

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

Recourse by Canada to Article 21.5 of the DSU

Notification of an Appeal by the United States
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 6 September 2005, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the Working Procedures for Appellate Review, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel on *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada: Recourse to Article 21.5 of the DSU by Canada* (WT/DS257/RW) ("Panel Report") and certain legal interpretations developed by the Panel in this dispute.

1. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the First Assessment Review does not fall outside the scope of the present DSU Article 21.5 proceeding, insofar as the pass-through analysis is concerned.¹ This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations of DSU Article 21.5.

2. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the United States failed, in the treatment of pass-through in the First Assessment Review, to properly implement the recommendations and rulings of the Dispute Settlement Body by not conducting a pass-through analysis with respect to sales, found not to be at arm's length, of logs by tenured timber harvesters, whether or not they also produce lumber, to unrelated timber producers, whether or not they hold a stumpage contract.² This erroneous conclusion is based on the Panel's erroneous legal conclusion, described in paragraph 1, above, that the First Assessment Review does not fall outside the scope of the DSU Article 21.5 proceeding.

¹ Panel Report, paras. 4.36-4.50, and 5.1, first subparagraph.

² Panel Report, paras. 4.58-4.82, 4.104-4.106, and 5.2, first subparagraph.

3. The United States seeks review by the Appellate Body of the Panel's legal conclusion that, in the First Assessment Review, the United States included in its subsidy numerator transactions for which it had not demonstrated that the benefit of subsidized log inputs had passed through to the processed product.³ This erroneous conclusion is based on the Panel's erroneous legal conclusion, described in paragraph 1, above, that the First Assessment Review does not fall outside the scope of the DSU Article 21.5 proceeding.

4. The United States seeks review by the Appellate Body of the Panel's legal conclusion that, with respect to the First Assessment Review, the United States remains in violation of 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").⁴ This erroneous conclusion is based on the Panel's erroneous legal conclusion, described in paragraph 1, above, that the First Assessment Review does not fall outside the scope of the DSU Article 21.5 proceeding.

5. The United States seeks review by the Appellate Body of the Panel's legal conclusion that, with respect to the First Assessment Review, the United States has nullified or impaired benefits accruing to Canada under the SCM Agreement and the GATT 1994.⁵ This erroneous conclusion is based on the Panel's erroneous legal conclusion, described in paragraph 1, above, that the First Assessment Review does not fall outside the scope of the DSU Article 21.5 proceeding.

³ Panel Report, paras. 4.114-4.115, and 5.2, second subparagraph.

⁴ Panel Report, paras. 4.114-4.115 and 5.4.

⁵ Panel Report, para. 5.5.