

**BRAZIL – EXPORT FINANCING PROGRAMME FOR AIRCRAFT**

Second Recourse by Canada to Article 21.5 of the DSU

The following communication, dated 19 January 2001, from the Permanent Mission of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

Canada requests that the following item be placed on the agenda for the Dispute Settlement Body meeting of 1 February 2001:

Brazil – Export Financing Programme for Aircraft  
– Recourse by Canada to Article 21.5 of the DSU

Both the Panel and Appellate Body found the Brazilian measures in dispute to violate Article 3 of the Agreement on Subsidies and Countervailing Measures (the SCM Agreement). On 20 August 1999, the DSB adopted the report of the Appellate Body and the report of the Panel, as modified by the Appellate Body. The resulting DSB rulings and recommendations included the recommendations that Brazil bring its measures found to be inconsistent with the SCM Agreement into conformity with the provisions of that Agreement and that Brazil withdraw the export subsidies for regional aircraft under PROEX within 90 days, i.e., by 18 November 1999.

On 19 November 1999 Brazil submitted a status report on its implementation to the DSB and indicated that, in Brazil's view, it had taken measures to implement the DSB's rulings and recommendations. Canada disagreed that the Brazilian measure brought Brazil into conformity with its obligations under the SCM Agreement and on 23 November 1999 requested the establishment of a panel under Article 21.5 of the DSU. On 9 December 1999, the DSB referred the matter to the original panel pursuant to Article 21.5.

The Article 21.5 Panel report was circulated to Members on 9 May 2000. The Panel found that Brazil's measures to comply with the Panel's recommendation either did not exist, or were not consistent with the SCM Agreement. Accordingly, the Panel concluded that Brazil had failed to implement the DSB's 20 August 1999 recommendation that it withdraw the export subsidies for regional aircraft under PROEX within 90 days. The Appellate Body, in a report circulated to Members on 21 July 2000, upheld the Panel's findings. The DSB adopted the Appellate Body report and the Panel report on 4 August 2000.

In light of Brazil's failure to implement the 20 August 1999 rulings and recommendations of the DSB, on 12 December 2000 the DSB authorized Canada to take appropriate countermeasures in the amount of C\$344.2 million annually.

On 12 December 2000 Brazil advised the DSB of changes that it had made to the measures at issue in this case and claimed that PROEX had been brought into compliance with Brazil's obligations under the SCM Agreement. Canada is of the view that Brazil continues to violate its SCM Agreement obligations.

In view of the above, there is a disagreement between Canada and Brazil as to whether the measures taken by Brazil to comply with the 20 August 1999 and 4 August 2000 rulings and recommendations of the DSB bring Brazil into conformity with the provisions of the SCM Agreement and result in the withdrawal of the export subsidies to regional aircraft under PROEX.

Canada requests that this matter be referred to the original Panel, pursuant to Article 21.5 of the DSU. Canada further requests that the Panel find that Brazil has not taken measures to comply fully with the 20 August 1999 and 4 August 2000 rulings and recommendations of the DSB. Canada requests that the Panel find, in particular, that Brazil continues to violate its obligations under Article 3 of the SCM Agreement.

This new Article 21.5 proceeding is in no way a precondition to the implementation of the authorized countermeasures. Although Canada has not yet implemented the countermeasures that were authorized by the DSB on 12 December 2000, it retains the full right to do so at any time. Canada is invoking Article 21.5 in the interest of further legal clarity. It does so without prejudice to its legal position with respect to the implementation of the authorized countermeasures.

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