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**EUROPEAN COMMUNITIES – MEASURES AFFECTING THE APPROVAL
AND MARKETING OF BIOTECH PRODUCTS**

Request for Consultations by Canada

The following communication, dated 13 May 2003, from the Permanent Mission of Canada to the Permanent Delegation of European Commission and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Government of Canada hereby requests consultations with the European Communities ("EC") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement"), Article 19 of the *Agreement on Agriculture*, and Article 14 of the *Agreement on Technical Barriers to Trade* ("TBT Agreement"), concerning measures affecting the approval and marketing of products that contain, consist of, or are produced from, genetically modified organisms ("GM products").

As a result of measures taken by EC Member States, including Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, and Sweden, since 1998, the EC has maintained a *de facto* moratorium on the approval of GM products. The moratorium prevents GM products from accessing or proceeding through the EC's approvals process.¹ As a consequence of the moratorium, Canadian GM products have been blocked at various stages of the EC's approval process.

In addition, some EC Member States, including Austria, France, Greece, and Italy have prohibited the importation and marketing of GM products despite those products having been approved by the EC for importation and marketing.²

¹ As set out in EC Directive No. 2001/18 of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EC (and its predecessor, EEC Directive No. 90/220 of 23 April 1990 on the deliberate release into the environment of genetically modified organisms), EC Regulation No. 258/97 of 27 January 1997 concerning novel foods and novel food ingredients and related legislative instruments specifically referred to therein.

² For example, see the Austrian measures re: Corn T25 published in the Federal Official Journal 28 April 2000; the French measures re: Rapeseed Topas 19/2 published in the Official Journal 18 November 1998; Greek measures re: Rapeseed Topas 19/2 effective 8 September 1998; and, Italian measures re: Corn T25 Official Gazette, Presidential Decree of August 4, 2000.

These measures appear to be inconsistent with the SPS Agreement, the TBT Agreement, the GATT 1994, and the Agreement on Agriculture. The provisions of these Agreements with which the measures appear to be inconsistent include the following:

- SPS Agreement: Articles 2.2, 2.3, 5.1, 5.5, 5.6, 7, 8 and Annexes B and C;
- TBT Agreement: Articles 2.1, 2.2, 2.8, 5.1 and 5.2;
- GATT 1994: Articles I:1, III:4, X:1 and XI:1;
- Agreement on Agriculture: Article 4.2.

These violations appear to nullify or impair the benefits accruing to Canada under these Agreements. Moreover, these measures appear to nullify and impair the benefits accruing to Canada in the sense of Article XXIII:1(b) of the GATT 1994.

Canada looks forward to receiving the reply of the EC to this request and welcomes any suggestions that it may wish to make concerning dates on which the consultations could take place.
