



30 October 2017

(17-5861)

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Original: English

CANADA – MEASURES CONCERNING TRADE IN COMMERCIAL AIRCRAFT

COMMUNICATION FROM BRAZIL

The following communication, dated 25 October 2017, from the delegation of Brazil to the Annex V Facilitator and to the Chairperson of the Dispute Settlement Body, is circulated at the request of that delegation.

Brazil makes reference to Canada's preliminary ruling request to the yet-to-be-composed panel in the dispute *Canada – Measures Concerning Trade in Commercial Aircraft* (DS522) and the letter sent to you requesting that the Annex V procedures be suspended until a decision on Canada's request is made by the Panel.

Brazil disagrees with the proposed suspension of the Annex V procedures. Canada's procedural tactics seem intended to delay and disrupt the collection of information solely in Canada's control and undermine Brazil's rights under the SCM Agreement and the DSU. Moreover, the acceptance of Canada's request would effectively nullify the Annex V process and the timetable expressly provided under the SCM Agreement, because any responding Member could then simply raise any DSU Article 6.2 objection and derail the Annex V procedures, to the detriment of the complaining Member. The suspension of the procedures would render the dispute settlement process much less effective, hinder the timely development of information, and endanger the well-functioning of the dispute settlement and the Annex V processes.

Brazil understands that the Annex V procedures run independently from the panel proceedings and are under the authority of the Facilitator alone, whose sole purpose, according to the text of Annex V, is to "ensure the timely development of the information necessary to facilitate expeditious subsequent multilateral review of the dispute."

This situation has happened before in the *Korea – Measures Affecting Trade in Commercial Vessels* (DS273) dispute. Korea, the responding Member in that dispute, filed a preliminary ruling request with regard to the panel's terms of reference under Article 6.2 of the DSU and sent a letter to the facilitator asking for the suspension of the Annex V procedures until a decision had been reached on its preliminary claims. The facilitator correctly refused, reaffirming that his mandate was to "ensure the timely development of the information necessary to facilitate expeditious subsequent multilateral review of the dispute", as provided under paragraph 4 of Annex V. In that dispute, Korea also asked the panel for the procedures to be suspended. The panel also correctly refused, understanding that it did not have authority to intervene in the procedure, which is "under the control of the Facilitator".¹

The Annex V procedures in the *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (DS316) also followed their due course despite requests for preliminary rulings from the responding Member.

In light of these precedents and of the text and objectives of Annex V, Brazil requests that you continue the Annex V procedures and suggests that the appropriate next step is to proceed with

¹ Panel Report, *Korea – Vessels*, para. 7.1.

establishing the working procedures and timetable for the Annex V procedures. Brazil is ready to submit its questions to Canada and other third-country Members as soon as you finalize the working procedures and timetable.

After the Panel is composed, Brazil will respond in detail to Canada's request for a preliminary ruling before the Panel.
