

**UNITED STATES – REVIEWS OF COUNTERVAILING DUTY
ON SOFTWOOD LUMBER FROM CANADA**

Request for Consultations by Canada

The following communication, dated 14 April 2004, from the delegation of Canada to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have asked me to request consultations with the Government of the United States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), and Article 30 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement). These consultations concern:

- (1) the failure of the United States Department of Commerce (Commerce) to complete expedited reviews of the countervailing duty order concerning certain softwood lumber products from Canada in order to promptly establish an individual countervailing duty rate for each requesting exporter; and
- (2) the refusal and failure of Commerce to conduct company-specific administrative reviews of the same countervailing duty order in order to establish a final individual countervailing duty rate for each requesting exporter.

On 22 May 2002, Commerce published an amended final countervailing duty determination and countervailing duty order concerning certain softwood lumber products from Canada.¹ On 17 July 2002 and 20 September 2002, Commerce initiated expedited reviews of the countervailing duty order.² On 1 July 2003, Commerce initiated an administrative review of the countervailing duty order.³ On 25 July 2003, Commerce issued a Decision Memorandum regarding the methodology for

¹ *Notice of Amended Final Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 Fed. Reg. 36070 (Department of Commerce, 22 May 2002), corrected in 67 Fed. Reg. 37775 (Department of Commerce, 30 May 2002).

² *Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 Fed. Reg. 46955 (Department of Commerce, 17 July 2002); *Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 Fed. Reg. 59252 (Department of Commerce, 20 September 2002).

³ *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 Fed. Reg. 39055 at 39058 (Department of Commerce, 1 July 2003).

the administrative review⁴ and on 15 March 2004, Commerce issued a Decision Memorandum regarding selection of companies for company-specific "zero/*de minimis*" administrative reviews.⁵

The measures at issue in these consultations include, but are not necessarily limited to: (1) the countervailing duty order concerning certain softwood lumber products from Canada as applied to exporters that requested company-specific expedited reviews and/or company-specific administrative reviews; (2) Commerce's failure to complete expedited reviews in order to promptly establish an individual countervailing duty rate for each requesting exporter; (3) Commerce's Decision Memoranda of 25 July 2003 and 15 March 2004; (4) Commerce's refusal and failure to conduct company-specific administrative reviews in order to establish a final individual countervailing duty rate for each requesting exporter; and (5) the relevant US laws and regulations relating to expedited and administrative reviews.

In a Fact Sheet released with final expedited review results for certain exporters on 3 March 2004, Commerce confirmed that there are exporters for which expedited reviews have not been completed⁶ in spite of the fact that these reviews were initiated nearly two years ago. Commerce has therefore failed to promptly establish an individual countervailing duty rate for these exporters.

In the Decision Memoranda of 25 July 2003, and 15 March 2004, Commerce confirmed that the administrative review of certain softwood lumber products from Canada would be conducted on an aggregate basis, meaning that Commerce would establish a country-wide countervailing duty rate.⁷ Commerce also confirmed that the countervailing duty rate established in the aggregate administrative review will supersede all previously established countervailing duty rates, including those established in the expedited reviews. Further, Commerce denied company-specific administrative reviews to all but 11 exporters, despite the fact many more exporters requested such reviews to establish final individual countervailing duty rates. For the selected 11 exporters, Commerce has characterized its review as a "zero/*de minimis*" review with no assurances that final individual countervailing duty rates over *de minimis* will be given effect. In addition, the 11 exporters chosen include only 6 of what Canada understands to be 69 exporters that requested both company-specific expedited and administrative reviews. The exporters that were not chosen for a company-specific "zero/*de minimis*" administrative review will certainly not receive a final individual countervailing duty rate. Instead, they will be subject to the country-wide countervailing duty rate established in the aggregate administrative review, thereby nullifying any individual countervailing duty rates established in expedited reviews.

The United States has therefore acted inconsistently with Articles 10, 19.1, 19.3, 19.4, 21.1, 21.2, 21.4 and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994.

I look forward to receiving your reply to this request and to selecting a mutually acceptable date for holding consultations within 30 days from the date of receipt of this request. Canada welcomes any suggestions that the United States may wish to make concerning dates on which the consultations could take place.

⁴ *First Administrative Review of the Countervailing Duty Order on Softwood Lumber Products from Canada – Methodology for Conducting the Review*, July 25, 2003 (Case No. C-122-839).

⁵ *First Administrative Review of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada – Selection of Companies for Company-Specific Reviews*, March 15, 2004 (Case No. C-122-839).

⁶ *FACT SHEET – Final Results of Expedited Reviews under the Countervailing Duty Order on Certain Softwood Lumber Products from Canada*, 3 March 2004.

⁷ Products from six Canadian provinces are subject to the countervailing duty order: Québec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia.