

BRAZIL - EXPORT FINANCING PROGRAMME FOR AIRCRAFT

Recourse by Canada to Article 21.5 of the DSU

The following communication, dated 23 November 1999, from the Permanent Mission of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

Canada requests a special meeting of the Dispute Settlement Body on 3 December 1999 to consider the following agenda item:

Brazil - Export Financing Programme for Aircraft
- Request by Canada for Determination of Consistency of Implementation Measures

Both the Panel and the Appellate Body in this dispute found the Brazilian measures in dispute to violate Article 3 of the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement"). On 20 August 1999, the DSB adopted the Appellate Body report and the report of the Panel, as modified by the Appellate Body. The resulting DSB rulings and recommendations include the recommendations that Brazil bring its measures found to be inconsistent with the SCM Agreement into conformity with the provisions of that Agreement and that Brazil withdraw the export subsidies for regional aircraft under PROEX within 90 days, i.e., by 18 November 1999.

On 16 November 1999, Canada and Brazil held consultations in Sao Paulo on, inter alia, the measures that Brazil intended to take to implement the DSB recommendations. On 19 November 1999, the Permanent Representative of Brazil to the WTO informed the Chairman of the DSB and announced at a meeting of the DSB on the same day the measures that Brazil has taken and/or intends to take to implement the DSB recommendations. In his letter the Permanent Representative of Brazil stated that Brazil "has effectively implemented the DSB recommendations ...".

The decision of the Appellate Body required Brazil to withdraw its export financing subsidies under PROEX both with respect to as yet undelivered aircraft that will be delivered pursuant to contracts entered into prior to 18 November 1999, and with respect to contracts and deliveries under contracts entered into from 18 November 1999 onward. In Canada's view, Brazil's communication to the DSB on 19 November 1999 provided insufficient information to demonstrate compliance in either respect, and in particular as to Brazil's intentions with respect to implementation of the DSB recommendations concerning regional aircraft to be delivered after 18 November 1999 under contracts for sale entered into before 18 November 1999.

In view of the above, there is a disagreement between Canada and Brazil as to whether the measures taken by Brazil to comply with the 20 August 1999 rulings and recommendations of the

DSB, in fact, bring Brazil into conformity with the provisions of the SCM Agreement and result in the withdrawal of the export subsidies to regional aircraft under PROEX.

Canada requests that this matter be referred to the original Panel, pursuant to Article 21.5 of the DSU. Canada further requests that the Panel find that Brazil has not taken measures to comply fully with the 20 August 1999 rulings and recommendations of the DSB. Canada requests that the Panel find, in particular, that, contrary to the report of the Appellate Body and the report of the Panel as modified by the Appellate Body, Brazil has not withdrawn the PROEX export subsidies applied to aircraft to be delivered after 18 November 1999 under contracts for sale entered into prior to 18 November 1999.

Canada and Brazil have reached an agreement concerning the procedures to be applicable in this case pursuant to Articles 21 and 22 of the DSU and Article 4 of the SCM Agreement. This is attached.

ANNEX

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The Panel and Appellate Body reports in this dispute were adopted by the Dispute Settlement Body on 20 August 1999.

The DSB recommendations and rulings included the recommendation that Brazil bring its measures found to be inconsistent with the Agreement on Subsidies and Countervailing Measures (the SCM Agreement) into conformity with the provisions of that Agreement and that Brazil withdraw the export subsidies for regional aircraft under PROEX within 90 days, or by 18 November 1999.

There is disagreement between Canada and Brazil as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings of the DSB, within the meaning of Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU).

Canada and Brazil have reached an agreement concerning the procedures to be applicable for proceedings in this case pursuant to Articles 21 and 22 of the DSU and Article 4 of the SCM Agreement, as follows:

1. On 23 November 1999, Canada will request that this matter be referred to the original panel pursuant to Article 21.5 of the DSU. Canada will also request the convening of a DSB meeting on 3 December 1999 and Brazil will not object to the holding of such a meeting.
2. At the DSB meeting convened in response to the request by Canada, Brazil will accept the establishment of a review panel under Article 21.5 of the DSU and will not pose any procedural objection to the establishment of such a panel.
3. Brazil and Canada shall cooperate to ensure that the review panel convened under Article 21.5 of the DSU will be able to circulate its report within 60 days of its establishment. Canada will not request authorization to suspend concessions until after circulation of the Article 21.5 report.
4. Neither Brazil nor Canada will object to a request that the DSB be convened to consider the report that may be submitted to it under Article 21.5 for adoption. In the event that such report finds that Brazil has not complied with the recommendations or rulings of the DSB, neither party will object to DSB consideration of a request by Canada for authorization to suspend concessions pursuant to Article 22.2 of the DSU and/or Article 4.10 of the SCM Agreement; provided, however, that Brazil may request that the matter be referred to arbitration pursuant to Article 22.6 of the DSU.
5. Pursuant to footnote 6 to Article 4 of the SCM Agreement, Brazil and Canada agree that the deadline for DSB action under the first sentence of Article 22.6 of the DSU shall be 15 days after the circulation of the report under Article 21.5 of the DSU, and that the deadline specified in the third sentence of Article 22.6 of the DSU for completion of arbitration shall be 30 days after the matter is referred to arbitration.

6. This agreement shall be forwarded immediately to the Chair of the DSB for circulation to all WTO Members.

AGREED TO in Geneva this 23rd day of November, 1999.

(Signed)

H.E. Mr. Celso Amorim
Ambassador
Permanent Representative of Brazil
to the World Trade Organization

(Signed)

H.E. Sergio Marchi
Ambassador
Permanent Representative of Canada
to the World Trade Organization
