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UNITED STATES - COUNTERVAILING DUTY ON PORK FROM CANADA

Request for Consultations under Article XXIII:1 by Canada

The following communication, dated 19 September 1989, from the Permanent Mission of Canada to the GATT Secretariat, is circulated in accordance with paragraph C.3 of the CONTRACTING PARTIES' 1989 Decision on Improvements to the GATT Dispute Settlement Rules and Procedures (L/6489).

The Delegation of Canada wishes to advise contracting parties that the United States Department of Commerce made a final affirmative countervailing duty determination on fresh, chilled and frozen pork from Canada on July 18, 1989. On August 28, 1989, the United States International Trade Commission made a final affirmative injury finding. As a consequence of these decisions, countervailing duties of \$0.08 per kilogram are being applied to exports of Canadian pork to the United States.

In making the final countervailing duty determination, the Department of Commerce deemed, pursuant to section 771B of the United States Tariff Act of 1930, as amended, that alleged subsidies on swine production are passed through automatically and in their full amount to producers of fresh, chilled and frozen pork. It is the view of Canadian authorities that the assumption of full pass-through to Canadian pork producers of subsidies allegedly provided to swine producers is contrary to United States obligations under Article VI:3 of the GATT: obligations which are further elaborated in Article 2.1 of the Subsidies and Countervailing Duties Code. This obligation requires the amount of a subsidy to be determined on the basis of an objective examination of the facts. Canadian authorities are of the view that the assumption of full pass-through of subsidies made by United States authorities in this case does not fulfil the obligation to make such a determination.

Furthermore, the Department of Commerce decision results in the levying of countervailing duties on Canadian pork exports greater than the amount of subsidies bestowed on the production of pork. The imposition of countervailing duties in excess of an amount equal to the estimated subsidy determined to have been granted, directly or indirectly, on the production of pork is contrary to the obligation of Article VI:3 of the GATT which is further elaborated in Article 4.2 of the Code.

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The action by the United States results in the nullification and impairment of benefits accruing to Canada under Articles II and VI of the GATT.

Accordingly, Canada requests consultations with United States authorities pursuant to Article XXIII:1 of the GATT, with a view to seeking a satisfactory resolution of this matter.