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Committee on Subsidies and
Countervailing Duties

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CANADA - INJURY DETERMINATION ON GRAIN CORN FROM THE UNITED STATES

Request for Conciliation by the United States

The following letter, dated 2 October 1989, has been received by the Chairman from the Office of the United States Trade Representative.

My authorities request that the following item be added to the agenda of the 26 October meeting of the Committee on Subsidies and Countervailing Measures:

Canada - Injury Determination on Grain Corn from the United States - Request for Conciliation by the United States.

The basis for this request is as follows:

My authorities request conciliation by the Committee on Subsidies and Countervailing Measures 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 the determination of the Canadian Import Tribunal that

"... the subsidizing of importations into Canada of grain corn in all forms, excluding seed corn, sweet corn and popping corn originating or exported from the United States ... has caused, is causing and is likely to cause material injury to the production in Canada of like goods."

My authorities have consulted with Canadian authorities upon numerous occasions since 1987, most recently on June 29, 1989, in consultations under Article 3 of the Agreement. These consultations have not led to a mutually agreed solution.

On December 22, 1988, the Federal Court of Canada issued a decision affirming the decision of the Canadian Import Tribunal. Of particular concern to the United States was the Federal Court's finding that the

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Canadian Import Tribunal did not err in reaching its finding that material injury to the Canadian industry was caused by the corn subsidy programme rather than subsidized imports of corn from the United States. The United States is concerned about the possible broad legal implications for injury analysis under the Agreement of the decision of the Canadian Import Tribunal.

Article 6 of the Agreement provides that:

A determination of injury ... shall involve an objective examination of both (a) volume of subsidized imports and their effect on prices in the domestic market for like products and (b) the consequent impact of these imports on domestic producers of such products.

In contrast, section 42 of the Canadian Special Import Measures Act provides for a determination by the Canadian Import Tribunal of whether "the subsidizing of the goods" has caused material injury. Thus, the way in which the Tribunal applied section 42 in this case would appear to conflict with Canada's obligation under the Agreement.