



16 March 2018

(18-1647)

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Original: English

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

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CANADA**

The following communication, dated 15 March 2018, from the delegation of Canada to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 28 November 2017, the Government of Canada ("Canada") requested consultations with the Government of the United States of America (the "United States" or "U.S.") 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 U.S. anti-dumping measures applying the Differential Pricing Methodology to softwood lumber products from Canada.

Canada held consultations with the United States on 17 January 2018. These consultations failed to settle the dispute.

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

The U.S. 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. *Certain Softwood Lumber Products From Canada: Antidumping Duty Order and Partial Amended Final Determination*, 83 Fed. Reg. 350 (January 3, 2018);
3. 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
4. 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*.

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 U.S. obligations under the Anti-Dumping Agreement, including:

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; and
2. Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement as the United States applied zeroing in its W-T calculation methodology 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 and 2 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.

The United States' anti-dumping measures in *Certain Softwood Lumber from Canada* nullify or impair benefits accruing to Canada directly or indirectly under the cited agreements.

Canada therefore respectfully requests, pursuant to Article 4.9 and Article 6 of the DSU and Articles 17.4 and 17.5 of the Anti-Dumping Agreement, that the Dispute Settlement Body establish a panel to examine this matter on an urgent basis, with the standard terms of reference as set out in Article 7.1 of the DSU. In accordance with Article 10.4 of the DSU, Canada also requests this matter be referred to the original panel that considered the DPM in *United States — Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*.

Canada asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 27 March 2018.

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