

28 April 1978

CANADA - WITHDRAWAL OF TARIFF CONCESSIONS

I. INTRODUCTION

1. The _____ established by the Council on 12 November 1976 _____ the following terms of reference (C/M/117, paragraph 15):

"To examine the _____ referred by the European _____ Community to CONTRACTING PARTIES pursuant to paragraph 2 of Article XXIII, relating to the withdrawal by Canada of tariff concessions under Article XXVIII:3 (L/4432 and SECRET/224/Add.4) and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII."

2. The Chairman of the Council

7. Canada notified to the CONTRACTING PARTIES in May 1976 that it considered the final offer of the Community, which had subsequently been implemented, to be unsatisfactory especially on zinc. It also notified, as provided for in paragraph 3 of Article XXVIII, the withdrawal of the bindings in the Canadian schedule of concessions on the following tariff items: canned meats, liqueurs, vermouth, aperitifs and cordial wines, and wire of iron and steel. No changes have until now been made in the actual rates of duty of these items. The trade coverage of the Canadian withdrawals was equivalent to the annual average figure for Canada's total exports to the Community of zinc in the period 1973-75. The final Community ad valorem rate on lead was not contested by Canada.

III. MAIN ARGUMENTS

A. European Economic Community

8. The objective of the European Economic Community for the renegotiation was to arrive at new ad valorem rates of duty on unwrought lead and zinc which were the fair and reasonable

10. In making its final compromise offer, the Community in its view had offered a reasonable solution to its suppliers and, in so doing, had fulfilled its obligations of Article XXVIII:2 to "endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations". The withdrawal of concessions carried out by Canada therefore constituted in the Community's view an unjustified impairment of the Community's right. Even if any withdrawals were considered appropriate, the extent of the retaliation went far beyond what could be justified in any circumstances. In its withdrawals, Canada had not taken account nor given due credit for the fact that the duty on zinc had been rebound by the Community, even though it had been rebound at a higher level than Canada considered fair. In addition Canada had based its decision to retaliate solely on an assessment of the zinc negotiations which, on the basis of any recent three-year period, would have resulted in an equivalent duty rate significantly higher

important item for Canada than for Australia. The difference between the Canadian and Australian position was therefore

relating to global Community imports of zinc rather than relating to imports from Canada only, took account of the provision of Article XXVIII:2 which refers to the maintenance of a "general level" of concessions, not less favourable to "trade", formulations which in the view of the Panel clearly