

UNITED STATES - MEASURES AFFECTING THE EXPORT
OF PURE AND ALLOY MAGNESIUM FROM CANADA

*Report by the Panel
(SCM/174)*

1. In a communication dated 20 December 1991 (document SCM/135), Canada requested the Committee on Subsidies and Countervailing Measures ("the Committee") to establish a Panel to examine a dispute between Canada and the United States concerning the decision taken by the United States on 23 September 1991 to initiate a countervailing duty investigation on imports of pure and alloy magnesium from Canada. This matter had previously been referred to the Committee by Canada (in document SCM/130) for the purpose of conciliation under Article 17 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Agreement"). It had, however, not been possible for the Committee to resolve this dispute under the conciliation procedures of the Agreement.

2. At its meeting on 5 March 1992, the Committee agreed to establish a Panel and authorized the Chairman to decide, in consultation with the parties concerned, the composition of the Panel (SCM/M/57, paragraphs 8 and 9).

3. The terms of reference of the Panel were as follows:

"To review the facts of the matter referred to the Committee by Canada in SCM/135 and, in the light of such facts, to present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade."

4. The composition of the Panel was as follows:

Chairman: Mr. Peter Hamilton

Members: Mr. Thomas Cottier
Mr. Andrés Espinosa

5. The Panel met with the parties to the dispute on 19 May and 8 July 1992. At the 8 July 1992 meeting, Canada requested that the Panel proceedings be suspended, and the United States concurred in that request.

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6. On 7 July 1993, Canada formally notified the Chairman of the Panel that it had decided to withdraw its complaint in this matter. The text of the letter conveying this information and explaining the reasons for Canada's decision is reproduced below.

"Following an understanding reached with the United States, Canada wishes to advise the signatories of the Subsidies Code that it has withdrawn its complaint under Article 17 of the Code regarding the imposition of a countervailing duty affecting the export of pure and alloy magnesium from Canada.

"In its original countervailing duty determination, the United States Department of Commerce found that the production of Canadian pure and alloy magnesium was subsidized as a result of a favourable hydro electricity contract negotiated between the producer, Norsk-Hydro, and the provincially-owned utility, Hydro-Quebec. Subsequent to the countervailing duty determination, the said contract for the provision of hydro electricity between Norsk-Hydro and Hydro-Quebec was amended. As a result of the change of circumstances in the contract between Norsk-Hydro and Hydro-Quebec, the United States Department of Commerce undertook a changed circumstances review to determine whether Canadian exports of pure and alloy magnesium were subsidized.

"On November 6, 1992 the United States Department of Commerce issued its final determination in the changed circumstances review. It was determined that the amended contract between Norsk-Hydro and Hydro-Quebec does not confer a subsidy on exports of Canadian pure and alloy magnesium.

"As a result of the November 6, 1992 determination, Canada has decided to withdraw its complaint. This decision is without prejudice to Canada's right to pursue or defend its interests with respect to the imposition of countervailing duties on export of pure and alloy magnesium from Canada.

7. In view of Canada's withdrawal of its complaint, the Panel considers that its proceedings are terminated.