

**CANADA – CONTINUED SUSPENSION OF OBLIGATIONS IN THE
EC – HORMONES DISPUTE**

Notification of an Other Appeal by Canada
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 10 June 2008, from the Delegation of Canada, is being circulated to Members.

Pursuant to paragraph 4 of Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the “DSU”) and paragraph 1 of Rule 23 of the *Working Procedures for Appellate Review*, the Government of Canada hereby submits its Notice of Other Appeal concerning certain other issues of law covered in the Panel Report on *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute* (WT/DS321/R) and certain legal interpretations developed by the Panel.

In the view of the Government of Canada, the Panel erred in interpreting Article 23 of the DSU in isolation from Article 22.8 of the DSU and committed an error in law by applying, in particular, Article 23.1 and 23.2(a) of the DSU to the situation of post-retaliation in this case. These errors are contained in paragraphs 7.162 to 7.164, 7.189 to 7.244 and 7.841 of the Panel Report.

The Government of Canada is also of the view that the Panel erred in finding that by continuing to suspend concessions *vis-à-vis* the European Communities following its notification to the Dispute Settlement Body of Directive 2003/74/EC Canada was: (i) seeking the redress of a violation of obligations under a covered agreement without having recourse to, and abiding by, the rules and procedures of the DSU in violation of Article 23.1 of the DSU; and (ii) making a determination to the effect that a violation had occurred without having recourse to dispute settlement in accordance with the rules and procedures of the DSU, in violation of Article 23.2(a) of the DSU. These errors are due to the Panel’s misinterpretation of the legal basis for Canada’s suspension of concessions. The Panel’s findings and corresponding reasoning are contained in paragraphs 7.841 and 7.189 to 7.244 of its report.

In the alternative, should the Appellate Body confirm the findings of the Panel in respect of DSU Article 23.1 and 23.2(a) in relation to Canada, the Government of Canada submits that the Panel erred in stating that it did not have jurisdiction to determine the compatibility of Directive 2003/74/EC with the covered agreements and by making the suggestion that Canada should have recourse to the rules and procedures of the DSU without delay in order to implement its findings under Article 23 of the DSU. These statements are contained in paragraph 8.3 of the Panel Report and are contrary to Articles 3.3, 3.7, 19.2 and 22.8 of the DSU.

The Government of Canada respectfully requests the Appellate Body to reverse the findings and conclusions of the Panel referred to above and to modify accordingly the recommendations of the Panel.
