

**UNITED STATES – DETERMINATION OF THE
INTERNATIONAL TRADE COMMISSION IN HARD RED SPRING WHEAT
FROM CANADA**

Request for the Establishment of a Panel by Canada

The following communication, dated 10 June 2004, from the delegation of Canada to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 8 April 2004, the Government of Canada requested consultations¹ with the Government of the United States concerning: the investigation of the United States International Trade Commission (Commission) in Hard Red Spring Wheat from Canada (Investigations Nos. 701-TA-430B and 731-TA-1019B (Final)); the Commission's final determination that an industry in the United States is materially injured by reason of imports from Canada of hard red spring wheat that have been found by the Department of Commerce to be subsidized by the Government of Canada and sold in the United States at less than fair value (68 Federal Register (FR) 60707 (23 October 2003)); the Department of Commerce's countervailing duty order (68 FR 60642 (23 October 2003)) and anti-dumping order (68 FR 60641 (23 October 2003)) with respect to hard red spring wheat from Canada; and the final definitive anti-dumping and countervailing duties applied as a result. Canada's request for consultations was made pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-Dumping Agreement) and Article 30 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).

Canada and the United States held consultations on 6 May 2004 regarding the inconsistency of these measures with Article VI:6(a) of the GATT 1994, Articles 1, 3.1, 3.2, 3.4, 3.5 and 18.1 of the Anti-Dumping Agreement and Articles 10, 15.1, 15.2, 15.4, 15.5, 19.1 and 32.1 of the SCM Agreement. These consultations failed to settle this dispute.

Canada therefore requests, pursuant to Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994, Article 17 of the Anti-Dumping Agreement and Article 30 of the SCM Agreement, that a panel be established at the next meeting of the Dispute Settlement Body (DSB), to be held on 22 June 2004. Canada further requests that the panel have the standard terms of reference as set out in Article 7 of the DSU.

¹ *United States – Determination of the International Trade Commission in Hard Red Spring Wheat from Canada*, Request for Consultations by Canada, WT/DS310/1, G/L/678, G/ADP/D53/1, G/SCM/D59/1, 15 April 2004.

Finally, Canada requests that the panel consider the claims, and find that the United States' measures are inconsistent with its obligations under the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement, as set out below.

In making a final determination of injury and, as a result, imposing final anti-dumping and countervailing duties, the United States has acted inconsistently with its obligations under Article 3 of the Anti-Dumping Agreement, Article 15 of the SCM Agreement and Article VI:6(a) of the GATT 1994. Specifically:

1. The United States violated Article 3.1 of the Anti-Dumping Agreement and Article 15.1 of the SCM Agreement by failing to base its injury determination on positive evidence and by further failing to conduct an objective examination of both (a) the volume of the dumped and subsidized imports and the effect of those imports on prices in the domestic market for like products, and (b) the consequent impact of those imports on domestic producers of such products.
2. The United States violated Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement by failing to properly consider the effect of the dumped and subsidized imports on prices, including whether there had been a significant price undercutting by the dumped and subsidized imports and whether the effect of those imports was otherwise to depress prices to a significant degree.
3. The United States violated Article 3.4 of the Anti-Dumping Agreement and Article 15.4 of the SCM Agreement by failing to properly examine the impact of the dumped and subsidized imports on the domestic industry concerned.
4. The United States violated Article 3.5 of the Anti-Dumping Agreement and Article 15.5 of the SCM Agreement. The violations include:
 - (i) failing to demonstrate a causal relationship between the dumped and subsidized imports and the injury to the domestic industry, on the basis of an examination of all the relevant evidence before the Commission; and
 - (ii) failing to examine known factors other than the dumped and subsidized imports which were injuring the domestic industry and further failing to ensure that the injuries caused by these other factors were not attributed to the dumped and subsidized imports.

In making a final determination of injury in the above-described circumstances and, as a result, imposing final anti-dumping and countervailing duties, the United States violated Articles 1 and 18.1 of the Anti-Dumping Agreement, Articles 10, 19.1 and 32.1 of the SCM Agreement and Article VI:6(a) of the GATT 1994.

For the foregoing reasons, benefits accruing to Canada directly or indirectly under the Anti-Dumping Agreement, the SCM Agreement and the GATT 1994 have been nullified or impaired.
