant in Quebec is very important, and Bombardier stated,
quote, we are forced to achieve that rate. End quote. This
can be found in the conference transcript at page 214.

How will Bombardier adhere to its production ramp
up schedule if the C Series is sold to U.S. customers through the plant in Alabama? Are you just giving that up?

MR. DEWAR: No. So as we mentioned earlier, a ramp up in Mirabel would be for non-U.S. customers. So we'll continue to ramp up the program in line with those customers and that demand, and we mentioned that Mobile of course will be used for deliveries to the U.S. market.

MS. ARANOFF: I think Mr. Dewar can maybe just talk a little bit more. Mr. Mullots comment from the prelim was taken significantly out of context, and I think we want to rectify that a little bit.

MR. DEWAR: So I said in my testimony earlier this afternoon, it's no secret that we've had a lot of challenge in the ramp up in Mirabel. And so I did testify that last year we had planned to deliver 15 aircraft, and in fact we delivered 7. This year our plans were to deliver between 30 and 35 aircraft, and as I testified this morning it will be approximately 20. So we have had a number of challenges with our supply chain that I referred to at Pratt & Whitney, and some other suppliers.

And it is a clean-sheet design with high technologies, so there is a learning curve that we have to get through. So those are the capacity reasons that I spoke about.

MS. ARANOFF: But just to clarify it a little bit
further, Mr. Mullot, like Mr. Dewar, are operations people. They are looking at the production line. And so when they talk about getting up the learning curve and increasing production, they are talking about getting experience under their belts so that they can feel confident that the line can operate efficiently.

They are not marketing people, and they were not making a statement about the marketing intentions of the company. So really when he said that, that there was a need to get up the learning curve, he was talking from sort of a technical perspective about what he was trying to achieve.

He was not talking about any sort of imperative to sell the product. Maybe Mr. Mitchell can comment on that.

MR. MITCHELL: Ross Mitchell for Bombardier. Certainly that’s the case. Sebastian Mullot is not in the marketing department.

From our perspective, we will use Mirabel now to supply the rest of the world, and Mobile to supply the U.S. The U.S. market does make up a significant portion of the world market, roughly about 20 percent, perhaps 25 percent. Its been declining over time simply because other markets are now becoming more important: India, China, Asia, are
becoming more important in the overall aerospace market.

We believe that there is significant untapped need for an aircraft like the C Series in a number of these markets, China being a significant potential customer. And the Mirabel plant will fulfill that. And we believe that the Air Bus transaction once completed will generate more interest in those markets because Air Bus has a global reach. So I think the Mirabel plant will continue to supply the rest of the world. Mobile will supply the U.S. market. And I think that’s definitely our plan moving forward.

VICE CHAIRMAN JOHANSON: Okay, thanks for your responses.

In its brief on page 3, Bombardier argues that the current launch or marquee C Series pricing sets no reference point for future sales. At what volume of market share do you believe that the C Series will no longer need to compete on the basis of this type of pricing, mainly the launch or marquee pricing?

MR. MITCHELL: Well I think as we testified earlier Mr. Mitchell for Bombardier as I testified earlier, one of the reasons you would have launch pricing is to deal with the risk of entry into service in the early stages of an aircraft program. And so as the aircraft begins to gain acceptance in the market, as you begin to get the feedback from the airlines that says the airplane is terrific, its
doing what bombardier says it should, then the need for this
type of pricing diminishes significantly.

As we testified earlier, Boeing themselves have
used this. The 787 encountered significant issues on entry
into service. In fact, to a certain extent because our
aircraft has advance technology the experiences of the 787
affected us, because it went out into the market and had a
number of entry-into-service problems that airlines had to
deal with.

And not just dealt with back then at the entry
into service, but continue to deal with. And so certainly
our aircraft has had a smooth entry into service if you
compare it to some of those other newer generation aircraft.
And so now that that has happened, the airlines see that the
risk is significantly diminished and there will be less need
for this sort of thing in the future. And certainly I think
we can demonstrate to the views of our customers in the
postconference brief and what they think, and how the
airplane is performing in service, and you will see this for
yourself.

MS. ARANOFF: I saw you squinting a little bit
at this chart up here, which looks a little bit confusing
and comes from an outside source, Leeham News. But what
this is basically showing you is a pricing curve. The curve
hasn't been drawn in, but it shows you how the prices start
out low, the launch pricing, and then they go up over time for the models that are on the chart.

VICE CHAIRMAN JOHANSON: Okay, thanks, Ms. Aranoff and Mr. Mitchell. And just to clarify, has there been any movement of machines or dirt yet in Mobile as a result of the joint venture? Or any ribbon-cutting ceremonies?

MR. LEVESQUE: No, there hasn't been. Just planning steps.

VICE CHAIRMAN JOHANSON: Okay.

MS. ARANOFF: They can't do that, Commissioner, until they get any trust approval that they would need.

VICE CHAIRMAN JOHANSON: Yeah, okay, that makes sense. So, but you're still awaiting antitrust approval? Okay. That's kind of a big step.

MS. ARANOFF: It needs to be sought in a number of countries, and if you take a look at our prehearing brief, you'll see that there's been some progress, but the process isn't over.

VICE CHAIRMAN JOHANSON: Okay. And then I think I had just one more question for you. On Page 9 of Boeing's brief, it mentions that Bombardier did not cooperate in Commerce's antidumping investigation, which resulted in duties of almost 80%. Is there any relevant background to that decision, for you all not to cooperate in the
investigation, which you wouldn't mind sharing here?

MR. LICHTENBAUM: I think it's somewhat of a mischaracterization. You know, essentially, without going into too much detail about dumping calculations, they were seeking information that is really not in existence, and therefore, Bombardier was not in a position to provide.

The nature of a dumping calculation involves comparison of costs and if you haven't got an airplane yet, that is, sufficiently produced in order to calculate what the costs are, then it's not really possible to answer these questions. And so we felt, the company felt that it was being asked to speculate and provide a number of different scenarios as to cost that it really couldn't stand behind what the answers might be.

They would really be hypothetical answers. And so, in our view, frankly, this is a direct result of Boeing bringing a case that is very unusual from a dumping standpoint. You know, normally because it's -- you're only talking about one sale about a plane that hasn't been built yet, and no imports into the U.S. -- and so trying to come up with dumping numbers that you can certify to, to the Commerce Department, we in the company felt it was really not possible. So we've explained that in abundant detail at the Commerce Department, and if you'd like, we can provide you those filings as an attachment to our post-hearing.
VICE CHAIRMAN JOHANSON: I'll just take your word.

MR. LICHTENBAUM: I thought you might.

VICE CHAIRMAN JOHANSON: We've got plenty else to get through. And that was my last question. So, it's not my most important one. But I'd like to thank y'all for appearing here today.

COMMISSIONER WILLIAMSON: Thank you. Just a few more questions. What is the status of Republic? And is there any reason why expectation of Republic will take delivery of the aircraft they ordered from Bombardier within the next few years?

MR. MITCHELL: The Republic order is still on our books. Republic ordered the aircraft a number of years ago. As you may know, they went through a bankruptcy proceeding and have emerged on the other side. So we continue to have discussions with Republic about the aircraft. As to when it will deliver and in what form, that's not been determined yet.

MS. ARANOFF: I should just add, Commissioner Williamson, that back at the staff conference in the preliminary part of this investigation, Mr. Novick did tell the staff at that time that they didn't base their petition on the Republic sale. They weren't concerned about the Republic sale and didn't consider it injurious. I may not
be quoting him exactly, but please do check the transcript.

COMMISSIONER WILLIAMSON: Okay, thank you. You might want to do this post-hearing. What number of orders do you need to make the C-100, C-300 viable? On ongoing production models? And I guess I would like, when you answer that question, if it's just Mirabel and Mobile, and does that make a difference in what your answer is? As I said, you may want to address it post-hearing.

MR. DEWAR: Yeah, exactly. So I guess it's in line with what a standard number of aircraft in the industry would be and we can provide that again in a post-briefing.

COMMISSIONER WILLIAMSON: Okay, thank you. No, there are public estimates that Delta purchased the CS100s for $19.6 million and $23 million for aircraft. Why wouldn't other airlines that compete with Delta, demand similar pricing? And I know this is statement about that they don't know, but if there's speculation out there, I'm sure there's no harm in asking for low price. So why wouldn't they?

MR. MITCHELL: I think there's a general recognition that launch customers get different pricing than everyone else. And I testified earlier that the actual price of the aircraft is a small determinant of the cost of the airline, and it makes up roughly -- ownership cost makes up roughly 20% and price is only one component of ownership
Remember that some airlines have better credit ratings than others, so they'll get different interest rates. They'll get different deals from lessors. So it's a very complex process to come up with exactly what the ownership cost differential is. And I must say, there are a lot of public reports out there about pricing. And you see them often and they're almost always wrong. In fact, they're always wrong.

And so, you know, for an airline to come in to see me and suggest that they saw a price in a particular article in a newspaper or magazine, and that's the price they want, that's a rather unsophisticated way to do a negotiation. I think what we try to do when we negotiate prices with customers is we talk about the value of our airplane and determine a price with the customer that works for them, that makes their business work.

Because that's what they're most concerned about anyways. They're not necessarily concerned about what the last airline may have got on a deal, or what has been reported. What they're most interested in is making sure they can make money based on their business model, given the fares that their customers will pay.

MR. MAY: A different campaign that I would comment on is, Delta, a few years ago, bought the Airbus
A350. We were not a launch customer. I'm very confident we
did not get launch pricing, but the pricing we got was fair.
It made our business case for going after the aircraft. We
were looking at that aircraft to replace our 747-400s, as
has been stated here multiple times, ownership is just a
minor piece of the overall equation.

I've seen a few drafts that concern me a little
bit on what's being shown as far as overall costs. When we
buy an aircraft, we keep an aircraft generally at least 25
years, 30 years. So if you're looking at your total
maintenance costs -- of your costs, maintenance costs
outweigh the ownership cost. Fuel outweighs the ownership
cost, and it's all about comparing what is my next best
option when I'm making the decision. Not what is
potentially rumored in the press or elsewhere that somebody
else got.

MR. BAISBURD: Yohai Baisburd with Delta. This
morning, Boeing talked about looking at city pairs. But
that's only a very small part of the analysis that the
airline does when it builds out its network. So Joe
testified this afternoon that he projects a schedule out for
331 days. And if an airline that only flies a Max 7, every
time it goes from Point A to Point B has to put a 138,
roughly, people in that plane.

Well, Delta has greater flexibility. So at the
same time, because there's less demand on that day, Delta can fly a smaller aircraft. Or if there's great demand, they can fly a bigger aircraft. But what they have out there in the market is an inventory of seats. And those seats are set with a projection out for 300 or so days.

And whatever fare is charged on an airline at any given time is based on supply and demand and we all know, because we're all consumers of airline tickets, is that they can fluctuate widely and they're not tied to the underlying aircraft. They're tied to demand, when you bought it, why you bought it, where you're going, early in the morning, late in the afternoon, in September.

But Boeing doesn't offer that. I mean it's so fundamental to this case. Like, Boeing does not give a U.S. airline the capability to buy something with less than 138 seats. In fact, they told you -- they were proud of it this morning. They said, in a 100- to 150-seat space, how we're gonna supply this market is we're going even bigger. We're gonna max out at the Max 7 at 138. And fares are independent. They're set by supply and demand.

MR. DIMITROFF: George Dimitroff, if I may, I'm from Flight Ascend. As an appraiser, this is one issue I really want to comment on. As appraisers, we hear a lot of rumor. I mean, it's our job to find out what aircraft are really worth in the market, right? And we hear a lot of
rumors. We hear rumors all the time, and the interesting
ting, as appraisers, we get a view of the market
from many different angles.

But if you're an airline or a manufacturer, you
only see the angle of the build that you're negotiating.
And one thing we do see all the time is how different -- we
often see different prices rumored for the same deal. So
even for the Delta deal and for the 737-700 deal, we've
actually seen or heard rumors for several different levels
of pricing.

And even if people claim it's scientifically
calculated from a 10Q or from a financial report, when we do
our calculation, when somebody else does their calculation,
we actually get different results, because there's so many
assumptions that have to be made, like, so they -- have
reported this amount, so if we assume that they paid 1%
deposit on signing, but what if they didn't pay 1%? What if
they paid 2%? Because that can make a huge difference.

So the prices rumored are not fact. And I think
airlines know that. And I think they can try to ask for
that rumored price jokingly in a sort of cordial
conversation with the manufacturer. But manufacturers will
stick to their guns, especially once the order book is now
much more filled and has the endorsement of a few solid
airlines.
COMMISSIONER WILLIAMSON: Okay, thank you. I was interested in that chart that Delta had, showing the, I guess it was the cost of the CS100 compared to the other airline. And I noticed there has been very little talk about the weight of the different planes. And I guess, which translate also into fuel efficiency, but I know engines are a factor. So the question I'm asking is, is it possible, and I guess petitioners to comment on this, to get an impression of where the CS100 and 300 fit with basis to 737-700? In terms of relative cost -- the things that are important to the airline when they decide to --

MR. MAY: Yeah, we'd be happy to, as part of our post-hearing brief to give you numbers and details that give the exact, marry up with these, this is a precise graph of how we evaluate the economics of each of the aircraft. We're not showing the numbers for confidentiality reasons, but we'd be happy to share those. But you can see the magnitude of the difference, how much lower cost the CS100 is, even though it has fewer seats.

So this, again, generally, more seats, on an airplane, you're spreading those costs across a bigger denominator. But the 700 is vastly inferior to the CS100. The manufacturers' jobs and my job as a buyer is, you see there's a new line kind of forming. It's to keep bringing that line down. And that 700 is now in the history books.
It's no an aircraft that you would to acquire now.

COMMISSIONER WILLIAMSON: And you're partially saying that's because of the weight of the --

MR. MAY: Yes, it's heavier, and so it has greater fuel burn, higher landing fees, all those things go into our analyses.

COMMISSIONER WILLIAMSON: Even with more efficient --

MR. MAY: The NPV analyses, it's true is what is done. And all those various costs are included.

MR. MITCHELL: Commissioner, I think you raise a good point. You know, we've talked a lot about seats, but we haven't talked a lot about weight. But weight can be used to show the differences between aircraft. So I did jot down the weights of a few aircraft, which I could give you now.

The Max 7 max takeoff weight is 177,000 pounds. The CS100 is 134,000 pounds. So that's a significant difference between those two airplanes. The CS300 is 149,000 pounds. So again, it's a significant difference. The difference between the Max 7 and the Max 8 is small. It's 177,000 pounds to 181,200.

So when you look at the weights, you can see what airplanes are kind of grouped together and what airplanes are more efficient and less efficient. And the
weight of the Max 7 is what precludes it from ever being
considered in a competition with our aircraft which are
significantly lighter and have more advanced technology.
And so the weight is an important consideration, and it does
show you the difference between our family of aircraft and
their family of aircraft.

COMMISSIONER WILLIAMSON: Okay, thank you. I'm
assuming you might wanna comment on that post-hearing.

MR. ESPOSITO: And Commissioner Williamson, just
wanted to point out that, you know, when you look at where
that falls in the costs, that's the reason we only have ten
of those airplanes. And we bought them for very specific
mission reasons, for hot and high type airports. And that's
why we would never purchase anymore than what we have today,
because of the cost profile of that airplane.

Because we already have it. We already know
what it costs us to operate. And then when you look at,
also, where the cost line, where the curve of that cost is,
that's also, falls very similar to how consumer ticketing
falls, and where the profitability of an aircraft within our
family, meets the line because we can't charge a premium to
the consumer because they got on a different type of
airplane. The market determines the pricing, so a different
-- so that's why it has to be fluid along that curve,
because pricing to the consumer doesn't recognize the
different type of airplane.

COMMISSIONER WILLIAMSON: Okay. I don't want to get too much into this, because it's getting late. But, in thinking about the discussion about the range of these different aircraft and how they'll be used. And I think it's true that planes are flying fuller than they were, say, ten years ago, and I assume this is a phenomenon that's everybody accepts now, you're gonna pack more of us into the plane.

So I wonder what implications that has for the importance of this, like, 100, 110 segment, versus the larger planes.

MR. ESPOSITO: Well, you know, when you look at our fleet, we, again, have a wide range of airplane types and we just purchased the largest of the narrow bodies, the 739s and the 321s, and we also operate 50-seaters. So it does come down, even though planes are fuller today, we still do fly to markets like Augusta and Duluth, Minnesota, that are very small and aren't growing as quickly as other metropolitan areas, and so they still have a need in our network to be serviced the proper way.

And that's why we look at ourselves as a full-service airline to the U.S., where, for example, other carriers have not elected to go into those types of markets. It's like Southwest Airlines. We fly 230 cities, Southwest
has been very successful at only operating to about 85
cities in the U.S. Because they only fly to the biggest
cities. And therefore, they had not a need to buy smaller
than the 737-700 in their 40-year plus history.

But that's the business model that we've
selected, and that's why it is critically important to get
each one right and if we miss that critical gap between 76
seats and then jump right to 138 seats, that's an 80%
increase in supply to the marketplace. And there we would
find a very uneconomical flying, or we would not be able to
serve some communities.

COMMISSIONER WILLIAMSON: Okay. And when you
talk of --

MR. BAISBURD: It's also -- planes are flying
fuller if you get the right size for the demand for that
flight on that day at that time. And so that is, I think,
critical, just some quick math. If you buy 75 Max 7s,
that's 29 extra seats per plane, or 2,175 extra seats.
That's the equivalent of 20 additional CS100s. So the seats
get filled and the plane flies full if you have the right
demand for the right capacity that you're offering at any
given point in time.

COMMISSIONER WILLIAMSON: Okay, thank you. And
when you talk about -- you're talking about Delta and Delta
Connection?
MR. ESPOSITO: Yes, sir.

COMMISSIONER WILLIAMSON: Okay, good. I just wanted -- okay. That's all the questions I have. Thank you.

COMMISSIONER BROADBENT: Okay. If there's potential that Bombardier's Canadian exports to Delta will occur within the next several years as planned, then subject imports are not negligible for purposes of threat. Given that Bombardier's brief has argued that these deliveries will not occur, can you provide stronger evidence to this effect in your post-hearing brief? Could we get sworn statements from Bombardier? That would be helpful.

MS. ARANOFF: We'll give you what we can in our post-hearing brief.

COMMISSIONER BROADBENT: Okay.

MR. BAISBURD: Can I make a clarification? Just conceptual. There's a difference between delivering a plane and it being imported into the United States. And I think that that's a distinction that is relevant, right? Because the threat analysis and imminence and negligibility is based on imports into the United States.

COMMISSIONER BROADBENT: Right, yeah, that's what I meant. Yeah. All right, let's see. For Bombardier, did you state to the Commerce Department that the proposed transaction between Bombardier and Airbus has not been
finalized and determinations based on it would be speculative, as asserted by Boeing on Page 75 of their prehearing brief?

MR. LICHTENBAUM: I want to be clear about what we said at Commerce, so thank you for asking that, Commissioner Broadbent. We were explicit at the Commerce Department, that the transaction uncertainty related to the regulatory requirements, i.e., the anti-trust approvals that we talked about earlier this afternoon. So it has nothing to do with commercial decisions.

If you'd like, the proposed transaction has not, due to regulatory requirements, been finalized. And so, that was the uncertainty that we spoke of to the Commerce Department. We've made, of course, significant headway on those lines since that was a month ago. And we expect to make more headway on it on the regulatory requirements by mid-January.

The other thing I wanna emphasize is that the Commerce Department's task is very different than the Commission's. We were emphasizing to them that it was a forward-looking question that they were asking us, which is not appropriate for them because their focus is on a POI that occurs in the past.

And there's many cases which are cited in our submission to the Commerce Department, that they focus in a
particular POI and disregard events that happen after that
POI, whereas the Commission's determination is in a threat
context. Obviously, it's inherently looking forward, and so
with all respect to counsel, I think they're taking
statements that are made in one legal context completely out
of context, to present them to you here.

In any case, the uncertainty that we are
referencing was relating to the regulatory issues rather
than any commercial uncertainty.

COMMISSIONER BROADBENT: Right. But we're just
trying to figure out what's gonna happen and what we can
depend on and not. And this regulatory process seems to
give you guys a huge out.

MR. LICHTENBAUM: Well, I guess it doesn't feel
that way, but you know, we've stated in our prehearing brief
already that we received a certain approval, which is a very
significant approval. And so I would refer you to that.
We're receiving more approvals, so it's not like this is a
hypothetical process that could go on for years and
therefore may not happen.

This is something where we're receiving
approvals practically on a daily basis. So that's -- when
we say, checking back us in January, we expect to have some
very significant information to report.

MR. BAISBURD: I would add that you've heard
today from Delta the importance they place on getting
deliveries in the United States, and the economics that are
tied to the benefit of having U.S.-produced aircraft, and
the expansion of the U.S. aerospace industry.

I'd also point out, it's not the first time that
the United States economy has seen this kind of impact,
right? There was a case on passenger vans from Japan. And
there was also significant Japanese, Korean, and German
investment in auto manufacturing in the U.S., which puts
them beyond the reach of dumping and countervailing duties
brought in the United States.

So this phenomena where you have large
capital-intensive investments that are long-term, which
long-term customer relationship can lead and has led in the
past to significant U.S. manufacturing expansion. And
that's exactly what's happening here, and it's happening for
good, solid reasons, and building an ecosystem and eco
structure in Alabama and the rest of the supply chain.

Today, right?

Absent this case, that CS100 still had more than
50% U.S. content. Now that content is gonna be even higher,
and a lot of that content doesn't have to cross the border
into Canada and then come back to the United States. It'll
stay in the United States, presumably, and if I understand
correctly what I've heard here today.
So I think that there are examples, historically, of how the chilling effect that bring a petition can have on an industry, even when the petition's unsuccessful. There is no order on passenger vans from Japan. And you've heard the compelling benefits for a U.S. carrier of taking delivery in the United States for aircraft that are manufactured here.

MR. MC LAIN: I just want to emphasize on that point again, the extraordinary disruption that the threat, just the threat of filing one of these petitions causes the carrier and the fleet-planning process, that's why the manufacturer in the United States -- that's why the trade risk that none of us ever really gave much thought to before now is so important.

If you can't plan your fleet, you can't run your airline, and you can't do it, you can't enter into these agreements if you face the risk that Boeing will file another petition, whether or not it's meritless, you spend 18 months of uncertainty trying to figure out how it's all gonna come out. That's why Delta will not import any of these aircraft into the United States.

COMMISSIONER BROADBENT: Okay well, I was just trying to get to Mr. Lichtenbaum's use of the word speculative, and you can just clarify that for the record, that would be helpful.
MR. LICHTENBAUM: Yeah, we're glad to.

COMMISSIONER BROADBENT: Okay. For Bombardier, are you currently producing the aircraft that you owe to Delta under the 2016 agreement for first delivery in 2018? If so, what is your current plan for those aircraft?

MR. DEWAR: Yes, as I testified earlier, those aircraft will be delivered now to non-U.S. customers and we are in advanced discussion with non-U.S. customers for those aircraft.

COMMISSIONER BROADBENT: Okay. This would be for probably Delta. Boeing asserts that customers are easily able to past pricing information, interpret news reports and financial statements, as well as other business intelligence reports in order to discern the most recent price paid for an airplane in a particular market segment.

In this manner, prices are relatively transparent in a market with few relatively sophisticated market participants. Given that you have stated the pricing is opaque, do you disagree with Boeing that firms can use these methods to discern market pricing?

MR. MAY: Very strongly disagree with Boeing on this point. And just further -- this isn't just my experience at Delta -- I've been involved in acquiring aircraft, selling and buying aircraft since 1993, and it really has not changed a lot. It's people maybe hear
rumors, but you hear conflicting rumors.

It's not like automobiles, where you've got Bluebooks that people can rely on, or anything like that. There are appraisers that estimate values, it would be maybe interesting for you to look at the difference in appraisers, one appraiser versus another appraiser will have a 20% value difference in what they think an aircraft is worth their cost.

MR. BAISBURD: If I can add, the purchaser questionnaires, I think, are pretty clear on the value that purchasers place on price relative to other factors in making their decision to acquire a particular aircraft, right? We've heard it multiple times today. The acquisition price is less than, or around 20% of the total operating costs.

And you saw the curve. That curve was without taking into account purchase price. We did it that way on purpose, so it could be on an even level. And so I would say that it's not just whether you know the price or not, which Greg was very clear that there's no clear source of actual pricing information, but the impact of whether you know that price or not is limited and the purchaser questionnaires themselves, I think, clearly show that.

MR. MITCHELL: If I may, the purchase price of an aircraft is quite complicated, too, and I think maybe
that hasn't had enough attention. There are a number of factors that can change what the end price is, including the optional features you put on the aircraft, which can be several million dollars in difference between one customer and another.

The requirements of the customer vary widely. The requirements for training and other support that we might give them as a part of that purchase can also vary widely. And so accurately saying what the price is on any one transaction and comparing it to another, is very difficult.

COMMISSIONER BROADBENT: Okay. Ms. Aranoff, about a year has passed between Bombardier's Delta purchase agreement in 2016, and the filing of this petition in 2017. Why was Bombardier unable to get additional U.S. sales and what does this suggest about commercial momentum?

MR. MITCHELL: I think, first of all, on commercial momentum, I think it's a word that gets tossed around here a lot. I'm not sure it's a defined term exactly. I think you saw the answers that the folks gave earlier, which were not clear to me, and I'm in the industry.

I think why we didn't sell an airplane from the time of Delta until the petition was filed, is simply that these things are complicated. They take a long time to work
through and we are certainly out there marketing the airplane. But remember, from '16 to '17 was our first year of service with the airplane with the CS100 at SWISS. And a number of customers would've been looking at the entry into service process.

How did we do? As I mentioned before, other manufacturers have had difficult entry into service, which has cost early airlines a lot of money, and has been difficult for them in their systems. So for us, we continue to market the airplane, but it's not uncommon in a geographical area for us not to have sold the airplane within one year while we're in the entry into service process.

MS. ARANOFF: So let me just circle back from what Mr. Mitchell has said, and say, you know, we heard a lot of reference this morning from Boeing about commercial momentum and as Mr. Mitchell said, it's not clear that everybody knows what that means.

But one important takeaway, you cannot buy commercial momentum no matter how low you set your price. Because customers are looking, with the new aircraft, for performance and service. So you might give out launch pricing, get a customer, put the aircraft into service, but then the aircraft has to perform, and subsequent customers are gonna be looking for that.
So if you're just gonna tie commercial momentum
as something that you can go out in the marketplace and buy,
it doesn't really work that way in practice.

MR. BAISBURD: Also on this commercial momentum
point the Max 7 hasn't had an order since 2013. So from
2013 to 2016 when Delta made its order you can't argue that
the CS100's stole or took or somehow took away commercial
momentum because the Max 7 didn't make a sale for three
years for this Delta purchase and hasn't made an order, as I
understand it since then.

CHAIRMAN SCHMIDTLEIN: I just had one last
question -- can you put on the record the agreement between
Bombardier and Airbus? I presume there is a written
agreement between you being that you're seeking regulatory
approvals and you've asserted here that this is definitely
going to happen?

I believe that is already on the record, okay --
including all Addendums, Appendix, side letters, anything --

MS. ARANOFF: As far as I understand yes but we'll double
check and if there's anything missing we'll add it.

CHAIRMAN SCHMIDTLEIN: All right, all right thank
you very much. Vice Chairman Johanson -- okay, Commissioner
Williamson?

COMMISSIONER WILLIAMSON: Just one quick question
for our post-hearing Miss Aranoff. Boeing cites the I guess
1984 Act about purchasing for importation and you know, this definitely implied here no matter when the plane was imported -- I was wondering if you might want to comment on that post-hearing and your views of that -- what we should make of that provision?

MS. ARANOFF: Yes, absolutely.

COMMISSIONER WILLIAMSON: Good, okay, thank you.

MR. MORAN: Madam Chair if I could -- Mark Moran for the Government of Canada. If I could follow-up on that --

MR. BISHOP: Pull your mic a little closer Mark please.

MR. MORAN: Sure. As Commissioner Williamson pointed out, Petitioner's counsel directed you to the 84 amendments and most prominently the legislative history. I think you need to fast-forward 10 years to the 1994 amendments, the most recent amendments to the most specific provision before the threat provision and the plain language of the statute not the legislative history.

So the plain language of the statute which was designed to implement the WGO AD and SEM Agreement's language on threat which unambiguously require a finding of threat to be based on a finding of further dumped or subsidized imports being imminent -- imports must be imminent not just the injury, it's both injury and imports.
That requirement was faithfully implemented into the provision of the statute 771-7F2 called "Basis for Determination" after the list of the mandatory factors and it says, "The Commission shall consider the factors set forth in clause one as a whole in making a determination of whether further dumped, or subsidized imports are imminent -- the imports are imminent and whether material injury by reason of imports, would occur unless an order is issued."

The focus is unambiguously on whether future imports are imminent and so when the other side suggests that you can ignore that language and make a threat determination on the basis of sales, that's plainly inconsistent with the unambiguous language of the statute.

This is Chevron step one. Now, at the same time that they amended the threat provision for basis of determination, they didn't alter the language that they referred to involving sales for importation even if the imports have not yet occurred. So how do you reconcile that?

You're still entitled to take into account sales and future sales for importation but you have to then take that information and evaluate it for what purpose -- to determine whether future dumped or subsidized imports are imminent.

So yes you can examine sales and orders in your
analysis, they do not replace the statutory basis for a threat finding which is that imports are imminent.

COMMISSIONER WILLIAMSON: Excuse me, okay, thank you for that. So anything that can be added post-hearing on this from both sides I would appreciate, thank you.

CHAIRMAN SCHMIDTLEIN: Okay, that concludes Commissioner questions. Do staff have any questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you Madam Chairman, staff has no additional questions.

CHAIRMAN SCHMIDTLEIN: Okay do Petitioners have any questions for this panel?

MR. NOVICK: We don't.

CHAIRMAN SCHMIDTLEIN: Okay thank you very much. All right, thank you all again for your testimony today. I will dismiss you at this time as we move to closing statements.

MS. ARANOFF: Madame Chairman could we request a five minute restroom break before closings?

CHAIRMAN SCHMIDTLEIN: Of course, yes.

MR. BISHOP: Would the room please come to order.

CHAIRMAN SCHMIDTLEIN: For closing statements those in support of duties have 3 minutes from direct plus 5 minutes for closing for a total of 8 minutes. Those in
opposition have a total of 7 minutes.

MR. BISHOP: Rebuttal and closing remarks on behalf of Petitioner will be given by Robert T. Novak of Wilmer, Cutler, Pickering, Hale and Dorr. Mr. Novak you have 8 minutes.

CLOSING STATEMENT OF ROBERT T. NOVICK

MR. NOVICK: Thank you. So I'd like to start by observing that what you heard a lot this afternoon was from Delta. Delta's one airline, it has one perspective on how it manages its fleet and what it wants to buy on any given day.

It is not representative of the airline industry and its testimony should be taken in exactly that context. The fact that it might choose a different approach to how it buys plains in the 100 - 150 seat segment is something that you have to take into account as you pay attention to their testimony.

Having said that it's interesting that Delta when they talked about its purchase from Bombardier seems to walk away from the idea that it has conversation right for 90 CS 300's. It talks about having bought just the 100. And when asked about the 75 to 120 planes -- why it was such a big order, it doesn't seem to recognize that it has these conversion rights that they got a price on at that time.
The other thing that's interesting about Mr. May -- both at the preliminary and here today he first says I knew that price at United or I had a good instinct and then when pressed there's no such thing as price transmission.

We heard from Flight Ascend that they spend their career -- he's here because his career is to try and figure out what the price of planes are but there is no price transmission. Just to remind the Commission of Mr. McAllister's testimony this morning -- we're not suggesting that every time a plane is sold anywhere in the world everyone knows exactly what the price of that plane is, but where you have a seismic development like there was at Delta with the C series, the market does now.

And you have confidential information in the record that tells you that the market knows, knows how to calculate it and then reacts to it. So the issue of price transmission is one that we could hopefully stop talking about.

I have to say Mr. Mitchell I believe it was, the inventor of the 100 and 150-seat market. Well the ITC might be surprised when it looks back at its 1993 report on page 4-3 that it used the 100 and 150-seat market to talk about a segment that Boeing competed in.

I hope Mr. Mitchell's not suggesting he invented that market before 1993 for marketing purposes.
Let me spend a minute on United. We learned a lot today about the United sale that Boeing was actually directly involved in. There is some suggestion it appears, that somehow United colluded with Boeing to set a low price to keep the C series out so that -- what? So that it could then convert them the next day?

Well there was a change in management at United and management at United made a different decision about what it wanted in its fleet. And we have on the record detail about the United campaign which you can look at separately from this -- my closing here.

But what's more important that we learned about United was in response to the questions about what they're going to do to fill the demand that they had for that 100 to 150-seat segment -- we learned that they are in the market.

We learned from Flight Ascend that they're going to be replacing those planes at some time and we learned from Mr. Mitchell that he's actually talking to them. That was news that we learned today.

The suspension agreement point -- technically the date that the deal was announced -- I believe it was October 16th would have been too late to do suspension agreements, that's correct.

They've been talking about this deal according to
counsel since 2015 and they certainly started talking about it long before October 16th. And if one of the concepts was to never import a plane from Canada for a U.S. airline, they certainly could have asked themselves what about doing a suspension agreement instead.

So the idea that the only reason they didn't think about that was because it was too late, it was not credible.

Let's talk a bit about the Alabama plant one more time or three more times. There is no plant, there is an agreement, there are regulatory approvals being sought, there's a concept -- it's legally irrelevant to your decision. It is legally irrelevant.

And let me say -- let me add, what was interesting today is we heard on one hand from Bombardier we have a struggling plane maker to ramp up the production levels in Mirabel. They're having trouble with deliveries, they're having trouble with supply, they're having a whole host of trouble.

And on the other hand they're going to put up this new facility and breeze planes out of it in a couple of years to all of these U.S. airlines. I don't know how those two are squared.

But let's assume for a moment they can be squared. What you have is them telling you that there's
enough demand for the 100 - 150-set segment, enough demand
for the C series that they can run two separate facilities
-- one dedicated for the foreign market and one dedicated
for the U.S. market.

Now, presumably they're making planes in Mirabel
that could go to a U.S. customer, maybe Delta decided
definitively that it doesn't want the planes from Canada but
that doesn't mean somebody else wouldn't want the planes
from Canada.

And the notion that Boeing would come in every
two months to file a Petition is just not real. There's
enough planes apparently in this production that they are
going to have in both places that if a U.S. customer wants a
plane in a couple of months coming off of their Mirabel
site, they can deliver it.

Boeing will have no time to bring a Petition, go
through the process and resolve the case before there's any
jeopardy attached to those planes -- so that doesn't really
add up.

So from a legal standpoint it's irrelevant. From
an economic standpoint it makes absolutely no sense and it's
really quite at odds with the story we hear about the
challenge they've had in Mirabel and the testimony they gave
at the preliminary that they have to do this.

It's part of getting down the learning curve.
You can't succeed -- the program can't succeed over time if
you don't get down the learning curve. So now they're going
to try to get down two separate learning curves in two
separate facilities. It's just not believable.

The jobs issue came up. And I said this I think
earlier today that their basic supposition is -- or
proposition is Boeing should exit this space, the jobs that
can be created by building these planes, whether in Mirabel
or now they're saying in the United States should go to
them.

Well why is that? Why is the domestic industry
that exists today, that's been building these planes for
years and years and years supposed to relent in the face of
unfair trade so some other jobs can be created -- they say
in the U.S. but also they're going to ramp up in Mirabel.

They've got to ramp up to meet all of that
foreign demand that they say they have. Why is it that
those jobs should be jobs that Boeing doesn't have? Boeing
is basically being frustrated in its ability to develop the
Max 7, produce the Max 7, create all the jobs that would
come from that so that Bombardier can have them -- the
Bombardier Airbus can have them.

That's not really what the trade laws were
intended to do. I see my time is up and I appreciate the
Commission's attention today. It's been a long day. I'll
just close by saying the question you have to ask is what will happen absent orders and it is clear what will happen absent orders.

They will continue to use their subsidized dumped product and now with the support of Airbus to push Boeing out of the 100 and 150-seat market which exists, which many customers look for planes in and with Mr. Mitchell did not create for marketing purposes.

It's real, it's where these plane-makers compete.

Thank you.

COMMISSIONER SCHMIDTLEIN: Thank you.

MR. BISHOP: Rebuttal and closing remarks on behalf of Respondents will be given by Shara L. Aranoff of Covington and Burling. Miss Aranoff you have 7 minutes.

CLOSING STATEMENT OF SHARA ARANOFF

MS. ARANOFF: Thank you all. The factual record in this case is challenging but the story that it tells is quite simple. The C Series is a fantastic product with a bright future. As witnesses today confirmed its prospects are bright because the C Series gives airlines the operating efficiency performance and passenger comfort that they need but have long been unable to obtain in the smaller single aisle aircraft.

Mr. Novak just said that Bombardier's argument in this case is that Boeing should exit this space. The
opposite is of course true. Boeing exited this space a long
time ago and that's the reason that the C Series exists.

The Max 7 does not and cannot satisfy these same
requirements. As a result there is no trade remedy that
will make the Max 7 an efficient solution for airlines such
as Delta. This is the whole attenuated competition argument
in this case and it really goes to non-attribution.

If there were no C Series, Delta still wouldn't
be able to use the Max 7 and the Max 7 would not become a
success in the market because it can't compete in this part
of the market. It doesn't offer the performance and value
that airlines need at that bottom end of the single aisle
segment.

Given the advantages such as incumbency and
commonality that Boeing has, it simply cannot attribute the
Max 7 struggles to the C Series.

Mr. Novak also mentioned that you had heard a lot
from Delta today but that you should actually disregard
everything that Delta told you. In fact, in many cases
where the Commission faces a situation where it's hearing
about a competition for a product and it's heard from the
U.S. supplier and it's heard from the foreign supplier and
they're not telling the same story, it's the customer the
Commission wants to hear from.

It's the customer that the Commission usually
believes about what really went on in that competition.

It's very rare that you have a customer as forthcoming as Delta who comes here and puts it all out on the public record and so I hope you will not disregard what Delta said because it's really what the Commission wants to encourage in every case where this sort of situation arises.

Mr. Novak also just referenced the fact that United might be in the market. Did you notice that he cleverly said because United didn't buy smaller, single aisle aircraft back in 2015, it must be in the market now for 100 to 150-seat LCA's.

Well that's kind of a sneaky thing to put in there because that's not right at all. What United said it was in the market for in 2015 and what it might want to reconsider at some point in the future was not 100 to 150 seat LCA, it was 100-seater plane -- that's what they were competing back in 2015 before they got diverted by the deal with Boeing for the 700 that they didn't end up taking.

So please don't let that slip and let you think they're back in the market and might be interested in something at the upper end of that 100 to 150 spectrum because there's no evidence of that.

What this comes down to is that although Boeing asserts that the Max 7 competes directly with the C Series it can't identify a single lost sale. It tells you that the
Max 7 is a distinct-like product but it tells its customers that the 737 family is "one airplane in four sizes."

Boeing claims that imports of the C Series from Canada are imminent but the record makes clear that there are no planned deliveries on the horizon and at the same time they dismiss the strategic partnership with Airbus and the new U.S. Foul as little more than self-serving speculation.

Now we recognize that the timing of all of this puts the Commission in an unenviable position because the events regarding the new Foul and Mobile are moving fast and they're not final.

But here's what you do have -- two public blue chip companies and their Boards of Directors committed to the project, a business case that the partnership will unlock C Series demand and create the business case for the second final assembly line and of course the fact that U.S. airlines are now unwilling to take the risk of purchasing the C Series if it has to be imported from Canada for fear of another case.

When you add those things up, there's simply nothing speculative about it. It is unfortunate that because of the anti-trust process the plans can't be more advanced right now. But it really is not reasonable at all to say that that makes them legally irrelevant.
They're as definite as they can be and getting more so by the day. Because of the unusual posture of this case and because the Commission is legally obligated to make its determination based on circumstances at the time that that determination is made -- we hope you will request that we update the record with anything that happens between now and the record closing date in the middle of January because we would be pleased to do that.

Madam Chairman and members of the Commission we are extremely grateful for your thoughtful attention through this long day. We know very well the demands that have been placed on you and on the staff of late with things being as busy as they are.

The tireless efforts of the staff to compile such a complete record on a compressed timetable have been particularly impressive and doing so amid the holiday season makes the accomplishment even more notable, especially given the novelty and the complexity of the facts presented in this case.

So with that I will simply say thank you for all of your attention today.

CHAIRMAN SCHMITLEIN: All right thank you very much Ms. Aranoff. We will be back here tomorrow at 11 a.m. with wire rod if you would like to join us because it never stops.
All right post-hearing briefs, statements responsive to questions in request of the Commission and corrections to the transcript must be filed by December 27th, 2017. Closing of the record and final release of data to parties is January 19, 2018 and final comments are due January 23, 2018.

Again, thank you to all the witnesses for your testimony today for helping us understand this very interesting case and we wish you all a very happy holiday.

This hearing is adjourned.

(Whereupon the meeting was adjourned at 5:36 p.m.)
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INVESTIGATION NOS.: 701-TA-578 and 731-TA-1368

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