

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

Request for the Establishment of a Panel by Canada

The following communication, dated 10 August 2001, from the Permanent Mission of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 21 May 2001, Canada, acting jointly and severally with Mexico, each in the exercise of rights accruing to it as a Member of the World Trade Organization (WTO), requested consultations with the United States of America pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the GATT), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the ADA) and Articles 7.1 and 30 of the Agreement on Subsidies and Countervailing Measures (the SCMA) regarding the amendment to the Tariff Act of 1930 signed into law by the President on 28 October 2000 entitled the "Continued Dumping and Subsidy Offset Act of 2000" (the Act) (WT/DS234/1).

Consultations were held with the United States in Geneva on 29 June 2001. Unfortunately, those consultations failed to resolve the dispute.

The express purpose of the Act is to remedy the "continued dumping or subsidisation of imported products after the issuance of antidumping orders or findings or countervailing duty orders". With that objective, the Act mandates the US customs authorities to distribute on an annual basis the duties assessed pursuant to a countervailing duty order, an anti-dumping order or a finding under the Anti-Dumping Act of 1921 to the "affected domestic producers" for their "qualifying expenses" (these duties are referred to below as "offsets"). The "affected domestic producers" are the petitioners or interested parties who supported the petition. "Qualifying expenses" include the expenditures incurred with respect to "manufacturing facilities, equipment, acquisition of technology, acquisition of raw material or other inputs".

The Act leaves no discretion to the competent authorities. They must pay the "offsets" whenever the conditions stipulated in the Act are present. Therefore, the Act constitutes mandatory legislation, which can itself be subject to WTO dispute settlement procedures.

The "offsets" constitute a specific action against dumping and subsidization that is not contemplated in the GATT, the ADA and the SCMA. Moreover, the "offsets" provide a strong incentive to the domestic producers to file or support petitions for anti-dumping or anti-subsidy measures, thereby distorting the application of the standing requirements provided for in the ADA and the SCMA. In addition, the Act makes it more difficult for exporters subject to an anti-dumping or countervailing duty order to secure an undertaking with the competent authorities, since the affected domestic producers will have a vested interest in opposing such undertakings in favour of the

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collection of anti-dumping or countervailing duties. In Canada's view, this is not a reasonable and impartial administration of the US laws and regulations implementing the provisions of the ADA and the SCMA regarding standing determinations and undertakings.

For these reasons, Canada considers that the Act is inconsistent with the obligations of the United States under the Marrakesh Agreement Establishing the WTO, the GATT, the ADA and the SCMA. In particular, Canada considers that the Act is, in several respects, in violation of the following provisions:

- Article 18.1 of the ADA in conjunction with Article VI:2 of the GATT and Article 1 of the ADA;
- Article 32.1 of the SCMA, in conjunction with Article VI:3 of the GATT and Article 10 of the SCMA;
- Article X(3)(a) of the GATT;
- Article 5.4 of the ADA and Article 11.4 of the SCMA;
- Article 8 of the ADA and Article 18 of the SCMA;
- Article XVI:4 of the Marrakesh Agreement Establishing the WTO, Article 18.4 of the ADA and Article 32.5 of the SCMA.

As a result of being inconsistent with the above provisions, the Act nullifies or impairs the benefits accruing to Canada under the cited Agreements.

Therefore, Canada hereby respectfully requests that a panel be established by the Dispute Settlement Body pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of GATT, Article 17 of the ADA and Article 30 of the SCMA and, to this end, further asks that this request for a panel be placed on the agenda for the special meeting of the Dispute Settlement Body to be held on 23 August 2001.

In addition to Canada's request for the establishment of a panel, Canada also requests, pursuant to Article 9.1 of the DSU, that a single panel be established to examine this complaint along with the complaint of Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand contained in document WT/DS217/5 and the complaint by Mexico related to this same matter, if applicable.

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