

**Dispute Settlement Body
1 June 2005**

MINUTES OF MEETING

Held in the Centre William Rappard
on 1 June 2005

Acting Chairman: Ms Amina Mohamed (Kenya)

Prior to the adoption of the agenda, the Chairman of the General Council, Ambassador Amina Mohamed, welcomed delegations and said that she had the pleasure of chairing the present meeting in the absence of Ambassador Eirik Glenne, the Chairman of the Dispute Settlement Body. She said that this was in accordance with the Rules of Procedure for meetings of the Dispute Settlement Body which provided that: "If the DSB Chairperson is absent from any meeting or part thereof, the Chairperson of the General Council or in the latter's absence, the Chairperson of the Trade Policy Review Body, shall perform the functions of the DSB Chairperson."

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1. United States – Final dumping determination on softwood lumber from Canada
(a) Recourse to Article 21.5 of the DSU by Canada: Request for the establishment of a panel (WT/DS264/16)

1. The Chairman drew attention to the communication from Canada contained in document WT/DS264/16 and invited the representative of Canada to speak.

2. The representative of Canada said that on 31 August 2004, the DSB had adopted the Reports of the Panel and the Appellate Body in the case: "United States – Final Dumping Determination on Softwood Lumber from Canada". He said that the Panel and the Appellate Body Reports had found that the United States was in violation of its WTO obligations in determining the existence of dumping on the basis of a methodology incorporating the practice of zeroing and had recommended that the United States bring its measures into conformity with its obligations under the Anti-Dumping Agreement. At the 19 May 2005 DSB meeting, the United States had reported that the US Department of Commerce had issued a new dumping determination. The United States had asserted that this new determination included revised calculations which brought it into conformity with its obligations under the Anti-Dumping Agreement. Canada would not be before the DSB at the present meeting if the United States had simply complied with the rulings and recommendations and had

issued a revised dumping determination, which did not include zeroing. Unfortunately, the United States had chosen to ignore the DSB's rulings and recommendations and had issued a new determination which continued to use zeroing to determine the existence of dumping. Canada considered that the United States had failed to comply with the DSB's recommendations and rulings. The United States continued to impose anti-dumping duties based on a determination incorporating the practice of zeroing. The United States, therefore, continued to violate its obligations under the Anti-Dumping Agreement. The enormous financial burden resulting from this and other illegal US trade actions regarding Canadian softwood lumber continued to have a tremendous negative impact on hundreds of companies, their workers and communities across Canada. In light of the US failure to bring its measures into conformity with its obligations, Canada sought recourse in this matter to dispute settlement under Article 21.5 of the DSU.

3. The representative of the United States said that his country regretted that Canada had chosen to request the establishment of a compliance panel under Article 21.5 of the DSU in this dispute. He said that the United States had fully implemented the DSB's recommendations and rulings within the reasonable period of time. The United States disagreed with Canada's assertion that the US Department of Commerce's new determination of the existence of dumping was not consistent with the Anti-Dumping Agreement. Accordingly, the United States considered that Canada's request for an Article 21.5 panel was unnecessary and without basis. Nonetheless, pursuant to the agreement between the United States and Canada that had recently been submitted to the DSB for circulation to Members, the United States would accept the establishment of a panel at the present meeting.

4. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Canada in document WT/DS264/16. The Panel would have standard terms of reference.

5. The representatives of China, the European Communities, India and Japan reserved their third-party rights to participate in the Panel's proceedings.

2. United States – Final dumping determination on softwood lumber from Canada

(a) Recourse to Article 22.2 of the DSU by Canada (WT/DS/264/17)

6. The Chairman drew attention to the communication from Canada contained in document WT/DS264/17, and invited the representative of Canada to speak.

7. The representative of Canada said that his country was also requesting authorization from the DSB, pursuant to Article 22.2 of the DSU, to suspend the application to the United States of its concessions or other obligations in an amount to be established yearly and which would be equivalent to the level of nullification and impairment caused by improper US implementation of the DSB's rulings. Canada wished to inform the DSB that it had entered into an agreement with the United States that provided that any proceedings pursuant to Article 22.6 of the DSU would be suspended until adoption by the DSB of its recommendations and rulings in the Article 21.5 compliance proceedings.

8. The representative of United States said that his country regretted that Canada had requested authorization to suspend concessions or other obligations in this dispute. As he had noted in his statement under the previous agenda item, the United States had fully implemented the DSB's recommendations and rulings prior to the expiration of the reasonable period of time. Therefore, on 31 May 2005, the United States had informed the DSB that, pursuant to Article 22.6 of the DSU, the United States objected to the level of suspension of concessions proposed by Canada. Under the terms of the DSU, the filing of this objection automatically resulted in the matter being referred to arbitration, and no further action was required of the DSB. Indeed, Article 22.6 of the DSU did not refer to any decision by the DSB. Consequently, the matter was already being referred to arbitration.

Nevertheless, the United States had no objection if the DSB wished to take note of that fact and confirm that it might not consider Canada's request for authorization, which was on the agenda of the present meeting, since the matter had been referred to arbitration. The United States would add that, pursuant to an agreement between the United States and Canada, once the arbitrator was constituted, the United States and Canada would request the arbitrator to suspend its proceedings until the completion of the Article 21.5 proceedings.

9. The DSB took note of the statements and it was agreed that the matter raised by the United States in document WT/DS264/19 is referred to arbitration, as required by Article 22.6 of the DSU.
