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CANADA – PROVISIONAL ANTI-DUMPING AND COUNTERVAILING DUTIES ON GRAIN CORN FROM THE UNITED STATES

Request for Consultations by the United States

The following communication, dated 17 March 2006, from the delegation of the United States to the delegation of Canada and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Canada 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"), Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"), and Article 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") with respect to Canada's imposition of provisional antidumping and countervailing duties on unprocessed grain corn from the United States published in the Canada Gazette on 31 December 2005, and also with respect to certain provisions of Canada's Special Import Measures Act ("SIMA"). These measures appear to be inconsistent with Canada's obligations under provisions of the GATT 1994, the AD Agreement, and the SCM Agreement.

In particular, the United States believes that the provisional antidumping and countervailing duties on unprocessed grain corn are inconsistent with at least the following provisions:

1. Article 3 of the AD Agreement and Article 15 of the SCM Agreement, in that:

   a. the Statement of Reasons published by the Canadian International Trade Tribunal ("CITT") on 30 November 2005, in support of its preliminary determination of injury does not address or refer to mandatory factors in an injury analysis such as the volume of imports[1] the price of imports, and the impact of imports on the domestic industry;

   b. the CITT expressly decided not to analyse the evidence before it with respect to causation, including with respect to the causal link between imports and injury and with respect to injury caused by factors other than imports;

[1] For example, the Statement of Reasons not only fails to address the 42% decline in the volume of imports during the period when injury allegedly occurred, the Statement does not even refer to the volume of imports at all.

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c. the CITT based its preliminary finding of injury solely on a supposed correlation between past injury to the Canadian domestic industry and an alleged decline in the US domestic price of unprocessed grain corn rather than on the mandatory injury factors identified in these provisions of the AD Agreement and SCM Agreement;

d. the evidence supporting the alleged decline in the US domestic price of unprocessed grain corn relied upon by the CITT was in fact largely a projection of future grain corn prices and therefore could not have been correlated with past injury to the domestic industry as the CITT found, even if such correlation were relevant to an injury determination; and

e. based on the above, the CITT failed to base its preliminary injury finding on "positive evidence" and an "objective examination" of that evidence;

2. Articles 1, 7, and 12.2.1 of the AD Agreement, Articles 10, 17, and 22.4 of the SCM Agreement, and Article VI of GATT 1994, by imposing provisional antidumping and countervailing duties based, in part, on a preliminary injury determination that is inconsistent with Article 3 of the AD Agreement and Article 15 of the SCM Agreement as described above.

In addition, SIMA and any amendments, implementing measures, or related measures, appear to be inconsistent with Article 3.5 of the AD Agreement, Article 15.5 of the SCM Agreement, and Article VI of GATT 1994, as they would appear to require the imposition of antidumping and countervailing duties upon a finding by the competent authorities that the "dumping and subsidizing" of the subject goods, including alleged effects of subsidies on the domestic prices of the goods in the market of the dumping or subsidizing Member, have caused or threaten to cause injury to Canada's domestic industry, even in the absence of any finding that the dumped or subsidized imports, through the effects of dumping or subsidies, as set forth in Articles 3.2 and 3.4 of the AD Agreement and Articles 15.2 and 15.4 of the SCM Agreement, respectively, had caused or threatened to cause injury.

Canada's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for the consultations.