

**UNITED STATES – FINAL DUMPING DETERMINATION ON
SOFTWOOD LUMBER FROM CANADA**

Understanding between Canada and the United States
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 27 May 2005, from the delegation of Canada and the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

Canada and the United States would like to inform the Dispute Settlement Body that they have agreed on the attached "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding Applicable to the WTO Dispute: *United States – Final Dumping Determination on Softwood Lumber from Canada* (WT/DS264)".

We ask that you please circulate this notification to the Dispute Settlement Body.

Agreed Procedures under Articles 21 and 22
of the Dispute Settlement Understanding Applicable to the WTO Dispute:
United States – Final Dumping Determination on Softwood Lumber
from Canada (WT/DS264)

The Panel and Appellate Body reports in this dispute were adopted by the Dispute Settlement Body ("DSB") on 31 August 2004.

On 6 December 2004, pursuant to Article 21.3(b) of the *Understanding on the Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Canada and the United States reached an agreement (WT/DS264/12) on a reasonable period of time for implementation of the DSB's recommendations and rulings of seven and one-half months (*i.e.*, from 31 August 2004 to 15 April 2005). Canada and the United States subsequently reached an agreement (WT/DS264/15) to modify the reasonable period of time so that the period would expire on 2 May 2005.

On 19 May 2005, the United States informed the DSB that it had implemented the DSB's recommendations and rulings.

On 20 May 2005, Canada informed the DSB that it considers that the United States has not properly implemented these recommendations and rulings.

Canada and the United States (the "Parties") have agreed on the following procedures:

1. Canada will request the establishment of a panel pursuant to Article 21.5 of the DSU (the "compliance panel") at the DSB meeting of 1 June 2005. The United States will accept the establishment of the compliance panel.
2. At the DSB meeting of 1 June 2005, Canada will also request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU. Pursuant to Article 22.6 of the DSU, the United States will object to the level of suspension of concessions or other obligations, thereby referring this matter to arbitration.
3. The Parties will cooperate to enable the compliance panel to circulate its report within 90 days of the referral of the matter to the compliance panel, excluding such time as the compliance panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. In case of an appeal of the compliance panel report, the Parties will cooperate to enable the Appellate Body to circulate its report within 90 days from the date of notification of the appeal to the DSB.
5. The Parties will request that the Article 22.6 arbitration be suspended until adoption by the DSB of the recommendations and rulings in the Article 21.5 compliance proceedings.
6. In the event that the DSB finds that the United States has failed to comply with the recommendations and rulings of the DSB or that the measures taken by the United States to comply with the recommendations and rulings of the DSB are inconsistent with the covered agreements, the Article 22.6 arbitration will resume at the request of either Party. The Parties will cooperate to enable the arbitrators to circulate their report within 60 days of the resumption of their work.
7. In the event that the DSB finds that the United States has complied with the recommendations and rulings of the DSB and that the measures taken by the United States to comply with the

recommendations and rulings of the DSB are not inconsistent with the covered agreements, Canada will withdraw its request under Article 22.2 of the DSU, thereby terminating the arbitration procedure.

8. The Parties will cooperate to facilitate the participation of the original panelists in the compliance panel and the Article 22.6 arbitration.
9. If any of the original panelists are not available for either the compliance panel or the Article 22.6 arbitration, or both, the Parties will promptly consult on a replacement panelist and either Party may request the Director-General of the WTO to appoint, as soon as possible, a replacement for the proceeding or proceedings in which such a replacement is required. If an original panelist is unavailable to serve on the compliance panel and the Article 22.6 arbitration, the Parties will further request that in selecting a panelist for the compliance panel, the Director-General seek a person who will also be available to act in the Article 22.6 arbitration.
10. The Parties agree to continue to cooperate in all matters related to these agreed procedures and not to raise any procedural objection to any of the steps set out in them. If during the application of these procedures, the Parties consider that a procedural aspect has not been properly addressed, they will endeavour to find a solution within the shortest time possible that will not affect the other agreed procedures.
11. These agreed procedures do not prejudice either Party's rights to take any action or procedural step to protect its rights or interests, including the activation of any aspect of the provisions of the DSU.

Geneva, 27 May 2005

For Canada:

For the United States:

(signed)
H.E. Mr Don Stephenson
Ambassador
Permanent Mission of Canada

(signed)
H.E. Ms Linnet F. Deily
Ambassador
Permanent Mission of the United States
