

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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Committee on Subsidies and
Countervailing Measures

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UNITED STATES - MEASURES AFFECTING THE EXPORT OF PURE AND ALLOY MAGNESIUM FROM CANADA

Request by Canada for Conciliation under Article 17 of the Agreement

The following communication, dated 4 November 1991, has been received by the Chairman of the Committee from the Permanent Mission of Canada.

My authorities have instructed me to request, pursuant to Articles 16 and 17 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code"), that you convene as soon as possible a special meeting of the Committee on Subsidies and Countervailing Measures for conciliation in respect of the matters referred to below regarding "United States - Measures Affecting the Export of Pure and Alloy Magnesium from Canada".

On 5 September 1991 a petition for the imposition of anti-dumping and countervailing duties on pure and alloy magnesium exports from Canada was filed before the United States Department of Commerce and International Trade Commission.

There is only one company, Magnesium Corporation of America (MCA), petitioning for the imposition of anti-dumping and countervailing duty. Based on data presented in its petition, MCA represents only 22 per cent of the domestic production of pure and alloy magnesium. There are two other known producers of the like product but these companies have not joined the complaint.

On 23 September 1991 consultations pursuant to Article 3:1 were held with the United States on the question of whether Magnesium Corporation of America represented the United States magnesium industry in light of the facts set out in paragraph 2 above. In the consultations Canada expressed the view that initiation of the investigation based on the petition without establishing the position of other United States producers would be inconsistent with Article 2:1 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on

Tariffs and Trade (the Subsidies Code). In response to a question from Canada, United States officials stated that the Department of Commerce had not contacted either Dow or North West Alloys and that neither of these producers had indicated their support for the petition taken by Magnesium Corporation of America.

United States authorities initiated the investigation on 23 September 1991. The International Trade Commission made an affirmative preliminary determination of injury with respect to imports of pure and alloy magnesium from Canada on 16 October 1991.

Canada considers that initiation of a countervailing duty investigation by the United States Government on exports of pure and alloy magnesium from Canada is contrary to Article 2:1 of the Subsidies Code which states that, "An investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request by or on behalf of the industry affected". Article 6:5 requires that domestic industry "be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products ...". It is the Canadian position that this provision of the Code requires that the investigating authorities verify that the petitioner does indeed represent the domestic industry or a major proportion of the domestic industry. By its own admission the United States Department of Commerce did not conduct such a verification and therefore it is the Canadian view that ipso facto the Code requirements regarding the definition of domestic industry have not been met.