Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products - Second Recourse by the United States to Article 21.5 of the DSU

FIRST SUBMISSION OF THE UNITED STATES OF AMERICA

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I. INTRODUCTION

1. The United States appreciates the willingness of the panelists in this dispute to serve yet again in reviewing Canada's revised export schemes for dairy. The United States understands that the Panel is familiar with the facts and background of this dispute[1] and rather than repeating that material in this submission, the United States hereby incorporates all the material it submitted to the panel in the proceedings on the first recourse of the United States to Article 21.5 of the DSU (WT/DS103/16).

2. Although the reasonable period of time for Canada to comply with the recommendations and rulings of the Dispute Settlement Body ("DSB") concerning its export subsidy obligations for dairy expired on 31 January 2001, Canada's export subsidies have not been brought into conformity with the DSB's rulings and recommendations as Canada persists in subsidizing dairy exports at a level that is inconsistent with its reduction commitments.

3. In the Art. 21.5 AB Report, the Appellate Body concluded that, on the facts of this case, the existence of "payments" under Article 9.1(c) of the *Agreement on Agriculture* should be assessed using a comparison between "commercial export milk" (hereinafter "CEM") prices and the "proper value" of the milk to the producer, as expressed in terms of the average total cost of

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1 Including *Canada - Measures Affecting the Exportation of Dairy Products and the Importation of Milk*, WT/DS103/R; WT/DS113/R, 17 May 1999 (hereinafter "Original Panel Report"); *Canada - Measures Affecting the Exportation of Dairy Products and the Importation of Milk*, WT/DS103/AB/R; WT/DS113/AB/R, 13 October 1999 (hereinafter "Original AB Report"); *Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products, Recourse by the United States and New Zealand to Article 21.5 of the DSU*, WT/DS103/RW, WT/DS113/ RW, adopted 18 December 2001(hereinafter "Art. 21.5 Panel Report"); and Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products, Recourse by the United States and New Zealand to Article 21.5 of the DSU, WT/DS103/AB/RW, WT/DS113/AB/RW, adopted 18 December 2001(hereinafter "Art. 21.5 AB Report").

production.[2]

4. Based on the factual record before it, however, the Appellate Body considered that it was unable to complete the analysis using this new standard, and thus could not determine whether Canada's revised export scheme involved "payments" under Article 9.1(c) of the *Agreement on Agriculture*.[3] The Appellate Body thus, without deciding whether the Canadian scheme's alleged payments were "financed by virtue of government action"[4], could not reach a conclusion as to whether Canada's revised export scheme constituted export subsidies in excess of Canada's commitments under the *Agreement on Agriculture*.

5. Having recourse to Article 21.5 of the DSU, the United States has requested the establishment of this Panel to assess once again Canada's compliance with the recommendations of the DSB and with its obligations under the *Agreement on Agriculture*. The United States demonstrates below that, when measured using the test that the Appellate Body specified but was unable to apply, Canada's CEM scheme continues to involve "payments" within the meaning of Article 9.1(c). The United States also shows that those payments are "financed by virtue of government action" within the meaning of Article 9.1(c). In sum, the United States demonstrates below that Canada's revised milk export scheme comprises export subsidies under Article 9.1(c), or, in the alternative, that it comprises export subsidies in contravention of Article 10.1, and that those export subsidies exceed or threaten to exceed Canada's commitments under the *Agreement on Agriculture*. Finally, the United States also shows that Canada's CEM scheme provides prohibited export subsidies in contravention of Article 3 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").

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[2] *Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products, Recourse by the United States and New Zealand to Article 21.5 of the DSU*, WT/DS103/AB/RW, WT/DS113/AB/RW, adopted 18 December 2001(hereinafter "Art. 21.5 AB Report"), para. 104.

[3] Art. 21.5 AB Report para. 103.

[4] Art. 21.5 AB Report para. 118.

II. CANADA'S MILK EXPORT SCHEME

6. As the United States noted in the first Article 21.5 proceeding, only the form, not the substance, of Canada's milk export scheme has changed from that condemned by the DSB in the original proceedings. Although the new provincial export programs differ in some regards from the Special Milk Class 5(e) that they have replaced, the objective is the exactly the same: the provision of low priced milk to processors/exporters to make dairy exports commercially viable. Canada has consistently implemented programs to subsidize dairy product exports, which could not compete on the global market if dairy processing took place on the terms that prevail in Canada's domestic milk market.

7. The provincial programs under the CEM scheme vary to some extent but possess several common elements that enable the new programs to accomplish this goal. First, by law, any milk produced without quota must be sold for export-only processing (or relegated to marginal uses like animal feed that carry a low price mandated by the government). The government mandates that milk that is committed to export may not be introduced into the domestic market; such milk and all components of it (or the resulting dairy products) must be exported by law. Second, exporters of dairy products are provided access to milk at significantly lower prices; they are not required to pay the much higher, regulated price for milk produced within the domestic quota, for which prices are specifically established by provincial authorities, and they are not required to turn to the noncompetitive Import for Re-Export Program ("IREP"). Third, producers are required to aid processors by "pre-committing" to sell in the export market, and export milk must be delivered "first out of the tank." This benefits processors by providing them with a predictable supply of milk. Fourth, the federal and provincial governments monitor and enforce (through financial and legal penalties) the requirement that milk contracted for export may not be redirected into the domestic market.

8. Thus, exporters/processors are furnished with discounted milk solely by virtue of the government controls on milk produced above or outside of domestic quota. By mandating this artificial separation based on the ultimate destination of the milk, the Canadian government ensures that reduced price milk will be offered to processors for export. The producers have no real choice if they produce without quota. They can either: 1) sell their milk into the export market for a reduced price; 2) sell their milk into the animal feed market under Class 4(m) at a very low government-set price; or 3) destroy the extra milk at a total loss. The only real commercial option is to sell any non-quota milk into the export market. Thus, by restricting the choice of the producer, the government ensures that reduced-price milk will be transferred to processors for export. Absent these restrictions, the processor would have to pay the higher price applicable to milk for dairy products sold into the domestic market.

9. In the prior proceedings, Canada went to considerable lengths to cloak the provision of discounted milk to export processors in the appearance of a "market" transaction. Canada would have the Panel believe that producers freely elect to sell non-quota milk to export processors at prices that, as will be shown below, do not recoup the producers' fixed and variable costs of production. These uneconomic transactions in the CEM "market" take place, however, only because Canada has legislatively restricted producers' options so that they have no real choice but to sell their non-quota milk for export. In this way, Canada continues to secure in-kind "payments" (in the form of discounted milk) for its dairy processors to make their exports commercially viable on the world market.

10. It is critical to note that the United States' challenge to Canada's excess export subsidies is not a challenge to its domestic dairy supply management program. Canada may, consistent with the WTO Agreements, manage its domestic dairy supply, including by allocating quotas and thereby controlling domestic milk prices and returns to producers (subject to limits on domestic support not at issue here).

11. It is not necessary to such a system, however, to export dairy products to the world market. Canada has chosen to foster such dairy exports, and to provide subsidies to export processors under Class 5(d) and the CEM scheme to make their products commercially viable. That, too, is Canada's right—*provided that* it does not furnish such subsidies in excess of the limits to which Canada committed itself under the *Agreement on Agriculture*. The CEM scheme, however, has no prospect of operating within those limits.

III. LEGAL ANALYSIS

12. Under the *Agreement on Agriculture*, a Member is permitted to use export subsidies to the extent of the quantity and budgetary commitment levels, if any, contained in that Member's WTO Schedule. Agricultural export subsidies or subsidized exports that exceed the specified limits are prohibited by Article 3.3 and Article 8 of the *Agreement*. The fundamental obligation of the *Agreement on Agriculture* concerning export subsidies is contained in Article 8, which provides that: "Each Member undertakes not to provide export subsidies other than in conformity with this *Agreement* and with the commitments as specified in that Member's Schedule." Article 3.3 of the *Agreement*, in turn, provides that a Member shall not provide export subsidies listed in paragraph 1 of Article 9 in excess of the budgetary outlay and quantity commitment levels specified in Section II of Part IV of that Member's Schedule.

13. To ensure, moreover, that the disciplines on export subsidies contained in Article 3.3 are not circumvented, Article 10.1 of the *Agreement* directs that any export subsidy not identified in Article 9.1 may "not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments . . ." Thus, a Member may use export subsidies not listed in Article 9.1 only within the limits of its scheduled reduction commitments.

14. Given this framework, any export subsidy that falls either within the scope of the export

subsidy descriptions contained in Article 9.1 or within the broader reach of Article 10.1 of the *Agreement* is subject to the limitations, both budgetary and quantitative, included in each Member's Schedule. For the reasons that follow, Canada's export measures are export subsidies within the meaning of Article 1(e) of the *Agreement* and, therefore, must be confined within the quantitative limits prescribed in Canada's Schedule. Canada's failure to respect its Schedule limitations on export subsidies is, in turn, a failure to comply with the DSB's recommendations to bring its milk export subsidies into conformity with the *Agreement*.

A. Canada Bears The Burden of Proof

15. As a preliminary matter, it is important to expressly recall that the burden of proof rests upon Canada in this proceeding. In most cases, "the burden of proof rests upon the party . . . who asserts the affirmative of a particular claim or defense."[5] This is not the case, however, with respect to a claim under the *Agreement on Agriculture* regarding agricultural export subsidies. Such claims are governed by the *lex specialis* of Article 10.3 of the *Agreement on Agriculture*. Article 10.3 provides

> Any Member which claims that any quantity exported in excess of a reduction commitment level is not subsidized must establish that no export subsidy, whether listed in Article 9 or not, has been granted in respect of the quantity of exports in question.

16. Canada's exports of cheese and "other milk" products exceeded its reduction commitments for 2000-2001, and has exceeded or will exceed its reduction commitments in

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[5] *United States—Measures Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R (23 May 1997) at page 14, quoted in *European Communities—Regime for the Importation, Sale and Distribution of Bananas—Recourse to Article 21.5 by Ecuador*, WT/DS27/RW/ECU (12 April 1999) at n. 255 to para. 6.133).

2001-2002.[6] Further, the allocation of the burden of proof pursuant to Article 10.3 is not affected by the fact that the claim is made in the context of an Article 21.5 proceeding.[7] Accordingly, as specified by Article 10.3 of the *Agreement on Agriculture*, Canada continues to bear the burden of establishing that its dairy management measures, including those putatively taken to comply with
the DSB's recommendations, have not subsidized dairy exports in excess of its commitment levels under that *Agreement*.

B. Canada's CEM Scheme Comprises Article 9.1(c) Export Subsidies

17. Canada's CEM scheme comprises export subsidies because they satisfy the criteria contained in Article 9.1(c) of the *Agreement on Agreement*. Article 9.1(c) identifies the following practice as an export subsidy:

> payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived.

18. The foregoing text establishes two conditions for finding an export subsidy to exist under paragraph (c). There must be: (1) payments on the export of an agricultural product and (2) those "payments" must be "financed by virtue of governmental action." The CEM scheme fulfills both of these conditions as demonstrated below and, thus, constitute an Article 9.1(c) export subsidy.

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[6] See Exhibit US - 1

[7] *Canada—Measures Affecting the Export of Civilian Aircraft—Recourse by Brazil to Article 21.5 of the DSU*, WT/DS70/RW (9 May 2000) at para. 5.26.

1. The Provision of Discounted Milk to Dairy Processors Is a "Payment"

19. In the original proceeding the Appellate Body confirmed, and Canada has not since disputed, that "payments" within the meaning of Article 9.1(c) of the *Agreement* include in-kind payments. Likewise, it is uncontested that the provision of a product at a discount constitutes such an in-kind payment, because it is equivalent to the provision of a portion of the product free of charge.

20. At issue for the first Article 21.5 panel, and thereafter for the Appellate Body, was the question of the benchmark against which any such "discount" should be measured. In the original proceeding concerning the Special Milk Class scheme, the Appellate Body concluded that discounts amounting to "payments" arose because the Special Milk Class milk for export was sold to processors at "reduced rates (that is, at below market rates)."[8]

21. In the Article 21.5 proceeding, the Appellate Body chose as its benchmark neither the regulated domestic price nor the world market price against which the panel had found that CEM prices were discounted and hence involved Art. 9.1(c) "payments". Instead, the Appellate Body stated that the existence of a "reduced rate" and hence a "payment" should be determined by comparing the CEM price to the "proper value" of the milk to the producer.[9] If the CEM price proved to be lower than the milk's value to the producer, the producer's sale of that milk at the CEM price would constitute a transfer of resources—a "payment"—to the export processor.

22. The Appellate Body explained that the "proper value" of milk to producers, in practical terms under the facts of this case, should be measured in terms of the producers' average total costs of production. If the export prices obtained by producers were sufficient to recoup their

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[8] Original AB Report para. 113.

[9] Art. 21.5 AB Report, para. 74.

average fixed and variable costs of production, they would not suffer a loss (*i.e.* a transfer of resources) over the long run. In that circumstance, under the Appellate Body's standard, no "payments" would take place within the meaning of Article 9.1(c) of the *Agreement on Agriculture*.

23. In explaining the "average total cost of production" test, the Appellate Body observed that milk production "requires an investment in fixed assets, such as land, cattle and milking facilities, and an outlay to meet variable costs, such as labor, animal feed and health-care, power and administration."[10]

24. The Appellate Body then considered whether the cost of production should be measured by dividing *all* fixed and variable costs by the total number of units of milk produced, or whether it is more appropriate to measure only the marginal cost of producing milk by excluding the fixed costs and including only the additional cost to the producer of producing an extra unit of production.[11]

25. The Appellate Body decided against the latter approach. It concluded that the "average total cost of production" must be determined "by dividing the fixed and variable costs of producing *all* milk, whether destined for domestic or export markets, by the total number of units of milk produced for both these markets."[12]

26. While in many cases such data on production costs might be difficult to obtain, here the task is made easier by the Canadian government. The Canadian Dairy Commission ("CDC")

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[10] *Id* at para. 87.

[11] *Id* at para 94.

[12] *Id* at para. 96.

each year collects data from provincial surveys on the costs of production, which it then uses to set its target domestic price (and in turn, to allocate domestic production quotas) in the following year. The guidelines for the CDC's cost of production determination are set out in the CDC publication *National Cost of Production Input to the Pricing of Industrial Milk, Handbook of COP Principles and Practices* ("CDC Handbook").[13] Although, as will be explained below, the CDC data in fact understates the actual costs of milk production, this data set provides a strong starting point for applying the Appellate Body's "average total cost of production" test for payments.

27. As explained in the CDC Handbook, the CDC annually estimates the costs of milk production based upon a random sample of provincial dairy producers which are intended to "represent the performance of an efficient segment of the dairy industry."[14] Provincial surveys collect data on major cost categories—including cash costs (feed, labor, etc.) and capital costs (debt, asset depreciation, return on equity, etc.)—that correspond to the "fixed and variable costs" that the Appellate Body has specified for analysis.[15] The stated policy objective of the CDC in collecting this data is to "provide efficient producers with the opportunity of a fair return for their labour and investment."[16] In addition, the Handbook states that the data is "collected for the provincial study by trained technicians" and "accounting concepts are based on generally accepted accounting principles [GAAP] and that "[e]ach provincial study is subject to audit by the CDC."[17]

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[13] Exhibit US-22.

[14] Exhibit US-22, page 3.

[15] Exhibit US-22, page 15, Art. 21.5 AB Report para. 87.

[16] Exhibit US-22, page 3.

[17] *Id.*

28. Based on this data, the CDC estimated that the average total cost of production per hectoliter of milk in Canada was C$59.47 in 1997, C$57.51 in 1998, C$56.43 in 1999, and C$57.27 in 2000.[18]

29. This data alone is sufficient to establish that Canada's average total cost of production exceeds CEM prices by a substantial margin. Public information posted by Ontario and Quebec show that the average price of CEM in the 12-month period between August 2000 and July 2001 was C$29.[19] Thus, the average total cost of production exceeded the average price for that period by C$28.27.[20] Further, inasmuch as it is extremely unlikely that costs of production could have dropped more than $20 since July 2001 (the last dairy year for which CDC data is presently available), it is a virtual certainty that the average total costs of production (as estimated by the CDC) have exceeded CEM prices for the since that time. Accordingly, applying the test set forth by the Appellate Body, Article 9.1(c) "payments" from producers to export processors have occurred under the CEM scheme.

30. Moreover, as mentioned above, the CDC's calculations in fact understate the actual costs of production. First, driven by its policy decision to set domestic prices at a level which rewards only "efficient" milk production, the CDC Handbook explains that the calculation does not include the 30% of farms with the highest costs of production.[21] Likewise, small farms are excluded through the requirement that producers whose production is less than 60% of the average provincial yearly production are not considered.[22] Typically, smaller farms are more

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[18] Exhibits US-2, US-23, US-24, US-25.

[19] Exhibit US-3.

[20] Exhibit US-3.

[21] Exhibit US-22, page 7.

[22] *Id.*

inefficient and therefore have higher production costs. Again, this is a policy decision to avoid rewarding inefficient producers with a higher quota milk price. This decision, however, necessarily lowers the reported average total cost of production.

31. Second, the CDC's calculation is understated because the cost of capital is calculated based upon the acquisition cost or book value of assets, such as land, as opposed to the market value of the assets.[23] The real cost of production for a producer is dependent upon the current market value of the property, not what that particular producer happened to pay for the asset any number of years ago.

32. Finally, the CDC does not include the cost of quota in its estimates.[24] Yet, quota is a fixed intangible asset and, according to the Appellate Body, the cost of production calculation must include the fixed cost of producing all milk.[25] Inclusion of the cost of quota as a fixed cost would again increase the CDC's total average cost of production.

33. Adjusting for the above factors would show that the difference between CEM prices and producers' costs of production (and hence the size of the "payments" for Article 9.1(c) purposes) is much greater than the C$20 plus margin that the basic comparison of CEM prices and CDC data above would suggest.

34. In sum, producers have failed to recoup their fixed and variable costs by a substantial margin making the so-called "market" transactions for CEM demonstrably uneconomic over the long-run. The Appellate Body's test for the existence of "payments" under the CEM scheme is

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[23] Exhibit US-22, page 3.

[24] Exhibit US-22, page 15.

[25] International Accounting Standards Committee defines an intangible asset as "(a) controlled by an enterprise as a result of past events; and (b) from which future economic benefits are expected to flow to the enterprise."

easily met.

2. CEM Payments Are "Financed by Virtue of Government Action"

35. The second prong of Article 9.1(c) of the *Agreement on Agriculture* specifies that to constitute an export subsidy under that provision, the "payments" (here, the sales of CEM at prices below the producers' average total costs of production) must be "financed by virtue of government action."

36. In its recent report in this dispute, the Appellate Body concluded that, because it could not complete the analysis of the "payment" prong of Article 9.1(c) due to the lack of data on costs of production, it need not decide whether the panel was correct that the alleged payments had been "financed by virtue of government action." Thus the Appellate Body neither reversed nor affirmed the panel's conclusion on this point.

37. Nevertheless, the Appellate Body did observe that, under the second prong of Article 9.1(c), "the words 'by virtue of' indicate that there must be a demonstrable link between the *governmental action* at issue and the *financing* of the payments."[26] In other words, the payments have to be financed "as a consequence of the governmental action."[27]

38. Although the Appellate Body declined to make findings on the second prong, it also noted that governmental action which establishes a regulatory framework "merely enabling a third person freely to make and finance 'payments'" is insufficient.[28] That being said, however, the Appellate Body recognized that "the existence of such a demonstrable link must be identified

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[26] Article 21.5 AB Report, para. 113. Emphasis in original.

[27] *Id.*

[28] *Id.* at para 115.

on a case-by-case basis, taking account of the particular governmental action at issue and its effects on 'payments' made by a third person."[29]

39. In its earlier report in this dispute, the Appellate Body stated that "payments" were to be regarded as "financed by virtue of governmental action" if "governmental action" was "indispensable" to the transfer of economic resources.[30] Applying this standard in the first Article 21.5 panel proceeding, the Panel concluded that governmental action was indispensable to the provision of lower-priced milk to processors for export because governmental action prevents Canadian milk producers from selling milk on the higher-priced domestic market without holding quota; and penalizes the diversion by processors of milk contracted as commercial export milk to the domestic market.[31]

40. In its most recent report, the Appellate Body acknowledged that, taken as a whole, the Panel's reasoning was "directed towards establishing the demonstrable link between governmental action and the financing of the payments."[32] However, the Appellate Body said, "even though Canadian governmental action prevents further domestic sales, we do not see how producers are obliged or driven to produce additional milk for export sale. As we have said above, each producer is free to decide whether or not to produce additional milk for sale as CEM."[33] Thus, the Appellate Body disagreed with the Panel's characterization of the CEM

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[29] *Id.*

[30] Original AB Report, para 120.

[31] Article 21.5 Panel Report, para. 6.77.

[32] *Id.* at para 116.

[33] *Id.* at para 117. It is not clear to the United States why the question of the conditions for sale of milk (i.e., is there an export subsidy) necessarily are related to the conditions for the production of milk (i.e., is there a production requirement).

measures as, "obliging producers, at least *de facto*, to sell outside-quota milk for export."[34]

41. Here, as shown above, the "payment" is financed by the producer accepting a price for export milk that does not cover the "average total cost of production" of milk (ie, a payment-in-kind). The question presented under the second prong of Article 9.1(c) is whether this financing by producers of "payments" to processors is "by virtue of government action." Or, as the Appellate Body stated, can the "payment" be demonstrably linked to, or be considered a consequence of, governmental action.[35]

42. It is the creation of the CEM program by the Canadian government, both at the federal and provincial levels, that constitutes the governmental action by virtue of which payments are financed. The CEM market is a "market" wholly contrived by governmental action in Canada. As the original Article 21.5 panel report explained, the CEM market "is not any different from the domestic market in terms of sellers, buyers, and the products which they trade.[36] Further, "[a]s milk is fungible, commercial export milk is not stored or processed separately from other milk."[37] The two specific indicia of the government's involvement in the financing of the payments include 1) the fact that Canada artificially segregates the market for milk that is exported and milk that is consumed domestically so that processors purchasing milk for export are exempted from having to buy the higher-priced domestic milk; and 2) that provincial regulations compel the export of any milk committed for export and that provincial governments

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[34] *Id.*

[35] *Id.*at para 113.

[36] Art. 21.5 Panel Report, para. 6.16.

[37] *Id.*

have sanction authority to enforce this requirement.[38]

43. The "nexus" between governmental action and the financing of the payments can be seen from the perspective of both the producer and the processor. First, producers do not choose to sell their milk to processors at a price below the average total cost of production because a regulatory framework simply enables them to do so. Even if the producer is freely choosing to produce non-quota milk, as the Appellate Body observed, once they do so, they have no choice but to sell it in the export market. From the producer's perspective, the governmental action is the prohibition against the selling of non-quota milk into the higher-priced domestic market.

44. The producer's choice of which market to sell into has been made by the government. If the producer were making the decision, the choice would obviously be to sell in the higher-priced domestic market and recover its fixed and variable costs. However, the government has foreclosed that choice by prohibiting non-quota milk from being sold in that market. Producers are not forced to produce extra milk. But when they do, they have no option but to sell in the CEM market and thereby make a "payment" to processors.[39]

45. Thus, it is easy to see the "demonstrable link" between the government's prohibition on selling milk in the domestic market without quota and the "payment" made by the producer's sale of non-quota milk in the CEM market. It is also easy to see that the financing of the "payments" made by producers to processors – the selling of milk at a price that is less than the average total cost of production – is "a consequence of"[40] governmental action, and that the

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[38] See Exhibits US 4 - 21, 27, 28, 29, 30, 31, 32, 33 which contain a compilation of the laws and regulations governing non-quota milk production.

[39] The only other permitted avenue for disposal of over-quota milk (other than destruction) is for use in animal feed under Class 4(m) – a use which obtains substantially lower prices than the export market.

[40] Article 21.5 AB Report, para 113.

governmental action is "indispensable" to the financing of the "payments".[41]

46. The "demonstrable link" is also easily seen from the processor's perspective. Without the government-enforced artificial segregation of the market for milk, there would be no lower-priced milk available to processors for export products. Processors would have to buy milk at the higher domestic price. It is only through governmental action that processors receive these "payments" from producers. The CEM market would not exist without the governmental exemption of processors from purchasing milk at the higher regulated prices for export purposes. This exemption is set forth in provincial regulations[42] and is available only to processors for products that are exported. In each province, milk qualifying as "commercial export milk" (or meeting the particular definition of "export contract milk" set forth in that province) is exempt from most domestic regulation, including, most importantly, the domestic price regulations that cover milk for the domestic market. However, if the milk is not exported, it no longer falls within the exemption from domestic regulation. As a result, the penalty is that the milk is reclassified as domestic milk and the processor is required to pay the high domestic price (which will be in addition to the export contract price that has already been paid to the producer.). Thus, in absence of the government-created CEM market, producers could choose to produce non-quota milk, but no one could legally purchase it.

47. That milk is available in the CEM market only because the economically rational choice of selling it at or above "average total cost of production" has been foreclosed by governmental action was recognized by the original panel report in this case:

> Canada is, therefore, correct that producers do not have a choice to make with respect to the allocation of Classes 5(d) and 5(e) milk. However, this is so (i.e.,

[41] Article 21.5 Panel Report, para 6.41.

[42] See Exhibit US-26.

> the producers' choice is predetermined) *not* -- as Canada implies -- because of commercial reasons (e.g., because of a lower domestic demand the producer -- depending on its profitability -- decides, in order to maximize its total revenue, to allocate a certain share of its production to lower priced export markets), **but because of governmental actions**. Under the Canadian system, selling milk for use in the domestic market is no longer an option (i.e., the choice for a higher return is taken away) **mainly because the quotas - set by Canadian governments or their agencies - are met**; *not* because there is no more domestic demand for milk. As noted earlier, producers would likely be able to sell more milk domestically if they were allowed to do so, albeit probably at a somewhat lower price. In conclusion, we consider that producers do forego a choice or revenue - **albeit through governmental action** - and, therefore, make a payment in kind to processors/exporters in the sense of Article 9.1(c). [43]

48. In other words, producers are selling in the export market, not because there is no demand in the higher-priced domestic market and the producer is therefore making a commercial choice to sell in the lower-priced export market, but because they cannot sell non-quota milk in the domestic market due to the government prohibition. As a result, the producer is foregoing revenue not based upon "commercial" reasons but as a direct consequence of governmental action. This situation described and relied upon by the Panel has not changed under the substituted provincial export programs.

49. The fact that Canada may deem the prohibition of non-quota milk in the domestic market as necessary to maintaining the integrity of its supply management system does not mean that the government must also enable processors to access that non-quota milk at lower prices, *i.e.* prices that are below the producers' average total cost of production. Other countries maintain dairy

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[43] Original Panel Report, para. 7.100 (emphasis in bold added).

supply management systems without this feature. For example, the United States understands that the European Union's dairy supply management system does not distinguish between milk sold to processors for use on the domestic market and milk sold to processors for products for export. Producers receive the same price regardless of the final destination of their milk (i.e., domestic or exported) and producers are required to not exceed their production quotas. Non-quota production carries substantial financial penalties. The EU also makes significant use of domestic schemes to dispose of surplus milk.

50. The government-created CEM scheme in Canada is not an unintended consequence of Canada's domestic supply management system. Nor is it a "spill-over" benefit of that system. It represents a deliberate choice of the Canadian government to make lower-priced milk available for processors for export. Without the exemption from the cost of the higher-priced milk, Canadian processors could not compete in the world markets for dairy products. However, that exemption from higher-priced milk is not necessary to the maintenance of a supply management system. As has long been evident, Canada cannot export most dairy products without providing its exporters with milk components at discounted prices. This is precisely the market situation that originally caused Canada to employ export subsidies in the form of producer-financed export rebates, and later to introduce the Special Milk Class system where export rebates took the form of reduced-price inputs. As mentioned above, only the form, not the substance, of the scheme has changed. The producers' choices are confined by government action no less so under the CEM scheme than was the case under the other schemes, and processors could not export with the exemption. The essential fact is that only through the exercise of government powers are processors provided milk at less than the milk's proper value. As a result, the processors receive a "payment" that is "by virtue of government action" within the meaning of Article 9.1(c) of the *Agreement on Agriculture*.

C. In the Alternative, The CEM Scheme Contravenes Article 10.1 of the Agreement on Agriculture

51. In the alternative, the United States maintains that, even if Canada's CEM scheme would found not to satisfy the requirements of Article 9.1(c), it would nevertheless violate Article 10.1 of the *Agreement* by providing export subsidies that circumvent (or threaten to circumvent) Canada's export subsidy commitments. Article 10.1 of the *Agreement* provides:

> Export subsidies not listed in paragraph 1 of Article 9 shall not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments; nor shall non-commercial transactions be used to circumvent such commitments.

In *United States - Tax Treatment of Foreign Sales Corporations*,[44] the Appellate Body stated that the obligations under Article 10.1 come into play when three factors are present: (1) there is a subsidy not identified in Article 9.1 of the *Agreement*, (2) that subsidy is contingent on export, and (3) the subsidy results in, or threatens to lead to, circumvention of a Member's export subsidy commitments.[45]

(a) Subsidy

52. Therefore, the initial task here, should the Panel fail to find export subsidies within the meaning of Article 9.1, is to determine whether the CEM scheme in Canada comprises export subsidies for purposes of Article 10.1. In *United States - FSC*, the Appellate Body drew upon the *SCM Agreement* as context for interpreting Article 10.1 of the *Agreement on Agriculture*.[46]

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[44] WT/DS108/AB/R, adopted 20 March 2000 (hereinafter "*United States - FSC*").

[45] *United States - FSC*, AB Report, para. 135-154.

[46] *Id.* at para. 136. Even if one were to consider the general notion of a "subsidy" within the meaning of Article 1 of the *SCM Agreement*—namely, whether "the grantor makes a 'financial contribution' which confers a 'benefit' on the recipient, as compared with what would have been otherwise available in the marketplace," *United States – FSC*, AB Report, para. 136—it is clear that Canada's CEM scheme qualifies as a "subsidy" per Article 1. Milk producers (the grantors) make payments (financial contributions), in the form of milk discounted below their average total cost of production, to dairy export processors (the recipients), who benefit from obtaining their principal input, milk, at prices far lower than the prices of the domestic milk otherwise available to them, and on prices and terms superior to

53. In the panel report in the original proceeding, the panel found that, because the question is one of export subsidies in this case, it is more appropriate "to examine what practices are considered under the *SCM Agreement* to be 'export subsidies', rather than to examine how that Agreement defines the more general concept of a 'subsidy' in its Article 1."[47]

54. In doing so, the original panel considered paragraph (d) of the Illustrative List of Export Subsidies contained in Annex I to the *SCM Agreement* to be the most relevant paragraph. Paragraph (d) specifically addresses the situation where a government provides inputs, indirectly through a government-mandated scheme, to exporters "on terms or conditions more favorable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption."

55. The original panel concluded that there are several conditions that must be fulfilled to satisfy paragraph (d): (1) the goods must be provided on terms or conditions more favorable than for provision of like or competitive products in the production of goods for domestic consumption; (2) the goods must be used in production for export; (3) the provision of goods must be by governments or mandated by them, either directly or indirectly; and (4) the goods provided to export processors must be available on terms or conditions more favorable than those commercially available on world markets to those exporters.[48]

56. Like the Special Milk Classes, Canada's CEM scheme satisfies satisfy each of these elements. First, dairy processors continue to have access to milk for dairy products for export

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those for imported milk theoretically "otherwise available" to them through the IREP program.

[47] Original Panel Report, para. 7.126.

[48] Original Panel Report, para. 7.128.

that is priced on more favorable terms than would otherwise be available to such processors when producing for domestic consumption, and on terms that are uneconomic to producers. The "terms or conditions...for the provision of like or directly competitive products...for use in the production of goods for domestic consumption," Paragraph (d), are indisputably less favorable than those for the provision of CEM for export processing: milk used for dairy products for domestic consumption must be in-quota milk under the domestic supply management system, for which processors must pay the high domestic price. Canada has never disputed that this price difference between domestic milk and CEM is substantial.

57. Second, the lower prices are *only* available for milk used in the production of export products. As explained above, all milk purchased through the commercial export milk market must be used in products that are exported. By law, CEM and products derived from it may not be diverted back into the Canadian domestic market. There are severe financial penalties if such products are ultimately sold into the domestic market.

58. Third, the lower-priced milk is provided by Canada's "governments or agencies directly or indirectly through government-mandated schemes." Again, as explained above, the provision of lower-priced milk for use in the production of dairy products for export is only possible through government intervention, including the government-mandated exemption of such milk from the higher regulated price and the enforced exclusion of such milk from the domestic market. The government forces non-quota milk into the government-created (and for producers, uneconomic) CEM market; producers' only other options are to destroy such milk, or to sell it for animal feed at the even more uneconomic government-set Class 4(m) price. Government action creates the CEM market, including by exempting export processors from the requirement to purchase high-price in-quota milk; government action ensures a steady and predictable supply of CEM by requiring that producers pre-commit to CEM sales and deliver CEM first out of the

tank; and the government polices the market, preventing the diversion of CEM milk and products into the higher-return domestic market (which would have the effect of driving up CEM prices and destroying the scheme's economic benefit—deep discounts on milk—to export processors).

59. Finally, the terms and conditions on which milk is made available to processors for export are more favorable than those available to them on world markets. In fact, the facts underlying the original panel's finding on this point have not changed. For all practical purposes, commercial imports of fluid milk for processing cannot enter Canada due to import restrictions.[49] Thus, if processors want to export dairy products, their only choice is to use domestically produced milk.[50] Obviously, this is not a choice which is "unrestricted and depends only on commercial considerations" in the sense of the footnote to Paragraph (d).

60. Article 1.1 of the *SCM Agreement* also provides further guidance to support the conclusion that the CEM scheme is a "subsidy" for purposes of Article 10.1 of the *Agreement on Agriculture*. In defining the general term "subsidy," Article 1.1(a)(2) includes "income and price supports in the sense of Article XVI of GATT 1994." Article XVI describes supports which

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[49] Original Panel Report para. 7.53-7.55, 7.131.

[50] Canada has previously argued that world market terms are available to exporters through the Import for Re-Export Program. Canada contended that the Minister's discretion to issue permits is not a barrier to it being a competitive source of milk for exporters. In the view of the United States, both the original panel and the previous Article 21.5 panel were correct that the requirements of the IREP demonstrate that its terms and conditions are less favorable. *See* Original Panel Report, para. 7.53; Art. 21.5 Panel Report, para. 6.25-6.26. These include: 1) the fact that the Minister has broad discretion as to whether to issue a permit for import under this program; 2) the fact that an importer has to obtain a permit in the first place; and 3) the fact that there is an administrative fee. This is not contradicted by the Appellate Body's suggestion (while discussing but not making a finding on the CEM scheme's alleged inconsistency with Article 10.1) that a routine import permitting requirement need not render imported products commercially unattractive for purposes of Paragraph (d). *See* Art. 21.5 AB Report, fn. 55. Moreover, an in-quota tariff applies to milk accessed under the IREP, which obviously does not apply to CEM milk. This fact was not discussed by the Appellate Body. Canada bears the burden of establishing that IREP imports are available on commercially attractive terms, and to date it has been unable to do so. Indeed, the fact that IREP milk is so infrequently accessed is persuasive evidence that its terms and conditions are less favorable than those available under Canada's export schemes (the SMC and now CEM).

"operate directly or indirectly to increase exports of any product" (section A.1) and proscribes subsidies that "result[] in the sale of [the subsidized] product for export at a price lower than the comparable price charged for the like product in the domestic market" (section B.4).

61. Canada's CEM scheme falls within these categories of income and price supports in the sense of Article XVI: First, it necessarily operates to increase the exports of dairy products from Canada, because such exports would not be competitive on the world market if processors were required to pay the domestic milk price for their inputs. Second, it is undisputed that dairy products produced for export using CEM are priced lower than the same dairy products produced for domestic consumption in Canada.

62. The CEM scheme is thus a subsidy within the meaning of Article 1.1 of the *SCM Agreement*, as elaborated in Article XVI of GATT 1994, providing further evidence that it is properly classified as a subsidy within the meaning of Article 10.1 of the *Agreement on Agriculture.*

(b) Contingent on Export

63. The next factor in the analytical framework suggested by the Appellate Body is to consider whether the availability of discounted milk pursuant to the CEM scheme is "contingent on export performance."[51] As explained above, under the CEM scheme, the availability of discounted milk is dependent on use of the milk in the manufacture of dairy exports. Severe financial penalties prevent the sale of the discounted milk or its products for any purpose other

[51] *United States - FSC*, AB Report, para. 141.

than export.

(c) Circumvention of Export Commitments

64. Likewise, the export subsidy thereby conferred by the CEM scheme "results in, or threatens to lead, to circumvention of export subsidy commitments," Article 10.1. Canada has evaded[52] its export subsidy commitments by finding a new means (the CEM scheme) to transfer to export processors the very same economic benefits (*i.e.* discounted milk) that it was prohibited from transferring under the SMC scheme condemned by the DSB under Article 9.1(c) of the *Agreement on Agriculture.*

65. In *United States—FSC*, the Appellate Body concluded that: " . . . under Article 10.1 it is not necessary to demonstrate *actual* 'circumvention' of 'export subsidy commitments'. It suffices that 'export subsidies' are applied in a manner . . . which *threatens to lead to circumvention* of export subsidy commitments."[53] In determining whether circumvention of export subsidy commitments is likely to result, the Appellate Body concluded that the structure and other characteristics of the measure are pertinent.[54]

66. Under the CEM scheme, the Canadian government requires that non-quota milk be excluded from ultimate consumption in the domestic market. The direct consequence of that exclusion is that such milk must be used to produce either products for export or animal feed.

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[52] The New Shorter Oxford English Dictionary's principal definition of "circumvent" reads, in pertinent part, "deceive, outwit, overreach; find a way around, evade (a difficulty)."

[53] *United States - FSC,* AB Report, para. 148.

[54] *Id.* at para. 149.

Processors who export are free from any limitation on the amount of non-quota milk for which they contract. Similarly, milk producers may provide as much such milk to processors for export as those producers are willing to pre-commit. In other words, the availability of discounted milk for export is confined only by the export opportunities available to Canada's dairy product processors. The revised export schemes lack any internal limit or control on the volume of discounted milk going to processors for export.

67. As in *United States—FSC*, the absence of any constraints on the use of the CEM export subsidy confirms that it is likely to threaten to lead to circumvention of Canada's dairy export subsidy commitments. Moreover, the United States would note that in this case there is not only threatened, but actual circumvention of Canada's export commitments under Canada's revised export measures. Canada's exports of cheese and "other milk" products in the dairy year 2000-2001 in fact exceeded (or for purposes of Article 10.1, circumvented) the limitations to which it committed itself in the *Agreement on Agriculture*.[55] Thus the threat of additional, unchecked circumvention of Canada's dairy export subsidy commitments is no mere possibility—it is underway.

(d) Non-Commercial Transactions

68. In addition, Canada's revised export scheme runs afoul of the second clause of Article 10.1 of the *Agreement on Agriculture*, which continues, "nor shall non-commercial transactions be used to circumvent such [export subsidy] commitments."

69. Despite the "market" trappings of the contractual arrangements between producers and

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[55] See Exhibit US-1; Art. 21.5 Panel Report para. 6.8. Canada is also on track to exceed its commitments for cheese and "other milk" products for the dairy year 2001-2001.

processors in the sale of CEM, those transactions are demonstrably "non-commercial." As discussed at length above, CEM sales are decidedly uneconomic for milk producers, who do not come close to recouping their costs of producing the milk. CEM prices have regularly fallen short of producers' fixed and variable costs of production by more than $20 per hectoliter (and much more if data biases were corrected).

70. Producers engage in these uneconomic CEM transactions because the only other alternatives legally available to them—disposal, or Class 4(m) sales for animal feed—offer even less of a return on their investment. The Canadian government thus leaves them no choice but to engage in "non-commercial" sales of their non-quota milk. Those sales to export processors, in turn, have resulted in the circumvention (and threaten further, unlimited circumvention) of Canada's export subsidy reduction commitments.

(e) Summation

71. In sum, Canada's CEM scheme comprises "export subsidies" or "non-commercial transactions" within the meaning of Article 10.1 of the *Agreement on Agriculture*, even if the CEM scheme is found not to meet strictly the definitional requirements of Article 9.1(c) of the *Agreement.* CEM subsidies or transactions have already resulted in the circumvention of Canada's export subsidy reduction commitments, and they threaten continued, indeed unlimited, circumvention of those commitments. As such, the CEM scheme violates Article 10.1 of the *Agreement.*

D. The CEM Scheme Constitutes a Prohibited Export Subsidy Under Article 3 of the SCM Agreement

72. In addition to constituting violations of Articles 9.1(c), or in the alternative, Article 10 of the *Agreement on Agriculture*, Canada's measures affecting the exportation of dairy products constitute prohibited export subsidies pursuant to Articles 1.1 and 3.1 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement). These measures -- Canada's CEM scheme as well as the maintenance of Special Class 5(d) -- provide discounted milk to milk dealers on the condition that the milk is exported to foreign markets. They do so by allowing exporters to purchase milk at prices that are less than the milk's proper value. Access to this low-priced product is contingent on the product being exported, because should a processor divert the low-priced milk or products made from it to the domestic market, the processor must pay a severe penalty.

73. Therefore, Canada's measures constitute subsidies contingent upon export performance in violation of Article 3.1(a) of the *SCM Agreement*, and the appropriate remedy is withdrawal of the subsidy without delay pursuant to Article 4.7 of the *SCM Agreement*.

1. Canada's CEM Scheme Provides Subsidies

74. In its report on Canada's SMC system, the Appellate Body noted that:

> [a] we said in our Report in *Canada - Aircraft*, a "subsidy", within the meaning of Article 1.1. of the *SCM Agreement*, arises where the grantor makes a "financial contribution" which confers a "benefit" on the recipient, as compared with what would have been otherwise available to the recipient in the marketplace.

[footnote omitted][56]

Notwithstanding the change that Canada imposed on the form of its programs, Canada's measures continue to meet Appellate Body's definition of a "subsidy" under Article 1.1 of the *SCM Agreement.*

a. The Provision of Discounted Milk to Dairy Processors Constitutes a Financial Contribution

75. Article 1.1(a)(1) of the *SCM Agreement* provides in part that a government offers a "financial contribution" where a "government provides goods or services other than general infrastructure, or purchases goods; [or] a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments[.]"

76. As stated above, Canadian governmental authorities continue to provide milk for export products at a reduced rate. Under Canada's new scheme, the CDC, CMSMC, the provincial governments, the milk marketing boards and the new provincial programs -- with their penalties for milk that is not properly channeled -- all work to ensure that this is the case. The Appellate Body found that, in such circumstances, "the recipient is paid in the form of goods or services."[57] This constitutes a financial contribution under Article 1.1(a)(1)(iii) of the *SCM Agreement.*

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[56] Original AB Report, para. 87.

[57] Original AB Report, para. 113.

b. The Provision of Discounted Milk to Dairy Processors Confers a Benefit

77. The term "benefit" was interpreted in the *Canada – Aircraft* case. The Appellate Body found that:[58]

> [T]he word 'benefit', as used in Article 1.1(b), implies some kind of comparison. This must be so, for there can be no 'benefit' to the recipient unless the 'financial contribution' [or 'income or price support'] makes the recipient 'better off' than it would otherwise have been, absent that contribution. In our view, the marketplace provides an appropriate basis for comparison in determining whether a 'benefit' has been 'conferred', because the trade-distorting potential of a 'financial contribution' [or 'income or price support'] can be identified by determining whether the recipient has received a 'financial contribution' [or 'income or price support'] on terms more favorable than those available to the recipient in the market.

78. Because of the incentive to sell milk at lower prices for export, dairy processors that export are the beneficiaries of the CEM scheme in Canada. Without this scheme, milk at such discounted prices would not be available through any other channel to processors for export. Since those processors have no other source for such low-priced milk and they could not sell their dairy products into world markets if they were compelled to pay the much higher domestic prices in Canada for milk, the processors clearly receive a competitive advantage that they would otherwise lack. Since the milk for export is provided on lower terms than would otherwise be available on the market absent the provincial pricing systems, the financial contribution provides a benefit within the meaning of Article 1.1(b) of the *SCM Agreement*.

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[58] *Canada - Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R (2 August 1999), para. 157.

2. Canada's CEM Scheme Comprises Prohibited Export Subsidies

79. Canada's CEM scheme requires that milk purchased at the exempted CEM price must be exported. As such, these subsidies are "contingent on export performance" and therefore prohibited under Article 3.1 of the *SCM Agreement*. Article 3.1 provides that:

> [T]he following subsidies, within the meaning of Article 1, shall be prohibited:
>
> > subsidies contingent, in law or in fact [footnote omitted], whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I; ...

A subsidy is "contingent ... on export performance" when it is conditional on or tied to exports; that is, where it is available only on condition that goods are exported. Under the CEM scheme, when a milk dealer is unable to show that all the quantities of components of the volume of milk have been exported, the milk dealer must pay a penalty. Canada's CEM scheme is, therefore, "contingent ... upon export performance" and, as such, provides prohibited subsidies under Article 3.1 of the *SCM Agreement*. As such, the appropriate remedy under Article 4.7 of the *SCM Agreement* is for the Panel to recommend that Canada withdraws the subsidy -- that is, Special Milk Class 5(d) and the CEM scheme -- without delay.

IV. CONCLUSION

80. Canada's introduction of the CEM scheme to replace Special Milk Class 5(e) cannot conceal the fact that dairy processors continue to receive milk for use in the production of exported goods at prices substantially below the proper value of the milk to the producers. This price benefit is conferred through export mechanisms authorized, administered, and enforced through governmental action. Thus there can be no doubt that Canada's current export regime

for dairy products, consisting of both Special Milk Class 5(d), as well as the CEM scheme, provides an export subsidy within the meaning of the *Agreement on Agriculture.*

81. Accordingly, in light of subsidized exports by Canada that exceed the applicable reduction commitment quantities for cheese and other dairy products, the United States respectfully requests that this Panel find that Canada has breached Articles 3.3, 8, and 9.1(c), or alternatively, Article 10.1, of the *Agreement on Agriculture.* In addition, the United States requests that the Panel find that Canada has breached Article 3 of the SCM Agreement.

82. The United States requests that the Panel direct Canada to bring its export measures for dairy products into conformity with its WTO obligations.

Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products - Second Recourse by the United States to Article 21.5 of the DSU

First Submission by the United States of America

EXHIBIT LIST

Exhibit US Number	Exhibit
1.	Canada Dairy Export Volumes Chart
2.	Canadian Dairy Commission Cost of Production Compilation Table
3.	Canada Price Comparison Chart
4.	Canada Gazette, 3 Janaury 2001, which contains the Regulations amending the Dairy Product Marketing Regulations, the Regulatory Impact Analysis Statement, the Directions to the Canadian Dairy Commission, and the amendments to milk orders for all provinces except Newfoundland
5.	Dairy Product Marketing Regulations, prior to amendment
6.	Outline of Ontario Dairy Export Contract Exchange Mechanism provided by Canada Department of Foreign Affairs and International Trade provided by Canada on June 15, 2000
7.	Ontario DFO Milk General Regulations, 09/00, Milk Act, R.S.O. 1990, Chapter M-12, as amended
8.	Ontario DFO Milk General Regulations, 08/00, Milk Act, R.S.O. 1990, Chapter M-12, as amended
9.	August 18, 2000 letter from Minister Vanclief to the Honorable Ernie Hardemann, Minister of Agriculture, Food and Rural Affairs, Government of Ontario
10.	Amendment to Ontario Regulation 179/00, 8 March 2000
11.	Description of Quebec Individual Milk Export Mechanism, provided by Canada on 22 September 2000
12.	Decision 7111 of the *Regie des marches et alimentaires du Quebec*, 28 July 2000

13. Decision 7140 of the *Regie des marches et alimentaires du Quebec*, 27 October 2000

14. Order in Council of the Government of Quebec, 6 December 2000

15. Description of Alberta Contracted Export Milk mechanism provided by Canada on 22 September 2000
Amendment to the Dairy Board Regulations, dated 12 July 2000
Letter (and attachments) dated 8 August 2000 from Minister Vanclief to Honorable Lund, Minister of Agriculture, Food and Rural Development for Alberta

16. Description of Manitoba Commercial Export Milk mechanism provided by Canada on 22 September 2000
Export Contract Milk Exemption Order, dated 21 November 2000
Letter (and attachments) dated 12 September 2000 from Minister Vanclief to Honorable Wowchuk, Minister of Agriculture, Food and Rural Development for Manitoba

17. Description of Prince Edward Island Contractual Commercial Export Activity mechanism provided by Canada on 22 September 2000
Prince Edward Island Marketing Board Order No. MMB00-02, dated 13 March 2000
Letter (and attachments) dated 18 September 2000 from Minister Vanclief to Honorable Murphy, Minister of Agriculture, Food and Rural Development for Prince Edward Island

18. Description of Nova Scotia Contractual Export scheme provided by Canada on 22 September 2000
Amendment to Regulations Respecting Milk Production, dated 5 February 2000
Amendment to Regulations for Specified Areas, dated 17 May 1999
Letter (and attachments) dated 12 September 2000 from Minister Vanclief to Honorable Fage, Minister of Agriculture, Food and Rural Development for Prince Edward Island

19. Description of New Brunswick Contractual Export scheme provided by Canada on 22 September 2000
Letter (and attachments) dated 12 September 2000 from Minister Vanclief to Honorable Robichaud, Minister of Agriculture, Food and Rural Development for Prince Edward Island

20. Description of Saskatchewan Contracted Milk Export scheme provided by

Canada on 22 September 2000
Amendments to the Milk Control Regulations
Letter (and attachments) dated 1 November 2000 from Minister Vanclief to Honorable Serby, Minister of Agriculture, Food and Rural Development for Prince Edward Island

21. Agreement on Commercial Milk Export between the British Columbia Milk Producer's Assoc., the Mainland Dairymen's Association and the British Columbia Dairy Council provided by Canada on 22 September 2000
Consolidated Order dated 1 August 2000 of the British Columbia Milk Marketing Board

22. National Cost of Production Input to the Pricing of Industrial Milk: Handbook of COP Principles and Practices

23. Estimated Cost of Producing Milk for 2001 Based on 2000 Survey Data

24. Estimated Cost of Producing Milk for 2000 Based on 1999 Survey Data

25. Estimated Cost of Producing Milk for 1999 Based on Final 1998 Calculations

26. List of pertinent provincial regulations

27. British Columbia Milk Marketing Board Regulation Amendments, BC Reg 167/94, s.1 (definition), s. 7.1(2) (exemption), s.7.1(3) (audit); s.7.2 (domestic price applies if not exported)

28. Manitoba Milk Producers' Marketing Milk General Order 301/89, Part I, s.1 (exemption), s.3(books and audit)

29. New Brunswick Milk Marketing Board Exemption Order 11, s.2 (definition), s.4 (exemption)

30. New Brunswick Milk Marketing Board Milk Pricing Order, s.3 (exemption from domestic prices)

31. Nova Scotia Regulation Respecting Contracted Exports of Dairy Products, Schedule 13, s.1(a)(definition), s.2 (exemption)

32. Prince Edward Island Milk Marketing Regulation Amendments, EC2000-785, s.1 (definition), s.3.1(1)(exemption & database)

33. Prince Edward Island Milk Marketing Regulations, Chapter N-3, s. 3(q)(seizure authority)