

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

Recourse by Canada to Article 22.7 of the DSU

The following communication, dated 10 November 2004, from the delegation of Canada to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.7 of the DSU.

Canada requests that the meeting of the Dispute Settlement Body on 24 November 2004 consider the following agenda item:

United States – Continued Dumping and Subsidy Offset Act of 2000

*Recourse by Canada to Article 22.7 of the Understanding on Rules and Procedures
Governing the Settlement of Disputes*

The Panel and the Appellate Body found that the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was inconsistent with the United States' obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Marrakesh Agreement establishing the World Trade Organization. On 27 January 2003, the Dispute Settlement Body ("DSB") adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB but failed to do so within the reasonable period of time, as determined by the arbitrator pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), which expired on 27 December 2003.

Consequently, on 15 January 2004, Canada requested the authorization to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in an amount to be determined every year on the basis of the amount of offset payments made to affected domestic producers in the latest annual distribution of anti-dumping and countervailing duties under the CDSOA.

On 23 January 2004, the United States objected to the level of suspension proposed and on 26 January 2004, pursuant to Article 22.6 of the DSU, the matter was referred to arbitration. On 31 August 2004, the arbitrator issued its decision as follows:

V. AWARD OF THE ARBITRATOR

5.1 For the reasons set out above, we determine that, in the matter *United States – Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by Canada)*, the level of nullification or impairment suffered by Canada in a particular year can be deemed to be equal to the total of disbursements made under the CDSOA for the preceding year relating to anti-dumping or countervailing duties paid on imports from Canada, multiplied by the coefficient identified in Section III.D above.

5.2 Accordingly, we decide that the suspension by Canada of concessions or other obligations in the form of:

- (a) the imposition of additional import duties above bound custom duties on products originating in the United States; and
- (b) 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;

covering, on a yearly basis, a *total value of trade* not exceeding, in US dollars, the amount resulting from the following equation:

Amount of disbursements under CDSOA for the most recent year for which data are available relating to anti-dumping or countervailing duties paid on imports from Canada at that time, as published by the United States' authorities.

multiplied by:

0.72

would be consistent with Article 22.4 of the DSU.

To date, the United States has still not implemented the recommendations and rulings of the DSB with respect to the CDSOA, and no mutually acceptable arrangement has been made.

Article 22.7 of the DSU provides that "the DSB shall be informed promptly of the decision of the arbitrators and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request." Therefore, Canada hereby requests authorization from the DSB to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 at a level not exceeding every year 72% of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from Canada for the most recent year for which data are available at that time.

Canada will annually notify the DSB of the terms of any measures it proposes to adopt in order to suspend its concessions or other obligations prior to bringing those measures into force. Such

notice will also identify the applicable level of suspension of concessions or other obligations for the following year established pursuant to the arbitrator's formula.
