

ARTICLE XXII.1 CONSULTATIONS
WITH THE UNITED STATES ON
CUSTOMS USER FEES
17 DECEMBER 1986

These consultations are being held under Article XXII.1 of the General Agreement. As previously indicated in GATT Council on 27 October, Canada had requested consultations under Article XXIII of the GATT but has agreed, at the suggestion of the United States, to hold these consultations under Article XXII. We thank the U.S. delegation for agreeing to meet with us today and welcome the participation of other governments who have expressed an interest in this matter. We view these consultations as an opportunity to obtain further information relating to the customs user fees and to register with the United States government the very serious concern of the Government of Canada, with the broad support of Canadian exporters, regarding the imposition of customs user fees in a manner inconsistent with the General Agreement. This concern is twofold in that the measure has a significant impact on Canadian exports to the United States and the United States seems to be ignoring the standstill commitments made at Punta del Este but one month prior to this legislative action.

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Our objective in these consultations is to have the United States remove the customs user fees, or at the very least, to bring these fees into line with the United States' obligations under GATT.

The background to these consultations is the signature by the President of the United States on 21 October 1986 of the Omnibus Budget Reconciliation Act of 1986 which has resulted in the imposition of fees on the users of the U.S. customs service on an ad valorem basis starting 1 December 1986. For the first fiscal year of the programme, the fee will be 0.22 percent of the value of the cargo. In the second and third fiscal years of the programme, the fee will be 0.17 percent. It is instructive to note that the United States administration supported the adoption of the customs user fees.

On the basis of United States estimates, this programme is expected to generate \$630 million, which together with the anticipated revenue of \$170 million from current user fees would generate \$800 million in revenues. The 1987 budget for the U.S. customs service is set at \$1 billion broken down into \$749 million for salaries and

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and expenses to maintain current operational levels, \$81 million for drug enforcement and \$171 million for the air interdiction programme. We would welcome today confirmation of this background information.

The imposition of these fees has a serious impact on Canada. We estimate that the fee will cost Canadian exporters \$210 million in the first year. This amount is significant. Moreover, the imposition of these fees has a more severe effect on Canada, the largest single trading partner of the United States, than on other contracting parties since the fees also apply to duty free items. Such items compose more than 70 percent of Canadian exports to the United States. Canadian authorities consider that the services provided by United States customs for goods bound at free are much less than those provided for goods on which duty must be calculated and collected. The customs user fees have therefore imposed a disproportionate burden on Canadian exporters of duty free goods. This burden has already placed in jeopardy the existence of one Canadian company involved in the production of gold bullion bars from U.S. material for re-export to the U.S.A. The conditions in the bullion market are such that the application of an ad valorem fee of .22 percent is greater than the margin of the value added in Canada, thereby undermining the commercial viability of the company.

The Conference Report of the United States Congress on this legislation specifically addressed the issue of the consistency of these fees with the GATT. This position taken was that these fees are limited in amount to the approximate cost of the services rendered by the customs service and the fees are therefore consistent with the GATT exceptions regarding such charges. Canada rejects this contention.

It is the Canadian position that ad valorem user fees as implied by the USA legislation are inherently inconsistent with the GATT as the fee is calculated not on the cost of the service but on the value of the goods. The fees as imposed by the United States are inconsistent with GATT Article II in that they are not covered by the exceptions under Article II.2 and with Article VIII.1.(a) as the fees imposed are not necessarily related to the costs of the services rendered.

Article II of GATT stipulates that products shall be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed at the time of joining GATT.

There are a number of precedents where the CONTRACTING PARTIES have addressed breaches of Article II. The phrase "other charges" has been broadly defined and the nature of a customs user fee clearly falls within the meaning of Article II. We recognized that Article II does not however prevent the imposition of fees or other charges commensurate with the cost of services rendered. In Canada's view, the United States customs user fees do not qualify under this exemption. In taking up this point we also refer to Article VIII.I.(a). The question of the determination of fees has been addressed previously under GATT in two cases brought by the USA against France, the Working Party on the Accession of the Congo, and more recently the USA/EC Tomato Concentrates Panel.

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These cases show that while newly imposed fees are allowed, fees which exceed the cost of services rendered or fees which are applied to non-related programmes, are inconsistent with the GATT. The illustrative list in Article VIII.4 also indicates that fees should only be charged for specific services relating directly to importation and exportation.

In Canada's view the USA has applied fees that do not "approximate the cost of services rendered". Canada does not dispute that, in principle, user fees may be charged, but Canada disagrees quite strongly that the U.S. system conforms to the GATT.

The individual fees charged by the USA do not necessarily relate to the cost of providing the service. In fact, given that the fee charged is based solely on the value of the item being imported, a fee being charged which relates to the cost of the services would happen only as the result of chance and not by design.

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An illustrative example of this problem can be demonstrated by showing the treatment that two different automobiles produced in Canada might be accorded under this system. Assume car "A" is a compact worth \$8,000 and car "B" is a full-size luxury sedan worth \$24,000. Both cars could enter the USA at the same border crossing, possibly on the same transport truck. Both cars would have the same customs documents and would be handled by the same customs officer but the fees charged for car "B" would be three times those charged for car "A", even though there was an essentially identical cost of processing to the U.S. customs service.

In Canada's view, the system employed by the USA is clearly discriminatory against higher value items and favours lower value items. Fees charged for importing high value items will be used to underwrite the import of low value products. This will especially hurt Canada, as a significant portion of our trade is in high value products such as automobiles.

We would request the United States delegation to provide information to show the actual costs of clearing various representative shipments. We would in particular be especially interested in data relating to past experience of the cost of clearing shipments with a tariff rate of free, such as autos and autoparts, which fall under the Canada USA Auto Pact.

We would also wish to draw your attention to the fact that Canadian exporters are being charged an extra administrative fee by customs brokers. This fee is approximately \$3.50 per entry. One exporter claims this will cost him an additional \$200,000 per year. This makes the effect of the fee greater than 0.22 percent.

We have demonstrated that the imposition of the user fees on an ad valorem basis is not commensurate with the individual services rendered which is the only GATT consistent approach. The US administration has argued that the only requirement is to ensure that the total revenue approximates the total cost of the service rendered. Even here we have questions. It is our understanding that the the total amount of fees collected exceeds the cost of providing customs services related to importations generally. We are concerned these fees are being used to underwrite other programmes of the customs service not related to importation.

For example, the budget notes that the customs service is involved in conducting criminal, civil and fact finding investigations of customs and related laws and the 1987 estimates allocates \$101.5 million for investigations. Could the US delegation explain how criminal investigations could be considered as "services rendered" to law abiding importers? In these circumstances, we request the USA delegation to provide detailed budgetary information to permit a determination whether the total amount of fees collected are limited to the cost of only those services related to importation of goods and that portion of administration that can be attributed to this function.

We are also of the view that the imposition of the user fee is contrary to the recognition set out in Article VIII.1.(b) and (c) to reduce the number and diversity of fees and for minimizing the incidence and complexity of import and export formalities and simplifying documentation requirements. Indeed, the USA measures reverse this trend and could set an unfortunate precedent. The addition of these fees to those imposed earlier in the year by the USA on the entry of ships, trucks, railway cars and the like adds to the administrative burden and complicates the procedures of clearing customs.

I would also wish to re-emphasize our concern that by imposing customs user fees at this time, the United States is going against the commitment made in Punta del Este but one month previous with respect to standstill.

The Government of Canada therefore wishes to have the customs user fee imposed by the United States removed, or at the very least brought into line with the USA's GATT obligations.