

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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CANADIAN PROPOSAL ON GATT ARTICLE XI

The following submission has been received from Canada.

1. The Punta del Este Declaration and the April 1989 Mid-Term Review Framework for negotiating the trade reform process leading to greater liberalization and predictability of international trade in agricultural products have established the need for bringing all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines and to make them equally applicable to all GATT contracting parties.
2. In light of recent GATT Panel reports which have noted the practical difficulties of applying the existing criteria in Article XI:2(c)(i) in respect of quantitative import restrictions necessary to the enforcement of governmental measures which restrict domestic production or marketing of agricultural products, it is clear that these GATT rules, particularly their interpretative notes, require a serious review in the context of the Uruguay Round. This submission contains Canada's suggestion on how GATT Article XI:2(c)(i) should be clarified and strengthened in a balanced way, consistent with the greater trade liberalization, predictability and equity objectives of the agricultural trade reform process.
3. This submission is based on the principle that any import quota should be permitted only (a) where uncontrolled imports would make ineffective government programmes which effectively restrict the domestic production or marketing of a fresh product at the primary producer level; and (b) under conditions where a reasonable and predictable balance is maintained between the interests of the countries and sectors subject to effective supply controls domestically and the interests of exporters. Accordingly, it suggests some verifiable criteria regarding effective governmental supply control measures, the scope of import restrictions coverage and the application of such import restrictions.

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4. Specifically:

I. Effective governmental supply control measures

Under the existing GATT Article XI:2(c), there is a requirement that there must be governmental measures which effectively restrict the quantities of the fresh agricultural product at the farm level permitted to be produced or marketed, before import restrictions could be legitimately introduced. This discipline should be retained. However, domestic supply controls should be deemed to be effective only if:

- (a) production or marketing does not exceed a designated level which should be notified at the beginning of each production or marketing control period;
- (b) penalty provisions exist at the individual farm level for over-quota production or marketing which ensure that the designated level is not exceeded; and
- (c) virtually all domestic production is under effective supply control.

II. Scope of import restriction coverage

The current requirement in Article XI:2(c) that any import restriction must be on an agricultural product and that the import restriction must be applicable to the like fresh product as is under domestic supply control, should be retained. However, a more operationally effective and clearer rule should remove the practical difficulties of determining the potential product coverage for its application, taking account of technological developments. These difficulties arise from the interpretative note to the Article regarding "in any form", "early stage of processing", "still perishable" and "which competes directly".

Accordingly, the potential product coverage for the application of import restrictions, in terms of processed products, should be determined by a requirement that the import restriction be limited to those processed products which are made "wholly or mainly" from the fresh product under domestic supply control. "Wholly or mainly" would be defined objectively by an agreed list of designated products and by a negotiated minimum percentage by dry weight of the fresh product under domestic supply control.

III. Application of import restrictions

The application of import restrictions on products under effective domestic supply control should reflect a reasonable and predictable balance between the interests of the country and sector subject to effective supply control domestically and the interests of the exporters. Accordingly:

- (a) The requirement that import controls be quantitative restrictions and not prohibitions should be retained.

- (b) The requirement not to reduce the proportion of imports relative to domestic production as compared to the proportion which might reasonably be expected to rule in the absence of restrictions should also be retained. However, for the initial establishment of an import restriction, this proportion should normally be the ratio of the actual imports of products to be restricted to production of the fresh product under supply control in the [X] year period preceding the imposition of import quotas.

In cases where the normal base period may be distorted by the existence of non-tariff barriers, the initial import quota level should be determined by a negotiated minimum access level of no less than [Y] per cent of domestic production on a fresh product equivalent basis. Similarly, when for any reason, there are little or no imports of a specific product in the normal base period, the minimum size of any initial import quota should be no less than [Z] per cent of domestic production of the product concerned.

- (c) Any initial allocation of the overall access level among specific products should not reduce the import access opportunities for any individual product below the level of actual imports during the previous [X] year period.
- (d) Changes to import quotas after the initial period should be tied to proportional changes in the domestic production of fresh products under supply control.
- (e) The country applying quantitative import restrictions should be required to accept disciplines on exports of products under supply control.

Finally, it may be necessary to envisage that certain technical problems related to the application of import restrictions, such as the circumvention of permitted import quotas by mixtures and/or new products which contain slightly less than the minimum content to qualify as a product wholly or mainly made from a fresh product under effective domestic supply controls, would have to be addressed objectively by an appropriate GATT technical body in an advisory capacity.