

TARIFFS AND TRADE

Committee on Subsidies and
Countervailing Measures

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CANADIAN COUNTERVAILING DUTY ON U.S. GRAIN CORN:
REQUEST FOR CONSULTATIONS / COMMITTEE MEETING
PURSUANT TO ARTICLE 16:1 OF THE AGREEMENT

Communication from the U.S. Delegation

The U.S. Delegation has been instructed to request that a special meeting of the Committee on Subsidies and Countervailing Measures be convened as soon as possible for the purpose of conducting emergency consultations under Article 16:1 of the Agreement on Interpretation and Application of Article VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (hereinafter referred to as the "Subsidies Code").

On July 2, 1986, pursuant to the Special Import Measures Act (SIMA), the Government of Canada initiated a countervailing duty investigation of imports of grain corn from the United States. The investigation was initiated on the basis of a petition filed by the Ontario Corn Producers Association, a group of Canadian producers located within the Canadian province of Ontario. Prior to initiation of the case, in consultations under Article 3:1 of the Subsidies Code, the United States expressed its serious concerns to the Canadian authorities regarding the adequacy of the petition. These consultations, however, failed to resolve the problem. Subsequently, on January 20, 1987, the United States provided further written comments to the Canadian authorities pursuant to Article 3:2 of the Subsidies Code. These comments also failed to resolve the problem. On March 20, 1987, the Canadian Import Tribunal issued a affirmative finding of material injury. The Tribunal found that the material injury was attributable to the "potential for importation" of grain corn from the United States, rather than actual imports. In effect, the Tribunal found the existence of a declining world price of grain corn to be the cause of injury and therefore imposed countervailing duties on U.S. corn.

The United States has requested a special meeting of the Subsidies Committee to discuss an issue which we believe is of fundamental and far-reaching significance. This issue relates to the causal linkage between imports and material injury required by Article 6:1 of the Subsidies Code. Despite this clear requirement, the Canadian Import Tribunal found it unnecessary to link the injury to Canadian producers to "imports" from the United States. Instead, the Tribunal concluded that "potential or likely imports" at a world price were sufficient to establish a causal link under the GATT and the Subsidies Code.

The United States believes that the Canadian Tribunal's legal interpretation of the Code is wrong and has potentially far-reaching implications for the interests of other signatories. The use of "potential for importation" as the basis for imposition of antidumping or countervailing duties would appear inconsistent with Article 6 of the Subsidies Code, which refers explicitly to the impact of actual "imports." As a practical matter, the "potential for importation" exists in almost every case. Indeed, the purpose of GATT and the elimination of barriers to trade was to create such potential. Accordingly, the Import Tribunal's interpretation of causation could undercut the material injury requirement of the GATT and the Subsidies Code.

The United States considers that the Canadian action detailed above relates in an important way to the operation of the Agreement and the furtherance of its objectives and therefore requests a special meeting of the Subsidies Code Committee for emergency consultations pursuant to Article 16:1 in order to discuss this and other aspects of the Canadian decision to impose countervailing duties on U.S. grain corn.