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**UNITED STATES – ANTI-DUMPING MEASURES APPLYING DIFFERENTIAL PRICING
METHODOLOGY TO SOFTWOOD LUMBER FROM CANADA**

REQUEST FOR CONSULTATIONS BY CANADA

The following communication, dated 28 November 2017, from the delegation of Canada to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the United States pursuant to Articles 4 and 10.4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement"), with respect to the US anti-dumping measures applying the Differential Pricing Methodology to softwood lumber products from Canada.

I. THE US ANTI-DUMPING MEASURES APPLYING THE DIFFERENTIAL PRICING METHODOLOGY TO SOFTWOOD LUMBER PRODUCTS FROM CANADA

The US anti-dumping measures applying the Differential Pricing Methodology ("DPM") to certain softwood lumber products from Canada include:

1. *Certain Softwood Lumber Products From Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 Fed. Reg. 51,806 (November 8, 2017);
2. Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances of Certain Softwood Lumber Products from Canada (November 1, 2017); and
3. The Preliminary Determination, Decision Memorandum for the Preliminary Determination, Sales Analysis Memoranda, and other memoranda, reports and measures related to the application of the DPM in the anti-dumping investigation into *Certain Softwood Lumber Products from Canada*.¹

In particular, the DPM affected the margins of dumping for Resolute FP Canada Inc. ("Resolute"), Tolko Marketing and Sales Ltd. and Tolko Industries Ltd. ("Tolko"), and West Fraser Mills Ltd. ("West Fraser") in the *Certain Softwood Lumber Products from Canada* investigation.

II. THE UNITED STATES' APPLICATION OF THE DPM IS INCONSISTENT WITH THE ANTI-DUMPING AGREEMENT

Canada considers the United States' application of the DPM in the measures set out in Section I to be inconsistent with US obligations under the Anti-Dumping Agreement, including:

¹ Canada also intends to include as a measure the U.S. Anti-Dumping Order, which is expected to follow the issuance of any final affirmative injury or threat of injury determination concerning *Softwood Lumber Products from Canada*.

1. Article 2.4.2 of the Anti-Dumping Agreement as the United States, in applying the weighted-average-to-transaction ("W-T") calculation methodology, improperly aggregated random and unrelated price variations and therefore failed to identify a pattern of export prices as required by the second sentence of this provision;
2. Article 2.4.2 of the Anti-Dumping Agreement as the United States improperly applied the W-T calculation methodology to non-pattern transactions for Resolute and Tolko;
3. Article 2.4.2 of the Anti-Dumping Agreement as the United States impermissibly combined the weighted-average-to-weighted-average and W-T calculation methodologies to calculate West Fraser's margin of dumping; and
4. Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement as the United States applied zeroing in its W-T calculation methodology with respect to Resolute, Tolko, and West Fraser when:
 - a. zeroing is not permitted when applying the W-T methodology;
 - b. zeroing in the W-T methodology does not account for all of the purported pattern transactions in calculating the margin of dumping; and
 - c. zeroing does not lead to a fair comparison of export prices.

The inconsistencies described in paragraphs 1-4 also resulted in the application of anti-dumping measures that are inconsistent with Articles 1 and 2.1 of the Anti-Dumping Agreement and Articles VI:1 and VI:2 of the GATT 1994.

Canada also notes that the United States is required to bring its anti-dumping measures related to *Certain Softwood Lumber Products from Canada* into conformity with the rulings and recommendations of the Dispute Settlement Body in *US – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea* by December 26, 2017. Should the United States fail to bring these measures into conformity at that time, Canada intends to request accelerated proceedings in this dispute pursuant to Article 4.9 of the DSU.

The United States' measures described above nullify or impair benefits accruing to Canada directly or indirectly under the cited agreements.

Canada reserves the right to address additional measures and claims in the course of consultations.

Canada looks forward to receiving the United States' reply to this request and to determining a mutually convenient date for consultations.
