



Canada Export Scheme

Background: In 1995, the Canadian government established a two-tier pricing system in which processors paid higher prices for milk used domestically and lower prices for milk used for exports. Canada argued that the discounts applied to exports were not an export subsidy, and therefore not subject to the limits agreed upon in the Uruguay Round. With Canadian exporters undercutting U.S. exporters in key overseas markets and the risk of other countries adopting similar schemes and significantly undermining the Uruguay Round Agreement, the United States challenged Canada's export subsidy scheme to the World Trade Organization (WTO), at the request of the industry, in October 1997.

In October 1999, a WTO dispute settlement panel upheld the U.S. challenge and ruled Canada had been illegally exceeding its export subsidy limitations. ([Click here for more information on this ruling.](#)) In December 1999, Canada agreed to implement changes to its export program. Throughout 2000, Canada's government and dairy industry struggled to devise a replacement program that met WTO rules and satisfied the needs of the Canadian dairy industry. The U.S. dairy industry put pressure on Congress and the Administration to ensure that Canada complies with the ruling.

In August 2000, Canada's federal government eliminated the Optional Export Program and the special surplus removal milk class, 5(e). Instead, the country's provincial governments implemented new export programs with the blessing and apparent involvement of the federal government.

In February 2001, the U.S. and New Zealand governments returned to the WTO dispute settlement process to ask a compliance panel (Germany - chair, Mexico and the Czech Republic) to determine if Canada's new system complies with the 1999 ruling. Each country also asked for permission to level \$35 million in retaliatory sanctions against Canada if found in violation.

The compliance panel review was completed on April 12, 2001, ruling in favor of the United States and New Zealand. ([Click here for more information.](#)) Canada appealed the decision to a WTO Appellate body. In January 2002, the Appellate Body ruled that the compliance panel used an incorrect price standard to analyze whether there was a payment or not. Because the Appellate Body did not have accurate information, it was unable to make a final ruling regarding the WTO consistency of the Canadian programs.



As a result, the U.S. and New Zealand governments asked the WTO to re-hear the case using the required data. On June 24, 2002, the WTO compliance panel again ruled in favor of the United States and New Zealand, concluding that Canada is continuing to illegally subsidize its dairy exports. On December 20, 2002, the WTO Appellate Body issued its final ruling in favor of the U.S. and New Zealand challenge. ([Click here for more information.](#)) In May 2003, the U.S., New Zealand and Canada reached an agreement that settled the case. Canada agreed to eliminate its illegal subsidies, no longer exporting subsidized dairy products to the U.S. and significantly limiting those destined for third countries. Canada eliminated its Commercial Export Milk program and by August 1, 2003, no subsidized dairy exports were to enter the United States.

Following this, there were a series of hearings and appeals brought by non-quota holders desiring to continue to export milk into the United States. In February 2007, the Canadian Supreme Court issued a ruling stating that non-quota holding dairy farmers that had been exporting milk to the U.S. needed to purchase quota or cease production. The non-quota holding farms challenged this for some time at the provincial level but were ultimately unsuccessful. Since early 2008 we have seen compliance from Canada with their obligations on this matter.

USDEC position: The U.S. dairy industry fought long and hard to facilitate a victory in its challenge of Canada's actions. The final WTO ruling in favor of the United States, coupled with the recent rulings by the Ontario Provincial government and now the Canadian Supreme Court, have allowed U.S. producers, processors and exporters to regain markets lost to Canada in previous years. Beyond those specific gains, this case has broad implications for the future of international dairy trade. For instance, the WTO's 1999 ruling against Canada discouraged the European Union and other countries from adopting similar circumvention schemes. [Click here for more information.](#)