

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

Recourse to Article 21.5 of the DSU by Canada

Notification of an Appeal by Canada  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 17 May 2006, from the Delegation of Canada, is being circulated to Members.

Pursuant to paragraph 4 of Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") and Rule 20 of the Working Procedures for Appellate Review, Canada appeals certain issues of law and certain legal interpretations covered in the Panel Report in *United States – Final Dumping Determination on Softwood Lumber From Canada – Recourse to Article 21.5 of the DSU by Canada*.<sup>1</sup>

The Panel found that the U.S. Department of Commerce's ("USDOC") section 129 dumping determination on softwood lumber was not inconsistent with Articles 2.4.2 and 2.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("ADA").<sup>2</sup> Consequently, the Panel determined that the United States had implemented the rulings and recommendations of the Dispute Settlement Body ("DSB").<sup>3</sup> These findings are in error as they are based on erroneous findings on issues of law and related legal interpretations.

Canada requests that the Appellate Body review, and reverse, these findings of the Panel. Specifically, Canada asks the Appellate Body to find:

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<sup>1</sup> Report of the Panel, WT/DS264/RW, circulated April 3, 2006.

<sup>2</sup> *Ibid.*, at paras. 5.27-5.28, 5.30, 5.65-5.66, 5.78, 6.1.

<sup>3</sup> *Ibid.*, at para. 6.2. See DSB, *Minutes of Meeting (31 August 2004)*, WT/DSB/M/175, September 24, 2004, 4(a), at para. 42.

- first, the Panel erred in interpreting Article 2.4.2 to permit the USDOC to treat transaction-specific comparisons that result in a negative value (*i.e.*, non-dumped transactions) as zero in calculating "margins of dumping" under the transaction-to-transaction methodology. These erroneous findings appear throughout the panel report including paragraphs 5.17-5.30, 5.65-5.66, and 6.1<sup>4</sup>; and
- second, the Panel erred in finding that Article 2.4 permits the treatment of transaction-specific comparisons that result in a negative value as zero in the calculation of "margins of dumping" under the transaction-to-transaction methodology. These findings are set out in paragraphs 5.72-5.78 and 6.1 of the panel report.

In the light of these errors, Canada respectfully requests that the Appellate Body:

- *reverse* the findings of the Panel set out above;
- *find* that the USDOC's use of zeroing under the transaction-to-transaction methodology in the section 129 determination, as described above, is inconsistent with Articles 2.4.2 and 2.4 of the ADA; and
- *determine* that, as a consequence, the United States has failed to implement the recommendations and rulings of the DSB.

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<sup>4</sup> The USDOC confirmed that it treated negative transaction-specific comparison results as zero in its section 129 determination, at one point describing the process as follows: "... because the Appellate Body report requires the offset for non-dumped sales only for a weighted-average-to-weighted-average comparison, we have not applied the offset for non-dumped sales in our transaction-to-transaction comparison." See *Notice of Determination Under Section 129 of the Uruguay Round Agreements Act; Antidumping Measures Concerning Certain Softwood Lumber Products From Canada*, 70 Fed. Reg. 22,636 at 22,639 (Dep't Commerce May 2, 2005).