

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

Recourse by New Zealand to Article 21.5 of the DSU

Request for the Establishment of a Panel

The following communication, dated 16 February 2001, from the Permanent Mission of New Zealand to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 27 October 1999, the Dispute Settlement Body (DSB) adopted its recommendations and rulings in the dispute "Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products (WT/DS113). The DSB found that Canada was exporting subsidized dairy products in breach of its export subsidy reduction commitments under the Agreement on Agriculture and recommended that Canada bring its measures into conformity with the Agreement.

On 23 December 1999, pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Canada and New Zealand agreed (WT/DS113/10) on the reasonable period of time for implementation of the recommendations and rulings of the DSB. According to the terms of the 23 December 1999 agreement, as amended on 11 December 2000 (WT/DS113/13), the staged implementation process was to be completed by 31 January 2001.

On 19 January 2001, Canada circulated to all Members of the DSB (WT/DS103/12/Add.6, WT/DS/113/12/Add.6) its "final status report", pursuant to Article 21.6 of the DSU. In that report Canada affirmed "that it will be in full compliance with the rulings and recommendations of the DSB by the conclusion of the implementation period" on 31 January 2001.

New Zealand considers that Canada has failed to comply with the above mentioned recommendations and rulings of the DSB by 31 January 2001 or since the expiry of that period.

In substitution for the dairy export measures that have been ruled in contravention of Canada's WTO commitments, Canada has put in place "new measures" for the export of dairy products, which are comprised in new provincial schemes that provide ongoing subsidization of Canadian dairy exports, contrary to Canada's commitments under the Agreement on Agriculture.

In particular, New Zealand notes the following acts, statutes, orders, regulations, directions, correspondence, and actions relating to the "new measures":

Federal and Inter-Provincial

- (a) Canadian Dairy Commission Act;
- (b) Dairy Products Marketing Regulations, as amended, including those enacted pursuant to the Canadian Dairy Commission Act (in effect on 13 December 2000 and published in Part II of the Canada Gazette on 3 January 2001);
- (c) Agricultural Products Marketing Act, and amendments to provincial milk orders issued under the Agricultural Products Marketing Act granting authority to regulate marketing in interprovincial and export trade of milk (in effect on 13 December 2000 and published in Part II of the Canada Gazette on 3 January 2001);
- (d) Comprehensive Agreement on Special Class Pooling, as well as Annexes, Addenda, and Schedules thereto;
- (e) National Milk Marketing Plan, as well as Appendices and Amendments thereto;
- (f) Interprovincial Comprehensive Agreement on Special Class Pooling;
- (g) operations of the Canadian Milk Supply Management Committee;
- (h) directions to the Canadian Dairy Commission by the Minister of Agriculture and Agri-food under Section 11 of the Canadian Dairy Commission Act (in effect on 13 December 2000 and published in Part II of the Canada Gazette on 3 January 2001);
- (i) official communications from provincial Agriculture Ministers to the Federal Minister of Agriculture and Agri-food outlining the new mechanisms, as per Canada's note of 1 December 2000 "Responses to Questions posed by New Zealand and/or the United States regarding Provincial Dairy Export Mechanisms", heading 4;
- (j) provincial export mechanisms adopted in the provinces of Prince Edward Island, Nova Scotia, New Brunswick; Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia as identified and described in materials provided by Canada to New Zealand in consultations held under the 23 December Implementation Agreement;

Prince Edward Island

- (k) Natural Products Marketing Act, Prince Edward Island Milk Marketing Regulations Amendment (as published in the Royal Gazette on 30 December 2000), and Contractual Commercial Export Activity Order, Board Order MMB00-02;

Nova Scotia

- (l) Dairy Commission Act: Section 5(2) of Schedule 2 "Regulations Respecting Milk Production"; Section 3(15) of Schedule 8 "Regulations for Specified Areas"; Schedule 13 "Regulation Respecting Contracted Exports of Dairy Products";

New Brunswick

- (m) New Brunswick Milk Marketing Board, Exemption Orders Nos. 6, 8 and 11 of 1 August 2000;

Québec

(n) Government of Québec, Order in Council 1408-2000 (December 6, 2000) as published in the Gazette Officielle du Québec on 3 January 2001; Gazette Officielle du Québec, 9 August 2000, no. 32; Décision 7140, Régie des marchés agricoles et alimentaire; Décision 7111, Régie des marchés agricoles et alimentaire;

Ontario

- (o) Regulation 179/00;
- (p) DFO Milk General Regulation 09/00;
- (q) DFO Milk Pricing Regulation 08/00;

Manitoba

- (r) Export Contract Milk Exemption Order;

Saskatchewan

- (s) Milk Control Regulations;

Alberta

- (t) Dairy Board Amendment Regulation, O.C. 260/2000;
- (u) Alberta Contracted Export Milk, Clarification of Operating Procedures;

British Columbia

- (v) British Columbia Milk Marketing Board Consolidated Order.

In New Zealand's view, these new measures equally involve the provision of export subsidies within the meaning of Article 9.1(a), Article 9.1(c) or Article 10.1 of the Agreement on Agriculture. The effect of these schemes is that Canada is exporting subsidised dairy products without counting these against its export subsidy reduction commitment levels.

Accordingly the measures referred to above appear to be inconsistent with the obligations of Canada under Article 3.3, Article 8, Article 9.1(a), Article 9.1(c), Article 10.1 and Article 10.3 of the Agreement on Agriculture.

On 2 February 2001, New Zealand requested consultations with Canada (WT/DS/113/15). Consultations were held on 9 February 2001, but failed to resolve the dispute.

Accordingly, "there is a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings of the DSB" between Canada and New Zealand, within the terms of Article 21.5 of the DSU. Pursuant to Article 21.5, and as envisaged in the "Agreed Procedures between Canada and New Zealand under Articles 21 and 22 of the DSU in the follow-up to the dispute in "Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products" (WT/DS/113)" (WT/DS113/14), New Zealand accordingly requests the establishment of a panel in this matter and requests that the DSB refer the disagreement to the original panel, if possible.
