

Original: English

## UNITED STATES – SUBSIDIES AND OTHER DOMESTIC SUPPORT FOR CORN AND OTHER AGRICULTURAL PRODUCTS

### Request for Consultations by Canada

The following communication, dated 8 January 2007, from the delegation of Canada to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

---

My authorities have asked me to request consultations with the Government of the United States pursuant to Articles 1 and 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), Articles 4, 7 and 30 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) and Article 19 of the *Agreement on Agriculture*.

There are three parts to this request. For each of the measures referred to in this request, the request also covers any amendments, replacements, extensions or other related measures.

I. The measures at issue in the first part of this request are subsidies and domestic support provided to US producers and/or exporters of corn (the "US corn industry") as well as the programs, legislation, regulations and statutory instruments providing these subsidies and support. The measures include the following subsidies and domestic support provided to the US corn industry from marketing year<sup>1</sup> 1996 onward:

- Subsidies and domestic support provided under the *Farm Security and Rural Investment Act of 2002* (2002 Farm Bill) and programs under the 2002 Farm Bill, relating to marketing loan payments (including marketing assistance loans, marketing loan gains, loan deficiency payments, commodity certificates, commodity certificate exchange gains and commodity loan interest subsidies), direct payments, counter-cyclical payments, and any other provisions of the 2002 Farm Bill that provide direct or indirect support to the US corn industry;
- Subsidies and domestic support provided under the *Federal Agriculture Improvement and Reform Act of 1996* (FAIR Act) and programs under the FAIR Act, relating to marketing loan payments (including marketing assistance loans, marketing loan gains, loan deficiency payments, commodity certificates, commodity loan interest subsidies, commodity certificate exchange gains), production flexibility contract

---

<sup>1</sup> The "marketing" year for corn runs from 1 September through 31 August. For example, marketing year 2005 began on 1 September 2005 and ended on 31 August 2006.

payments and any other provisions of the FAIR Act that provide direct or indirect support to the US corn industry;

- Market loss assistance (MLA) payments to the US corn industry provided under the *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 1998*; *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 1999*; the *Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999*; the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2000*; the *Agriculture Risk Protection Act of 2000*; and the *Crop Year 2001 Agricultural Economic Assistance Act*;
- Export credit guarantees to facilitate the export of corn, provided under the *Agricultural Trade Act of 1978*, and other measures such as the General Sales Manager (GSM-102) program and Supplier Credit Guarantee Program (SCGP).

Canada considers that the measures at issue are inconsistent with the United States' obligations under Articles 5(c) and 6.3 (c) of the *SCM Agreement*.

Under the measures at issue, the United States provides subsidies to the US corn industry. These subsidies take the form of financial contributions by the US government or an income or price support in the sense of Article XVI of *GATT 1994*, within the meaning of Article 1.1(a) of the *SCM Agreement* and a benefit is thereby conferred within the meaning of Article 1.1(b) of the *SCM Agreement*. These subsidies are specific to US producers of primary agricultural products and/or to the US corn industry within the meaning of Articles 2.1 and 2.3 of the *SCM Agreement*.

These measures cause adverse effects in the form of serious prejudice and threat of serious prejudice to the interests of Canada. The operation of the statutory provisions of the 2002 Farm Bill, the FAIR Act and the other statutes referred to above that mandate payments of marketing loans, counter-cyclical payments and direct payments (including production flexibility contract payments) and MLA payments to the US corn industry, and the mandatory payments under those provisions, as well as the export credit guarantees, cause significant price depression and price suppression for corn in the Canadian market for marketing years 1996-2006, and threaten to cause significant price depression and price suppression for corn in the Canadian market, in violation of Articles 5(c) and 6.3(c) of the *SCM Agreement*.

II. The measures at issue in the second part of this request are support in respect of corn and other agricultural products not scheduled in Section II of Part IV of the Schedule of the United States, provided to US exporters of those products through export credit guarantee programs under the *Agricultural Trade Act of 1978* and other measures such as the GSM-102 program and SCGP as well as the programs, legislation, regulations and statutory instruments providing the support.

Canada considers that the measures at issue are inconsistent with the United States' obligations under Articles 3.1(a) and 3.2 of the *SCM Agreement* and Articles 3.3, 8, 9.1 and 10.1 of the *Agreement on Agriculture*.

Through these programs, the United States makes available to its exporters premium rates and other terms more favourable than those which the market would otherwise provide. The premium rates under these programs are also inadequate to cover the long-term operating costs and losses of the programs. These programs therefore provide subsidies contingent upon export performance contrary to Article 3.1(a) and 3.2 of the *SCM Agreement*. These measures also violate Articles 3.3, 8, 9.1 and 10.1 of the *Agreement on Agriculture*.

III. The measures at issue in the third part of this request are the domestic support that is properly subject to the provisions of Article 6 of the *Agreement on Agriculture*, provided by the United States in favour of agricultural producers, as well as the programs, legislation, regulations and statutory instruments providing this support. Canada considers that the United States provides support in excess of the commitment levels specified in Section I of Part IV of its Schedule. The measures include the following:

- Production Flexibility Contract (PFC) payments pursuant to the FAIR Act;
- Direct Payments pursuant to the 2002 Farm Bill;
- MLA payments pursuant to the *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 1999*; the *Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999*; the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2000*; the *Agriculture Risk Protection Act of 2000*; and the *Crop Year 2001 Agricultural Economic Assistance Act*;
- Counter-Cyclical Payments pursuant to the 2002 Farm Bill.

Canada considers that the measures at issue are inconsistent with the United States' obligations under Article 3.2 of the *Agreement on Agriculture*.

PFC payments and Direct Payments do not fully conform with paragraph 6(b) of Annex 2 to the *Agreement on Agriculture*. Accordingly, PFC payments should be included in the Aggregate Measurement of Support (AMS) of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, and rice, and Direct Payments should be included in the AMS of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds.

In addition, MLA payments should be included in the AMS of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, and rice, and Counter-Cyclical Payments should be included in the AMS of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds.

According to Article 3.2 of the *Agreement on Agriculture* the United States is allowed to provide support in favour of domestic agricultural producers not in excess of the levels specified in Section I of Part IV of its Schedule. These levels are US \$19,899.264 million in 1999 and US \$19,103.294 million in each subsequent year.

When the annual payments under the foregoing programs are included in the AMS of the United States for the respective products indicated in the preceding paragraphs, the Current Total AMS of the United States exceeds the levels specified in each of 1999, 2000, 2001, 2004, and 2005. Through the improper exclusion of domestic support, the United States therefore provides support in favour of domestic producers in excess of the commitment levels specified in Section I of Part IV of its Schedule, contrary to Article 3.2 of the *Agreement on Agriculture*.

In respect of Parts I and II of this request for consultations, Articles 4.2 and 7.2 of the *SCM Agreement* together require that Canada include a statement of available evidence with regard to (a) the existence and nature of the subsidies in question and (b) the serious prejudice caused to the interests of Canada. The Annex to this request contains Canada's statement of available evidence.

Canada reserves the right to raise additional claims and legal matters regarding the measures at issue during the course of consultations.

I look forward to receiving your reply to this request and to selecting a mutually acceptable date on which consultations may take place.

## **ANNEX**

### **Statement of Available Evidence**

Canada's request for consultations dated 8 January 2007 identifies the subsidies that are part of this request for consultations. The evidence set out below is evidence presently available to Canada regarding the existence and nature of those subsidies, and the serious prejudice caused to the interests of Canada. Canada reserves the right to supplement or alter this list in the future, as required.

The evidence presently available to Canada includes, in addition to the relevant legislation, regulations and statutory instruments, the following:

#### **United States Department of Agriculture (USDA):**

USDA Commodity Estimates Book: FY 2007 Mid-Session Review  
[http://www.fsa.usda.gov/Internet/FSA\\_File/comm\\_est\\_book\\_2006.pdf](http://www.fsa.usda.gov/Internet/FSA_File/comm_est_book_2006.pdf)

History of Budgetary Expenditures of the Commodity Credit Corporation, Fiscal Year 1990-2000 Actual, April 9, 2001. USDA Farm Service Agency, Budget Division, Book 3.  
[http://www.fsa.usda.gov/Internet/FSA\\_File/book3.pdf](http://www.fsa.usda.gov/Internet/FSA_File/book3.pdf)

History of Budgetary Expenditures of the Commodity Credit Corporation, Fiscal Years 2001-2003 Actual, January 30, 2004. USDA Farm Service Agency, Budget Division, Book 4.  
[http://www.fsa.usda.gov/Internet/FSA\\_File/book4.pdf](http://www.fsa.usda.gov/Internet/FSA_File/book4.pdf)

Farm and Commodity Policy Briefing Room  
<http://www.ers.usda.gov/Briefing/FarmPolicy/>

The 2002 Farm Bill: Provisions and Economic Implications  
<http://www.ers.usda.gov/Features/farmbill/>

The 2002 Farm Act: Provisions and Implications for Commodity Markets.  
USDA ERS Agriculture Information Bulletin Number 778. November 2002.  
<http://www.ers.usda.gov/Publications/AIB778/>

Comparison and Summary of 1996 and 2002 Farm Bills – Title 1: Commodity Programs  
<http://www.ers.usda.gov/Features/Farmbill/titles/title1commodities.htm>

Farm and Commodity Policy: 1996-2001 Commodity Provisions – Emergency and Supplemental Assistance  
<http://www.ers.usda.gov/Briefing/FarmPolicy/1996emerge.htm#2>

1996 FAIR Act Frames Farm Policy for 7 Years  
<http://www.ers.usda.gov/publications/agoutlook/aosupp.pdf>

Provisions of the Federal Agriculture Improvement and Reform Act of 1996  
<http://www.ers.usda.gov/publications/aib729/>

US Farm Program Benefits: Links to Planting Decisions and Agricultural Markets  
<http://www.ers.usda.gov/publications/agoutlook/oct2000/ao275e.pdf>

Fact Sheet: Feed Grains – Summary of 2002-2007 Program. July 2003.  
<http://165.221.16.19/pas/publications/facts/feedgrains03.pdf>

Farm and Commodity Policy: Program Provisions  
<http://www.ers.usda.gov/Briefing/FarmPolicy/ProgramProvisions.htm>

Direct Payments  
<http://www.ers.usda.gov/Briefing/FarmPolicy/DirectPayments.htm>

Counter Cyclical Income Support Payments  
<http://www.ers.usda.gov/Briefing/FarmPolicy/CounterCyclicalPay.htm>

Marketing Assistance Loan and Loan Deficiency Payment Programs  
<http://www.ers.usda.gov/Briefing/FarmPolicy/2002malp.htm>

Nonrecourse Marketing Assistance Loans and Loan Deficiency Payments Fact Sheet, June 2003  
[http://www.fsa.usda.gov/Internet/FSA\\_File/nonrec03.pdf](http://www.fsa.usda.gov/Internet/FSA_File/nonrec03.pdf)

Commodity Certificates Fact Sheet, July 2000  
[http://www.fsa.usda.gov/FSA/printapp?fileName=pf\\_20000701\\_comop\\_en\\_certs.html&newsType=prfactsheet](http://www.fsa.usda.gov/FSA/printapp?fileName=pf_20000701_comop_en_certs.html&newsType=prfactsheet)

Commodity Costs and Returns: US and Regional Cost and Return Data  
<http://www.ers.usda.gov/Data/CostsAndReturns/testpick.htm>

Corn Briefing Room  
<http://www.ers.usda.gov/Briefing/Corn/>

Corn: Policy  
<http://www.ers.usda.gov/Briefing/Corn/policy.htm>

Corn: Market Outlook  
<http://www.ers.usda.gov/Briefing/Corn/marketoutlook.htm>

Feed Outlook – Various issues.  
<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1273>

Feed Yearbook – Various issues.  
<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do;jsessionid=0AB948D9EAA3F1212F7A4CE0465BFD0B?documentID=1274>

Feed Grains Database  
<http://www.ers.usda.gov/data/feedgrains/>

Grain: World Markets and Trade. Foreign Agricultural Service Circular Series. Various issues.  
<http://www.fas.usda.gov/grain/circular/2006/09-06/grain0906.pdf>

USDA Agricultural Baseline Projection Tables, Released February 2006  
<http://usda.mannlib.cornell.edu/MannUsda/viewStaticPage.do?url=http://usda.mannlib.cornell.edu/usda/ers/94005/.2006/index.html>

Production, Supply & Distribution online, Custom Query

<http://www.fas.usda.gov/psdonline/psdquery.aspx>

National Agricultural Statistical Service – Acreage. Various issues.

<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1000>

National Agricultural Statistical Service – Agricultural Prices. Various issues.

<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1002>

World Supply and Demand Estimates

<http://www.usda.gov/oce/commodity/wasde/>

Agricultural Outlook Forum 2005: Grains and Oilseeds Outlook for 2005. Prepared by Members of the Wheat, Feed Grains, and Oilseeds Interagency Commodity Estimates Committees. USDA.

[http://agecon.lib.umn.edu/cgi-bin/pdf\\_view.pl?paperid=17007&ftype=.pdf](http://agecon.lib.umn.edu/cgi-bin/pdf_view.pl?paperid=17007&ftype=.pdf)

USDA Export Credit Guarantee Programs

<http://www.fas.usda.gov/excredits/ecgp.asp>

Eligible Commodities Under the GSM-102 and SCGP Programs

<http://www.fas.usda.gov/excredits/gsmcommodities.html>

GSM 102 Guarantee Fee Rate Schedule

<http://www.fas.usda.gov/excredits/gsm102fees.html>

Monthly Summary of Export Credit Guarantee Program Activity

<http://www.fas.usda.gov/excredits/Monthly/ecg.html>

#### **Other US Government Sources:**

Potential Challenges to US Farm Subsidies in the WTO: A Brief Overview. Congressional Research Service (CRS) Report for Congress. October 25, 2006.

<http://fpc.state.gov/documents/organization/76911.pdf>

Potential Challenges to US Farm Subsidies in the WTO. CRS Report for Congress. October 25, 2006.

<http://www.agweb.com/images/content/CRS1.pdf>

Agricultural Trade Liberalization. Congressional Budget Office (CBO). Economic and Budget Issue Brief. November 20, 2006.

<http://www.cbo.gov/ftpdocs/76xx/doc7690/11-20-AgTrade.pdf>

Emergency Funding for Agriculture: A Brief History of Supplemental Appropriations, FY1989-FY2006. CRS Report for Congress. Updated July 3, 2006.

<http://ncseonline.org/NLE/CRSreports/06Aug/RL31095.pdf>

Budget of the United States Government. Office of Management and Budget.

<http://www.whitehouse.gov/omb/budget/fy2007/>

#### **Other sources, including analytical studies:**

Boxed in: Conflicts between US farm policies and WTO obligations. Daniel A. Sumner. CATO Institute. December 5, 2005.

<http://www.freetrade.org/node/23>

Statement of Professor Sumner. Canadian International Trade Tribunal. NQ-2005-001. Grain Corn From the United States. Public Exhibit A-6.

CCP Reply Brief. Effects of US Corn Subsidies on the Corn Industry in Canada: Responses to Comments and Analysis, Daniel A. Sumner. Canadian International Trade Tribunal. NQ-2005-001. Public Exhibit A-18.

When the Peace Ends: The Vulnerability of EC and US Agricultural Subsidies to WTO Legal Challenge. Richard H. Steinberg and Timothy E. Josling. *Journal of International Economic Law* 6(2), 369-417. Oxford University Press.

US Agriculture Without Farm Support. Australian Bureau of Research and Agricultural Economics (ABARE) Research Report 06.10. September 2006.  
[http://www.abare.gov.au/publications\\_html/trade/trade\\_06/us\\_ag.pdf](http://www.abare.gov.au/publications_html/trade/trade_06/us_ag.pdf)

Truth or Consequences: Why the EU and the USA Must Reform Their Subsidies, Or Pay the Price. Oxfam Briefing Paper. Oxfam International. November 2005.  
[http://www.oxfam.org/en/files/bp81\\_truth\\_or\\_consequences/download](http://www.oxfam.org/en/files/bp81_truth_or_consequences/download)

*United States – Subsidies on Upland Cotton*, Panel Report (WT/DS267/R) and Report of the Appellate Body (WT/DS267/AB/R).

Chicago Board of Trade Corn Pricing Data  
<http://www.cbot.com/>

Canada: Grains and Oilseeds Outlook. Agriculture and Agri-Food Canada, Market Analysis Division  
[http://www.agr.gc.ca/mad-dam/index\\_e.php?s1=pubs&s2=go-co&page=go-co-hist](http://www.agr.gc.ca/mad-dam/index_e.php?s1=pubs&s2=go-co&page=go-co-hist)

Weekly Price Summary. Agriculture and Agri-Food Canada, Market Analysis Division  
[http://www.agr.gc.ca/mad-dam/index\\_e.php?s1=pubs&s2=pri&page=intro](http://www.agr.gc.ca/mad-dam/index_e.php?s1=pubs&s2=pri&page=intro)

---