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CANADA – MEASURES CONCERNING TRADE IN COMMERCIAL AIRCRAFT

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY BRAZIL

The following communication, dated 18 August 2017, from the delegation of Brazil to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 8 February 2017, the Government of Brazil ("Brazil") requested consultations with the Government of Canada ("Canada") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"); Articles 4, 7, and 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"); and Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") (to the extent incorporated by Article 30 of the SCM Agreement) in relation to measures affecting trade in commercial aircraft. Consultations were held on 10 March 2017 with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

Accordingly, Brazil respectfully requests that the Dispute Settlement Body ("DSB") establish a panel pursuant to Article 6 of the DSU; Articles 4, 7, and 30 of the SCM Agreement; and Article XXIII:2 of the GATT 1994 (to the extent incorporated by Article 30 of the SCM Agreement).

In Brazil's view, the measures that are the subject of this panel request are prohibited and actionable subsidies provided to Bombardier, Inc. ("Bombardier")¹ and its suppliers as well as legislation, regulations, other instruments, and amendments thereto providing such subsidies to these recipients. Such measures include the following:

Quebec's Aerospace Strategy

In July 2006, the government of Quebec ("Quebec") announced the Quebec Aeronautical Industry Development Strategy.² The Quebec government's objectives of the strategy are to "maintain Quebec's position as a world leader in the aeronautical sector by developing new products and enhancing the sector's competitiveness" and "{s}trengthen Quebec's largely dominant position in the Canadian aeronautical industry." Quebec indicated that it would work jointly with the federal government to foster "the development of new products, export assistance and financing of the sales of prime contractors, equipment manufacturers and SMEs." In May 2016, Quebec stated that its contributions under the 2006 Strategy amounted to more than C\$700 million. The initiatives announced under the strategy include, but are not limited to:

- financing of R&D and product development by means of loans repayable through royalties on sales;
- financing of developmental projects in the form of share capital by the *Société générale de financement* (which was merged into *Investissement Québec* ("IQ") in December 2010);

¹ "Bombardier," as referenced in this request, includes Bombardier, Inc.; Bombardier Aerospace; Bombardier Transportation (Investment) UK Ltd; the C Series Aircraft Limited Partnership; and all other subsidiaries and affiliates of Bombardier, Inc.

² "Quebec Aeronautical Industry Development Strategy" (July 2006), <http://collections.banq.qc.ca/ark:/52327/bs58942>. Brazil referred to this strategy in its request for consultations as Quebec's Aerospace Strategy 2006-2016. Canada provided a link to the strategy during consultations.

- broadening the Quebec content in prime contractors' projects;
- participating in the long-term funding of the *Consortium de recherche et d'innovation en aérospatiale au Québec* ("CRIAQ");
- pursuing Quebec's financial support for the *Centre technologique en aérospatiale* ("CTA");
- maintaining Quebec's fiscal measures pertaining to precompetitive research;
- supporting the modernization and purchase of leading-edge equipment (amendment of rules governing programs of the *Ministère de l'Économie, Science et Innovation Québec* ("MESI")); and
- ensuring that the federal government plays an essential support role in the Quebec aeronautical industry by financing product development.

In 2006, *Aéro Montréal* (of which Bombardier and its suppliers are members) was established to provide supply chain solutions, knowhow, and industry collaboration services to Bombardier and other aerospace companies in Montreal. Canada's federal government, Quebec, and *Communauté métropolitaine de Montréal* provided at least C\$5 million in funding to *Aéro Montréal* to support its initiatives and working groups, which included participation in, for example, the Greener Aircraft Catalyst Project or SA2GE (*Systèmes aéronautiques d'avant-garde pour l'environnement*) and the MACH Initiative.

In May 2016, Quebec announced government contributions of C\$510 million under Quebec's Aerospace Strategy 2016-2026.³ Under the 2016 Strategy, Quebec will, among other things, bolster industry growth through support for major investment projects, assist SMEs through boosting exports, and promote innovation through stimulating the development of new products (e.g., Greener Aircraft Catalyst Project).

Brazil considers that the above-referenced measures and initiatives provide subsidies directly or indirectly to Bombardier and its suppliers or are used by Canada to adopt and/or implement the measures identified below.

"Launch Aid" and Related Financing

- Canada's provision (through Industry Canada ("IC"), a Government of Canada department (Ministry) now called Innovation, Science and Economic Development Canada) of C\$350 million of financing to Bombardier for commercial aircraft design and development (hereinafter "launch aid"⁴). Canada and Bombardier initially agreed on the launch aid in May 2005. Brazil understands that the Terms and Conditions were signed in 2008, and the contribution agreements were signed in March 2009. The C\$350 million in funding had been disbursed to Bombardier as of the end of December 2013.
- Quebec's provision (through IQ, Quebec's economic development corporation) of C\$117 million of launch aid to Bombardier. The launch aid was announced in May 2005. Quebec agreed to provide the launch aid in July 2008, and C\$117 million was disbursed in 2009.⁵
- Canada's provision (through Innovation, Science and Economic Development Canada) of C\$120 million in additional royalty-based financing for Bombardier's C-Series aircraft. Canada announced the additional contribution on 7 February 2017. The funds are being provided under existing contribution agreements with Bombardier.⁶

Subsidies Managed by the Industrial Technologies Office

The Industrial Technologies Office ("ITO") is a Special Operating Agency of Innovation, Science and Economic Development Canada. ITO manages repayable and non-repayable financing provided under:

³ "Québec Aerospace Strategy Summary," at 2 (May 2016), https://www.mrif.gouv.qc.ca/pdf/actualites/13326_Sommaire_SQA_En_LR_Final.pdf.

⁴ The term "launch aid" in this request includes: "royalty-based financing", "repayable contributions", "launch investment", "repayable investment", "contribution financière remboursable par redevances", and other terms that have been used to describe the financing provided to Bombardier and its suppliers. The terms of such financing may include no interest or interest at non-commercial rates, and a repayment obligation that is tied to future sales.

⁵ See *Decret 666-2009* (10 June 2009), *Gazette Officielle du Québec*, No. 27, at 3123 (8 July 2009).

⁶ This contribution is a portion of C\$372.5 million in repayable contributions that Canada announced on 7 February 2017 to support Bombardier and that Brazil referenced in its request for consultations.

- Technology Partnerships Canada ("TPC"), which was launched in March 1996 to support technological development in the aerospace sector. As of November 2016, Canada disbursed more than C\$1.5 billion to Bombardier and its C-Series suppliers.
- Strategic Aerospace and Defence Initiative ("SADI"), which was launched in April 2007. During 2008-2014, Canada agreed to contributions totaling more than C\$1 billion for Bombardier's C-Series suppliers. On 7 February 2017, Canada announced additional contributions of C\$252.5 million under SADI to Bombardier purportedly for the development of the Global 7000 business aircraft. Bombardier and Canada reached an agreement regarding this additional funding on 24 March 2017.⁷
- Technology Demonstration Program ("TDP"), which was launched in September 2013 to provide non-repayable contributions to support large scale projects. In October 2016, Canada announced a contribution of up to C\$54 million to a consortium led by Bombardier to develop state-of-the-art electric systems and advanced aerodynamic systems.

Other Research and Development Subsidies

- Quebec's provision of over C\$110 million to Bombardier, its C-Series suppliers, and other aerospace companies through SA2GE (i.e., the Greener Aircraft Catalyst Project). Quebec's MESI initially introduced SA2GE in 2010 under the Quebec Research and Innovation Strategy and launched the second phase in 2016 under the Quebec Aerospace Strategy.
- Canada's and Quebec's provision of funding to CRIAQ (of which Bombardier and its suppliers are members) to finance aerospace research projects conducted by Bombardier, its C-Series suppliers, and other aerospace companies. Since CRIAQ was established in 2002, it has funded numerous aerospace research projects. Bombardier has participated in at least twenty-five of these projects.
- Canada's and Quebec's provision of funding to the Consortium for Aerospace Research and Innovation in Canada ("CARIC") (of which Bombardier and its suppliers are members) to launch research and development projects and provide other support to Bombardier, its C-Series suppliers, and other Canadian aerospace companies. In August 2014, CARIC and IC signed an agreement for C\$30 million in funding over five years.
- Canada's provision of funding to the Green Aviation Research & Development Network ("GARDN") to increase the competitiveness of Bombardier and other companies in Canada's aerospace industry and reduce the environmental footprint of Canadian aircraft, engines, and avionics systems. In January 2009, the Government of Canada established GARDN as a Business-Led Network of Centres of Excellence. GARDN is receiving C\$25 million for 2009-2018, and nearly C\$18 million has been disbursed as of fiscal year 2015. Bombardier has received funding through at least twelve GARDN research projects, and its C-Series suppliers have also received funding through GARDN research projects.
- Canada's provision of support through the Canada Economic Development for Quebec Regions ("CEDQ") (including its Quebec Economic Development Program). Since its creation in 2005, CEDQ has provided at least C\$20 million in contributions to Bombardier's C-Series suppliers to improve productivity and production, acquire equipment, and expand operations.
- Canada's and Quebec's provision of funding, technology transfer, in-kind goods and services, and other support through the CTA,⁸ the National Research Council ("NRC"),⁹ and the Natural Sciences and Engineering Research Council of Canada ("NSERC").¹⁰

⁷ This contribution is a portion of C\$372.5 million in repayable contributions that Canada announced on 7 February 2017 to support Bombardier and that Brazil referenced in its request for consultations.

⁸ "Quebec Aeronautical Industry Development Strategy," at 21, 32, and 36 (July 2006), <http://collections.banq.qc.ca/ark:/52327/bs58942>.

⁹ "Quebec Aeronautical Industry Development Strategy," at 15 and 21 (July 2006), <http://collections.banq.qc.ca/ark:/52327/bs58942>.

¹⁰ Canada's and Quebec's support to Bombardier and its C-Series suppliers through these entities included participation in SA2GE programs, CEDQ programs (including establishment of the Aerospace Manufacturing Technology Centre ("AMTC")), and other collaborative projects (for example, in the areas of composite materials and robotics systems for aircraft assembly). "Assembly of First Flight Test Vehicle for Bombardier C-Series Aircraft Underway" (15 October 2012), <http://www.marketwired.com/press-release/assembly-of-first-flight-test-vehicle-for-bombardier-c-series-aircraft-underway-tsx-bbd.a-1713407.htm>;

- Canada's provision of non-repayable contributions of up to C\$950 million for "superclusters" in the advanced manufacturing, digital technology, clean resources, infrastructure, transportation, and other industries through the Innovation Superclusters Initiative.¹¹
- Quebec's provision to Bombardier of a tax credit under the Tax Credit for Private Partnership Pre-Competitive Research, which provides a tax credit to encourage corporations in the private sector to form partnerships with two or more corporations to carry out pre-competitive research in Quebec¹².

Equity Infusions

- Quebec's provision (through IQ) of US\$1 billion to Bombardier for cash flow purposes of the C-Series program in exchange for a 49.5 percent share in a newly-created entity to which Bombardier will transfer the assets, liabilities, and obligations of its C-Series program. In October 2015, IQ and Bombardier entered into a memorandum of understanding for the US\$1 billion equity infusion. In June 2016, Bombardier closed the investment with IQ and transferred the C-Series assets to a new entity. IQ paid the first installment of US\$500 million to Bombardier in June 2016 and the second installment of US\$500 million to Bombardier in September 2016.
- Quebec's provision (through *Caisse de Dépôt et Placement du Québec* ("CDPQ"), an entity owned and controlled by the government of Quebec) of US\$1.5 billion for general corporate purposes of Bombardier in exchange for a convertible share investment in Bombardier Transportation's newly-created holding company, Bombardier Transportation (Investment) UK Ltd. The agreement between CDPQ and Bombardier was announced in November 2015. In February 2016, the sale was closed, and Bombardier received gross proceeds of US\$1.5 billion from CDPQ.

Provincial and Local Subsidies Relating to Bombardier's C-Series Production Facilities

- Quebec's agreement with Bombardier to construct, own, lease, finance, operate, and/or provide other support for Bombardier's new C-Series production facility at Mirabel, Quebec. Quebec offered to pay for Bombardier's new C-Series final assembly plant in January 2005 and announced an "agreement" on the selection of a site in Mirabel, Quebec in May 2005. Bombardier again selected Mirabel, Quebec as the C-Series final assembly site in July 2008.
- The municipality of Mirabel's (Quebec) tax incentives, exemptions, and other support, including exemption of property taxes for Bombardier's C-Series production facility during its first ten years of operations. These measures include, but are not limited to, *Règlement* No. 1633 (28 April 2008) and *Règlement* No. 1915 (28 November 2012). In November 2008, Mirabel approved a ten-year tax credit for companies in the aircraft manufacturing industry that are established at the airport, including Bombardier and its C-Series facility.
- Provision of support by *Aéroports de Montréal* ("ADM") to Bombardier and C-Series suppliers in relation to the selection, construction, lease, and/or operation of the Mirabel site of Bombardier's C-Series final assembly plant and suppliers' component plants and investments in infrastructure for aerospace companies located at the airport. ADM is the

"The National Research Council of Canada and Bombardier Aerospace Sign R&D Cooperation Agreement," defense-aerospace.com (5 December 2011), <http://www.defense-aerospace.com/article-view/release/130954/bombardier-canada-nrc-sign-r&d-agreement.html>. Additional information on these measures is available in the Response of the Government of Canada to the Department's May 19, 2017 Questionnaire in 100- to 150-Seat Large Civil Aircraft from Canada before the U.S. Department of Commerce International Trade Administration (Inv. No.: C-122-860), GOC Volume VIII – Other Assistance, July 25, 2017 (Public Version).

¹¹ "Innovation Superclusters Program Guide," Innovation, Science and Economic Development Canada (2017), [https://www.ic.gc.ca/eic/site/093.nsf/vwapj/Sprclstr-Prgrm-Gd-EN.pdf/\\$file/Sprclstr-Prgrm-Gd-EN.pdf](https://www.ic.gc.ca/eic/site/093.nsf/vwapj/Sprclstr-Prgrm-Gd-EN.pdf/$file/Sprclstr-Prgrm-Gd-EN.pdf); Aéro Montréal Press Release, "Federal Budget 2017 - Aéro Montréal welcomes measures targeting innovation, the supply chain and skills development for our Québec SMEs" (23 March 2017), <http://www.newswire.ca/news-releases/federal-budget-2017---aero-montreal-welcomes-measures-targeting-innovation-the-supply-chain-and-skills-development-for-our-quebec-smes-616968324.html>.

¹² Response of the Government of Quebec to the Department's May 19, 2017 Initial Questionnaire in Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada before the U.S. Department of Commerce International Trade Administration (Inv. No.: C-122-860), Other Subsidies, July 24, 2017, GOQ-128 (Public Version).

local airport authority that operates the Mirabel airport and surrounding area under a long-term lease from Transport Canada, which closely regulates and continuously reviews ADM's activities.

- Other assistance disclosed by the Government of Quebec and Bombardier, including the PR@M Industry Program administered by the City of Montreal and governed by the Ville de Montreal By-Law RCG 07-029, Hydro-Quebec Energy Efficiency Programs, and the Tax Credit for Investment Relating to Manufacturing and Processing Equipment¹³.

Other Quebec Provincial Subsidies

- Quebec's provision (through state-owned and controlled CDPQ) of a line of credit for US\$195 million to Bombardier (as part of a revolving credit facility in which other institutions participated). CDPQ's US\$195 million line of credit was announced in September 2009. Bombardier has extended the maturity date of the credit facility multiple times, most recently to June 2019.
- Quebec's provision of C\$4 million to Bombardier – including C\$2 million for the C-Series program – through *Emploi-Québec*. The support was announced in November 2013.
- Quebec's provision of loan guarantees, financial assistance, and other support to Bombardier and its C-Series suppliers through the Strategic Support for Investment Program (known as "PASI") and other programs (*Projet de Soutien de Progrès Économique* ("PSPE"), *Programme d'Attraction et de Retention des Investissements en Recherche* ("PARIR"), and *Programme d'Aide aux Employés* ("PAE")) that were subsequently consolidated under ESSOR.¹⁴

Brazil's request also covers any amendments, revisions, implementing measures, or related measures to the measures identified above.

Brazil understands that the above measures are inconsistent with the obligations of Canada under the following provisions:

1. Articles 3.1(a) and 3.2 of the SCM Agreement;
2. Articles 3.1(b) and 3.2 of the SCM Agreement; and
3. Articles 5(c), 6.3(a), 6.3(b), 6.3(c), 6.4, and 6.5 of the SCM Agreement.

The above measures that are the subject of this request appear to be specific subsidies. They are financial contributions (e.g., grants, loans, equity infusions, tax credits, government provision of goods or services, etc.) by a government or public body (or through the entrustment or direction of a private body) that confer a benefit to Bombardier within the meaning of Article 1.1(a) and (b) of the SCM Agreement. Furthermore, these subsidies are specific to Bombardier or the aerospace industry within the meaning of Article 2 of the SCM Agreement.

In Brazil's view, each and every measure listed above is a subsidy contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance in violation of Articles 3.1(a) and 3.2 of the SCM Agreement and is contingent, in law or in fact, whether solely or as one of several other conditions, upon the use of domestic over imported goods in violation of Articles 3.1(b) and 3.2 of the SCM Agreement.

Brazil is also concerned that Canada is causing, through the use of the above-referenced measures, adverse effects to the interests of Brazil in the form of serious prejudice or threat of serious prejudice within the meaning of Article 5(c) of the SCM Agreement. In particular:

¹³ Response of the Government of Quebec to the Department's May 19, 2017 Initial Questionnaire in Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada before the U.S. Department of Commerce International Trade Administration (Inv. No.: C-122-860), Other Subsidies, July 24, 2017, GOQ-99, GOQ-110, GOQ-129 (Public Version). See also Response of Bombardier Inc. and C Series Aircraft Limited Partnership to the Remainder of Section III of the Countervailing Duty Questionnaire in Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada, Inv. No.: C-122-860), Other Subsidies, July 25, 2017, 128, 129, and 144 (Public Version).

¹⁴ "Contrats et engagements financiers," MESI, <https://www.economie.gouv.qc.ca/ministere/le-ministere/acces-information/contrats-et-engagements-financiers>.

- The effect of the subsidies is to displace or impede or threaten to displace or impede the imports of a like product of Brazil into Canada within the meaning of Articles 6.3(a) and 6.4 of the SCM Agreement.
- The effect of the subsidies is to displace or impede or threaten to displace or impede the exports of a like product of Brazil from third country markets within the meaning of Articles 6.3(b) and 6.4 of the SCM Agreement.
- The effect of the subsidies is significant lost sales or threat of lost sales by the like product of Brazil to the subsidized product in the same market within the meaning of Article 6.3(c) of the SCM Agreement.
- The effect of the subsidies is significant price suppression or price depression or threat of significant price suppression or price depression in the same market within the meaning of Article 6.3(c) of the SCM Agreement.
- The effect of the subsidies is significant price undercutting or threat of significant price undercutting by the subsidized product as compared to the price of the like product of Brazil in the same market within the meaning of Articles 6.3(c) and 6.5 of the SCM Agreement.

Brazil is further concerned that the measures that are the subject of this request have caused and continue to cause nullification or impairment of benefits accruing directly or indirectly to Brazil under the GATT 1994 within the meaning of Article XXIII:1.

Brazil requests that a Panel be established with standard terms of reference, in accordance with Articles 4.4 and 7.4 of the SCM Agreement and Article 7 of the DSU.

Brazil asks that this request for the establishment of a Panel be placed on the agenda for the next meeting of the DSB, which is scheduled to take place on 31 August 2017.

Brazil further requests that, upon establishment of a panel for this matter, the DSB initiate the procedures provided for in Annex V of the SCM Agreement pursuant to paragraph 2 of that Annex, and designate a representative to serve the function of facilitating the information-gathering process pursuant to paragraph 4 of that Annex. Brazil also intends to put forward suggestions as to the information that should be sought under this procedure once the panel is established.

In order to obtain sufficiently representative data to resolve this dispute while at the same time avoiding unnecessary burdens on other WTO Members, Brazil intends to address questions under the Annex V procedure to Canada and to the following third-country Members: China, European Union, Germany, Ireland, India, Indonesia, Japan, Kingdom of Bahrain, Kingdom of Saudi Arabia, Latvia, The Netherlands, Norway, Republic of Korea, Russian Federation, Sweden, Switzerland, Tanzania, United Arab Emirates, United Kingdom, and United States.

The entity within the Government of Brazil that is responsible for administering the Annex V process is the Ministry of Foreign Affairs, and Brazil requests that all communications under the Annex V process be directed to the Brazilian Mission to the WTO in Geneva.
