

**UNITED STATES - CONTINUED DUMPING AND SUBSIDY
OFFSET ACT OF 2000**

Request for Consultations by Canada and Mexico

The following communication, dated 21 May 2001, from the Permanent Missions of Canada and Mexico to the Permanent Mission of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Governments of Canada and Mexico, acting jointly and severally, each in the exercise of rights accruing to it as a Member of the WTO, hereby request consultations with the Government of the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the GATT), Article 17 of the Agreement on Implementation of Article VI of GATT 1994 (the ADA) and Articles 7.1 and 30 of the Agreement on Subsidies and Countervailing Measures (the SCMA) regarding the amendment to the Tariff Act of 1930 signed into law by the President on 28 October 2000, entitled the "Continued Dumping and Subsidy Offset Act of 2000" (the Act).

The express purpose of the Act is to remedy the "continued dumping or subsidization of import products after the issuance of antidumping orders or findings or countervailing duty orders". With that objective, the Act requires the U.S. customs authorities to distribute, on an annual basis, the duties assessed pursuant to a countervailing duty order, an anti-dumping order or a finding under the Antidumping Act of 1921 to the "affected domestic producers" for their "qualifying expenses". The "affected domestic producers" are the petitioners or interested parties who supported the petition. "Qualifying expenses" include the expenditure incurred with respect to "manufacturing facilities, equipment, acquisition of technology, acquisition of raw material or other inputs."

The "offsets" constitute a specific action against dumping and subsidization which is not contemplated in the GATT, the ADA or the SCMA. Moreover, the "offsets" provide a strong incentive to the domestic producers to file or support petitions for anti-dumping or countervailing measures, thereby distorting the application of the standing requirements provided for in the ADA and SCMA. In addition, the Act makes it more difficult for exporters subject to an anti-dumping or countervailing duty order to secure an undertaking with the competent authorities, since the affected domestic producers will have a vested interest in opposing such undertakings in favour of the collection of anti-dumping or countervailing duties. In Canada and Mexico's view, this would not lead to an impartial and reasonable administration of the U.S. laws, regulations and decisions or rulings implementing the provisions of the ADA and the SCMA regarding standing determinations and undertakings.

Furthermore, Canada and Mexico consider that the "offset" paid under the Act constitute specific subsidies within the meaning of Article 1 of the SCMA, which may cause "adverse effects" to their interests, in the sense of Article 5 of the SCMA in the form of nullification and impairment of benefits accruing directly or indirectly to Canada and Mexico and serious prejudice in the sense of Article 6 of the SCMA.

For these reasons, Canada and Mexico consider that the Act appears to be inconsistent with the obligations of the United States under the Marrakesh Agreement establishing the WTO, as well as the GATT, the ADA and the SCMA. In particular, the Act seems to be inconsistent with the obligations of the United States under:

- Article 18.1 of the ADA in conjunction with Article VI:2 of the GATT and Article 1 of the ADA;
- Article 32.1 of the SCMA, in conjunction with Article VI:3 of the GATT and 10 of the SCMA;
- Article X(3)(a) of the GATT;
- Article 5.4 of the ADA and Article 11.4 of the SCMA;
- Article 8 of the ADA and Article 18 of the SCMA;
- Article 5 of the SCMA; and
- Article XVI:4 of the Marrakesh Agreement establishing the WTO, Article 18.4 of the ADA and Article 32.5 of the SCMA.

As a result of being inconsistent with the above provisions, the Act appears to nullify or impair the benefits accruing to Canada and Mexico under the cited Agreements in the manner described in Article XXIII:1(a) of GATT.

In addition, Canada and Mexico consider that the Act, whether or not it conflicts with the provisions of the cited Agreements, may nullify or impair benefits accruing to Canada and Mexico under the above-mentioned Agreements in the manner described in Article XXIII:1(b) of GATT.

Canada and Mexico reserve the right to raise additional claims and legal matters regarding the legislation during the course of consultations.

We look forward to receiving your reply to this request and welcome any suggestions that the United States may wish to make concerning dates on which the consultations could take place.

Statement of available evidence provided for in Article 7.2 of the SCMA

The evidence of subsidization and adverse effects available to Canada and Mexico consists of:

- the text of the "Continued Dumping and Subsidy Offset Act of 2000"
- the schedule of tariff concessions bound by the United States under Article II of GATT.
