

BRAZIL – EXPORT FINANCING PROGRAMME FOR AIRCRAFT

Communication from Canada

The following communication, dated 16 June 2000, from the Permanent Mission of Canada to the Permanent Mission of Brazil and to the Chairman of the Dispute Settlement Body, is circulated at the request of Canada.

We have received the 13 June 2000 Note from the Secretariat in the matter of Brazil – Export Financing Programme for Aircraft. Recourse to Article 22.6 of the DSU and Article 4.11 of the SCM Agreement. Constitution of the Arbitrator (WT/DS46/19).

The first paragraph of this Note states as follows:

"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."

Document WT/DS46/18 contains the text of the communication from Brazil dated 7 June 2000, which was circulated to Members on 9 June 2000.

The DSB, at its meeting on 22 May, thus could not have agreed to refer to arbitration the matter raised by Brazil in document WT/DS46/18, since this document post-dates the DSB meeting. Moreover, document WT/DS46/18 contains a new claim by Brazil with respect to Article 22.3 of the DSU, which Brazil did not raise at the 22 May DSB meeting.

On 9 June, Canada wrote to the arbitrators to express its concern that Brazil's 7 June communication attempted to modify the scope of the arbitration more than two weeks after the arbitration was established, one week after the organizational meeting for the arbitration, and following its receipt of Canada's methodology paper. In our view, this raises a serious issue of due process. We asked the arbitrators to confirm that Brazil's new claim with respect to Article 22.3 of the DSU was not within the scope of the arbitration.

The arbitrators have yet to decide on this point. We must therefore register our strong concern with the Note by the Secretariat, which seems to pre-judge the decision of the arbitrators on the scope of the arbitration.

Accordingly, we would ask that you direct the Secretariat to issue a corrigendum to its Note, making clear that at its meeting on 22 May, the DSB did not refer to arbitration the matter raised by Brazil in document WT/DS46/18. The DSB agreed only to refer to arbitration the matter raised by Brazil in its oral intervention of 22 May.
