

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

Recourse to Article 22.2 of the DSU by Canada

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 22.2 of the DSU.

Canada requests that a special meeting of the Dispute Settlement Body (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 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

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 on a "reasonable period of time" to comply with the recommendations and rulings of the DSB pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("*DSU*").³ The United States confirmed in this agreement that it would complete implementation no later than 15 April 2005. On 14 February 2005, Canada and the United States agreed to extend the "reasonable period of time" until no later than 2 May 2005.⁴

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 and *United States – Final Dumping Determination on Softwood Lumber from Canada*, Report of the Panel, WT/DS264/R, adopted 31 August 2004.

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.

The United States has failed to comply with the DSB's recommendations and rulings within the reasonable period of time provided. Therefore, pursuant to Article 22.2 of the *DSU*, Canada requests authorization from the DSB to suspend the application to the United States of concessions or other obligations, in an amount representing the portion of the total anti-dumping duties illegally collected and not refunded as a result of the United States' non-compliance (*i.e.*, the United States' failure to eliminate the practice of zeroing). Through 2005, this amount will be approximately \$CAD 400 million. For the year 2005, the level of suspension of concessions should therefore equal this amount. In each subsequent year, the level of suspension of concessions will equal the portion of the total anti-dumping duties illegally collected and not refunded for that year as a result of the United States' non-compliance.

This level of suspension of concessions is equivalent to the level of nullification and impairment of benefits accruing to Canada that results from the US failure to bring its measures into compliance with *Anti-Dumping Agreement* or to otherwise comply with the recommendations and rulings of the DSB.

Canada intends to implement this suspension of tariff concessions and related obligations under the *General Agreement on Tariffs and Trade 1994* by imposing additional import duties above bound custom duties on products originating in the United States. For each year in which Canada intends to take such measures, Canada will provide the DSB with a final list indicating the level of additional duties that Canada will apply and the products that will be subject to the additional duties.
