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Committee on Subsidies and
Countervailing Measures

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REQUEST FOR CONCILIATION UNDER ARTICLE 17 OF THE AGREEMENT

Communication from the Commission of the European Communities

The following communication has been received by the Chairman from the Commission of the European Community.

The Commission of the European Communities requests on behalf of the European Economic Community that a meeting of the Committee on Subsidies and Countervailing Measures be convened during the week of 28 July - 1 August for the purposes of conciliation under Article 17 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade regarding certain issues surrounding the countervailing duty investigation on boneless manufacturing beef from the Community carried out by the Government of Canada.

Background

On 30 October 1985, prior to the initiation of the countervailing duty investigation on boneless manufacturing beef from the European Community the Commission held consultations with Canadian Government representatives under Article 3:1 of the GATT Code on Subsidies and Countervailing Measures outlining orally and in a memorandum (annexed hereto) the reasons why the Canadian authorities should not initiate a countervailing duty investigation into boneless manufacturing beef from the European Community. These consultations did not lead to a mutually agreed solution and a countervailing duty investigation was initiated.

The final determinations in the case have just been completed by the Canadian authorities. On 12 June 1986 the Department of National Revenue determined that imports of boneless manufacturing beef from the Community were subsidized and on 25 July 1986 the Canadian Import Tribunal determined that the subject goods threatened to cause material injury to the Canadian production of like goods.

The Community considers that the initiation of an investigation in this case and the subsequent findings of the Canadian authorities are contrary to Canada's obligations under the GATT Code on Subsidies and Countervailing

Measures and hence constitute a violation of international trade law. For these reasons the Community invokes its rights under Article 17:1 of the GATT Code on Subsidies and Countervailing Measures for conciliation with a view to resolving the matters at dispute.

The issues

During the consultations held with Canadian Government representatives under Article 3:1 of the Code and in several subsequent submissions in the course of the countervailing duty proceeding, the Commission emphasized the petitioner, the Canadian Cattlemen's Association (CCA), had no standing to bring a complaint against Community exports of boneless manufacturing beef to Canada since members of the association did not produce the like product.

Under Article 2(1) of the Code, any request to initiate an investigation into alleged subsidies must be made "by or on behalf of the industry affected". The term domestic industry is defined in Article 6(5) of the Code as "... the domestic producers as a whole of the like product ...". The like product is defined in turn as one "which is identical i.e. alike in all respects to the product under consideration" or, in the absence of such a product, one which has characteristics closely resembling those of the product under consideration (Footnote 18 to Article 6(1)(a) of the Code).

It follows from these clear and unequivocal definitions that a complaint may only be accepted if it is submitted on behalf of the relevant domestic industry, i.e. the industry producing the like product - boneless manufacturing beef. No evidence has been advanced to suggest that the CCA represents the Canadian beef industry let alone its producers of boneless manufacturing beef. Indeed it is clear from the evidence presented in the course of the investigation that the CCA does not represent this industry.

Since the CCA does not produce the like product, it has no standing under the Code to petition for the imposition of countervailing duties on boneless manufacturing beef from the Community. To initiate a countervailing duty case on the basis of such a complaint is, therefore, contrary to Canadian obligations under the Code.

Without prejudice to the Community's arguments on the standing of the petitioners in this case, the Commission wishes to bring to the Committee's attention a second, related set of issues to which the conciliation process should apply. These relate to the definition of domestic industry for the purposes of assessing material injury.

In its final injury determination, the Canadian Import Tribunal considers that the CCA is representative of the industry concerned and has the required standing to make a case for material injury to that industry. The arguments used by the Tribunal in support of its conclusion are that

- there is a continuous sequential production process commencing with live cattle and ending with beef;
- there is a high degree of functional dedication and economic dependence in in this sequential process;

- slaughterers, boners, the dairy industry, and packing houses also engaged in the production of subject goods are contributors to the goods in question but do not form separate industries.

Finally, the Tribunal states in a key passage that:

"The question is not whether live cattle and boneless manufacturing beef are like products, but whether people who raise beef cattle can be considered to be engaged in the production of boneless manufacturing beef",

to which the Tribunal responds in the affirmative.

In answer to these arguments the Community would draw to the attention of the members of the Committee the fact that the only criterion to be applied when defining the domestic industry for the purposes of injury assessment is whether it produces the "like product" (as defined in footnote 18 to Article 6(1)(a), i.e. the precise question which the Tribunal itself considers inapposite. Thus the question is not whether the CCA is engaged in a production process which leads, inter alia, to the production of the like product, as the Tribunal erroneously states, but only whether it is the producer of the like product. The answer to this question is clearly negative. While it may be noted that under Canadian legislation, material injury is defined as "... material injury to the production of like goods" (emphasis added), the Code however, speaks only of material injury to the domestic producers of the like product. The concept in the Code is narrower in meaning and scope than that in Canadian legislation and, in the current case, may have caused the Canadian authorities to arrive at the contested conclusion. Signatories are entitled to expect, however, that the internationally agreed definition be applied by the Government of Canada in countervailing duty proceedings.

In this connection the Committee will recall that the issue of the definition of domestic industry under the Code has already been brought before the Committee by the European Community in the case against United States legislation concerning wine.

The arguments of sequential production, functional dedication and economic dependence cited by the Canadian authorities to justify the status of the CAA as representing the domestic industry producing manufacturing beef have no basis in the Code and thus cannot justify their inclusion.

For the reasons set out above, the European Community requests conciliation on an urgent basis pursuant to Article 17 of the Agreement.

Finally, the Community wishes to make clear that it has limited its request for conciliation to certain points of principle. This does not imply in any way, however, that it accepts the position of the Canadian authorities on other points of principle in this case, such as the cumulation of public intervention buying schemes with export refunds in the determination on alleged subsidization of manufacturing beef from the Community.