

## CANADA – EXPORT CREDITS AND LOAN GUARANTEES FOR REGIONAL AIRCRAFT

### Report of the Panel WT/DS222/R

*Adopted by the Dispute Settlement Body  
on 19 February 2002*

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**I. INTRODUCTION**

*A. Complaint of Brazil*

1.1 On 22 January 2001, Brazil requested consultations<sup>1</sup> with Canada pursuant to Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), and Article 4 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") regarding certain alleged subsidies granted by the Government of Canada and the Province of Québec that support the export of regional aircraft from Canada.

1.2 Brazil and Canada held consultations on 21 February 2001, but failed to reach a mutually satisfactory solution.

1.3 On 1 March 2001, Brazil requested the establishment of a panel pursuant to Article XXIII of the GATT 1994, Article 6 of the DSU, and Article 4.4 of the SCM Agreement.<sup>2</sup>

*B. Establishment and Composition of the Panel*

1.4 The Dispute Settlement Body ("DSB") established a panel on 12 March 2001, with standard terms of reference. The terms of reference of the Panel are:

To examine, in the light of the relevant provisions of the covered agreements cited by Brazil in document WT/DS222/2, the matter referred to the DSB by Brazil in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.

1.5 On 7 May 2001, Brazil requested the Director-General to determine the composition of the Panel, pursuant to paragraph 7 of Article 8 of the DSU. This paragraph provides:

If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Di-

<sup>1</sup> See WT/DS222/1.

<sup>2</sup> See WT/DS222/2.

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**Report of the Panel**

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rector-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.<sup>3</sup>

1.6 On 11 May 2001, the Director-General accordingly composed the panel as follows:

Chairman: Prof. William J. Davey  
Members: Prof. Seung Wha Chang  
Ms. Usha Dwarka-Canabady

1.7 Australia, the European Communities, India, and the United States reserved their rights to participate in the panel proceedings as third parties.

### C. Panel Proceedings

1.8 The Panel met with the parties on 27 and 28 June 2001, and on 31 July 2001. The Panel met with the third parties on 27 June 2001.

1.9 The Panel submitted its interim report to the parties on 19 October 2001. Comments from the parties on the interim report were received on 26 October 2001, and on each other's comments on 2 November 2001 (*See* Section VI, *infra*). The Panel submitted its final report to the parties on 9 November 2001.

## II. FACTUAL ASPECTS

2.1 This dispute concerns various Canadian measures which Brazil alleges are subsidies inconsistent with Canada's obligations under Article 3.1(a)<sup>4</sup> of the SCM Agreement in that they are contingent in law or in fact, whether solely or as one of several other conditions, upon export performance.<sup>5</sup>

2.2 The measures as identified in Brazil's request for the establishment of a panel are export credits, including financing, loan guarantees, or interest rate support provided by or through the Export Development Corporation ("EDC") – both Canada and Corporate Accounts thereunder – to facilitate the export of civil aircraft, and export credits and guarantees, including loan guarantees, equity guarantees, residual value guarantees, and "first loss deficiency guarantees", provided by *Investissement Québec ("IQ")*, a programme operated by the Province of Québec.

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<sup>3</sup> Paragraph 12 of Article 4 of the SCM Agreement provides:

For purposes of disputes conducted pursuant to this Article, except for time-periods specifically prescribed in this Article, time-periods applicable under the DSU for the conduct of such disputes shall be half the time prescribed therein.

<sup>4</sup> We understand Brazil's reference in its request for the establishment of a panel to Article 3 of the SCM Agreement to mean Article 3.1(a) of the Agreement.

<sup>5</sup> *See* footnote 14, *infra*.



### III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

#### A. *Brazil*

- 3.1 In its request for establishment, Brazil requests that the panel find that:
1. Export credits, including financing, loan guarantees, or interest rate support by or through the Canada Account are and continue to be prohibited export subsidies within the meaning of Articles 1 and 3 of the SCM Agreement.
  2. Canada has not implemented the report of the Article 21.5 panel, adopted by the DSB, requesting that Canada withdraw Canada Account subsidies.
  3. Canada, in defiance of the rulings and recommendations of the Dispute Settlement Body, continues to grant or offers to grant export credits to the regional aircraft industry through the Canada Account, that are prohibited subsidies within the meaning of Articles 1 and 3 of the Agreement.
  4. Canada's grant or offer to grant Canada Account export credits to Air Wisconsin is a prohibited export subsidy within the meaning of Articles 1 and 3 of the Agreement.
  5. Export credits, including financing, loan guarantees, or interest rate support by or through the EDC are prohibited export subsidies within the meaning of Articles 1 and 3 of the Agreement.
  6. Canada's grant or offer to grant export credits by or through EDC to Air Wisconsin is a prohibited export subsidy within the meaning of Articles 1 and 3 of the Agreement.
  7. Export credits and guarantees provided by *Investissement Québec*, including loan guarantees, equity guarantees, residual value guarantees, and "first loss deficiency guarantees" are prohibited export subsidies within the meaning of Articles 1 and 3 of the Agreement.<sup>6</sup>
- 3.2 Brazil further requested that the Panel recommend that the DSB direct Canada to withdraw these prohibited subsidies without delay.<sup>7</sup>

#### B. *Canada*

- 3.3 Canada requests that the Panel find that Brazil has failed to present a *prima facie* case that any of the Canada Account, Corporate Account or *IQ* programmes, "as such", "as applied" or in respect of "specific transactions" are inconsistent with Canada's obligations under the SCM Agreement.<sup>8</sup>
- 3.4 Canada considers that:

<sup>6</sup> WT/DS222/2.

<sup>7</sup> *Ibid.*

<sup>8</sup> Canada also raises a number of preliminary objections in respect of the claims of Brazil. See para. 7.3. *infra*.

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 Report of the Panel
 

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1. There is no basis for this Panel to reverse the findings in *Canada – Aircraft*<sup>9</sup> that EDC (Corporate Account) and Canada Account are discretionary;
2. *IQ* is not "as such" inconsistent with the SCM Agreement;
3. Brazil's "as such" claims would improperly condemn all ECAs, and are at odds with the facts and the law;
4. Brazil seeks to make an untenable distinction between its challenges to measures "as applied" and in respect of "specific transactions"; and
5. Brazil has failed to show that any specific transactions, under Corporate Account, *IQ* or Canada Account, including Air Wisconsin, are inconsistent with Canada's obligations under the SCM Agreement, because they are not inconsistent.

#### IV. ARGUMENTS OF THE PARTIES

4.1 The arguments of the parties are set out in their submissions to the Panel. The parties' submissions are attached to this Report as Annexes (*See List of Annexes, page Error! Bookmark not defined.*).

#### V. ARGUMENTS OF THE THIRD PARTIES

5.1 The arguments of the third parties – Australia, the European Communities, India, and the United States – are set out in their submissions to the Panel and are attached to this Report as Annexes (*See List of Annexes, page Error! Bookmark not defined.*).

#### VI. INTERIM REVIEW

6.1 On 26 October 2001, both parties submitted written requests for review by the Panel of particular aspects of the interim report issued on 19 October 2001. On 2 November 2001, each party provided written comments on certain aspects of the other party's request for interim review. Neither party requested an additional meeting with the Panel. The issues raised by the parties are addressed below. The Panel deleted paragraph 7.263 of the interim report, and made minor changes to paragraphs 7.243, 7.256, 7.259, 7.262, 7.276, and 7.284 of the interim report.

##### A. *Brazil's Request for Interim Review*

6.2 Brazil drew the attention of the Panel to a number of typographical and factual errors in the interim report, which we have corrected.

6.3 Brazil requested a change to the Panel's description of Brazil's argument in paragraph 7.221 of the interim report. Canada denied the need for any such change. In order to avoid any misunderstanding, we have deleted that paragraph from the final version of our report.

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<sup>9</sup> *Canada – Measures Affecting the Export of Civilian Aircraft* ("Canada – Aircraft"). Report of the Panel, WT/DS70/R, and Report of the Appellate Body, WT/DS70/AB/R, adopted 20 August 1999, DSR 1999:IV, 1443.