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Page: 1/12

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## **CANADA – MEASURES CONCERNING TRADE IN COMMERCIAL AIRCRAFT**

### **REQUEST FOR CONSULTATIONS BY BRAZIL**

The following communication, dated 8 February 2017, from the delegation of Brazil to the delegation of Canada and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of 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.

Bombardier, Inc. ("Bombardier")<sup>1</sup> has received considerable financial support from Canada's federal, provincial, and local governments. In 2005, Bombardier initially launched its C-Series aircraft program and re-launched the program in 2008. Since the launch of the C-Series program, Bombardier has sold over 300 aircraft to customers in Canada, the United States, Australia, Europe, Asia, and the Middle East. The first deliveries of C-Series aircraft to customers occurred in 2016.

Canada's federal, provincial, and local governments have provided substantial subsidies to Bombardier to develop, launch, and preserve its C-Series aircraft program. Canada's support to Bombardier for the C-Series program includes loans, grants, equity infusions, tax credits, and other financial contributions.

The measures that are the subject of this request are prohibited and actionable subsidies to Bombardier and its suppliers, as well as legislation, regulations, other instruments, and amendments thereto providing such subsidies to these recipients. Such measures include the following:

- Canada's provision (through Industry Canada ("IC"), a former Canadian government agency 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"). Canada and Bombardier initially agreed on the launch aid in May 2005, and Canada reconfirmed its offer on July 2008. The Terms and Conditions were signed in 2008, and the contribution agreements were signed in March 2009. The C\$350 million in funding was disbursed to Bombardier as of the end of December 2013.<sup>2</sup>

<sup>1</sup> "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.

<sup>2</sup> See, e.g., Industry Canada Press Release, "Government Of Canada Commits Its Support For Proposed C-Series Commercial Aircraft Program" (13 May 2005); Agreement Between Industry Canada And Bombardier (12 May 2005); Bombardier Press Release, "Bombardier Launches C-Series Aircraft Program" (13 July 2008); Industry Canada Press Release, "Government Of Canada Reconfirms Investment In Bombardier's C-Series"

- Quebec's provision (through Investissement Québec ("IQ"), Quebec's economic development corporation) of C\$118 million of launch aid to Bombardier. The launch aid was announced in May 2005. Quebec again offered launch aid in July 2008, and C\$117 million was disbursed in 2009.<sup>3</sup>
- Quebec's provision of support for Bombardier to construct a new C-Series production facility at Mirabel, Quebec. Quebec offered to "assume responsibility for the new Bombardier aircraft 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.<sup>4</sup>
- 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. In November 2008, Mirabel approved a ten-year tax credit for companies in the aircraft manufacturing industry that are established at the airport.<sup>5</sup>
- Canada's provision of repayable or non-repayable financing to Bombardier and its suppliers under the Technology Partnerships Canada program to support technological development in the aerospace sector. Canada launched the Technology Partnerships Canada program in March 1996. Authority to conclude new projects expired in December 2006, but all existing contracted projects continue and are managed through the Industrial Technologies Office. As of November 2016, Canada disbursed at least C\$1.6 billion to Bombardier and its suppliers.<sup>6</sup>
- Canada's provision of C\$20 million to Bombardier by Innovation, Science and Economic Development Canada for aerospace research and development.<sup>7</sup>
- Quebec's provision of over C\$700 million in support under Quebec's Aerospace Strategy 2006-2016. Quebec announced the Aerospace Strategy 2006-2016 in July 2006, and it stated in May 2016 that its contributions under the Aerospace Strategy 2006-2016 amounted to more than C\$700 million.<sup>8</sup>
- The Strategic Aerospace and Defence Initiative, under which Canada is providing over C\$1 billion in funding to the aerospace industry, including Bombardier's C-Series suppliers. Canada launched this initiative in April 2007. During 2008-2014, Canada agreed to contributions totaling at least C\$1.28 billion for Bombardier's C-Series

(13 July 2008); Audit and Evaluation Branch, "Final Audit Report: Audit of the Bombardier C-Series Contribution Agreements" (May 2014); Industry Canada, "Bombardier: Current Position and New Request" (8 June 2015).

<sup>3</sup> See, e.g., Ministry of Economic Development, Innovation and Exports Press Release, "Quebec Has Won" (13 May 2005); "Everyone aboard for C-Series project," *Montreal Gazette* (14 July 2008); Investissement Québec, "Successful Takeoff for the C-Series" (20 September 2013); Government of Quebec Press Release, "Québec réagit à l'annonce de Bombardier Aéronautique" (22 February 2008); Government of Quebec, Décret 666-2009 (10 June 2009).

<sup>4</sup> See, e.g., "Quebec offers to build plant in partnership with the private sector," *La Presse* (28 January 2005); Ministry of Economic Development, Innovation and Exports Press Release, "Quebec Has Won" (13 May 2005); Bombardier Press Release, "Bombardier Launches C-Series Aircraft Program" (13 July 2008); "No Place Like Home," *Site Selection* (September 2008).

<sup>5</sup> See, e.g., Responses of the City of Mirabel to the Aide-Memoire from the Government of Brazil (December 2008); "No Place Like Home," *Site Selection* (September 2008); Ville de Mirabel, "Règlement No. 1387" (22 November 2004); Ville de Mirabel, "Règlement No. 1915" (28 November 2012); Ville de Mirabel, "Annexe 2 – Fonds de soutien au développement sectoriel (FSDS)" (February 2016).

<sup>6</sup> See, e.g., Government of Canada, "Technology Partnerships Canada Annual Report 1999 – 2000" (2000); Government of Canada, "Technology Partnerships Canada Program," [https://ito.ic.gc.ca/eic/site/ito-oti.nsf/eng/h\\_00154.html](https://ito.ic.gc.ca/eic/site/ito-oti.nsf/eng/h_00154.html) (accessed 28 January 2017); Government of Canada, "Technology Partnerships Canada (TPC) Repayment Status Report," <https://ito.ic.gc.ca/eic/site/ito-oti.nsf/eng/00943.html> (1 November 2016).

<sup>7</sup> See, e.g., Alex Thompson, Advice to the Minister of Innovation, Science and Economic Development, (CCM 282118) (4 December 2015).

<sup>8</sup> See, e.g., Government of Quebec Press Release, "Le ministre Raymond Bachand dévoile la stratégie de développement de l'industrie aéronautique Québécoise" (16 July 2006); Government of Quebec Press Release, "510 millions de dollars pour l'industrie de l'aérospatiale" (30 May 2016).

suppliers. As of fiscal year 2015, Canada has disbursed over C\$788 million to these suppliers.<sup>9</sup>

- Quebec's provision (through state-owned and controlled Caisse de Dépôt et Placement du Québec ("CDPQ")) of a line of credit for US\$195 million (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.<sup>10</sup>
- 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.<sup>11</sup>
- Quebec's provision (through CDPQ) 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.<sup>12</sup>
- Other federal, provincial, and local subsidy programs benefiting Bombardier and the C-Series aircraft program, including (but not limited to):
  - Canada's provision (through the Natural Sciences and Engineering Research Council of Canada ("NSERC")) of financial support to the Green Aviation Research & Development Network ("GARDN") (of which Bombardier is a member) to increase the competitiveness of 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.<sup>13</sup>
  - 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

<sup>9</sup> See, e.g., Government of Canada, "The Strategic Aerospace and Defence Initiative (SADI)," [https://www.ic.gc.ca/eic/site/ito-oti.nsf/eng/h\\_00093.html](https://www.ic.gc.ca/eic/site/ito-oti.nsf/eng/h_00093.html) (accessed 28 January 2017); Industry Canada Press Release, "Canada's New Government Announces New Strategic Aerospace and Defence Initiative" (2 April 2007); Government of Canada, "Project Portfolio," [https://www.ic.gc.ca/eic/site/ito-oti.nsf/eng/h\\_00025.html](https://www.ic.gc.ca/eic/site/ito-oti.nsf/eng/h_00025.html) (accessed 28 January 2017); Government of Canada, "Public accounts of Canada," [http://epe.lac-bac.gc.ca/100/201/301/public\\_accounts\\_can/pdf/index.html](http://epe.lac-bac.gc.ca/100/201/301/public_accounts_can/pdf/index.html) (accessed 28 January 2017).

<sup>10</sup> See, e.g., CDPQ Press Release, "The Caisse de Dépôt et Placement du Québec Grants US\$195 Million in Financing to Bombardier" (2 September 2009); Bombardier Second Quarterly Report ending June 30, 2016 (5 August 2016).

<sup>11</sup> See, e.g., Bombardier Press Release, "Bombardier Announces Financial Results for the Third Quarter Ended September 30, 2015, Government of Québec Partners with Bombardier for \$1 billion in C Series as Certification Nears, Bombardier Inc." (29 October 2015); Bombardier Third Quarterly Report ending September 30, 2016 (10 November 2016); Bombardier Material Change Report, Form 51-102F3, (2 November 2015); Investissement Québec and Bombardier, Convention de Souscription (22 June 2016).

<sup>12</sup> See, e.g., Bombardier Press Release, "Bombardier and CDPQ enter into definitive agreement: CDPQ to acquire 30% of newly-created BT Holdco for \$1.5 billion" (19 November 2015); Bombardier Material Change Report, Form 51-102F3 (25 November 2015); Bombardier Third Quarterly Report ending September 30, 2016 (10 November 2016); Subscription Agreement between Caisse de Dépôt et Placement du Québec and Bombardier (18 November 2015).

<sup>13</sup> See, e.g., Government of Canada Press Release, "Government of Canada Stimulates World-Class R&D" (7 January 2009); Networks of Centres of Excellence of Canada, "Greening Canada's aircraft to compete globally," [http://www.nce-rce.gc.ca/NetworksCentres-CentresReseaux/BLNCE-RCEE/GARDN\\_eng.asp#about](http://www.nce-rce.gc.ca/NetworksCentres-CentresReseaux/BLNCE-RCEE/GARDN_eng.asp#about) (accessed 28 January 2017); Government of Canada, "Public accounts of Canada," [http://epe.lac-bac.gc.ca/100/201/301/public\\_accounts\\_can/pdf/index.html](http://epe.lac-bac.gc.ca/100/201/301/public_accounts_can/pdf/index.html) (accessed 28 January 2017).

November 2013, although the plan for the C-Series program actually began in fall 2012.<sup>14</sup>

- Aéroports de Montréal's provision of support to Bombardier and C-Series suppliers for selecting Mirabel for the site of Bombardier's C-Series final assembly plant and suppliers' component plants and other support for aerospace companies.<sup>15</sup>

- Canada's provision of investment tax credits for research and development through the Scientific Research and Experimental Development Tax Incentive.<sup>16</sup>

- Canada's and Quebec's provision of funding to the Consortium for Research and Innovation in Aerospace in Québec ("CRIAQ") (of which Bombardier is a member) to finance aerospace research projects. Since CRIAQ was established in 2002, it has funded numerous aerospace research projects.<sup>17</sup>

- Canada's and Quebec's provision of funding to the Consortium for Aerospace Research and Innovation in Canada ("CARIC") (of which Bombardier is a member) to launch research and development projects and provide other support to Canada's aerospace industry. In August 2014, CARIC and IC signed an agreement for C\$30 million in funding over five years. CARIC, Canada, and Quebec have funded millions of Canadian dollars in research projects involving Bombardier and other aerospace companies.<sup>18</sup>

- Canada's, Quebec's, and Communauté métropolitaine de Montréal's provision of funding to Aéro Montréal (of which Bombardier is a member) to provide assistance to Quebec's aerospace industry, and Quebec's provision of C\$70 million to the aerospace industry for Phase 1 of SA2GE ("Systèmes aéronautiques d'avant-garde pour l'environnement"), in which Aéro Montréal participated. Since Aéro Montréal's creation in 2006, it has received and used funding from government sources for its aerospace initiatives.<sup>19</sup>

- Canada's provision of financial assistance to aerospace projects through the Canada Economic Development for Quebec Regions ("CEDQ") (including its Quebec Economic Development Program). From 2005 (when CEDQ was created) to the present, it has provided tens of millions of Canadian dollars in contributions

<sup>14</sup> See, e.g., "Formation de la main-d'œuvre: Québec octroie 4 M\$ à Bombardier Aéronautique," *Nordinfo* (26 November 2013).

<sup>15</sup> See, e.g., Aéroports de Montréal Press Release, "Mirabel destined to become Canada's aircraft production capital" (13 June 2005); Aéroports de Montréal Press Release, "Montreal-Mirabel Airport Development Ongoing; Site of Former Terminal Continues to Attract Interest" (11 July 2016); Aéroports de Montréal, "The economic and tax impacts of the activities at Montréal-Mirabel airport" (September 2014).

<sup>16</sup> See, e.g., Canada Revenue Agency, "Overview of the Scientific Research and Experimental Development (SR&ED) Tax Incentive Program," [http://www.hmtrevenuegroup.com/docs/CRA\\_Overview\\_SRED.pdf](http://www.hmtrevenuegroup.com/docs/CRA_Overview_SRED.pdf) (accessed 28 January 2017); Fassi Kafyeke, Director Strategic Technology, Bombardier Aerospace, "Review of Federal Support to Research and Development Expert Panel Consultation questions: An Aerospace Industry Perspective," [http://rd-review.ca/eic/site/033.nsf/vwapj/sub023.pdf/\\$file/sub023.pdf](http://rd-review.ca/eic/site/033.nsf/vwapj/sub023.pdf/$file/sub023.pdf) (accessed 28 January 2017).

<sup>17</sup> See, e.g., CRIAQ, "Our Partners," [http://www.criq.aero/Pages/Detail/6219850280/11281102632/our\\_partners.html](http://www.criq.aero/Pages/Detail/6219850280/11281102632/our_partners.html) (accessed 28 January 2017); CRIAQ, "About CRIAQ," [http://www.criq.aero/Pages/Detail/5975934504/10579844776/about\\_criq.html](http://www.criq.aero/Pages/Detail/5975934504/10579844776/about_criq.html) (accessed 28 January 2017); CRIAQ, "International Collaboration," [http://www.criq.aero/Projets\\_B/ListeProjets/13079981480/projects\\_list.html](http://www.criq.aero/Projets_B/ListeProjets/13079981480/projects_list.html) (accessed 28 January 2017); CRIAQ, "CRIAQ Classic," [http://www.criq.aero/Projets\\_A/ListeProjets/12927534120/projects\\_list.html](http://www.criq.aero/Projets_A/ListeProjets/12927534120/projects_list.html) (accessed 28 January 2017).

<sup>18</sup> See, e.g., CARIC, "Mission, vision & values," <http://caric.aero/about-us/mission-vision-values/> (accessed 28 January 2017); CARIC, "2015-2016 Annual Report" (29 September 2016); CARIC Press Release, "CARIC Welcomes the Federal Government's Support to Aerospace R&D" (8 August 2014).

<sup>19</sup> See, e.g., Aéro Montréal, "Innovation," <https://www.aeromontreal.ca/aero-innovation.html> (accessed 28 January 2017); Aéro Montréal, "Partners," <https://www.aeromontreal.ca/partners.html> (accessed 28 January 2017); Aéro Montréal Press Release, "Aéro Montréal Receives \$2 Million to Pursue MACH Initiative Projects and Launch a 5th Cohort" (12 December 2016); Government of Canada Press Release, "Aéro Montreal Receives \$1,584,150 in Funding from Government of Canada" (5 May 2014); Government of Canada Press Release, "Aéro Montréal Receives \$731,250 in Funding from the Government of Canada" (21 March 2011); CRIAQ, "Progress Report" (31 August 2010).

to aerospace companies, including more than C\$11 million for 16 entities announced in June 2015 and C\$4.98 million for 11 entities announced in July 2016.<sup>20</sup>

- Other federal, provincial, and local subsidy programs potentially benefiting the C-Series program, Bombardier, and the Canadian aerospace industry, including (but not limited to):
  - Quebec's provision of loan guarantees, financial assistance, and other support through the Strategic Support for Investment Program (PASI) (also known as ESSOR).<sup>21</sup>
  - Canada's provision of an Accelerated Capital Cost Allowance to support investment in machinery and equipment. The Government of Canada created this measure in 2007, and it was scheduled to expire at the end of 2015. It was extended to include eligible assets acquired after 2015 and before 2026.<sup>22</sup>
  - Quebec's provision of support through refundable tax credits for pre-competitive research.<sup>23</sup>
- Other measures by Canada and Quebec to support the sales of C-Series aircraft to Air Canada.<sup>24</sup>
- Any other existing or future measures or amendments or revisions to the measures identified above that involve a financial contribution by Canadian federal, provincial, or local government entities or by any entities controlled by such Canadian government entities that benefit Bombardier or the C-Series program, including but not limited to the following measures announced by Canada and Quebec:
  - C\$372.5 million in repayable contributions to Bombardier. On 7 February 2017, Canada announced that these contributions will be provided in installments over four years "to support the development of the Global 7000 business aircraft through the Strategic Aerospace and Defence Initiative (SADI) and the C Series, under existing contribution programs."<sup>25</sup>

<sup>20</sup> See, e.g., CEDQ Press Release, "The Government of Canada is providing financial assistance to 11 aerospace sector projects" (12 July 2016); An Act to establish the Economic Development Agency of Canada for the Regions of Quebec, S.C. 2005, c. 26 (23 June 2005); CEDQ Press Release, "Major aerospace announcement by the Government of Canada in the wings of the International Paris Air Show" (17 June 2015); CEDQ, "Disclosure of grant and contribution awards," <http://dec-ced.gc.ca/eng/disclosure/grant-contribution-awards/quarters.html> (accessed 28 January 2017).

<sup>21</sup> See, e.g., Government of Canada, "Strategic Support for Investment Program (PASI)," <https://www.ic.gc.ca/eic/site/054.nsf/eng/00167.html> (accessed 28 January 2017); Investissement Québec, "ESSOR," <http://www.investquebec.com/quebec/en/financial-products/all-our-solutions/essor.html> (accessed 28 January 2017); Investissement Québec, "Customized Financial Products," <http://www.investquebec.com/international/en/industries/aerospace/customized-financial-products.html> (accessed 28 January 2017).

<sup>22</sup> See, e.g., Government of Canada, "Budget 2015: Chapter 3.1 - Supporting the Manufacturing Sector and Investing in Advanced Research" (21 April 2015); Canada Revenue Agency, "T2 Corporation – Income Tax Guide – Chapter 3: Page 3 of the T2 return," <http://www.cra-arc.gc.ca/E/pub/tg/t4012/t4012-05-e.html> (accessed 28 January 2017).

<sup>23</sup> See, e.g., Rufin Baghana and Pierre Mohnen, "Effectiveness of R&D Tax Incentives in Small and Large Enterprises in Québec" (28 December 2008); Finances Québec, "2008-2009 Budget: Additional Information on the Budgetary Measures" (13 March 2008).

<sup>24</sup> See, e.g., "Erin O'Toole on Air Canada Public Participation Act," In the House of Commons (1 June 2016); "Air Canada Inc threatens to walk away from Bombardier Inc C-Series deal if legislation over maintenance isn't passed," *Financial Post* (22 June 2016); "Quebec getting heat for dropping lawsuit against Air Canada in S-Series deal," *CityNews* (18 February 2016).

<sup>25</sup> Innovation, Science and Economic Development Canada, "Backgrounder: Bombardier Contribution," <http://news.gc.ca/web/article-en.do?mthd=index&ctr.page=1&nid=1186209> (7 February 2017); Bombardier Press Release, "Government of Canada and Bombardier Announce Significant Investment to Strengthen Leadership in Aerospace" (7 February 2017).

- US\$1 billion in financial assistance to Bombardier. On 11 October 2016, Canada's Minister of Innovation, Science and Economic Development stated that support for Bombardier is "not a matter of if but how we want to make the investment."<sup>26</sup>
- At least C\$510 million in government contributions, including grants, loans, and financing, announced in May 2016 under Quebec's Aerospace Strategy 2016-2026. This support includes C\$40 million for Phase 2 of SA2GE. In October 2016, Quebec selected five projects for Phase 2 of SA2GE, including a proposal from Bombardier.<sup>27</sup>
- Up to C\$54 million announced in October 2016 to support Bombardier and its suppliers under the Technology Demonstration Program. Canada launched the Technology Demonstration Program in September 2013.<sup>28</sup>

Brazil considers that the measures are inconsistent with Canada's obligations, *inter alia*, 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.

Brazil considers that the measures that are the subject of this request are financial contributions (e.g., grants, loans, equity infusions, and tax credits) by a government or public body that confer a benefit to Bombardier within the meaning of Article 1.1(a) and (b) of the SCM Agreement. Brazil also considers that these subsidies are specific to Bombardier or the aerospace industry within the meaning of Article 2 of the SCM Agreement.

In Brazil's view, the Canadian federal and provincial launch aid subsidies and other subsidy programs appear to be 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. Other measures appear, in law or in fact, to condition the subsidies, 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.

The use of the above-referenced measures causes adverse effects to the interests of Brazil in the form of serious prejudice or threat of serious prejudice:

- 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 in violation of Articles 5(c), 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 to the United States, the European Union, and other third country markets in violation of Articles 5(c), 6.3(b), and 6.4 of the SCM Agreement.

<sup>26</sup> See, e.g., "Navdeep Bains: Liberals Ready To Invest In Bombardier, With Conditions," *Canadian Press* (11 October 2016); "Trudeau Plans Aerospace Support After Bombardier Request," *Bloomberg* (15 December 2016); Industry Canada, Advice to the Minister of Innovation, Science and Economic Development, Bombardier Request (4 December 2015).

<sup>27</sup> See, e.g., Government of Quebec Press Release, "Québec prépare l'avion de demain" (14 October 2015); Government of Quebec Press Release, "80 millions de dollars pour développer les technologies liées à l'avion de demain" (6 October 2016); Government of Quebec Press Release, "510 millions de dollars pour l'industrie de l'aérospatiale" (30 May 2016); Government of Quebec, "Quebec's Aerospace Strategy" (2016); Aéro Montréal, "Launch of the 2nd Phase of the SA2GE Project for the Development of Greener Aircraft" (6 October 2016).

<sup>28</sup> See, e.g., Government of Canada Press Release, "Government of Canada invests up to \$54 million in next-generation aircraft technologies" (11 October 2016); Government of Canada Press Release, "Harper Government Launches Key Aerospace and Defence Program" (4 September 2013); Industry Canada, "Technology Demonstration Program (TDP) — Program Guide" (2016).

- The effect of the subsidies is significant lost sales or threat of lost sales to the subsidized product in the United States, the European Union, and other markets in violation of Articles 5(c) and 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 United States, the European Union, and other markets in violation of Articles 5(c) and 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 in the United States, the European Union, and other markets in violation of Articles 5(c), 6.3(c), and 6.5 of the SCM Agreement.

Brazil also is concerned that the measures 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.

In the Annex to this request for consultations, and in accordance with Articles 4.2 and 7.2 of the SCM Agreement, Brazil provides a list of available evidence of the existence and nature of the subsidies in question and the serious prejudice to Brazil's interests.

Brazil reserves the right to raise additional claims and measures and address additional legal and factual issues under other provisions of the covered agreements during the course of the consultations.

My authorities look forward to receiving in due course the reply of Canada to the present request and to consider with Canada a mutually convenient date and venue to hold consultations.

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## ANNEX

### Statement of Available Evidence in Accordance with Articles 4.2 and 7.2 of the SCM Agreement

Brazil's request for consultations dated 8 February 2017 identifies the subsidy measures that are part of this request for consultations. The evidence set out below is evidence presently available to Brazil regarding the existence and nature of those subsidy measures and the serious prejudice caused by them to the interests of Brazil. Brazil reserves the right to supplement or alter this list in the future, as appropriate.

The evidence presently available to Brazil includes the following:

Industry Canada Press Release, "Government Of Canada Commits Its Support For Proposed CSeries Commercial Aircraft Program" (13 May 2005)

Bombardier Press Release, "Bombardier Launches CSeries Aircraft Program" (13 July 2008)

Industry Canada Press Release, "Government Of Canada Reconfirms Investment In Bombardier's CSeries" (13 July 2008)

Audit and Evaluation Branch of Industry Canada, "Final Audit Report: Audit of the Bombardier CSeries Contribution Agreements" (May 2014)

Agreement Between Industry Canada And Bombardier (12 May 2005)

Industry Canada, "Bombardier: Current Position and New Request" (8 June 2015)

Ministry of Economic Development, Innovation and Exports Press Release, "Quebec Has Won" (13 May 2005)

"Everyone aboard for CSeries project," *Montreal Gazette* (14 July 2008)

Investissement Québec, "Successful Takeoff for the CSeries" (20 September 2013)

Government of Quebec Press Release, "Québec réagit à l'annonce de Bombardier Aéronautique" (22 February 2008)

Government of Quebec, Décret 666-2009 (10 June 2009)

"Quebec offers to build plant in partnership with the private sector," *La Presse* (28 January 2005)

Bombardier Press Release, "Bombardier Announces Financial Results for the Third Quarter Ended September 30, 2015, Government of Québec Partners with Bombardier for \$1 billion in C Series as Certification Nears, Bombardier Inc." (29 October 2015)

Bombardier Material Change Report, Form 51-102F3 (2 November 2015)

Bombardier Material Change Report, Form 51-102F3 (25 November 2015)

Investissement Québec and Bombardier, Convention de Souscription (22 June 2016)

Bombardier Press Release, "Bombardier and CDPQ enter into definitive agreement: CDPQ to acquire 30% of newly-created BT Holdco for \$1.5 billion" (19 November 2015)

Subscription Agreement between Caisse de Dépôt et Placement du Québec and Bombardier (18 November 2015)



CDPQ Press Release, "The Caisse de Dépôt et Placement du Québec Grants US\$195 Million in Financing to Bombardier" (2 September 2009)

"Navdeep Bains: Liberals Ready To Invest In Bombardier, With Conditions," *Canadian Press* (11 October 2016)

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