

BRAZIL - EXPORT FINANCING PROGRAMME FOR AIRCRAFT

Communication from Brazil

The following communication, dated 23 September 1996, from the Permanent Mission of Brazil to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

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In a letter sent to you by Ambassador John M. Weekes, dated 16 September 1996, Canada requested the inclusion of an item on the agenda of the meeting of the Dispute Settlement Body scheduled for 27 September 1996, concerning the establishment of a Panel pursuant to Article XXIII of GATT 1994 and Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) to examine certain aspects of the Brazilian *Programa de Financiamento às Exportações* (PROEX) that relate to the export of aircraft by the Brazilian company Embraer.

As stated during the bilateral consultations with the Government of Canada, Brazil is not of the view that the interest rate equalization granted under export operations of Embraer aircraft is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM), in particular Article 3 thereof.

Even if the aspects of PROEX at issue were to be considered inconsistent with Article 3 of the Agreement on SCM, Brazil is of the view that they would be justified by Article 27 of the Agreement. This provision, concerning Special and Differential Treatment of Developing Country Members, is of necessity invoked whenever an Article 3 question is raised concerning a developing country. Otherwise, the Article 27 benefits explicitly negotiated for by developing countries could always be avoided by the simple expedient of not raising the Article in the panel request. Brazil's rights under Article 27 were recognized by Canada during the consultations and in document WT/DS46/1, but not in Canada's proposed terms of reference for the Panel.

Brazil has no intention of blocking Canada's request. Nevertheless, in light of the above, and in accordance with Article 7 of the DSU, Brazil reserves its rights to invoke Article 27 of the Agreement on Subsidies and Countervailing Measures before any Panel is established to examine the matter at issue, and requests that the terms of reference proposed by Canada explicitly recognize Brazil's right to do so.