

**UNITED STATES – SUBSIDIES AND OTHER DOMESTIC SUPPORT
FOR CORN AND OTHER AGRICULTURAL PRODUCTS**

Request for the Establishment of a Panel by Canada

The following communication, dated 7 June 2007, from the delegation of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Pursuant to Articles 4 and 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 19 of the *Agreement on Agriculture* and Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), Canada requests that a panel be established at the meeting of the Dispute Settlement Body ("DSB") scheduled for 20 June 2007, to consider the following matters:

- That the United States' Current Total Aggregate Measurement of Support has exceeded its commitment levels in each of the years¹ 1999, 2000, 2001, 2002, 2004 and 2005, contrary to Article 3.2 of the *Agreement on Agriculture*; and
- That the United States provides, through its General Sales Manager 102 ("GSM-102") program, export credit guarantees in respect of agricultural products that are export subsidies inconsistent with Articles 10.1 and 8 of the *Agreement on Agriculture* and prohibited by Articles 3.1 and 3.2 of the *SCM Agreement*.

These violations nullify or impair the benefits accruing to Canada under these agreements.

Canada asks that the panel have the standard terms of reference as set out in Article 7.1 of the DSU.

I. THE UNITED STATES CURRENT TOTAL AGGREGATE MEASUREMENT OF SUPPORT HAS EXCEEDED ITS COMMITMENT LEVELS

The measures at issue in this part of Canada's request are:

- (a) for the years 1999, 2000 and 2001, all domestic support in favour of agricultural producers within the meaning of Article 6.1 of the *Agreement on Agriculture* notified by the

¹ In this request, "year" has the meaning assigned to it in Article 1(i) of the *Agreement on Agriculture*.

United States in the notifications of its domestic support² (the "Notifications") as part of its Aggregate Measurements of Support for those years and the programs, legislation, regulations and other instruments by which that support was provided as set forth in Title 7 of the U.S. Code and Title 7 of the U.S. Code of Federal Regulations as well as the following programs and support provided thereunder:

- Production Flexibility Contract payments³ for each of wheat, corn, grain sorghum, barley, oats, upland cotton, and rice;
- Non-insured Crop Disaster Assistance payments⁴, Crop Disaster payments⁵, Emergency Feed program payments⁶ for each of beef and veal, dairy, hogs and pigs, sheep and lamb, and all other livestock, Livestock Indemnity⁷ payments for each of beef and veal, dairy, hogs and pigs, sheep and lamb, and all other livestock, and Tree Assistance Program payments⁸ for each of apples, apricots, peaches, pears, and all other trees, bushes and vines.

(b) for the years 2002, 2004 and 2005, all domestic support measures in favour of agricultural producers within the meaning of Article 6.1 of the Agreement on Agriculture and the programs, legislation, regulations and instruments by which that support was provided as set forth in Title 7 of the U.S. Code and Title 7 of the U.S. Code of Federal Regulations, including the measures identified in the Annex to this request; and

(c) any other legislation, regulations and other instruments by which the support identified in (a) and (b) was provided.

Pursuant to Article 3.2 of the *Agreement on Agriculture*, the United States committed that it would limit its Total Aggregate Measurement of Support to the annual levels specified in section I of Part IV of Schedule XX of the United States: for the year 1999 US\$19,899.264 million and for each subsequent year US\$19,103.294 million. Despite these commitments, the United States' Current Total Aggregate Measurement of Support has exceeded its commitment levels in each of the years 1999, 2000, 2001, 2002, 2004 and 2005 in violation of Article 3.2.

For the years 1999, 2000, and 2001, the Notifications of the United States purport to show that it did not exceed its commitment levels. However, in its Notifications the United States failed to properly include in its Aggregate Measurements of Support, certain support that the United States provided. Among other aspects of the Notifications, the United States:

² G/AG/N/USA/43 of 5 February 2003 for year 1999 and G/AG/N/USA/51 of 17 March 2004 for years 2000 and 2001.

³ Subtitle B, Title I, *Federal Agriculture Improvement and Reform Act of 1996*, Public Law 104-127.

⁴ Section 109, *Agricultural Risk Protection Act of 2000*, Public Law 106-224; *Federal Crop Insurance Reform Act of 1994*.

⁵ "Food Security Act of 1985, Disaster Assistance Acts of 1988 and 1989 and subsequently" [sic]; *Fiscal Year 2000 Appropriations Act*, Public Law 106-78, October 22, 1999.

⁶ Notification G/AG/N/USA/43 indicates no public law or other references for this program. Notification G/AG/N/USA/51 lists several public law references but does not indicate which ones apply specifically to this program.

⁷ Notification G/AG/N/USA/43 indicates no public law or other references for this program. Notification G/AG/N/USA/51 lists several public law references but does not indicate which ones apply specifically to this program.

⁸ Notification G/AG/N/USA/43 refers to descriptions in the "1988 and subsequent disaster assistance acts". Notification G/AG/N/USA/51 seems to refer to the *Disaster Assistance Act of 1988*, Public Law 100-387, and also to "Public Law 105-174, May 1, 1998", whose name appears to be "1998 Supplementary Appropriations and Rescissions Act" and in which Title II identifies a "Tree assistance program".

- incorrectly claimed that its Production Flexibility Contract payments conformed to the criteria for Decoupled income support (paragraph 6 of Annex 2 of the Agreement on Agriculture);
- incorrectly claimed that payments under its Non-insured Crop Disaster Assistance, Crop Disaster Assistance, Emergency Feed, Livestock Indemnity, and Tree Assistance programs conformed to the criteria for Payments for relief from natural disasters (paragraph 8 of Annex 2 of the Agreement on Agriculture);
- incorrectly included its crop Market Loss Assistance payments⁹ in its non-product-specific Aggregate Measurement of Support instead of product-specific Aggregate Measurements of Support.

For each of the years 1999, 2000 and 2001 the support that the United States provided and which constituted its Current Total Aggregate Measurement of Support exceeded its commitment levels, contrary to Article 3.2 of the *Agreement on Agriculture*.

Although the United States has not notified its domestic support since 2001, for each of the years 2002, 2004 and 2005, the support that the United States provided and which constituted its Current Total Aggregate Measurement of Support also exceeded its commitment levels, contrary to Article 3.2 of the *Agreement on Agriculture*.

II. THE GSM-102 PROGRAM PROVIDES PROHIBITED EXPORT SUBSIDIES

The measures at issue in this part of Canada's request are the GSM-102 program under sections 202 and 211 of the *Agricultural Trade Act of 1978* as amended, and the export credit guarantees provided under that program.¹⁰

The United States provides, through its GSM-102 program, export credit guarantees in respect of agricultural products. Pursuant to the terms and conditions of the GSM-102 program, the premium rates that the United States charges for guarantees under the program are inadequate to cover the long-term operating costs and losses of the program. Thus, the GSM-102 program and guarantees issued under it fall within item (j) of Annex I to the *SCM Agreement* as export subsidies. As well, the GSM-102 program offers export credit guarantees on terms that are more favourable than those available to recipients in the market, and these are offered solely on the export of U.S. agricultural products. The program and guarantees therefore are subsidies within the meaning of Article 1 of the *SCM Agreement* and are contingent on exportation within the meaning of Article 3.1(a) of that Agreement. Consequently, the GSM-102 program and export credit guarantees provided under it involve "export subsidies" within the meaning of Article 1(e) of the *Agreement on Agriculture*.

Export credit guarantees are issued under the GSM-102 program in respect of agricultural products for which the United States has not undertaken export subsidy reduction commitments in Section II of Part IV of Schedule XX of the United States. These export subsidies are applied in a manner which results in, or which threatens to lead to, circumvention of the export subsidy commitments of the United States. The GSM-102 program and the subsidies under it are therefore inconsistent with the obligations of the United States under Articles 10.1 and 8 of the *Agreement on*

⁹ Section 802, Subtitle A, Title VIII, *Emergency and Disaster Assistance for Producers*, Public Law 106-78; *Agricultural Risk Protection Act of 2000*, Public Law 106-224. The Notifications refer to crop Market Loss Assistance payments as "Crop market loss assistance payments", "market loss payments (MLP)", and "market loss payments (MLA)".

¹⁰ 7 U.S.C. 5622, 5641. See also 7 C.F.R. Part 1493, as amended.

Agriculture. The GSM-102 program and GSM-102 export credit guarantees are also prohibited under Articles 3.1(a) and 3.2 of the *SCM Agreement*.

On 7 February 2007, Canada and the United States held consultations on these matters, pursuant to Articles 1 and 4 of the DSU, Article XXII of the *GATT 1994*, Articles 4, 7 and 30 of the *SCM Agreement* and Article 19 of the *Agreement on Agriculture*, but these consultations failed to resolve the dispute. Accordingly, Canada makes this request and asks that it be placed on the agenda of the meeting of the DSB scheduled for 20 June 2007.

ANNEX to the Letter of Canada to the DSB dated 7 June 2007
List of Measures

| <u>Measure type</u> | <u>Policy authority</u> |
|---|---|
| Availability of Recourse Loans for High Moisture Feed Grains and Seed Cotton | Section 1209, Subtitle B of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Certificate Exchange Gains | Section 812, Subtitle B, Title VIII of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Public Law 106-78) & 7 CFR, Part 1401, § 1401.4 |
| Commodity Loan Forfeit | 7 CFR, Part 1405, § 1405 (Equivalent to authorities notified in ST DS: 6 in G/AG/N/USA/51) |
| Commodity Loan Interest Subsidy | 7 CFR, Part 1401, § 1401.4 (Equivalent to authorities notified in ST DS:7 in G/AG/N/USA/51) |
| Cotton User Marketing Certificates | Section 136(a), Title 1 of the Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104-127) |
| Cottonseed Payments | Section 206, Title II of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7) |
| Countercyclical Payments (for covered commodities) | Subtitle A, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Countercyclical Payments (for peanuts) | Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Crop and Revenue Insurance Subsidized by the Federal Crop Insurance Corporation | Title 7 U.S.C., Chapter 36, § 1516 |
| Crop Disaster payments | Title II, Consolidated Appropriations Resolution, 2003 (Public Law 108-7) |
| Dairy Indemnities | Title 7, Chapter 17, § 450j & § 450k |
| Dairy Forward Pricing Pilot Program | Title 7, Chapter 26, Subchapter III, § 627 |
| Direct Payments (for covered commodities) | Subtitle A, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171), as amended |
| Direct Payments (for peanuts) | Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171), as amended |
| Emergency Loans for Seed Producers | Section 10103, Subtitle B, Title X of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Farm Ownership Loans | Subtitle A, Title V of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Farm Storage Facility Loan Program | Commodity Credit Corporation Charter Act (62 Stat.1070; 15 U.S.C. 714), as amended |
| Flexible Marketing Allotments for Sugar | Section 1403, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Hard White Wheat Incentive Payments Program | Section 1616, Subtitle F, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Irrigation on Bureau of Reclamation Projects in 17 Western States | Equivalent to Authorities Notified in Supporting Table DS:9 in G/AG/N/USA/51. |
| Livestock Pilot Program | Section 132, Subtitle C of the Agricultural Risk Protection Act of 2000 (Public Law 106-224) |
| Loan Deficiency Payments (for loan commodities) | Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Loan Deficiency Payments (for peanuts) | Section 1307, Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Marketing Loan Repayment provision | Section 1204, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Market Loss Assistance payments | Section 1617, Subtitle F, Title I of the Farm security and Rural Investment Act of 2002 (Public Law 107-171) |

| <u>Measure type</u> | <u>Policy authority</u> |
|---|--|
| National Dairy Market Loss Payments (Milk Income Loss Contract, i.e., MILC) | Section 1502, Subtitle E, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| National Dairy Market Loss Payments (the authorized extended period of the MILC program, i.e., MILCX) | Section 1101, Subtitle A, Title 1 of the Deficit Reduction Act of 2005 (Public Law 109-171) |
| Net Federal Budget Outlays for Grazing Livestock on Federal Land | Equivalent to authorities notified in Supporting Table DS:9 in G/AG/N/USA/51 |
| Noninsured Crop Disaster Assistance Program | Section 109, Subtitle A, Title I of the Agricultural Risk Protection Act of 2000 (Public Law 106-224) |
| Nonrecourse Marketing Assistance Loans (for loan commodities) | Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Nonrecourse Marketing Assistance Loans (for peanuts) | Section 1307, Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Payments in lieu of Loan Deficiency Payments for Grazed Acreage | Section 1206, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Payment to Processor (Sugar) | Section 1401, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Price support/quota: Milk Price Support Program | Section 1501, Subtitle E, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Price support/quota: Sugar program | Section 1401, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Producer Retention of Erroneously Paid Loan Deficiency Payments and Marketing Loan Gains | Section 1618, Subtitle F, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Production Flexibility Contract payments | Subtitle B, Title I of the Federal Agriculture Improvement and Reform Act of 1996 |
| Recourse loans available for seed cotton | Section 1209(b), Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Sheep and Lamb Adjustment Assistance Program | Clause 3 of Section 32 of the Agricultural Adjustment Act of August 24, 1935, (Public Law 74-320), as amended (See also Lamb Meat Adjustment Assistance Program FSA Fact Sheets, August 14, 2000 and April 2002) |
| Special Competitive Provisions for Extra Long Staple Cotton | Section 1208, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Special Marketing Loan Provisions for Upland Cotton | Section 1207, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| State Credit Programs | Equivalent to authorities notified in Supporting Table DS:9 of G/AG/N/USA/51 |
| Storage Payments | Equivalent to authorities notified in Supporting Table DS:7 in G/AG/N/USA/51 under Cotton |
| Sugar Storage Facility Loan | Section 1402, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Supplemental Loan (Sugar) | Section 1401, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |
| Support Under Assistance for Livestock Producers (includes Livestock Indemnity, Livestock Compensation and Livestock Assistance payments) | Section 10104, Subtitle B, Title X of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171), as amended & Section 203(d) of the Agricultural Assistance Act of 2003 (Public Law 108-7), as amended |
| Tree Assistance Program | Subtitle C, Title X of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) |