



Avenue de l'Ariana
1202 Geneva, Switzerland
Tel: (41.22) 919-9214, Fax: 919-9254

January 8, 2007

H.E. Mr. Peter Allgeier
Ambassador
Permanent Mission of the United States
to the WTO
11, route de Pregny
1292 Genève

Dear Mr. Ambassador,

My authorities have asked me to request consultations with the Government of the United States pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Articles 4, 7 and 30 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) and Article 19 of the *Agreement on Agriculture*.

There are three parts to this request. For each of the measures referred to in this request, the request also covers any amendments, replacements, extensions or other related measures.

I. The measures at issue in the first part of this request are subsidies and domestic support provided to U.S. producers and/or exporters of corn (the "U.S. corn industry") as well as the programs, legislation, regulations and statutory instruments providing these subsidies and support. The measures include the following subsidies and domestic support provided to the U.S. corn industry from marketing year¹ 1996 onward:

- Subsidies and domestic support provided under the *Farm Security and Rural Investment Act of 2002* (2002 Farm Bill) and programs under the 2002 Farm Bill, relating to marketing loan payments (including marketing assistance loans, marketing loan gains, loan deficiency payments, commodity certificates, commodity certificate exchange gains and commodity loan interest subsidies), direct payments, counter-cyclical payments, and any other provisions of the 2002 Farm Bill that provide direct or indirect support to the U.S. corn industry;

¹ The "marketing" year for corn runs from September 1 through August 31. For example, marketing year 2005 began on 1 September 2005 and ended on 31 August 2006.

- Subsidies and domestic support provided under the *Federal Agriculture Improvement and Reform Act of 1996* (FAIR Act) and programs under the FAIR Act, relating to marketing loan payments (including marketing assistance loans, marketing loan gains, loan deficiency payments, commodity certificates, commodity loan interest subsidies, commodity certificate exchange gains), production flexibility contract payments and any other provisions of the FAIR Act that provide direct or indirect support to the U.S. corn industry;
- Market loss assistance (MLA) payments to the U.S. corn industry provided under the *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 1998*; *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 1999*; the *Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999*; the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2000*; the *Agriculture Risk Protection Act of 2000*; and the *Crop Year 2001 Agricultural Economic Assistance Act*;
- Export credit guarantees to facilitate the export of corn, provided under the *Agricultural Trade Act of 1978*, and other measures such as the General Sales Manager (GSM-102) program and Supplier Credit Guarantee Program (SCGP).

Canada considers that the measures at issue are inconsistent with the United States' obligations under Articles 5(c) and 6.3 (c) of the *SCM Agreement*.

Under the measures at issue, the United States provides subsidies to the U.S. corn industry. These subsidies take the form of financial contributions by the U.S. government or an income or price support in the sense of Article XVI of *GATT 1994*, within the meaning of Article 1.1(a) of the *SCM Agreement* and a benefit is thereby conferred within the meaning of Article 1.1(b) of the *SCM Agreement*. These subsidies are specific to U.S. producers of primary agricultural products and/or to the U.S. corn industry within the meaning of Articles 2.1 and 2.3 of the *SCM Agreement*.

These measures cause adverse effects in the form of serious prejudice and threat of serious prejudice to the interests of Canada. The operation of the statutory provisions of the 2002 Farm Bill, the FAIR Act and the other statutes referred to above that mandate payments of marketing loans, counter-cyclical payments and direct payments (including production flexibility contract payments) and MLA payments to the U.S. corn industry, and the mandatory payments under those provisions, as well as the export credit guarantees, cause significant price depression and price suppression for corn in the Canadian market for marketing years 1996-2006, and threaten to cause significant price depression and price suppression for corn in the Canadian market, in violation of Articles 5(c) and 6.3(c) of the *SCM Agreement*.

II. The measures at issue in the second part of this request are support in respect of corn and other agricultural products not scheduled in Section II of Part IV of the Schedule of the United States, provided to U.S. exporters of those products through export credit guarantee programs under the *Agricultural Trade Act of 1978* and other measures such as the GSM-102 program and SCGP as well as the programs, legislation, regulations and statutory instruments providing the support.

Canada considers that the measures at issue are inconsistent with the United States' obligations under Articles 3.1(a) and 3.2 of the *SCM Agreement* and Articles 3.3, 8, 9.1 and 10.1 of the *Agreement on Agriculture*.

Through these programs, the United States makes available to its exporters premium rates and other terms more favourable than those which the market would otherwise provide. The premium rates under these programs are also inadequate to cover the long-term operating costs and losses of the programs. These programs therefore provide subsidies contingent upon export performance contrary to Article 3.1(a) and 3.2 of the *SCM Agreement*. These measures also violate Articles 3.3, 8, 9.1 and 10.1 of the *Agreement on Agriculture*.

III. The measures at issue in the third part of this request are the domestic support that is properly subject to the provisions of Article 6 of the *Agreement on Agriculture*, provided by the United States in favour of agricultural producers, as well as the programs, legislation, regulations and statutory instruments providing this support. Canada considers that the United States provides support in excess of the commitment levels specified in Section I of Part IV of its Schedule. The measures include the following:

- Production Flexibility Contract (PFC) payments pursuant to the FAIR Act;
- Direct Payments pursuant to the 2002 Farm Bill;
- MLA payments pursuant to the *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 1999*; the *Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999*; the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2000*; the *Agriculture Risk Protection Act of 2000*; and the *Crop Year 2001 Agricultural Economic Assistance Act*;
- Counter-Cyclical Payments pursuant to the 2002 Farm Bill.

Canada considers that the measures at issue are inconsistent with the United States' obligations under Article 3.2 of the *Agreement on Agriculture*.

PFC payments and Direct Payments do not fully conform with paragraph 6(b) of Annex 2 to the *Agreement on Agriculture*. Accordingly, PFC payments should be included in the Aggregate Measurement of Support (AMS) of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, and rice, and Direct Payments should be included in the AMS of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds.

In addition, MLA payments should be included in the AMS of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, and rice, and Counter-Cyclical Payments should be included in the AMS of the United States for each of wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds.

According to Article 3.2 of the *Agreement on Agriculture* the United States is allowed to provide support in favour of domestic agricultural producers not in excess of the levels specified

in Section I of Part IV of its Schedule. These levels are U.S. \$19,899.264 million in 1999 and U.S. \$19,103.294 million in each subsequent year.

When the annual payments under the foregoing programs are included in the AMS of the United States for the respective products indicated in the preceding paragraphs, the Current Total AMS of the United States exceeds the levels specified in each of 1999, 2000, 2001, 2004, and 2005. Through the improper exclusion of domestic support, the United States therefore provides support in favour of domestic producers in excess of the commitment levels specified in Section I of Part IV of its Schedule, contrary to Article 3.2 of the *Agreement on Agriculture*.

In respect of Parts I and II of this request for consultations, Articles 4.2 and 7.2 of the *SCM Agreement* together require that Canada include a statement of available evidence with regard to (a) the existence and nature of the subsidies in question and (b) the serious prejudice caused to the interests of Canada. The Annex to this request contains Canada's statement of available evidence.

Canada reserves the right to raise additional claims and legal matters regarding the measures at issue during the course of consultations.

I look forward to receiving your reply to this request and to selecting a mutually acceptable date on which consultations may take place.

Yours sincerely,



Don Stephenson
Ambassador
Permanent Representative

cc: H.E. Mr. Muhamad Noor Yacob, Chairman, Dispute Settlement Body
H.E. Mr. Yonov Frederick Agah, Chairman, Council for Trade in Goods
Mr. Christian Haerberli, Chairman, Committee on Agriculture
Mr. Keiya Iida, Chairman, Committee on Subsidies and Countervailing Measures
Mr. Bruce Wilson, Director, Legal Affairs Division
Mr. Jan Woznowski, Director, Rules Division