

Original: English

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

Request for Consultations by Canada

The following communication, dated 13 September 2002, from the Permanent Mission of Canada 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* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article 17 of the *Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement)*, concerning the final affirmative determination of sales at less than fair value with respect to certain softwood lumber products from Canada (Inv. No. A-122-838) announced by the United States Department of Commerce on 21 March 2002 pursuant to section 735 of the *Tariff Act of 1930*, as amended on 22 May 2002 (Final Determination).

The measures at issue include the initiation of the investigation, the conduct of the investigation and the Final Determination. The Government of Canada considers these measures and, in particular, the determinations made and methodologies adopted therein by the United States Department of Commerce under authority of the United States *Tariff Act of 1930*, to violate the *Anti-Dumping Agreement* and the GATT 1994 (in particular Articles 1 and 18.1 of the *Anti-Dumping Agreement* and Article VI of the GATT 1994) for, among others, the following reasons:

1. The United States Department of Commerce improperly initiated the anti-dumping investigation that resulted in the Final Determination in contravention of Article 5 of the *Anti-Dumping Agreement* (including Articles 5.2, 5.3, 5.4 and 5.8). The application to initiate filed by the US applicant failed to provide evidence of dumping, injury and causation that was reasonably available, including prices at which softwood lumber was sold in Canada. As a whole, the application did not contain "sufficient evidence" to justify the initiation of an investigation. Further, the initiation of the investigation was not based on an objective and meaningful examination and determination of the degree of support for the application by the domestic industry because the *Continued Dumping and Subsidy Offset Act of 2000* (CDSOA), by requiring that a member of the US industry support the application as a condition of receiving payments under the CDSOA, made an objective and meaningful examination of industry support for the application impossible.
2. The United States Department of Commerce improperly applied a number of methodologies inconsistent with Article VI of the GATT 1994 and Articles 1, 2 (including Articles 2.1, 2.2, 2.4 and 2.6) and 9.3 of the *Anti-Dumping Agreement* as a result of improper and unfair

comparisons between the export price and the normal value, resulting in artificial and/or inflated margins of dumping. These included:

- (a) reliance on unrepresentative home market prices and improper determinations that sales of the like products in Canada were not in the ordinary course of trade, the effect of which led the Department of Commerce to disregard a significant proportion of domestic sales of like products (identical or similar goods) for purposes of making price to price comparisons and for purposes of calculating profit in determining constructed values;
 - (b) failure to properly allocate costs in calculating the cost of production of the like product in Canada, including the failure to extend the value-based cost allocation methodology to take into account differences in lumber dimension, the effect of which led to improperly determining constructed values and profit, distortions in the application of the sales below cost test, and limiting the use of like products for purposes of making price to price comparisons;
 - (c) application of the practice of "zeroing", the effect of which was to inflate margins of dumping and which, in the recommendations and rulings of the Dispute Settlement Body in an earlier dispute, was found to be inconsistent with the *Anti-Dumping Agreement* when establishing the existence of margins of dumping;
 - (d) failure, when conducting comparisons between like products, to make due allowance for differences that affect price comparability;
 - (e) the use of an unreasonable amount for profit in the calculation of constructed values;
 - (f) failure to apply a reasonable method in calculating amounts for administrative, selling and general expenses, including improper adjustment to export price and an improper allocation of general and administrative expenses including financial expenses; and
 - (g) failure to apply a reasonable method to account for by-product revenues as offsets in calculating costs of production.
3. The United States Department of Commerce failed to establish a clear, definitive and proper product scope for investigation and improperly initiated and pursued the investigation with regard to certain products contrary to Articles 5.1, 5.2, 5.4 and 5.8 of the *Anti-Dumping Agreement*. The Department of Commerce further failed to give parties opportunity to defend their interests in contravention of Article X:3(a) of the GATT 1994 and Article 6 of the *Anti-Dumping Agreement* (including Articles 6.1, 6.2, 6.4 and 6.9), by failing to issue timely decisions and provide reasonable schedules for briefing and hearings, and to adequately consider the representations of the parties.

Canada reserves the right to raise additional claims and legal matters regarding the initiation, conduct and Final Determination in the investigation during the course of consultations.

I look forward to receiving your reply to this request and in accordance with Article 4.8 of the DSU, to selecting a mutually acceptable date for holding consultations within 10 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.
