

**CANADA – MEASURES AFFECTING THE IMPORTATION OF MILK  
AND THE EXPORTATION OF DAIRY PRODUCTS**

Recourse by the United States to Article 21.5 of the DSU

*Request for Consultations*

The following communication, dated 2 February 2001, from the Permanent Mission of the United States to the Permanent Mission of Canada and to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

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On 27 October 1999, the Dispute Settlement Body (DSB) adopted its recommendations and rulings in the dispute "Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products (WT/DS103)". The DSB recommended that Canada bring the export subsidy measures found to be inconsistent with its obligations under the Agreement on Agriculture into conformity with that agreement.

On 23 December 1999, Canada, New Zealand, and the United States concluded an agreement pursuant to Article 21.3 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU) (WT/DS/103/10; WT/DS113/10) on the reasonable period of time available to Canada to implement the DSB's recommendations. By the terms of that agreement, Canada committed to complete the implementation process by no later than 31 December 2000. The reasonable period of time later was extended to 31 January 2001 by the mutual agreement of the parties to the dispute.

In the view of the United States, Canada has failed to implement the DSB recommendations and rulings by not bringing its export regime for dairy products into compliance with its export subsidy commitments under the Agreement on Agriculture. While Canada has eliminated the Special Class 5(e) export subsidies that the DSB found to contribute to a violation of Canada's export subsidy commitments under Articles 3, 8 and 9 of the Agreement, Canada substituted new programmes in place of the Special Class 5(e) export subsidies. In addition, Canada has retained and continues to use the Special Class 5(d) export subsidy, which Canada acknowledges the DSB found was an export subsidy.

The new programmes introduced by Canada as part of its attempted implementation vary from province to province, but possess several common elements. The provincial programmes instituted in nine of Canada's provinces during the implementation period allow exporters to purchase milk at prices that are below prevailing market levels in Canada for milk used in dairy products sold into Canada's domestic market. The low priced milk made available to these exporters (dairy processors) can only be used to manufacture dairy products for sale to foreign markets and, thus, the availability of such milk is contingent on export. Sanctions exist to penalize any processor that diverts products made from such low priced milk into Canada's domestic market.

For purposes of Canada's export subsidy commitments under the Agreement on Agriculture, the access given to low priced milk through these substitute programmes does not appear to differ in any meaningful respect from that provided under the Special Class 5(e) system that was found by the Dispute Settlement Body to constitute an export subsidy. Thus, through its national and provincial measures, including pricing arrangements for milk and its components, Canada is continuing to provide export subsidies on dairy products through these provincial mechanisms, and the associated federal regulations and orders, as well as Special Class 5(d), without regard to its export subsidy commitments. Available data shows that the quantity of Canada's subsidized dairy product exports were higher in certain categories than the applicable reduction commitment levels for marketing year 1999/2000. Moreover, dairy product exports during the 2000/2001 marketing year appear to be occurring at monthly levels that, if continued for the remainder of the year, would result in an additional year of subsidized export shipments inconsistent with Canada's obligations. These export subsidies distort markets for dairy products and adversely affect the United States.

The United States considers that the following measures establish an export regime that is inconsistent with Canada's obligations under the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement):

- (1) The Canadian Dairy Commission Act;
- (2) the Dairy Products Marketing Regulations, as amended, including those amendments published in the Canada Gazette on 3 January 2001, and SOR/94-466;
- (3) The Agricultural Products Marketing Act, as well as amendments to the provincial milk delegation orders issued under the Act relating to the authority to regulate marketing in interprovincial and export trade of milk, including those amendments published in the Canada Gazette on 3 January 2001 and Order JUS602260; Nova Scotia Milk Order, SOR/94-626; Ontario Milk Order C.R.C., c. 215; Quebec Milk Order SOR/94-720; New Brunswick Milk Order SOR/94-627; Manitoba Milk Order C.R.C., c. 155; Prince Edward Island Milk Order, Registration 6 October 1994; Saskatchewan Milk Order SOR/94-721; Alberta Milk Order SOR/94-719;
- (4) The Comprehensive Agreement on Special Class Pooling, as well as Annexes, Addendums, and Schedules thereto, including the Optional Export Program, both as described therein and as operated in the provinces exporting dairy products;
- (5) The National Milk Marketing Plan, as well as Appendices and Amendments thereto;
- (6) The interprovincial Comprehensive Agreement on Special Class Pooling;
- (7) The operations of the Canadian Milk Supply Management Committee;
- (8) Official communications from provincial Agricultural Ministers to the Federal Minister of Agriculture and Agri-Food outlining the new mechanisms, as per Canada's note of 1 December 2000 "Responses to Questions posed by New Zealand and/or the United States regarding Provincial Dairy Export Mechanisms (hereinafter "Canadian Responses")";
- (9) Directions to the Canadian Dairy Commission by the Minister of Agriculture and Agri-Food under Section 11 of the Canadian Dairy Commission Act as published in the Canada Gazette on 3 January 2001 (JUS-602420);

(10) The provincial export mechanisms adopted in the provinces of Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia as identified and described in materials provided by Canada to the United States in consultations held under the 23 December 1999 Implementation Agreement and referenced in Canadian Responses (Answer to Question 1);

(11) All acts, statutes, regulations, orders, and rulings regarding the provincial export mechanisms referenced above or relating to the provincial authority to regulate milk for intraprovincial, interprovincial, or export trade, including the following:

- (a) Prince Edward Island: Contractual Commercial Export Activity Order, Board Order MMBOO-02;
- (b) Nova Scotia: Dairy Commission Act, Section 5(2) of Schedule "Regulations Respecting Milk Production"; Section 3(15) of Schedule 8 "Regulations for Specified Areas"; Schedule 13 "Regulation Respecting Contracted Exports for Dairy Products";
- (c) Quebec: Government of Quebec, Order in Council 1408-2000 (6 December 2000), as published in Gazette Officielle du Québec on 3 January 2001; Gazette Officielle du Québec, 9 August 2000, no. 32; Decision 7140, Régie des marchés agricoles et alimentaire; Décision 7111, Régie des marchés agricoles et alimentaire;
- (d) Ontario: Regulation 179/00; DFO Milk General Regulation 09/00; DFO Milk Pricing Regulation 08/00;
- (e) Manitoba: Export Contract Milk Exemption Order;
- (f) Saskatchewan: Milk Control Regulations;
- (g) Alberta: Dairy Board Amendment Regulation, O.C. 260/2000, Alberta Contracted Export Milk, Clarification of Operating Procedures; and
- (h) British Columbia: British Columbia Milk Marketing Board Consolidated Order;

These measures appear to be inconsistent with the obligations of Canada under the Agreement on Agriculture and the SCM Agreement. The provisions of these agreements with which these measures appear to be inconsistent include:

- (1) Agreement on Agriculture, Articles 3.3, 8, 9.1, 10.1 and 13; and
- (2) Agreement on Subsidies and Countervailing Measures, Articles 1, 3 and Annex I.

Without prejudice to its rights under the WTO, and in accordance with paragraph 1 of the 21 December 2000 "Agreed Procedures between Canada and the United States under Articles 21 and 22 of the Dispute Settlement Understanding in the follow-up to the dispute in "Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products" (WT/DS103/14), the United States hereby requests Canada to enter into consultations. A statement of available evidence as to the existence and nature of the subsidies is included in the Annex.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

### **Statement of Available Evidence**

The following evidence is available to the United States within the meaning of Article 4.2 of the SCM Agreement:

1. Panel and Appellate Body Reports in WT/DS103 and WT/DS113.
2. The Canadian Dairy Commission Act;
3. The Dairy Products Marketing Regulations, as amended, including those amendments published in the Canada Gazette on 3 January 2001, and SOR/94-466;
4. The Agricultural Products Marketing Act, as well as amendments to the provincial milk delegation orders issued under the Act relating to the authority to regulate marketing in interprovincial and export trade of milk, including those amendments published in the Canada Gazette on 3 January 2001 and Nova Scotia Milk Order, SOR/94-626; Ontario Milk Order C.R.C., c. 215; Québec Milk Order SOR/94-720; New Brunswick Milk Order SOR/94-627; Manitoba Milk Order C.R.C., c. 155; Prince Edward Island Milk Order, Registration 6 October 1994; Saskatchewan Milk Order SOR/94-721; Alberta Milk Order SOR/94-719;
5. The Comprehensive Agreement on Special Class Pooling, as well as Annexes, Addendums, and Schedules thereto, including the Optional Export Program, both as described therein and as operated in the provinces exporting dairy products;
6. the National Milk Marketing Plan, as well as Appendices and Amendments thereto;
7. The Interprovincial Comprehensive Agreement on Special Class Pooling;
8. The operations of the Canadian Milk Supply Management Committee;
9. Official communications from provincial Agricultural Ministers to the Federal Minister of Agriculture and Agri-Food outlining the new mechanisms, as per Canada's note of 1 December 2000 "Responses to Questions posed by New Zealand and/or the United States regarding Provincial Dairy Export Mechanisms (hereinafter "Canadian Responses");
10. Directions to the Canadian Dairy Commission by the Minister of Agriculture and Agri-Food under Section 11 of the Canadian Dairy Commission Act as published in the Canada Gazette on 3 January 2001 (JUS-602420);
11. The provincial export mechanisms adopted in the provinces of Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia as identified and described in materials provided by Canada to the United States in consultations held under the 23 December 1999 Implementation Agreement and referenced in Canadian Responses (Answer to Question 1);
12. All regulations, orders, and rulings regarding the provincial export mechanisms referenced above or relating to the provincial authority to regulate milk for intraprovincial, interprovincial, or export trade, including the following:
  - (a) Prince Edward Island: Contractual Commercial Export Activity Order, Board Order MMBOO-02;

(b) Nova Scotia: Dairy Commission Act, Section 5(2) of Schedule "Regulations Respecting Milk Production", Section 3(15) of Schedule 8 "Regulations for Specified Areas"; Schedule 13 "Regulation Respecting Contracted Exports for Dairy Products";

(c) Quebec: Government of Quebec, Order in Council 1408-2000 (6 December 2000), as published in Gazette Officielle du Québec on 3 January 2001; Gazette Officielle du Québec, 9 August 2000, no. 32; Décision 7140, Régie des marchés agricoles et alimentaire; Décision 7111, Régie des marchés agricoles et alimentaire;

(d) Ontario: Regulation 179/00; DFO Milk General Regulation 09/00; DFO Milk Pricing Regulation 08/00;

(e) Manitoba: Export Contract Milk Exemption Order;

(f) Saskatchewan; Milk Control Regulations;

(g) Alberta: Dairy Board Amendment Regulation, O.C. 260/2000; Alberta Contracted Export Milk, Clarification of Operating Procedures; and

(h) British Columbia: British Columbia Milk Marketing Board Consolidated Order;

13. Export contract volumes and prices for November-December 2000 reported on the Quebec Individual Export Mechanism (Bulletin Board), at <http://www.telmatik.com/laiteport>;

14. Export contract volumes and prices contained on the Ontario Bulletin Board found at <http://exportcontracts.org>;

15. Prices for milk and milk components sold into the domestic market in Canada as reported at <http://www.dairyinfo.agr.ca/cadairy.htm>.

16. Memorandum from Catherine Tokarz to Members of National Dairy Council regarding status of Optional Export Program, dated March 2000;

17. Excerpt from Barry Wilson's Dairy Industry Newsletter, dated 1 August 2000, entitled "Farmers Leap at New Export Regime";

18. Letter from Parmalat Canada, dated October 2000, describing changes in Canada's export subsidy regime resulting from the WTO dispute ruling and recommendations;

19. National Post Article, 20 March 2000, "Why milk marketing boards must go";

20. National Dairy Council of Canada, April 2000, volume 9-2, "Dairy Export Business in Crisis".

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