

**CANADA – MEASURES RELATING TO EXPORTS OF  
WHEAT AND TREATMENT OF IMPORTED GRAIN**

Notification of an Appeal by the United States  
under paragraph 4 of Article 16 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 1 June 2004, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the Working Procedures for Appellate Review, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the March Panel and July Panel<sup>1</sup> on *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain* (WT/DS276/R) and certain legal interpretations developed by the March Panel and July Panel in this dispute.

1. The United States seeks review by the Appellate Body of the March Panel's legal conclusion in its preliminary ruling of June 25, 2003, that Canada's request for a preliminary ruling on Article 6.2 of the *Understanding of Rules and Procedures Governing the Settlement of Disputes* ("DSU") was filed in a timely manner and that by implication a response to Canada's letter of April 7, 2003 could "cure" any breach of Article 6.2 of the DSU. These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations, including those found in paragraphs 53 to 64 of the Panel's preliminary ruling.<sup>2</sup>

2. The United States seeks review by the Appellate Body of the July Panel's legal conclusion that the Canadian Wheat Board ("CWB") Export Regime is consistent with Canada's obligations under Article XVII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). This finding is in error, and is based on erroneous findings on issues of law and related legal interpretations, including, for example:

- (a) that the phrase "enterprises of the other [Members]" in Article XVII:1(b) is limited to those enterprises that wish to purchase products from a state trading enterprise ("STE");<sup>3</sup>
- (b) that the phrase "solely in accordance with commercial considerations" in Article XVII:1(b) is a narrow requirement "simply intended to prevent STEs from behaving like 'political' actors"

<sup>1</sup> As distinguished in the Panel Report, paras. 1.4 and 1.10.

<sup>2</sup> See Panel Report, para. 6.10.

<sup>3</sup> See, e.g., Panel Report, paras. 6.66 – 6.73; 6.150.

and not intended to prevent STEs from using their special and exclusive privileges to the disadvantage of commercial actors;<sup>4</sup> and

- (c) that "the CWB's legal structure and mandate, together with the special and exclusive privileges granted to it," does not create an incentive for the CWB to make sales which are not "solely in accordance with commercial considerations," and that this finding alone is sufficient to determine that therefore the CWB Export Regime as a whole does not necessarily result in making sales which are not "solely in accordance with commercial considerations," as required by Article XVII:1.<sup>5</sup>

3. The United States seeks review by the Appellate Body, pursuant to Article 11 of the DSU, of the July Panel's assessment of the CWB's legal framework as being limited solely to the structure of the CWB's Board of Directors and the lack of day-to-day government control over the operations of the CWB, and not including the special and exclusive privileges granted under the *CWB Act*.<sup>6</sup> The United States further seeks review by the Appellate Body, pursuant to Article 11 of the DSU, of the July Panel's assessment that the CWB is "controlled by" grain producers.<sup>7</sup> In both situations, the Panel's complete disregard for other evidence submitted by the United States, such as elements of the *CWB Act* and Canada's control and influence over the CWB,<sup>8</sup> is inconsistent with the Panel's duty to make an objective assessment of the matter before it.

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<sup>4</sup> See, e.g., Panel Report, paras. 6.86 – 6.106.

<sup>5</sup> See, e.g., Panel Report, paras. 6.110 – 6.135; 6.146 – 6.149.

<sup>6</sup> See, e.g., Panel Report, paras. 6.122 – 6.124.

<sup>7</sup> See, e.g., Panel Report, paras. 6.122 – 6.124.

<sup>8</sup> See, e.g., U.S. First Submission, paras. 22, 24 (referring to CWB monopoly right of purchase and sale under *CWB Act*); U.S. First Submission, para. 24 (referring to prices established jointly by CWB and the Government of Canada under *CWB Act*); U.S. First Submission, para. 16 n. 19 (referring to Government of Canada's absorption of any losses sustained by the CWB under *CWB Act*).