

CANADA - COUNTERVAILING DUTY INVESTIGATION CONCERNING
IMPORTS OF CERTAIN DRY PASTA FROM ITALY

Request for Consultations with Canada
under Article 13.2 of the Agreement

Communication from the European Communities

The following communication, dated 15 September 1995, has been received from the Permanent Mission of the European Communities.

1. The Community requests consultations under Article 13.2 of the WTO Subsidies Agreement concerning the above investigation, with a view to clarifying the factual situation and arriving at a mutually agreed solution.
2. Canada initiated this countervailing duty investigation on 30 August 1995, on the basis of a complaint from its domestic producers. The only subsidy scheme alleged in the complaint is the Community's export restitution programme. As was explained by the Community during consultations held prior to the initiation, no export restitutions have been granted for pasta since 30 June 1995; indeed, on page 6 of its statement of reasons Revenue Canada accepts that the amount of subsidy is zero.
3. Given that the alleged subsidy is no longer granted by the EC, and since the statement of reasons contains no evidence to demonstrate that its resumption is imminent, the Community can see no grounds for the initiation of the investigation and requests that Canada terminate it promptly.
4. Indeed, the initiation of this investigation constitutes a clear violation of Article 11.2 of the Subsidies Agreement, as Revenue Canada itself admits that the application does not contain sufficient evidence of subsidization, in view of the information on the absence of refunds supplied by the Community (in this respect, past subsidization is irrelevant). The attention of the Canadian authorities is also drawn to Article 19.4 which states, *inter alia*, that "[n]o countervailing duty shall be levied ... in excess of the amount of the subsidy found to exist [emphasis added]: *a fortiori* no investigation should be initiated when the amount found is zero, as well as to Article 21.1 which states that "[a] countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization ...".
5. The initiation of this investigation further constitutes a violation of Article 11.3 which states that "[t]he authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation": it is hard to see how evidence of subsidization is sufficient to justify initiation when the investigating authority itself states that the subsidy amount is zero.

6. The initiation of this investigation also constitutes a violation of Article 11.9, which states that "[a]n application under paragraph 1 shall be rejected ... as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case". Furthermore, should Canada not terminate this investigation, this would constitute a further violation of Article 11.9, which also states that, in such circumstances as these, "an investigation shall be terminated promptly". Attention is also drawn to the remainder of Article 11.9, which states that "[t]here shall be immediate termination in cases where the amount of a subsidy is *de minimis* For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1 per cent ad valorem": here the amount is zero.

7. It should be emphasized that the provisions of Article 11 apply at the stage of the receipt of an application (i.e. before initiation) and that Article 11.9 also applies at the stage immediately after initiation, and that investigating authorities are not allowed, under the Agreement, to carry out an investigation to find out whether, despite insufficient evidence in the application, and evidence to the contrary supplied by the Community, subsidization in fact exists.

8. The consultations should be held in Geneva as soon as possible.