

Brazil's WTO schedule, such as the Merchant Marine Renewal Tax, with its potential trade-restricting and trade-distorting effect. The amount of this tax is 25% of the ocean freight of imported goods. Since the tax does not apply to domestically produced goods, nor to goods imported over land from neighbouring countries, Canada considers that it violates both the national treatment and most-favoured-nation obligations of the GATT. Also, in many cases where Brazil's applied tariff is within the level of its WTO binding, the combination of the Merchant Marine Renewal Tax and the applied tariff exceeds the WTO binding.

PROEX

Since 1998, the WTO Dispute Settlement Body (DSB) has issued five rulings that PROEX, a Brazilian export finance program that reduces financing costs for Brazilian exports under its "interest equalization" component, is a prohibited export subsidy as applied to regional aircraft.

On December 12, 2000, following the breakdown of bilateral negotiations, Canada requested and received WTO authority to impose countermeasures on Brazil up to a level of \$344.2 million per year, for a total of \$2.1 billion. On that same date, Brazil informed the WTO that revisions to PROEX brought that prohibited export subsidy into compliance with its WTO obligations. Canada disagreed with Brazil's claims.

On February 16, 2001, at Canada's request, the WTO established a panel to examine whether the revisions brought the program into compliance with Brazil's WTO obligations. The panel's report, issued on July 26, found that PROEX III was compliant, as such, but could be applied in a WTO-inconsistent manner. More importantly, the panel established clear criteria (minimum commercial interest and reference rate, maximum 10-year term, maximum 85% of transaction to be financed) that PROEX financing must follow in order to comply with Brazil's WTO obligations. These were essentially the same criteria that Canada had been seeking from the beginning of the dispute, and which Brazil had consistently rejected. On August 23, the WTO adopted the panel's report.

On January 10, 2001, then Industry Minister Brian Tobin announced a proposal to provide below-market Canada Account financing to Air Wisconsin to assist Bombardier in securing a sale of 75 regional jets. The

financing terms matched the terms of the proposal made by Brazil on behalf of its aircraft producer, Embraer.

On March 12, in response to the matching strategy employed by Canada, Brazil initiated a challenge at the WTO, alleging that Canada Account financing provided in the Air Wisconsin transaction constituted a prohibited export subsidy. The DSB issued its final report on the Air Wisconsin transaction on January 28, 2002. The report found that Canada Account financing of the Air Wisconsin transaction and the matching tool used by Canada (though allowable under the OECD Arrangement) contravened WTO rules. Importantly, the Canada Account and Corporate Account, as well as the Investissement Québec program, were found compliant, as such.

Following a year-long hiatus, Canadian and Brazilian officials restarted discussions in November. Initial talks were cordial and professional, and the two parties agreed to meet again in 2002 to work toward a negotiated solution in this five-year-old dispute.

Customs Valuation

On February 13, 1998, Brazil published Decree No. 2.498/98, implementing the Customs Valuation Agreement of the World Trade Organization. The Agreement was further regulated by the adoption of two normative instructions (16/98 and 17/98) issued by the Brazilian Revenue Department, which establish that all goods are subject to verification and that the process is a selective one. The verification process takes into consideration the declared price of the merchandise, the integrity of the documents presented, freight costs, costs related to loading and unloading the merchandise, and costs of freight insurance. In addition, Brazilian authorities may request further documentation from the importer to confirm the declared price of the merchandise.

In practice, 80% of goods enter Brazil under the automatic licensing system (SISCOMEX) introduced in 1997. The remaining 20% of goods (normally goods subject to health and phytosanitary requirements) require approval and are reviewed by the respective decision-making ministries. While Brazil has hailed SISCOMEX as a significant step forward in streamlining customs procedures, many current and potential exporters find the system cumbersome and inflexible.