

**UNITED STATES – PRELIMINARY DETERMINATIONS  
WITH RESPECT TO CERTAIN SOFTWOOD LUMBER FROM CANADA**

Request for Consultations by Canada

The following communication, dated 21 August 2001, from the Permanent Mission of Canada to the Permanent Mission of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have asked me to request consultations with the Government of the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 30 of the Agreement on Subsidies and Countervailing Measures (the SCM Agreement), concerning the preliminary countervailing duty determination and the preliminary critical circumstances determination made by the US Department of Commerce on 9 August 2001, with respect to certain softwood lumber from Canada.

Regarding the preliminary countervailing duty determination, Canada considers this determination to be inconsistent with US obligations under Articles 1, 2, 10, 14, 17.1, 17.5, 19.4, and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994. Such inconsistencies include the determination's treatment of stumpage as a "financial contribution", its finding that stumpage is "specific", its presumption that an alleged benefit from stumpage passes through an arm's-length transaction to a downstream recipient, its measurement of the "adequacy of remuneration" by reference to conditions in another country rather than prevailing market conditions in Canada, and its inflation of the subsidy found by calculating a "weighted average country-wide rate" based upon only a portion of Canadian exports of softwood lumber to the United States.

With respect to the preliminary critical circumstances determination, Canada considers this determination to be inconsistent with Articles 17.1, 17.3, 17.4, 19.4 and 20.6 of the SCM Agreement because it is based upon an alleged export subsidy that was found to be *de minimis*, purports to apply a rate that is in excess of the rate determined for subsidies found to have been bestowed inconsistently with GATT 1994 and the SCM Agreement, was made without the requisite finding of injury caused by massive imports of softwood lumber benefiting from this alleged export subsidy, and was based on a distorted finding of "massive imports". Furthermore, there is no basis in the SCM Agreement for the application of provisional measures pursuant to such a determination.

Canada also requests consultations with the Government of the United States concerning certain US measures that, *inter alia*, fail to provide for company-specific expedited reviews or administrative reviews in countervailing duty cases in which the investigation was conducted on an aggregate or country-wide basis, and that mandate that a single country-wide duty rate calculated in

an administrative review supersedes all individual rates previously determined in the countervailing duty proceeding.

The US measures at issue with regard to expedited and administrative reviews are section 777A(e)(2)(A) and (B) of the Tariff Act of 1930, US Department of Commerce regulations at 19 C.F.R. § 351.214(k) and § 351.213(b) and (k), and the operation of these measures in the ongoing US countervailing duty proceeding against certain softwood lumber products from Canada. Canada considers these measures to be inconsistent with US obligations under Article VI:3 of the GATT 1994 and Articles 10, 19.3, 19.4, 21.1, 21.2 and 32.1 of the SCM Agreement. Canada also considers that the United States has failed to ensure that its laws and regulations are in conformity with its WTO obligations as required by Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement.

Given the immediate and significant trade impact of the affirmative preliminary countervailing duty and critical circumstances determinations, Canada requests urgent consultations pursuant to Article 4.8 of the DSU. These measures, which have effect as of 19 May 2001, affect approximately \$CDN 26 million in trade per day in softwood lumber from Canada, already representing a cost of nearly \$CDN one half billion. Furthermore, this cost to the Canadian softwood lumber industry is increasing at over \$CDN 5 million per day. These measures have already resulted in the closure of a number of lumber mills, with more closures being imminent and in significant layoffs of workers in mills still operating.

I look forward to receiving your reply to this request and, in accordance with Article 4.8 of the DSU, to selecting a mutually acceptable date for holding consultations within 10 days from the date of receipt of this request. Canada welcomes any suggestions that the United States may wish to make concerning dates on which the consultations could take place.

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