

May 28, 2003

Ms. Claudia Orozco
Chairperson of the Panel
*Canada – Measures Relating to Exports
of Wheat and Treatment of Imported Grain*
World Trade Organization
Centre William Rappard
Rue de Lausanne 154
1211 Geneva 21

Dear Madam Chairperson:

This letter is in response to Canada's request of May 13, 2003, for a preliminary ruling regarding the establishment of special procedures for the treatment of business confidential information ("BCI") in the dispute, *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain* (WT/DS276). The United States remains surprised that this is the subject of a request for a preliminary ruling. There is no disagreement between the parties as to the adoption of special procedures, and this is in any event a matter of the panel's organization. Accordingly, there is nothing on which to "rule." Rather, the Panel simply needs to exercise its authority under Article 12 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") to adopt additional procedures in consultation with the parties. The United States continues to stand ready for such consultations and to assist the Panel in this matter.

Canada has stated in paragraph 3 of its request that such procedures should be established because Canada may need to submit BCI during the course of these panel proceedings. As noted above, to the extent that Canada will be submitting such information, the United States does not object to the Panel establishing procedures for the protection of BCI, as nothing in the DSU precludes panels from adopting additional procedures for protecting business confidential information. The United States also recalls that, at the panel organizational meeting of May 21, 2003, the United States represented that it does not plan to rely on BCI in its presentations before the Panel.

It is important to note that this same situation arose in a very recent dispute between Canada and the United States. In that dispute, *United States – Final Dumping Determination on*

Softwood Lumber from Canada (WT/DS264), Canada and the United States were able to agree on procedures for the treatment of BCI, which are attached to this letter as Exhibit US-3 (fax of April 2, 2003, from the legal officer of the panel to the parties, transmitting the adopted working procedures in that dispute, including Annex I on the working procedures concerning business confidential information). There was no need for a preliminary ruling in that dispute.

The United States believes that these procedures, which both Canada and the United States are already familiar with and are currently utilizing, should simply be adopted by this Panel to protect BCI in this dispute. Indeed, nothing in Canada's request for a preliminary ruling suggests the need for procedures different than those attached here. And by adopting these previously agreed-to procedures, the Panel and the parties can avoid wasting time and effort in considering and debating the uncertain implications of Canada's newly developed proposals.

Therefore, the United States asks the Panel to adopt the attached procedures for the treatment of BCI in these panel proceedings.

The United States is providing a copy of this letter directly to Canada, Australia, Chile, China, the European Communities, Japan, Mexico, and Chinese Taipei.

Sincerely,

Stephen Kho
Legal Advisor

cc: H.E. Mr. Sergio Marchi, Permanent Mission of Canada
H.E. Mr. David Spencer, Permanent Mission of Australia
H.E. Mr. Alejandro Jara, Permanent Mission of Chile
H.E. Mr. Sun Zhenyu, Permanent Mission of China
H.E. Mr. Carlo Trojan, Permanent Delegation of the European Commission
H.E. Mr. Shotaro Oshima, Permanent Mission of Japan
H.E. Mr. Eduardo Pérez Motta, Permanent Mission of Mexico
Mr. Ching-Chang Yen, Permanent Mission of Chinese Taipei