

**UNITED STATES – INVESTIGATION OF THE INTERNATIONAL
TRADE COMMISSION IN SOFTWOOD LUMBER FROM CANADA**

Recourse to Article 22.2 of the DSU by Canada

The following communication, dated 14 February 2005, from the delegation of Canada to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Canada requests that a special meeting of the Dispute Settlement Body (DSB) be held on 25 February 2005 to consider the following agenda item:

United States – Investigation of the International Trade Commission in Softwood Lumber from Canada -

Recourse by Canada to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

The Panel in this dispute concluded that the US International Trade Commission's (USITC) finding of a likely imminent substantial increase in softwood lumber imports from Canada was not one which could have been reached by an objective and unbiased investigating authority in light of the totality of the factors and the reasoning in the USITC determination. On this basis, the Panel concluded that the USITC determination was not consistent with the requirements of Article 3.7 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") and Article 15.7 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement").

The Panel also concluded that the USITC's determination was not consistent with the requirements of Article 3.5 of the *AD Agreement* and Article 15.5 of the *SCM Agreement* because the USITC's analysis rested upon its unsubstantiated finding of an imminent substantial increase in imports.

In addition, the Panel found that in the absence of a WTO-consistent causation finding, it was not necessary or appropriate to make findings with respect to whether the ITC attributed the injuries caused by other factors to the allegedly dumped and subsidized imports. In view of the fundamental significance of the non-attribution requirement and to give guidance should the issue arise in implementation, however, the Panel set out its serious concerns on this issue. The Panel concluded that given the overall absence of discussion of other factors potentially causing injury in the future, the Panel would conclude that the ITC determination is not consistent with the obligation in Article 3.5 of the *AD Agreement* and Article 15.5 of the *SCM Agreement* that "injuries caused by these other factors must not be attributed" to the allegedly dumped and subsidized imports.

On 26 April 2004, the DSB adopted the Panel Report. The United States stated that it intended to implement the DSB's recommendations and rulings.

On 1 October 2004, pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Canada and the United States agreed on a "reasonable period of time" of nine months for the United States to implement the recommendations and rulings of the DSB. That period of time expired on 26 January 2005. Canada considers that the United States has failed to comply with the DSB's recommendations and rulings within the reasonable period of time provided.

Therefore, pursuant to Article 22.2 of the DSU, Canada requests the authorization of the DSB to suspend the application to the United States of its concessions or other obligations, in an amount representing the total amount of countervailing and anti-dumping duty cash deposits collected and not refunded as a result of the United States' failure to properly implement the DSB's recommendations and rulings (*i.e.* the United States' failure to revoke the countervailing and anti-dumping duty orders of 22 May 2002)¹. To date, this amount is approximately \$CAD 4.25 billion. For the year 2005, the level of suspension of concessions should, therefore, equal this amount. In subsequent years, the level of suspension of concessions will equal the amount of total countervailing and anti-dumping duty cash deposits collected and retained on the anniversary date of the filing of this request.

This level of suspension is equivalent to the level of nullification and impairment of benefits accruing to Canada that results from the United States' failure to bring its measures into compliance with its WTO obligations.

Canada intends to suspend tariff concessions and related obligations under the *General Agreement on Tariffs and Trade 1994* by imposing additional import duties above bound custom duties on products originating in the United States. For each year in which Canada intends to take such measures, Canada will notify the DSB of the amount of duties improperly collected and retained by the United States during the prior year and of the level of the duties it will impose on selected products.

¹ 67 Fed. Reg 36,067 and 67 Fed. Reg. 36,070 (Dep't Commerce 22 May 2002)