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CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM

**MODIFICATION OF THE AGREEMENT UNDER ARTICLE 21.3(B) OF THE DSU
AND
UNDERSTANDING BETWEEN CANADA AND THE EUROPEAN UNION
REGARDING PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU**

The following communication, dated 24 March 2014, from the delegation of Canada and the delegation of the European Union to the Chairman of the Dispute Settlement Body, is circulated at the request of those delegations.

The European Union and Canada would like to inform the Dispute Settlement Body of the attached "Agreed Modification of the Reasonable Period of Time and Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" between the European Union and Canada with respect to the dispute (WT/DS426).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

**Agreed Modification of the Reasonable Period of Time and
Agreed Procedures under Articles 21 and 22
of the Dispute Settlement Understanding**

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *Canada — Measures Relating to the Feed-in Tariff Program* (WT/DS426) on 24 May 2013.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") Canada and the European Union ("EU") originally agreed that the reasonable period of time ("RPT") to implement the DSB recommendations and rulings would be 10 months, expiring on 24 March 2014 (WT/DS426/16). With this notification, Canada and the EU inform the DSB that they have mutually agreed to modify the RPT to expire on 5 June 2014.

In order to facilitate a satisfactory solution to the dispute, Canada and the EU ("the parties to the dispute") have agreed on the following procedures for the exclusive purposes of this dispute, designed to reduce the scope for procedural disputes and without prejudice to either party's views on the correct interpretation of the DSU:

1. Should the situation described in Article 21.5 of the DSU exist at the end of the RPT on 5 June 2014, the EU may request that Canada enter into consultations with the EU. The Parties agree to hold such consultations within 15 days from the date of receipt of the request. After this 15-day period has elapsed, the EU may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.
2. At the first DSB meeting at which the EU's request for the establishment of an Article 21.5 panel appears on the agenda, Canada shall accept the establishment of that panel.
3. The parties to the dispute shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members, unless either party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the parties to the dispute shall cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date of notification of the appeal to the DSB. Further, either party to the dispute may request the DSB to adopt its recommendations and rulings at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
6. The EU may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU in the event that the DSB rules as a result of a proceeding under Article 21.5 of the DSU that a measure taken to comply does not exist or is inconsistent with a covered agreement. The EU may also request authorization to suspend concessions or other obligations pursuant to Article 22.2 if the situation described in Article 21.5 of the DSU does not exist, including when in the course of ongoing proceedings under Article 21.5 of the DSU it becomes apparent that neither party disputes the inexistence or inconsistency with the covered agreements of measures taken to comply with the DSB recommendations and rulings. In no case shall Canada assert that the EU is precluded from obtaining such DSB authorisation because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This is without prejudice to Canada's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
7. If the EU requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, Canada shall have the right to object under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. In the event of such objection, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.

8. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
9. If any of the original panelists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), or any person serving in such proceeding becomes unavailable to serve, the parties to the dispute will promptly consult on a replacement, and either party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, or a person serving in such proceeding becomes unavailable to serve, the parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
10. The parties to this dispute will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in these procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

Signed in Geneva, 24 March 2014

For Canada

(signed)
Bruce Christie
Minister
Deputy Permanent Representative
Permanent Mission of Canada to the WTO

For the European Union

(signed)
Angelos Pangratis
Ambassador, Permanent Representative
Permanent Mission of the European Union
to the WTO
