

**CANADA – MEASURES AFFECTING THE IMPORTATION OF MILK  
AND THE EXPORTATION OF DAIRY PRODUCTS**

Recourse by the United States to Article 22.2 of the DSU

The following communication, dated 16 February 2001, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

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Pursuant to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), the United States requests authorization from the Dispute Settlement Body (DSB) to suspend the application to Canada of tariff concessions and related obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994), covering trade in the amount of US\$35 million on an annual basis. This level of suspension is equivalent to the level of nullification and impairment of benefits accruing to the United States that results from Canada's failure to bring its export subsidy measures concerning dairy products into compliance, by 31 January 2001, with the Agreement on Agriculture or to otherwise comply with the recommendations and rulings of the DSB in "Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products" (WT/DS103).

On 25 March 1998, the DSB established a panel at the request of the United States to examine Canada's measures concerning dairy products. Both the Panel and the Appellate Body in this dispute found Canada's measures to constitute export subsidies and the quantity of subsidized dairy product exports by Canada to breach the Agreement on Agriculture. On 27 October 1999, the DSB adopted its recommendations and rulings. The DSB recommendations and rulings include, *inter alia*, the recommendation that Canada bring the measures determined to be inconsistent with the Agreement on Agriculture into conformity with its obligations under the agreement.

The United States and Canada agreed that the "reasonable period of time" for Canada to implement the DSB recommendations and rulings would expire on 31 December 2000 (WT/DS103/10). The reasonable period was extended until 31 January 2001 by the mutual agreement of the parties on 11 December 2000 (WT/DS103/13). In the view of the United States, Canada failed to comply with the recommendations and rulings of the DSB with respect to its export subsidies for dairy products by the end of the reasonable period of time. Therefore, the United States is entitled to redress under Article 22 of the DSU.

In considering what concessions to suspend, the United States followed the principles and procedures set forth in Article 22.3(a) of the DSU. As required by Article 22.4 of the DSU, the level of suspension proposed is equivalent on an annual basis to the nullification or impairment of benefits accruing to the United States resulting from Canada's failure to comply with the DSB's recommendations and rulings.

The United States intends to implement this suspension of tariff concessions and related obligations under the GATT 1994 by directing the US Customs Service to impose duties in excess of the bound rates on a list of products to be drawn from the list attached to this request. The trade value of the final list of products subject to increased duties will be equivalent, on an annual basis, to US\$35 million or, if applicable, to an amount determined through arbitration pursuant to Article 22.6 of the DSU to be equivalent to the nullification or impairment of benefits accruing to the United States in this matter.

Based on the Understanding between Canada and the United States Regarding Procedures Under Articles 21 and 22 of the DSU (WT/DS103/14), the United States understands that Canada will object to the level of suspension of concessions requested and/or make a claim under Article 22.3, thus referring the matter to an arbitrator pursuant to Article 22.6 of the DSU.

ATTACHMENT

Note: The product descriptions supplied below for the items of the Harmonized Tariff Schedule of the United States (HTS) are for the convenience of the reader and are not intended to delimit in any way the scope of the products that would be subject to increased duties.

Chapter 3	Fish and crustaceans, molluscs and other aquatic invertebrates
Chapter 4	Dairy produce, birds eggs; natural honey; edible products of animal origin, not elsewhere specified or included
Chapter 5	Products of animal origin, not elsewhere specified or included
Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of citrus fruit or melons
Chapter 9	Coffee, tea, mate and spices
Chapter 10	Cereals
Chapter 11	Products of the milling industry; malt; starches; inulin; wheat gluten
Chapter 12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder
Chapter 13	Lac; gums, resins and other vegetable saps and extracts
Chapter 15	Animal or vegetable fats and oils and their cleavage products prepared edible fats; animal or vegetable waxes
Chapter 16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates
Chapter 17	Sugars and sugar confectionery
Chapter 18	Cocoa and cocoa preparations
Chapter 19	Preparations of cereals, flour, starch or milk; bakers' wares
Chapter 20	Preparations of vegetables, fruit, nuts or other parts of plants
Chapter 21	Miscellaneous edible preparations
Chapter 22	Beverages, spirits and vinegar
Chapter 23	Residues and waste from the food industries; prepared animal feed

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