

**CANADA - MEASURES RELATING TO EXPORTS OF WHEAT
AND TREATMENT OF IMPORTED GRAIN**

Request for the Establishment of a Panel by the United States

The following communication, dated 30 June 2003, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The United States considers that certain measures of the Government of Canada are inconsistent with Canada's obligations under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement").

(1) The Government of Canada has established the Canadian Wheat Board ("CWB"), and has granted to this enterprise exclusive and special privileges. These exclusive and special privileges include the exclusive right to purchase western Canadian wheat for export and domestic human consumption at a price determined by the Government of Canada and the CWB; the exclusive right to sell western Canadian wheat for export and domestic human consumption; and government guarantees of the CWB's financial operations, including the CWB's borrowing, the CWB's credit sales to foreign buyers, and the CWB's initial payments to farmers.

The United States understands that the legal framework of the CWB, including the control or lack thereof by the Government of Canada and rules for setting the terms and conditions for the CWB's purchases and sales of wheat, is established in the Canadian Wheat Board Act and associated regulations. The United States understands that the exclusive and special privileges specified above are provided under the Canadian Wheat Board Act and the Canada Grain Act and these Acts' associated regulations, and under the Credit Grain Sales Program and Agri-food Credit Facility. The legal framework of the CWB, Canada's provision to the CWB of the exclusive and special privileges specified above, and the actions of the Government of Canada and the CWB with respect to the CWB's purchases and sales involving wheat exports, will hereinafter be referred to, collectively, as the "CWB Export Regime".

The CWB Export Regime appears to be inconsistent with the obligations of the Government of Canada under Article XVII of the GATT 1994. In particular, the CWB Export Regime appears to be:

- inconsistent with paragraph 1(a) of Article XVII of the GATT 1994, pursuant to which the Government of Canada has undertaken that the CWB, in its purchases or sales involving wheat exports, shall act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the GATT 1994; and

- inconsistent with paragraph 1(b) of Article XVII of the GATT 1994, pursuant to which the Government of Canada has undertaken that the CWB shall make such purchases or sales solely in accordance with commercial considerations and shall afford the enterprises of other WTO Members adequate opportunity, in accordance with customary business practice, to compete for such purchases or sales.

The apparent inconsistency of the CWB Export Regime with Canada's obligations under Article XVII of the GATT 1994 includes the absence of any mechanism, and the failure of the Government of Canada to take actions, to ensure that the CWB makes purchases or sales involving wheat exports in accordance with the requirements set forth in paragraphs 1(a) and 1(b) of Article XVII.

(2) With regard to the treatment of grain that is imported into Canada, Canadian measures discriminate against imported grain, including grain that is the product of the United States:

- Under the Canada Grain Act and Canadian grain regulations, imported grain must be segregated from Canadian domestic grain throughout the Canadian grain handling system; imported grain may not be received into grain elevators; and imported grain may not be mixed with Canadian domestic grain being received into, or being discharged out of, grain elevators. These measures accord to imported grain less favorable treatment than that accorded to like Canadian grain, and thus appear to be inconsistent with the obligations of Canada under Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement.
- Canadian law caps the maximum revenues that railroads may receive on the shipment of Canadian domestic grain, but not revenues that railroads may receive on the shipment of imported grain. In addition, in allocating railcars used for the transport of grain under the authority of Section 87 of the Canada Grain Act, Canada provides a preference for domestic grain over imported grain. These measures concerning rail transportation accord to imported grain less favorable treatment than that accorded to like domestic grain, and thus appear to be inconsistent with the obligations of Canada under Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement.

On 17 December 2002, the United States Government requested consultations with the Government of Canada pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the GATT 1994, and Article 8 of the TRIMs Agreement (to the extent it incorporates by reference Article XXII of the GATT 1994). The United States and Canada held such consultations on 31 January 2003. The consultations did not resolve the dispute.

Accordingly, the United States respectfully requests the Dispute Settlement Body to establish a panel pursuant to Article 6 of the DSU to examine this matter with the standard terms of reference as set out in Article 7.1 of the DSU. The United States further asks that this request for a panel be placed on the agenda for the next meeting of the Dispute Settlement Body.
