

WORLD TRADE ORGANIZATION

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UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000

Recourse by Canada to Article 22.7 of the DSU

Addendum

The following document, which was submitted at the DSB meeting on 26 November 2004, is being circulated at the request of Canada.

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CANADA GAZETTE

Part I

OTTAWA, TUESDAY, NOVEMBER 23, 2004

DEPARTMENT OF FINANCE

DEPARTMENT OF INTERNATIONAL TRADE

NOTICE SEEKING COMMENTS ON POSSIBLE TRADE RETALIATION AGAINST THE UNITED STATES IN RESPONSE TO THAT COUNTRY'S FAILURE TO REPEAL THE *CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000* (commonly referred to as the Byrd Amendment)

Background

On August 31, 2004, the World Trade Organisation (WTO) Arbitrator ruled that Canada and seven other WTO members (Brazil, Chile, the European Union, India, Japan, Mexico, and South Korea) could retaliate against the United States for its failure to repeal the WTO-inconsistent *Continued Dumping and Subsidy Offset Act of 2000* (more commonly referred to as the Byrd Amendment). Under the Byrd Amendment, anti-dumping and countervailing duties are given to U.S. producers who supported those trade remedy actions. These duties were previously deposited in the U.S. Treasury. In this context, the WTO Arbitrator authorized Canada to retaliate up to 72 percent of the annual level of U.S. anti-dumping and countervailing duties collected on Canadian goods

disbursed to U.S. producers under the Byrd Amendment. This level is based on an economic model developed by the WTO to measure the trade effect of the Byrd Amendment on U.S. trading partners.

The collected duties are disbursed under the Byrd Amendment only after the corresponding entries have been "liquidated" by U.S. Customs. In some cases, particularly when the anti-dumping or countervailing duties themselves are subject to litigation, disbursements may not occur until several years after the monies have been paid on these entries. The effect of the Byrd Amendment is that U.S. companies that bring trade remedy cases stand to benefit not only from the imposition of antidumping and countervailing duties on competing imports, but also from direct payments from the U.S. government when those duties are disbursed. The Byrd Amendment, therefore, provides a double remedy that creates a trade distorting advantage to U.S. companies that compete against Canadian and other exporters.

For this reason, Canada and 10 other WTO members challenged the measure at the WTO. On January 27, 2003, the World Trade Organization (WTO) Dispute Settlement Body (DSB) ruled that the Byrd Amendment is inconsistent with the WTO agreements on Anti-dumping and on Subsidies and countervailing measures. For details on the Byrd Amendment dispute, please visit International Trade Canada's Web site at www.byrdconsultations.gc.ca.

The United States had until December 27, 2003, to bring its inconsistent measure into compliance with its WTO obligations but failed to do so. Consequently, on January 26, 2004, Canada, along with Brazil, Chile, the European Union, India, Japan, Mexico, and South Korea, requested authorization from the WTO to retaliate by suspending tariff concessions and other obligations to the United States under the WTO Agreement. Canada's preferred option is to see the Byrd Amendment repealed. However, until the United States does so, Canada must consider all its options available to it under WTO rules.

Canada's retaliation authorization request was meant to ensure that the level of retaliation is linked to annual disbursements of duties under the Byrd Amendment, now and in the future. Disbursements related to duties collected on Canadian products have so far been modest (approximately US\$17 million between 2001 and 2003) and are expected to remain at similar levels for the next three years. However, over US\$1 billion of U.S. anti-dumping and countervailing duties on Canadian softwood lumber exports could be disbursed annually to the U.S. softwood lumber industry starting in late 2007.

The intent of these consultations is to ensure that Canada is prepared to respond with a range of options depending on a number of factors that are not known at this time, including developments related to ongoing litigation and any action by the United States to bring itself into compliance with its obligations.

The Government of Canada will consider its options regarding retaliation once it has completed its consultations with Canadians. Specifically, Canada will consider the following actions:

1. The application of a 100 percent surtax on imports of selected products from the United States – A list of proposed products is included in Table 1. Please note that the product list should be read in conjunction with the Schedule to the Customs Tariff, which can be accessed by visiting the following Web site: <http://www.cbsa-asfe.gc.ca/general/publications/customs-tariff-e.html>.
2. The suspension of the injury requirement for the application of border measures on dumped and subsidized goods originating in or exported from the United States – In this regard, the Special Import Measures Act, in accordance with the WTO Anti-dumping and Subsidies agreements, stipulates that anti-dumping and countervailing duties can be imposed only following determinations that the subject dumped or subsidized imports are causing or threatening to cause material injury to

the Canadian domestic industry producing like goods. Under this option, an anti-dumping and/or countervailing investigation involving imports from the United States which concludes with a negative final injury determination could result in the application of duties under the Customs Tariff, equivalent to the dumping and/or subsidization margins found during the investigation. For more information on Canada's antidumping and countervailing laws, refer to the Canada Border Services Agency (CBSA) Web site at www.cbsa-asfc.gc.ca/sima/menu-e.html.

Invitation to submit views

Interested parties are invited to submit comments on the following list of products proposed for possible tariff measures as well as the proposal to suspend the injury test in anti-dumping and countervailing investigations involving U.S. exporters. Comments should be submitted in writing to the following address by December 20, 2004: International Trade Policy Division, Department of Finance, L'Esplanade Laurier, East Tower, 14th Floor, 140 O'Connor Street, Ottawa, Ontario K1A 0G5, (613) 995-3843 (facsimile), byrd-consultations@international.gc.ca (electronic mail). Please note that all submissions should indicate "Byrd Amendment."

Enquiries

Additional information concerning the Byrd Amendment can be found on the Internet at www.byrd-consultations.gc.ca or by calling 1-800-769-0674, Monday to Friday, from 8 a.m. to 8 p.m. EST.

TABLE 1

Tariff Heading, Sub-Heading or Item	Product Description
01.03	Live Swine
0301.10.00	Ornamental fish
0303.79.00	Fish, frozen, excluding fish fillets and other fish meat of heading 03.04, and the goods of tariff items 0303.11.00 to 0303.78.00 inclusive
0303.80.00	Fish livers and roes
0304.90.00	Fish fillets and other fish meat, excluding fresh or chilled and frozen fillets
0306.13.00	Shrimps and Prawns, frozen
0307.10	Oysters
0307.49.00	Squid, excluding live, fresh or chilled
0713.10.90	Dried peas (<i>Pisum sativum</i>) excluding seed, in packages of a weight not exceeding 500 g each
0713.20.00	Dried chickpeas (garbanzos)
0713.31.10	Dried beans of the species <i>Vigna radiata</i> (L.) Wilczek, in bulk or in packages or a weight exceeding 500 g each
0713.31.90	Dried beans of the species <i>Vigna mungo</i> (L.) Hepper or <i>Vigna radiata</i> (L.) Wilczek in packages of a weight exceeding 500 g each
0713.32.00	Dried small red (Adzuki) beans (<i>Phaseolus</i> or <i>Vigna angularis</i>)
0713.33.91	Dried red kidney beans
0713.33.99	Dried kidney beans, including white pea beans (<i>Phaseolus vulgaris</i>), Other
0713.39.10	Dried lima and Madagascar beans
0713.39.90	Dried beans, excluding those of tariff items 0713.31.10 to 0713.39.10 inclusive
0713.40.00	Dried lentils
0713.50.90	Dried broad beans shelled, whether or not skinned or split (<i>Vicia faba</i> var. <i>major</i>) and horse beans (<i>Vicia faba</i> var. <i>equina</i> , <i>Vicia faba</i> var. <i>minor</i>), excluding seed in bulk or in packages of a weight exceeding 500 g each
0713.90.90	Other dried leguminous vegetables, shelled, whether or not skinned or split, classified under tariff item 0713.90.90.
0805.20.00	Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids
0807.20.00	Papaws (papayas)
1604.11.00	Prepared or preserved salmon, whole or in pieces but not minced
1702.20.00	Maple sugar and Maple syrup
1905.90.51	Pizza and Quiche
2001.10.00	Cucumbers and gherkins prepared or preserved by vinegar or acetic acid
20.04	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of headings 20.02, 20.03 and 20.06
2005.10.00	Homogenized vegetables, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06
2005.40.00	Peas (<i>Pisum sativum</i>)
2005.51.10	Red bean (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) paste for use in the manufacture of food products
2005.51.90	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.), shelled, other than red bean paste for use in the manufacture of food products
2005.59.00	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.), other than shelled
2005.60.00	Asparagus
2005.70.10	Olives sulphured or in brine but not in glass jars; Ripe olives in brine
2005.70.90	Olives prepared or preserved otherwise than by vinegar or acetic acid classified under tariff item 2005.70.90
2005.80.00	Sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)
2005.90.11	Baby carrots (of a length not exceeding 11 cm), in cans or glass jars

Tariff Heading, Sub-Heading or Item	Product Description
2005.90.19	Carrots excluding those of tariff item 2005.90.11, prepared or preserved otherwise than by vinegar or acetic acid, not frozen
2005.90.20	Artichokes (globe or Chinese), bamboo shoots, cactus leaves (nopales), cardoons, chickpeas (garbanzos), cilantro (Chinese or Mexican parsley or Yen Sai), jicama, leaf chervils, malanga, okra, peas (Angola, catjang, no-eye, pigeon), spinach, tamarillos (tree tomatoes), tarragons, tomatillos, topedos, verdolagas and water chestnuts prepared or preserved otherwise than by vinegar or acetic acid, not frozen
2005.90.90	Other vegetables and mixtures of vegetables, excluding carrots, prepared or preserved otherwise than by vinegar or acetic acid, not frozen
2007.91.00	Jams, fruit jellies, marmalades, fruit puree and fruit pastes of citrus fruit excluding homogenized preparations
2007.99	Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, excluding homogenized preparations and similar preparations of citrus fruit
2008.11.10	Peanut butter
2103.30.20	Prepared mustard
2103.90.10	Mayonnaise and salad dressing
2103.90.20	Mixed condiments and mixed seasonings
22.01	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; ice and snow
2202.10.00	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured
2203.00.00	Beer made from malt
22.04	Wine of fresh grapes, including fortified wines; grape must other than that of heading 20.09
2208.30.00	Whiskies
2208.40.00	Rum and tafia
2208.60.00	Vodka
24.01	Unmanufactured tobacco; tobacco refuse
2402.20.00	Cigarettes containing tobacco
2403.99	Other [Other manufactured tobacco and manufactured tobacco substitutes; "homogenized" or "reconstituted" tobacco; tobacco extracts and essences] excluding smoking tobacco, "homogenized" or "reconstituted" tobacco
3303.00.00	Perfumes and toilet waters
3304.30.00	Manicure and pedicure preparations
33.05	Preparations for use on the hair
42.02	Trunks, suit-cases, vanity-cases, executive-cases, school satchels and similar containers (leather products)
42.03	Articles of apparel and clothing accessories, of leather or of composition leather
4407.10.00	Coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end jointed, of a thickness exceeding 6 mm
4408.10	Coniferous sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end jointed, of a thickness not exceeding 6 mm
4410.21.00	Oriented strand board and waferboard, of wood. Unworked or not further worked than sanded
4410.29.00	Other oriented strand board and waferboard, of wood. Other than unworked or not further worked than sanded
4410.31.00	Particle board and similar board other than oriented strand board and waferboard, of wood. Unworked or not further worked than sanded

Tariff Heading, Sub-Heading or Item	Product Description
4410.32.00	Particle board and similar board other than oriented strand board and waferboard, of wood. Surface covered with melanine-impregnated paper
4410.39	Particle board and similar board other than oriented strand board and waferboard, of wood, whether or not painted
44.11	Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances
4412.14	Plywood, veneered panels and similar laminated wood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of non-coniferous wood
4412.19	Other plywood, veneered panels and similar laminated wood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness
4412.23.00	Plywood, veneered panels and similar laminated wood with at least one outer ply of non-coniferous wood, containing at least one layer of particle board
4412.29.00	Other plywood, veneered panels and similar laminated wood with at least one outer ply of non-coniferous wood
4412.93.00	Other plywood, veneered panels and similar laminated wood, containing at least one layer of particle board
4412.99.00	Other plywood, veneered panels and similar laminated wood
4418.90.00	Other builders' joinery and carpentry of wood including cellular wood panels, laminated beams and arches, prefabricated partitions and panels for buildings, and other fabricated structural members
4701.00.00	Mechanical wood pulp
4703.11.00	Chemical wood pulp - soda or sulphate - coniferous, unbleached
4703.19.00	Chemical wood pulp - soda or sulphate - non-coniferous, unbleached
4703.21.00	Chemical wood pulp - soda or sulphate - coniferous, bleached
4703.29.00	Chemical wood pulp - soda or sulphate - non-coniferous, bleached
4704.21.00	Chemical wood pulp - sulphite - coniferous, bleached
4704.29.00	Chemical wood pulp - sulphite - non-coniferous, bleached
4705.00.00	Wood pulp obtained by a combination of mechanical and chemical pulping processes
4801.00.00	Newsprint, in rolls or sheets
4802.20.00	Photo/Heat/Electro-Sensitive Paper and Paperboard – for writing/printing - uncoated
4802.40.00	Wallpaper base paper - for writing/printing – uncoated
4802.54.00	Fine writing/printing paper - not containing fibres obtained by a mechanical or chemi-mechanical process - <40 g/m ²
4802.55.00	Fine writing/printing paper - not containing fibres obtained by a mechanical or chemi-mechanical process - 40-150 g/m ² - in rolls
4802.56.00	Fine writing/printing paper - not containing fibres obtained by a mechanical or chemi-mechanical process - 40-150 g/m ² - in sheets (not exceeding 435 x 297 mm)
4802.57.00	Fine writing/printing paper - not containing fibres obtained by a mechanical or chemi-mechanical process - 40-150 g/m ² - other nes
4802.61.00	Fine writing/printing paper - >10% fibres obtained by a mechanical or chemi-mechanical process - in rolls
4802.62.00	Fine writing/printing paper - >10% fibres obtained by a mechanical or chemi-mechanical process - in sheets (not exceeding 435 x 297 mm)
4802.69.00	Fine writing/printing paper - >10% fibres obtained by a mechanical or chemi-mechanical process - other nes
4804.19.00	Uncoated Kraftliner paper - in rolls/sheets - other than unbleached
4804.21.00	Uncoated sack kraft paper - in rolls/sheets - unbleached

Tariff Heading, Sub-Heading or Item	Product Description
4804.29.00	Uncoated sack kraft paper - in rolls/sheets - other than unbleached
4804.31.00	Kraft paper nes - in rolls/sheets <150 g/m' - unbleached
4804.39.00	Other uncoated kraft paper nes - in rolls/sheets <150 g/m' - unbleached
4805.11.00	Other uncoated semi-chemical fluting paper - in rolls/sheets
4810.22.00	Lightweight paper - >I 0% fibres obtained by a mechanical or chemi-mechanical process - coated with inorganic substances - for writing/printing
4810.92	Multi-ply paper - coated with inorganic substances - not used for writing/printing, or kraft
4814.20	Wallpaper - coated or covered with plastic
4814.90	Other wallpaper and similar wall coverings nes
5703.90	Carpets and other textile floor coverings, tufted, whether or not made up, of other textile materials, other than wool or fine animal hair, nylon, and man-made textile materials
6116.10	Gloves, mittens and mitts, knitted or crocheted which are impregnated, coated or covered with plastics or rubber
64.02	Other footwear with outer soles and uppers of rubber or plastics, including sports footwear
70.13	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 70.10 or 70.18)
71.01	Pearls, natural or cultured, whether or not worked or graded but not strung, mounted or set; pearls, natural or cultured, temporarily strung for convenience of transport
7118.10	Coin (other than gold coin), not being legal tender
8415.10	Air conditioning machines; window or wall types, self contained or "split-system"
84.72	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines)
8476.21	Automatic beverage vending machines incorporating heating or refrigerating devices
85.19	Turntables (record-deck), record-players, cassette-players and other sound reproducing apparatus, not incorporating a sound recording device
85.20	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device
85.21	Video recording or reproducing apparatus, whether or not incorporating a video tuner
8528.12	Colour television whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus
87.12	Bicycles and other cycles (including delivery tricycles), not motorized
89.03	Yachts and other vessels for pleasure or sports; rowing boats and canoes
90.06	Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 85.39
9403.60	Other wooden furniture
9403.80	Furniture of other materials, including cane, osier, bamboo, or similar materials
9405.10.00	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares
95.04	Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games, and automatic bowling alley equipment
9506.11	Skis (including downhill, cross country and snowboards)
9506.31.00	Golf Clubs, complete (including individual golf clubs and sets of golf clubs)
9506.91	Articles and equipment for general physical exercise, gymnastics or athletics

Tariff Heading, Sub-Heading or Item	Product Description
96.13	Cigarette lighters and other lighters, whether or not mechanical, or electrical, and parts thereof other than flints and wicks
