

CANADA – AIRCRAFT CREDITS AND GUARANTEES¹

(DS222)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	Brazil	ASCM Arts. 1 and 3.1(a)	Establishment of Panel	March 12 2001
			Circulation of Panel Report	January 28 2002
Respondent	Canada		Circulation of AB Report	NA
			Adoption	February 19 2002

1. MEASURE AND INDUSTRY AT ISSUE

- Measure at issue: Financing, loan guarantees or interest rate support provided by the Canadian Export Development Corporation (EDC) and other export credits, guarantees including equity guarantees etc. provided by the *Investissement Québec* (IQ) to the Canadian civil aircraft industry.
- Industry at issue: Civil aircraft industry.

2. SUMMARY OF KEY PANEL FINDINGS²

- ASCM Arts. 1 and 3.1(a) (as such): The Panel found that the EDC and IQ programmes *as such* were not inconsistent with Art. 3.1(a) as Brazil had failed to point out any specific provision in the relevant legal instruments that suggested that the EDC and IQ programmes (and related measures) mandated the conferral of a benefit, and thereby subsidization, within the meaning of Art. 1. The Panel found that even if EDC had the "ability", and the IQ "could" confer such a benefit, this did not necessarily mean that these programmes were required to do so.
- ASCM Arts. 1 and 3.1(a) (as applied in individual instances): The Panel relied on, inter alia, the definition of "benefit" established by the Appellate Body³, i.e. that a benefit will be conferred where a recipient received a "financial contribution" on terms more favourable than those available to the recipient in the market.

On this basis, the Panel found that since the EDC loan financing to Air Wisconsin was at rates better than those available commercially, it therefore conferred a benefit and was a subsidy under Art. 1.1(b). The Panel also found that this was a prohibited subsidy under Art. 3.1(a) as Canada itself did not deny this fact and admitted that the subsidy programme in question was intended to support Canada's export trade and hence qualified as an "export subsidy".

Similarly, the Panel found that certain EDC finance transactions⁴ conferred "benefits" on the individual recipients and also constituted prohibited export subsidies under Art. 3.1(a). However, in the case of certain other EDC financing transactions⁵, the Panel found that Brazil had failed to establish the existence of a benefit to the individual recipients. The Panel concluded that in these instances no subsidy existed, and therefore no violation could be found of Art. 3.1(a).

In the case of IQ equity guarantees, the Panel examined the level of fees charged before the issuing of guarantees, and found that only one of the IQ equity guarantee transactions at issue conferred a benefit within the meaning of Art. 1. The Panel found that this transaction was neither *de jure* or *de facto* export contingent, and therefore it did not breach Art. 3.1(a).

In the case of IQ loan guarantees, the Panel found that Brazil had not established that one of the two guarantees at issue conferred a benefit under Art. 1, or that the other guarantee, which did confer a benefit, was contingent upon export performance. Thus, the Panel found that Brazil had failed to establish that either of the two IQ loan guarantees were inconsistent with Art. 3.1 (a).

¹ *Canada – Export Credits and Loan Guarantees for Regional Aircraft*

² Other issues addressed: Art 21.5 panel's jurisdiction; DSU Art. 6.2 and 13.1; "as applied" challenge; Item (k); business confidential information.

³ *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, adopted 20 August 1999, para. 157.

⁴ In respect of Comair and Air Nostrum.

⁵ In respect of Atlantic Coast Airlines, Atlantic Southeast Airlines, Comair, Kendell and Air Nostrum.