

BRAZIL – EXPORT FINANCING PROGRAMME FOR AIRCRAFT

Recourse by Brazil to Article 22.6 of the DSU and Article 4.11 of the SCM Agreement

Constitution of the Arbitrator

Note by the Secretariat

1. At its meeting on 22 May 2000, the Dispute Settlement Body (DSB) agreed that the matter raised by Brazil in document WT/DS46/18 shall be referred to arbitration in accordance with Article 22.6 of the DSU and Article 4.11 of the SCM Agreement.

2. Article 22.6 of the DSU provides as follows:

"When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator¹ appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration."

3. Article 4.11 of the SCM Agreement provides as follows:

"In the event a party to the dispute requests arbitration under paragraph 6 of Article 22 of the DSU, the arbitrator shall determine whether the countermeasures are appropriate."

4. The original panel will carry out the Arbitration, namely:

Chairman: Dr. Dariusz Rosati

Members: Professor Akio Shimizu
Mr. Kajit Sukhum

¹ The expression "arbitrator" shall be interpreted as referring either to an individual or a group.