

**UNITED STATES – FINAL COUNTERVAILING DUTY DETERMINATION  
WITH RESPECT TO CERTAIN SOFTWOOD LUMBER FROM CANADA**

Recourse to Article 22.2 of the DSU by Canada

The following communication, dated 30 December 2004, from the delegation of Canada to the Chairperson 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 14 January 2005 to consider the following agenda item:

*United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*

*Recourse by Canada to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes*

The Panel and the Appellate Body in this dispute found that the failure of the Department of Commerce of the United States (Commerce) to conduct a pass-through analysis in respect of arm's length sales of *logs* by tenure harvesters/sawmills to unrelated sawmills was inconsistent with Articles 10 and 32.1 of the *Agreement on Subsidies and Countervailing Measures (SCM Agreement)* and Article VI:3 of the *General Agreement on Tariffs and Trade 1994 (GATT 1994)*. The Panel also found that Commerce's failure to conduct a "pass-through" analysis in respect of arm's length sales of logs by independent harvesters (*i.e.*, entities that do not produce softwood lumber products under investigation) to sawmills was inconsistent with these same provisions.

On 17 February 2004, the DSB adopted the Appellate Body and Panel reports. The United States subsequently stated that it intended to implement the recommendations and rulings of the DSB.

Canada and the United States agreed that the "reasonable period of time" for the United States to implement the DSB's recommendations and rulings would expire on 17 December 2004. On that date, the United States informed the DSB that it had complied with its recommendations and rulings. Canada considers that the United States has failed to comply with the DSB's recommendations and rulings with respect to the "pass-through" analysis allegedly conducted by Commerce. Canada is, therefore, entitled to redress under Article 22 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*.

Pursuant to Article 22.2 of the DSU, Canada requests authorization from the DSB to suspend the application to the United States of its concessions or other obligations in an amount that will be established each year based on the portion of the applicable countervailing duty rate for that year

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which is illegal due to the failure of Commerce to conduct an appropriate "pass-through" analysis. For 2005, Canada requests authorization to suspend concessions or other obligations covering trade in the amount of C\$200,000,000.

This level of suspension is equivalent to the level of nullification and impairment of benefits accruing to Canada that results from the United States' failure to bring its measures concerning Commerce's "pass-through" analysis into compliance by 17 December 2004 with the *GATT 1994* and the *SCM Agreement* or to otherwise comply with the DSB's recommendations and rulings.

Canada intends to implement this suspension of tariff concessions and related obligations by imposing duties in excess of the bound rates on products originating in the United States. Each year, prior to the imposition of the additional duties, Canada will provide the DSB with a final list indicating the level of duties on selected products.

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