

**CANADA - CONTINUED SUSPENSION OF OBLIGATIONS IN THE
EC - HORMONES DISPUTE**

Request for Consultations by the European Communities

The following communication, dated 8 November 2004, from the delegation of the European Communities to the delegation of Canada and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The European Communities hereby requests consultations with the Government of Canada pursuant to Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") regarding Canada's continued suspension of concessions and other obligations under the covered agreements, after the European Communities has removed the measures found to be WTO-inconsistent in *European Communities – Measures concerning meat and meat products (Hormones)* ("EC – Hormones").

On 13 February 1998, the Dispute Settlement Body ("DSB") adopted the panel and Appellate Body reports in *EC – Hormones*. In doing so, the DSB recommended that the European Communities bring the measures at issue into conformity with WTO rules. The Arbitrator appointed pursuant to Article 21.3(c) of the DSU determined that the European Communities shall have a "reasonable period of time" until 13 May 1999 to comply with the recommendations. On 26 July 1999, Canada obtained from the DSB the authorization to suspend obligations up to the level of 11.3 million Canadian Dollars per year. The arbitrators acting pursuant to Article 22.6 of the DSU had previously determined this level to be equivalent to the level of nullification or impairment suffered by Canada in the matter *EC – Hormones* (Article 22.4 of the DSU). Pursuant to the DSB's authorization and since 1 August 1999, Canada applies import duties in excess of bound rates to imports from the European Communities by imposing a 100 % *ad valorem* rate of duty on a list of articles that are the products of certain EC Member States.

The European Communities subsequently removed the measure found to be inconsistent with a covered agreement. It adopted Directive 2003/74/EC of the European Parliament and of the Council of 22 September 2003 amending Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists. The Directive was published and entered into force on 14 October 2003.

In conformity with the recommendations and rulings of the DSB, the new EC legislation is based on a comprehensive risk assessment, in particular on the opinions of the independent Scientific

Committee on Veterinary Measures relating to Public Health.¹ The European Communities initiated and funded a number of specific scientific studies and research projects. It addressed specific requests to the United States, Canada and third countries to provide any recent scientific data and information in their possession. It took account of the findings of various independent expert bodies.

On 27 October 2003, the European Communities notified to the DSB the adoption, publication and entry into force of this Directive as well as the preceding scientific risk assessment. In the same communication, the European Communities explained that it considers itself to have fully implemented the recommendations and rulings of the DSB in the *EC – Hormones* dispute and that, as a consequence, it considers the United States' and Canada's suspension of concessions vis-à-vis the European Communities to be no longer justified.²

The United States and Canada disagreed and denied that the new Directive was based on science and that it implements the DSB's recommendations and rulings. As announced in the DSB,³ the United States and Canada maintained the suspension of their concessions in relation to imports from the European Communities. Further, the United States and Canada refused to initiate dispute settlement proceedings under Article 21.5 of the DSU in order to obtain a review of the new Directive's consistency with the recommendations and rulings of the DSB. They have also rejected all proposals by the European Communities over the last year which sought to establish an agreed procedure for resolving this dispute.

The issues which the European Communities would like to raise in the course of the consultations include, but are not limited to, the following measures:

- Canada's suspension of obligations and continued imposition of import duties in excess of bound rates on imports from the European Communities despite the EC's removal of the measures found to be inconsistent with the covered agreements and notification thereof to the DSB;
- Canada's unilateral determination that the new EC legislation is in violation of obligations under the covered agreements; and
- Canada's failure to have recourse to dispute settlement proceedings pursuant to Article 21.5 of the DSU in order to resolve the disagreement over whether the new EC legislation is consistent with a covered agreement.

These measures are inconsistent with Canada's obligations under Articles I and II of GATT 1994 and Articles 23.1; 23.2(a) and (c); 22.8 and 21.5 of the DSU.

- Canada has acted inconsistently with Article 22.8 of the DSU by failing to apply the suspension of obligations only until such time as the measure found to be inconsistent with a

¹ *Opinion of the Scientific Committee on Veterinary Measures Relating to Public Health: Assessment of potential risks to human health from hormone residues in bovine meat and meat products (30 April 1999); Opinion on review of previous SCVPH opinions of 30 April 1999 and 3 May 2000 on the potential risks to human health from hormone residues in bovine meat and meat products (adopted on 10 April 2002) and Review of specific documents relating to the SCVPH opinion of 30 April 99 on the potential risks to human health from hormone residues in bovine meat and meat products (adopted on 3 May 2000).*

² WTO, *European Communities – Measures concerning meat and meat products (Hormones)*, Communication from the European Communities, WT/DS26/22, WT/DS48/20, 28 October 2003.

³ DSB, *Minutes of Meeting held on 7 November 2003*, WT/DSB/M/157, 18 December 2003, paras. 29-33.

covered agreement has been removed, or the implementing Member has provided a solution to the nullification or impairment of benefits previously caused to Canada.

- Canada has acted inconsistently with Articles I and II of GATT 1994 by imposing import duties in excess of bound rates on imports from the European Communities. Thereby, Canada has failed to accord an advantage granted, with respect to customs duties, to products originating in other countries immediately and unconditionally to the like products originating in the territory of the European Communities. By the same measure, Canada has failed to accord to the commerce of another Member treatment no less favourable than that provided for in the appropriate part of the Schedule annexed to the GATT 1994. Canada has also failed to exempt products, which are the products of territories of another Member, on their importation into Canada's territory, from ordinary customs duties in excess of those set forth and provided in Canada's Schedule.
- Canada has acted inconsistently with Article 23.1 of the DSU by failing to have recourse to, and abide by, the rules and procedures of the DSU, in a situation where it seeks redress of an alleged violation of obligations under a covered agreement.
- In the particular instance, Canada failed to have recourse to dispute settlement pursuant to Article 21.5 DSU, in a situation where there is a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with DSB recommendations and rulings.
- Canada has acted inconsistently with Article 23.2(a) of the DSU by unilaterally making a determination to the effect that a violation is still occurring, despite the removal of the measures. Canada has made such determination without recourse to dispute settlement in accordance with the rules and procedures of the DSU and, as a consequence, in the absence of findings contained in an adopted panel or Appellate Body report or arbitration award rendered under the DSU.
- By applying the suspension of obligations to the new EC legislation, Canada has acted inconsistently with Article 23.2(c) of the DSU. Canada has failed to follow the procedures set forth in Article 22 of the DSU and to obtain DSB authorization in accordance with those procedures before suspending obligations under a covered agreement in response to the alleged failure of another Member to implement DSB recommendations and rulings.

The European Communities reserves the right to address additional measures and claims under other provisions of the WTO Agreement regarding the above matter during the course of the consultations.

The European Communities looks forward to receiving in due course a reply from Canada to this request. The European Communities is ready to consider with Canada mutually convenient dates to hold consultations in Geneva.
