

**UNITED STATES – FINAL DUMPING DETERMINATION ON
SOFTWOOD LUMBER FROM CANADA**

Recourse to Article 21.5 of the DSU by Canada

Request for the Establishment of a Panel

The following communication, dated 19 May 2005, from the delegation of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 31 August 2004, the Dispute Settlement Body ("DSB") adopted the panel and Appellate Body Reports in *United States – Final Dumping Determination on Softwood Lumber from Canada*.¹ The panel and Appellate Body found that the United States acted "inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement* in determining the existence of dumping on the basis of a methodology incorporating the practice of 'zeroing'".² The panel and the Appellate Body recommended that the United States bring its measure into conformity with its obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* ("*Anti-Dumping Agreement*").

On 6 December 2004, Canada and the United States reached agreement pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("*DSU*") on a "reasonable period of time" to comply with the recommendations and rulings of the DSB.³ The United States confirmed in this agreement that it would complete implementation no later than 15 April 2005. Canada and the United States subsequently agreed to extend the "reasonable period of time" until 2 May 2005.⁴

In November 2004 the United States commenced implementation proceedings in accordance with section 129(b) of the *Uruguay Round Agreements Act*.⁵ On 15 April 2005, the US Department of Commerce ("Commerce") released its final section 129 determination, which purported to implement the recommendations and rulings of the DSB. In the final section 129 determination, Commerce

¹ Dispute Settlement Body, *Minutes of Meeting (31 August 2004)*, WT/DSB/M/175, 24 September 2004, at para. 4. Also see *United States – Final Dumping Determination on Softwood Lumber from Canada*, Report of the Appellate Body, WT/DS264/AB/R, adopted 31 August 2004; ["Appellate Body Report"] and *United States – Final Dumping Determination on Softwood Lumber from Canada*, Report of the Panel, WT/DS264/R, adopted 31 August 2004. ["Panel Report"]

² Appellate Body Report, at para. 183(a); and Panel Report, at para. 8.1(a)(i).

³ *United States – Final Dumping Determination on Softwood Lumber from Canada, Agreement under Article 21.3(b) of the DSU*, WT/DS264/12, 8 December 2004.

⁴ *United States – Final Dumping Determination on Softwood Lumber from Canada, Agreement under Article 21.3(b) of the DSU*, WT/DS264/15, 17 February 2005.

⁵ 19 U.S.C. § 3538(b)(2).

again determined the existence of dumping on the basis of a methodology incorporating the practice of "zeroing".⁶

Canada considers that the United States has failed to comply with the recommendations and rulings of the DSB, as the use of "zeroing" under the section 129 determination is inconsistent with Articles 2.4 and 2.4.2 of the *Anti-Dumping Agreement*.⁷ The following measures are at issue in these proceedings:

- *Notice of Determination Under Section 129 of the Uruguay Round Agreements Act; Antidumping Measures Concerning Certain Softwood Lumber Products From Canada; and*⁸
- *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products from Canada.*⁹

As there is a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the rulings and recommendations of the DSB, Canada seeks recourse to Article 21.5 of the *DSU* in this matter. Accordingly, Canada requests that a special meeting of the DSB be held on 1 June 2005 to consider the following agenda item:

*United States – Final Dumping Determination on Softwood Lumber from Canada;
Recourse by Canada to Article 21.5 of the Understanding on Rules and Procedures
Governing the Settlement of Disputes.*

⁶ *Notice of Determination Under Section 129 of the Uruguay Round Agreements Act; Antidumping Measures Concerning Certain Softwood Lumber Products From Canada*, 70 Fed. Reg. 22,636 (2 May 2005)

⁷ *Ibid.*

⁸ *Ibid.*

⁹ 67 Fed. Reg. 36,068 (22 May 2002).