

**UNITED STATES - CONTINUED DUMPING AND
SUBSIDY OFFSET ACT OF 2000**

Recourse by Canada to Article 22.2 of the DSU

The following communication, dated 15 January 2004, from the delegation of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Canada requests that a special meeting of the Dispute Settlement Body (DSB) be held on 26 January 2004 to consider the following agenda item:

United States – Continued Dumping and Subsidy Offset Act of 2000
- *Recourse by Canada to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes*

The panel and the Appellate Body in this dispute found that the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) is inconsistent with the United States' obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-dumping Agreement), the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement), the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and the *Marrakesh Agreement establishing the World Trade Organisation* (WTO Agreement). In particular, they found that:

- the CDSOA is a non-permissible specific action against dumping or a subsidy contrary to Article 18.1 of the Anti-dumping Agreement, Article 32.1 of the SCM Agreement and Articles VI:2 and VI:3 of the GATT 1994;
- consequently, the United States has failed to comply with Article 18.4 of the Anti-dumping Agreement, Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement; and
- to the extent the CDSOA is inconsistent with provisions of the Anti-dumping and SCM Agreements, the CDSOA nullifies or impairs benefits accruing to Complaining Parties under those Agreements.

On 27 January 2003, the DSB adopted the Appellate Body report and the report of the Panel, as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB.

A subsequent arbitration pursuant to Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) determined that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would expire on

./.

27 December 2003. The United States has failed to implement those recommendations and rulings by that date, and no mutually acceptable arrangement has been made.

Therefore, pursuant to Article 22.2 of the DSU, Canada requests the authorization of the DSB to suspend the application to the United States of its concessions or other obligations in an amount that will be determined every year by the amount of the offset payments made to affected domestic producers in the latest annual distribution under the CDSOA. This amount will be established by adding (i) the amount of offset payments attributed to duties collected on products from Canada and (ii) a proportionate amount of the balance of total offset payments less the offset payments attributed to duties collected on products of other Members that are authorized by the DSB to suspend concessions or other obligations in this dispute. The annual amount of offset payments will be based on information published by the U.S. Bureau of Customs and Border Protection or any successor entity.

Canada intends to take measures in the form of one or both of the following:

(1) the imposition of additional import duties above bound custom duties on products originating in the United States. Each year, prior to the imposition of the additional duties, Canada will notify to the DSB a final list indicating the level of the duties on selected products in the light of the latest annual distribution of offset payments under the CDSOA;

(2) the suspension of the application of the obligations under Article VI of GATT 1994, Articles 3, 5, 7, 8, 9, 10, 11 and 12 of the Anti-dumping Agreement, and Articles 11, 12, 15, 17, 18, 19, 20, 21 and 22 of the SCM Agreement to determine that the effect of dumping or subsidization of products from the United States is to cause or threaten material injury to an established domestic industry, or is to retard materially the establishment of a domestic industry.

The application of one or both of these measures will not exceed the level of suspension of concessions or other obligations authorized by the DSB.
