

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

Recourse by New Zealand to Article 21.5 of the DSU

*Request for Consultations*

The following communication, dated 2 February 2001, from the Permanent Mission of New Zealand 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 23 December 1999, pursuant to Article 21.3(b) of the DSU, Canada, the United States and New Zealand agreed (WT/DS103/10; WT/DS113/10) on the reasonable period of time for implementation of the recommendations and rulings of the Dispute Settlement Body (the DSB) in the matter of "Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products". According to the terms of the 23 December 1999 agreement, as amended on 11 December 2000 (WT/DS103/13, WT/DS113/13), the staged implementation process, "including any new measures for the export of " dairy products, was to be completed by 31 January 2001.

On 19 January 2001, Canada circulated to all Members of the DSB (WT/DS103/12/Add.6, WT/DS/113/12/Add.6) its "final status report", pursuant to Article 21.6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU). In that report Canada affirmed "that it will be in full compliance with the rulings and recommendations of the DSB by the conclusion of the implementation period" on 31 January 2001.

New Zealand considers that Canada has failed to comply with the above mentioned recommendations and rulings of the DSB by 31 January 2001.

In substitution for the dairy export measures that have been ruled in contravention of Canada's WTO commitments, Canada has put in place "new measures" for the export of dairy products. In New Zealand's view, these new measures, which have allowed schemes to be put in place at the provincial level that are designed to provide ongoing support to Canadian dairy exports, equally involve the provision of export subsidies within the meaning of Article 9.1 or Article 10.1 of the Agreement on Agriculture. The effect of these schemes is that Canada is exporting subsidized dairy products without counting these against its export subsidy reduction commitment levels. As a result, once again Canada is in violation of its obligations under Article 3.3 and Article 8 of the Agreement on Agriculture.

In particular, New Zealand notes the following acts, statutes, orders, regulations, directions, correspondence, and actions:

### **Federal and Inter-Provincial**

- (a) Canadian Dairy Commission Act;
- (b) Dairy Products Marketing Regulations, as amended, including those enacted pursuant to the Canadian Dairy Commission Act (in effect on 13 December 2000 and published in Part II of the Canada Gazette on 3 January 2001);
- (c) Agricultural Products Marketing Act, and amendments to provincial milk delegation orders issued under the Agricultural Products Marketing Act granting authority to regulate the marketing in interprovincial and export trade of milk (in effect on 13 December 2000 and published in Part II of the Canada Gazette on 3 January 2001);
- (d) Comprehensive Agreement on Special Class Pooling, as well as Annexes, Addenda, and Schedules thereto;
- (e) National Milk Marketing Plan, as well as Appendices and Amendments thereto;
- (f) Interprovincial Comprehensive Agreement on Special Class Pooling;
- (g) operations of the Canadian Milk Supply Management Committee;
- (h) directions to the Canadian Dairy Commission by the Minister of Agriculture and Agri-food under Section 11 of the Canadian Dairy Commission Act (in effect on 13 December 2000 and published in Part II of the Canada Gazette on 3 January 2001);
- (i) official communications from provincial Agriculture 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", heading 4;

### **Prince Edward Island**

- (j) Contractual Commercial Export Activity Order, Board Order MMB00-02;

### **Nova Scotia**

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

### **New Brunswick**

- (l) Amendments to the legal framework have not been completed; Canada has undertaken to provide such amendments when they are effective or in force;

### **Québec**

- (m) Government of Québec, Order in Council 1408-2000 (6 December 2000) as published in the 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;

**Ontario**

- (n) Regulation 179/00;
- (o) DFO Milk General Regulation 09/00;
- (p) DFO Milk Pricing Regulation 08/00;

**Manitoba**

- (q) Export Contract Milk Exemption Order;

**Saskatchewan**

- (r) Milk Control Regulations;

**Alberta**

- (s) Dairy Board Amendment Regulation, O.C. 260/2000;
- (t) Alberta Contracted Export Milk, Clarification of Operating Procedures;

**British Columbia**

- (u) British Columbia Milk Marketing Board Consolidated Order.

Without prejudice to its rights under the WTO, and in accordance with paragraph 1 of the 21 December 2000 "Agreed Procedures between Canada and New Zealand 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/DS113/14), New Zealand hereby requests Canada to enter into consultations.

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

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