

**CANADA – MEASURES AFFECTING THE EXPORT OF  
CIVILIAN AIRCRAFT**

Recourse by Brazil to Article 21.5 of the DSU

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

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On 20 August 1999, the Dispute Settlement Body (DSB) adopted the reports of the Appellate Body and the Panel, as modified by the Appellate Body, in "Canada – Measures Affecting the Export of Civilian Aircraft" (WT/DS70). The Panel report concluded that Canada Account debt financing since 1 January 1995 and Technology Partnerships Canada (TPC) assistance constitute prohibited export subsidies in violation of Article 3.1(a) and 3.2 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The Panel report recommended, and the Appellate Body affirmed, that Canada must withdraw the subsidies within 90 days.

The 90 day period for implementation of the DSB recommendations expired on 18 November 1999. On 19 November, with respect to Canada Account, the Canadian government announced before the DSB that it had implemented the Panel's recommendation by approving a new policy guideline. With respect to TPC, the Canadian government announced before the DSB that it had implemented the Panel's recommendation by amending TPC's Contribution Agreements and by restructuring TPC and revising its Terms and Conditions and Framework Document.

Brazil believes that these measures taken by Canada to comply with the recommendations and rulings of the DSB are not consistent with the SCM Agreement and the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). In particular, regarding the Canada Account, Brazil recalls that there are a large number of provisions in the OECD Arrangement that allow for derogations from its general rules. Therefore, Canada's vague statement that this new policy guideline complies with the OECD Arrangement is inconsistent with the recommendations and rulings of the DSB and Article 3 of the SCM Agreement. In addition, Brazil has not received any documentation with the revised policy guidelines of Canada Account.

Regarding TPC, Canada's statement in the 19 November DSB meeting maintained that new terms and conditions and a new administrative framework for the program were approved. Brazil has no information on such framework and since TPC payments were contingent in fact upon export performance, compliance by Canada with Article 3 of the SCM Agreement requires more than a mere reformulation of some of the TPC rules and regulations.

In conclusion, Brazil believes that Canada has not implemented the recommendations of the DSB concerning neither Canada Account nor TPC. Accordingly, because "there is a disagreement as

to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings of the DSB" between Brazil and Canada, within the terms of Article 21.5 of the DSU, Brazil seeks recourse to Article 21.5 in this matter and requests that the DSB refer the disagreement to the original panel, if possible, pursuant to Article 21.5.

Attached to this communication are the terms of an agreement reached by Brazil and Canada concerning the procedures to be followed pursuant to Articles 21 and 22 of the DSU. Brazil stresses that such agreement does not prejudice its rights concerning an appeal of the review panel report.

## ANNEX

### CANADA – MEASURES AFFECTING THE EXPORT OF CIVILIAN AIRCRAFT

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 Canada 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 Canada shall withdraw the subsidies identified in sub-paragraphs (b) and (f) of paragraph 10.1 of the Panel report 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, Brazil will request that this matter be referred to the original panel pursuant to Article 21.5 of the DSU. Brazil will also request the convening of a DSB meeting on 3 December 1999 and Canada will not object to the holding of such a meeting.
2. At the DSB meeting convened in response to the request by Brazil, Canada 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. Brazil 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 Canada has not complied with the recommendations or rulings of the DSB, neither party will object to DSB consideration of a request by Brazil 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 Canada 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 that 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 23<sup>rd</sup> day of November, 1999.

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

(Signed)  
H.E. Mr. Sergio Marchi  
Ambassador  
Permanent Representative of Canada  
to the World Trade Organization

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